



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Fitton

**Respondent:** Scope it Ltd

**Heard at: London South Employment Tribunal (Croydon)**

**On: 4 December 2023**

**Before: Employment Judge T Perry**

## **Representation**

Claimant: did not attend

Respondent: Mr J Megarry (Counsel)

# JUDGMENT

The Claimant having failed to attend the hearing, his claims are dismissed under rule 47.

# REASONS

1. The Claimant failed to attend the first day of a four-day full merits hearing of his case. The hearing had been listed in April 2022.
2. The Tribunal made several attempts to contact the Claimant. Tribunal staff called him on the telephone number included in the claim form (which said calls could not connect) and emailed him on the email address provided in form ET1 asking him to contact the Tribunal to explain his absence. The Tribunal staff asked Mr Megarry whether the Respondent had any indication of the reasons why the Claimant had not attended, but he confirmed the Respondent had had no contact from the Claimant.
3. Ultimately the Tribunal staff tried the different mobile number contained in the medical notes provided by the Claimant. He apparently answered this number and explained that due to his wife's broken neck, he was her primary carer. Mentally and physically this case was not top of his priorities. Finally, he confirmed that he could not say when he would be able to do anything on the case and that he would

leave it to the Tribunal to decide whether to strike his case out.

4. I also had regard to the medical evidence provided by the Claimant on 14 August 2023 regarding his failure to attend a Preliminary Hearing on 31 July 2023.
5. I note that the Claimant had been ordered by Employment Judge Frazer to provide evidence supporting his absence at the Preliminary Hearing on 31 July 2023 and medical evidence of his prognosis and future ability to participate in proceedings from this point onwards.
6. What the Claimant actually provided was images of a car crash in May 2022 and medical records for himself and his wife. It is clear from these records that the Claimant himself seems to have been physically relatively unhurt given the high speed of the crash. He suffered lower leg pain and walked with crutches for a period. It was suggested that he would benefit from physiotherapy. Ultimately his physical injuries were deemed to be simply severe swelling.
7. Mentally it appears that the Claimant suffered more and I have seen evidence that the Claimant said he was suffering from PTSD (and I accept he may have been/may still be). The Claimant was actually diagnosed by the community mental health team with moderate anxiety and moderate depression in April of this year. It was proposed that the Claimant start a course of CBT with a view to becoming more social. There was no evidence before me of whether this treatment took place or its effects.
8. Mrs Fitton clearly has more significant physical injuries from the crash and did suffer broken bones in her back. She appears to suffer from persistent shoulder and scapular pain and had oedema in her ribs. Mrs Fitton was in a wheelchair (at least initially and possibly still is) and was out of a cast by the end of June 2022. She had serious swelling of the legs. It appears from the medical records that she received physiotherapy until at least October 2022. There is evidence that the spinal team at King's hospital discharged Mrs Fitton in January 2023 when she was told she no longer required to stay in a collar or brace. Notwithstanding this, she was still suffering right hip pain in February 2023. Ultimately there was no need for surgery and it appears she was able to go away for two weeks in August 2023. Medical reports show that she has been able to drive again. I accept she may still have significant physical symptoms from the crash including significant pain.
9. Mrs Fitton also received treatment for PTSD but was apparently discharged in June 2023 after not attending appointments.
10. I consider from the Claimant's discussion with tribunal staff and from my review of the medical evidence that the Claimant has chosen not to attend today's hearing (which was listed in April of last year) rather than being prevented by his own health.
11. It appears that the Claimant considers he is unable to progress the case in part

because he has to care for his wife. I have not seen any medical evidence to suggest that Mrs Fitton requires a level of care that would prevent the Claimant from either progressing his case and/or attending hearings. Even if the Claimant could not have attended in person today he could have sought to attend by CVP or by telephone. I see nothing in the medical evidence satisfactorily explaining why the Claimant was not able to attend the Preliminary Hearing in July 2023.

12. It is notable that, despite being ordered to do so, the Claimant has provided no medical prognosis as to when he is going to be able to progress his case. His own evidence is that cannot say when he will be able to do so as the case is not a high priority for him.
13. I consider in those circumstances that following the Claimant's failure to attend today, it is proportionate to dismiss his claims. I do not consider it would be appropriate to postpone the case for a further 6 months as the Claimant had apparently suggested in July 2023 as there is no evidence before me (including the Claimant's own comments to Tribunal staff) that the Claimant will be in a better position to progress the case then.
14. Accordingly, the Claimant's claims are dismissed under rule 47.

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Employment Judge **T Perry**

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Date 4 December 2023

### **Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

