EMPLOYMENT TRIBUNALS

Claimant: **Graham Stimpson**

Respondent: **DHL Services Limited**

JUDGMENT ON THE CLAIMANT'S APPLICATION FOR RECONSIDERATION

The claimant's application dated 3 May 2024 for reconsideration of the judgment dated 6 May 2024 (written reasons sent on 14 June 2024) is refused because there is no reasonable prospect of the original decision being varied or revoked.

REASONS

1. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contain the Employment Tribunal Rules of Procedure 2013 (ET Rules). Rule 71 of the ET Rules requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The application for reconsideration of the judgment dated 6 May 2024 is in time.

2. Rule 72 (1) of the ET Rules provides: "An Employment Judge shall 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 (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused, and the Tribunal shall inform the parties of the refusal. …"

3. Under rule 70 of the Employment Tribunal Rules of Procedure 2013, a judgment will only be reconsidered where it is 'necessary in the interests of justice to do so'.

4. For the preliminary hearing on 2 May 2024, I had an agreed bundle of 143 pages. The claimant, who represented himself, participated fully in the hearing and had the opportunity to rely on relevant documents and advance all arguments that he wanted to make.

5. The issues were explored with both parties at the beginning of the preliminary hearing. As set out in the written reasons dated 6 June 2024, at paragraphs 6 and 7, it was agreed that the claimant had an impairment of a prolapsed disc during the relevant period of 28 December 2022 to 14 February 2023 and that this impairment had substantial adverse effects on the claimant's ability to carry out day-to-day activities. The effects, as agreed by both parties at the hearing, are waking up at night, struggling to get out of bed, bending, lifting, washing, dressing. The claimant accepted that the effects of the impairment had not lasted at least 12 months.

6. The agreed issue that I had to determine was whether the effects of the impairment were long term. In determining this question, I had to decide whether the effects of the impairment were likely to last at least 12 months and if not, and the substantial effects had ceased to have a substantial effect, they were likely to recur. The burden of proof is on the claimant and if he is unable to show that the effect of his impairment is long term then he is unable to show that he meets the definition of disability under the Equality Act 2010 and has the protected characteristic of disability.

7. The application for reconsideration dated 3 May 2024 is made on the following grounds:

> The Tribunal did not, given the accepted facts, have sufficient regard to the implications of the Equality Act 2010 and its requirements regarding reasonable adjustments and protection against discrimination based on disability status. This led to an incorrect assessment of the likelihood of injury recurrence and subsequent discriminatory actions by the respondent.

8. I have considered all the points made in the email dated 3 May 2024. I carefully considered the claimant's submissions in relation to whether there had been a recurrence and the GP entry on 6 February 2023 but found, for the reasons set out at paragraph 22 of the written reasons dated 6 June 2024, that the claimant had not shown that the substantial adverse effects were likely to recur. As set out in the written reasons I reached this conclusion based on the facts and circumstances at the relevant time and that the evidence presented did not show that the effects of the impairment were likely to last 12 months or that, the substantial effects had ceased to have that effect, but should be treated as continuing to have that effect because they were likely to recur.

9. The Tribunal is asked, as part of its review, to consider the email dated 27 January 2023 from Robert Benney (Transport Line Manager). The claimant says that this email sets out that Mr. Benny expressed apprehension about Mr. Stimpson's immediate return and suggested a gradual reintroduction to his role to prevent re-injury and is compelling evidence that DHL Services Ltd harbored legitimate concerns about the potential recurrence of the claimant's injury. Reading the email as a whole it says that if the claimant wants to "give it a go then come in and we can go through gradually getting you back into the role to avoid any re-injury" but then continues "If it is still causing you issues and you need further time off, please continue to follow the absence process." I find that this correspondence takes the claimant's case no further, and is not evidence that, at the relevant time, the effects of the impairment were likely to recur.

10. I heard no evidence from Stacey Hayes and Mr. Benny at the preliminary hearing. The references in the reconsideration application to conversations with Stacey Hayes and what may or may not have been said at the probation hearing by Mr. Benny does not take the claimant's case any further in demonstrating that, at the relevant time, the effects of the claimant's impairment were likely to last 12 months or the substantial effects had ceased to have such an effect but should be treated as continuing to have that effect because they were likely to recur.

Conclusion

11. In reaching my decision I have kept in mind that under Rule 70 the Employment Tribunal has a broad discretion. In *Outasight VB Ltd v Brown 2015 ICR D11, EAT*, Her Honour Judge Eady QC accepted that the wording 'necessary in the interests of justice' in rule 70 allows employment tribunals a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, 'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation'.

12. That finality in litigation is a central aspect of the interests of justice was also referred to in *Ebury Partners Ltd v Acton Davis 2023 EAT 40* where the EAT stated that it is unusual for a litigant to be given a 'second bite at the cherry' and the jurisdiction to reconsider should be exercised by employment tribunals with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the Employment Tribunal after the parties have had a fair opportunity to present their cases on a relevant issue.

13. I have carefully considered the claimant's application and applying the relevant legal principles I refuse the application for reconsideration pursuant to Rule 72 because there is no reasonable prospect of the Judgment being varied or revoked. There is nothing in the claimant's application for reconsideration that in the interests of justice requires this decision to be changed or reviewed. The judgment dated 6 May 2024 is confirmed.

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Employment Judge F Allen

Date___18 June 2024_____

JUDGMENT SENT TO THE PARTIES ON
18 June 2024

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FOR THE TRIBUNAL OFFICE