



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M Morris

**Respondent:** Natural Resources Wales

**UPON APPLICATION** made on 7 February 2024 to reconsider the Reconsideration Judgment, sent to the parties on 19 January 2024 (“**Reconsideration Judgment**”), under rule 71 of the Employment Tribunals Rules of Procedure 2013 (“**Rules**”).

## JUDGMENT

The Claimant’s application for reconsideration is refused and the Reconsideration Judgment is confirmed.

## REASONS

### Background

1. The Claimant had previously, on 15 December 2023, submitted an application for reconsideration of my Judgment, sent to the parties on 5 December 2023 (“**Judgment**”), following a hearing on 14 November 2023, in which I had concluded that she was not disabled, at the relevant times, for the purposes of section 6 of the Equality Act 2010. I refused that reconsideration application in the Reconsideration Judgment.
2. The Claimant sent in a request for reconsideration of my Reconsideration Judgment in a document attached to an email of 7 February 2024. She provided a further document, in the form of a doctor’s letter, the following day by way of attachment to a further email.

### Issues and Law

3. I set out the applicable law relating to reconsiderations in paragraphs 2 to 4 of my Reconsideration Judgment, and do not repeat that here. I do however observe that Rule 71 provides that applications for reconsideration must be made within 14 days of the date on which the written record of the original decision was sent to the parties.
4. As I have noted, the Reconsideration Judgment was sent to the parties on 19 January 2024, which meant that any reconsideration application in relation to it should have been submitted by 2 February 2024. However,

the Claimant's second reconsideration application was not submitted until 7 February 2024.

5. Rule 5 of the Employment Tribunal Rules of Procedure however gives me power to extend any time limit specified in the Rules, whether or not it has expired, and I considered that, bearing in mind the Claimant's status as a litigant-in person, it would be in furtherance of the overriding objective for me to consider the Claimant's application notwithstanding that it had not been submitted within the required time period.
6. I also observe that, as I noted in the Reconsideration Judgment, Rule 70 of the Rules specifies only one ground for reconsideration, namely; where it is necessary in the interests of justice. That was a change from the provisions relating to reviews of judgments under the previous Rules issued in 2004, which specified, in Rule 34, certain specific grounds for review. Those included, at Rule 34(3)(d), the availability of new evidence.
7. Bearing in mind that the Claimant's second reconsideration application referenced new evidence, I considered it appropriate to have regard to case authorities which dealt with applications under that ground.
8. With regard to applications on the ground that new evidence was available, it has been long established, following the Court of Appeal decision in Ladd –v- Marshall [1954] 1 WLR 1489, that the party making the application needs to be able to show that the new evidence: could not have been obtained with reasonable diligence for use at the original hearing; would probably have had an important influence on the hearing, although it need not be decisive; and was apparently credible, although it need not be incontrovertible.
9. That requirement was largely reflected within the wording of Rule 34(3)(d) of the 2004 Rules which allowed a review where "*new evidence has become available since the conclusion of the hearing to which the decision relates, provided that its existence could not have been reasonably known of or foreseen at that time*".

### The Application

10. The Claimant's second reconsideration application focused on a letter dated 31 January 2024 from one of her treating GPs, who had been a partner in the Claimant's GP Surgery until June 2023, and who continues to work there as a locum GP. He has known the Claimant since she registered at the Surgery in November 2007.
11. In his letter, the GP noted that the Claimant had been referred to a local Chronic Fatigue Clinic in November 2008, with her case being closed there in July 2010. He observed that, although the exact biological pathway of that illness remains unknown, most clinicians would accept that it is a chronic, long term condition for many who develop it. He further observed that the long term pattern of the illness was often that the symptoms fluctuate in intensity, with illnesses such as viral infections triggering the fluctuations. He noted that that would appear to be the case with the Claimant on looking through her medical record.

12. The GP also noted that the Claimant had presented acutely stressed in July 2017, and that consultations regarding that had lasted until February 2018. He noted that, although never referred or formally assessed and diagnosed by the mental health services, he felt that the Claimant's presentation would be consistent with a diagnosis of Post Traumatic Stress Disorder.
13. Finally with regard to the Claimant's conditions, the GP noted that the Claimant's presentation with respiratory system infections seemed to affect the Claimant more severely, or to have a more protracted timescale, than others, and that one of those presumed infections had led to a referral to the ENT department in June 2022.
14. The GP concluded by noting that he understood that what was required in relation to the Claimant related to the long term nature of her conditions. He confirmed that, in his opinion, the first two conditions described (Chronic Fatigue and Post Traumatic Stress Disorder) were persistent though fluctuating in intensity. He commented that the respiratory infections were intermittent, but their effect on the Claimant's wellbeing would have been greater than it would have been for many other patients, and would also have exacerbated her Chronic Fatigue.
15. The GP also clarified the sickness certificates issued by the GP surgery. He commented that the software used requires only one illness to be recorded, and, whilst multiple problems can be added manually, that never happens due to the time constraints on the GPs.

### Conclusions

16. I considered the reconsideration application in light of the directions provided by the Court of Appeal in Ladd, i.e. by assessing: whether the evidence, in the form of the GP's letter, could have been obtained with reasonable diligence for use at the hearing; whether the letter's content would probably have had an important influence on the result of the hearing; and whether the content of the letter was apparently credible.
17. With regard to the last of those matters, I had no concern that the GP's comments were apparently credible. Indeed, the bulk of them very much accorded with my interpretation of the underlying GP records following the hearing. I also had no reason to doubt that the clarification provided in relation to the medical certificates was apparently credible, although it seemed to me, from my experience of sickness certificates in many other cases, that if more than one condition is having a material impact on a patient, a GP will often make reference to all material conditions by adding the few words required.
18. However, with regard to the first matter identified in Ladd, there did not seem to be any reason why, if the Claimant considered it would assist her in establishing that she was disabled for the purposes of the Equality Act, the letter could not have been put before me at the hearing in November 2023. On that basis, I did not consider that it would be appropriate for me to consider the GP's letter.

19. However, notwithstanding my view on that, I did not consider, in any event, that the evidence provided by the GP's letter would have led to a different outcome, the second matter identified in Ladd. As I have noted above, the summary of the Claimant's conditions and their impact on her was very much in line with the conclusions I had myself drawn directly from the GP notes. As I noted in my Judgment, I was satisfied that the Claimant had suffered, and continues to suffer, from the identified conditions, and that they did, at times in the past, impact on her day-to-day activities to the required substantial degree.
20. However, my concern, from the evidence I heard and read at the hearing, was over the question of whether that impact was likely to have the required long-term effect or was likely to recur, and I ultimately concluded that, assessing matters as at the period when the discriminatory treatment was said to have occurred, I did not consider that the effects of the Claimant's conditions were likely to last for at least 12 months overall or were likely to recur.
21. I further clarified, in paragraph 23 of my Reconsideration Judgment, that the focus required is not on whether the conditions themselves have lasted or are likely to last for at least 12 months, but on whether the substantial adverse effect of those conditions has lasted or is likely to last for at least 12 months, or is likely to recur.
22. As I have noted at paragraph 14 above, the GP, in his letter, confirmed that the conditions were persistent, i.e. as I interpreted his comments, were long term. However, the letter provides no evidence on the likely persistence of the required substantial adverse effect of those conditions, which is what I had to assess.
23. With regard to the GP's clarification of the sickness certificates, whilst I appreciated from that that the reference only to "*Acute reaction to stress*" in the certificates did not mean that the Claimant had not presented with other conditions, it seemed to me that that stress condition, i.e. a reaction to the meeting the Claimant had with her manager on 20 September 2022, was the condition which materially impacted upon her from September 2022 onwards. As I noted in the Judgment, the evidence from the relevant time did not support a conclusion that that condition was likely to have the required long-term substantial adverse effect.
24. Consequently, I did not consider that the GP's letter, had I had it before me at the hearing in November 2023, would have had an important influence on the result of the hearing.
25. Ultimately therefore, I did not consider that there was any reasonable prospect of my original Judgment or my Reconsideration Judgment being varied or revoked, and I therefore concluded that the Claimant's application for reconsideration should be refused.

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Employment Judge S Jenkins

Date: 16 February 2024

JUDGMENT SENT TO THE PARTIES ON 19 February 2024

FOR THE TRIBUNAL OFFICE Mr N Roche