EMPLOYMENT TRIBUNALS

Claimant: Mrs C Charlton

Respondent: Crystal Clear International Ltd

Judgment was sent to the parties on 12 March 2024. The claimant has applied for reconsideration of the judgment.

JUDGMENT

The reconsideration application is refused.

REASONS

The judgment

1. There was a preliminary hearing on 29 February 2024. At the hearing, the claimant was represented by her father, Mr Green. The respondent was represented by Mrs Skeaping, a solicitor.
2. At the hearing I decided that the claimant had a disability within the meaning of section 6 of the Equality Act 2010 ("EqA") by reason of the mental impairment of anxiety. Importantly for the purpose of this application, I also decided that the claimant started to have that disability on 30 June 2022. As a consequence, I dismissed all but two of the claimant's allegations of harassment. Judgment to that effect was sent to the parties on 12 March 2024. Written reasons ("Reasons") for that judgment have been provided separately.

The reconsideration application

3. In two e-mails dated 4 and 7 March 2024, Mr Green has applied on the claimant's behalf for the judgment to be reconsidered. In summary, his grounds for reconsidering the judgment are:
   3.1. Ground 1 - Mistaken evidence. Mr Green argued that my judgment was made on an incorrect factual basis. The claimant gave mistaken evidence about when it was that her anxiety adversely affected her ability to carry out normal day-to-day activities. She made that mistake because she had misunderstood questions that she had been asked. This, said Mr Green, was a consequence

of her having taken diazepam on the day of the hearing. The *Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings* requires the tribunal to have regard to mental disabilities and medical treatment.

3.2. Ground 2 – Respondent's submissions. Mr Green has suggested that my decision was affected by some "inaccurate evidence" given by Mrs Skeaping, and has given some examples.

Evidence

4. In the body of Mr Green's 4 March 2024 e-mail is a passage of text beginning with the words, "Witness statement by Catherine Charlton". The passage continues:

> "This is my Statement of Truth by Catherine Charlton of presentation of evidence at the PHR 29 of February 2021. I would like to explain how the heavy dosage of diazipan [sic] I had taken in order to attend the hearing affected my ability to understand questions asked by the Judge and Ms Skeaping at the hearing. I felt confused and did not and did not fully understand the questions asked. When the Judge asked me to write bullet points, I wrote down "My difficulties (start 21". By this I meant my life was severely affected at that time. When I answered the question the Judge asked about when this happened I believed that I was explaining the date, time and events that happened in the academy in November 2021 and how my life was severely affected at that time and continues to be affected. I was confused by Ms Skeapings question about being affected in March 2022 and answered yes because I was affected at that time but I thought I had explained to the Judge I had been severely affected in November 2021."

Relevant law

5. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".

6. The making of reconsideration applications is governed by rule 71.

7. Rule 72(1) states that an employment judge must consider any application made under rule 71. If the judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application must be refused.

8. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.

9. When considering a reconsideration application, the tribunal must take into account the importance of finality in litigation: *Outasight VB Ltd v. Brown* UKEAT 0253/14.

10. In the Reasons, I set out various legal principles and sources of guidance on the question of the fairness and accessibility of a hearing.

Conclusions

Ground 1 – Mistaken evidence

11. I was aware that the claimant had taken diazepam on the day of the hearing.

12. I do not know whether or not the claimant's diazepam caused her to misunderstand any questions. I do not, however, think there is any reasonable prospect of the claimant demonstrating that any such misunderstanding makes it necessary to alter my factual findings. This is because:

    12.1. The claimant gave her evidence in response to a clear question from me. First, she wrote down the day-to-day activities that she found difficult because of her anxiety. These were: (a) standing in the playground, (b) attending children's parties and (c) going shopping for food. I then asked her, "When did you have these difficulties"?

    12.2. The claimant was given a fair opportunity to tell her story in her own words. According to my note, in answer to my question, the claimant said:

> "I tried to tell the doctor.
> I wanted to work but I didn't want to sign off.
>
> I don't take my daughter to school parties
> I don't go shopping my husband
> I arrive at school, I won't go in the school ground. I hardly ever.
> From the beginning of me asking for change the things I was offered weren't.
>
> In the end by the time it came to April I did get signed off I cdn't cope any more. I have never been back to that building since. It was a job I loved. Previous to that point I had never had a complaint against my name. it was a series of this sort of pressure. Even my director of finances. Pressure to train. By the time April come, I cdn't cope with anything then, so completely shut down. It has affected my children.
> I am not outgoing I don't go to social events. It has completely altered."

    12.3. It is correct to say that, after the claimant had said this, Mrs Skeaping asked her a series of questions that tended to suggest that the claimant's day-to-day activities were first affected in April 2022. The claimant agreed with each of those propositions. The *Equal Treatment Bench Book* warns against the dangers of placing reliance on the answers to such questions. For this reason, I did not base my factual findings on those answers, but on what the claimant had said freely in her own words. It was for that reason that I found that by the time the claimant went on sick leave, her anxiety had already had a substantial adverse effect on her ability to carry out normal day-to-day activities for a few weeks.

    12.4. The claimant's evidence about her difficulties in taking her children to school matched the evidence of Mr Green, which was that he started taking her children to school after the claimant went on sick leave.

    12.5. I took into account the *Presidential Guidance* when deciding how to conduct the hearing. There was a package of measures in place, suggested by Mr Green on the claimant's behalf. I refused one of them. The Reasons explain why.

12.6. Just because a party has made a genuine mistake during their oral evidence, it does not follow that it is necessary in the interests of justice for a judgment based on that mistaken evidence to be reconsidered. Nor should such an outcome usually follow if the party can demonstrate that the mistake was not their fault. Finality in litigation is important. So is the overriding objective. It requires the tribunal to avoid delay where this is practicable. If there were to be a reconsideration hearing, the final hearing would not be able to start on 25 March 2024. I considered the possibility of a reconsideration hearing on 25 March 2024 before me, to be followed immediately by the final hearing. But I am not available for any of the period for which the final hearing has been listed. Moreover, a reconsideration hearing would present real problems in completing the final hearing within its time allocation.

13. There is accordingly no reasonable prospect of my revoking or varying my decision on the point in time at which the claimant first had an anxiety disability.

Ground 2 – Respondent's submissions

14. Mrs Skeaping did not give oral evidence. She asked questions and put forward oral submissions. I suspect that Mr Green has got his terminology mixed up, and I do not hold that against him for one moment.

15. I was not swayed by any inaccuracies in the submissions that Mrs Skeaping made. In the Reasons I identified some arguments that Mrs Skeaping put forward that I did not accept. I explained, for example, that it was irrelevant that the claimant could carry bags, or drive, or walk reasonable distances. Mr Green also takes issue with points that Mrs Skeaping made about the content of the PIP assessment, but they did not influence my conclusion either. The PIP assessment did not support the claimant's case. This was not because the assessment gave the claimant particular scores for particular types of activity. It was because there was no evidence that the assessment was based on the state of affairs that existed at the time of the alleged harassment.

Disposal

16. I must therefore refuse the reconsideration application.

17. The final hearing is due to start on 25 March 2024. The parties are reminded of their duty to cooperate with each other and to help the tribunal achieve the overriding objective. They must be ready to start on the first day of the hearing.

Employment Judge Horne
19 March 2024

SENT TO THE PARTIES ON
21 March 2024

FOR THE TRIBUNAL OFFICE