Case No: 1300215/2018

EMPLOYMENT TRIBUNALS

Claimant: **Mr H Ahmed**

Respondent: **Department for Work and Pensions**

DECISION ON RECONSIDERATION APPLICATION

The claimant's application dated 5 July 2024 for reconsideration of the judgment sent to the parties on 4 July 2024 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. Rule 71 of the Employment Tribunals Rules of Procedure 2013 ("ET Rules") requires that an application for reconsideration is made within 14 days of the written record being sent to the parties. The claimant's application for a reconsideration was received on 5 July 2024, one day after the written judgment and reasons was sent to the parties so is made in time. The claimant then sent two further e mails on 6 and 7 July 2024 which have been considered as part of his application for reconsideration.

2. The grounds for reconsideration are set out in rule 72 (1) of the ET Rules: *"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. The application for reconsideration appears to be made on the following grounds:
    a) The Tribunal made perverse findings of fact that no formal action was taken against the claimant in relation to his s20 EQA claim and failed to properly consider the claimant's case, directions from the EAT and the decision of the Court of Appeal in Griffiths v DWP.
    b) The Tribunal rejected what the claimant said in his written representations in relation to his s15 EQA claim connected to 'inflexibility with break timings' with the claimant stating that the

Tribunal needed to identify incidents with MB when the claimant was inflexible.

c) The Tribunal did not properly consider his written representations in relation to his s15 EQA claim connected to 'blocking out the diary' or considered a relevant authority. He also suggests that is claim was not analysed properly and the Tribunal were biased against the claimant.

d) The Tribunal's decision in relation to justification was incorrect.

e) The Tribunal made further perverse findings of fact in relation to a s 15EQA claim related to "declining to undertake work not scheduled for me'.

f) The Tribunal allowed the respondent's representative to allegedly "harass" the claimant during the hearing.

4. The Tribunal hearing was the claimant's opportunity to give information, ask questions and raise issues about all matters remitted to the Tribunal for consideration. The claimant chose not to attend that hearing for the reasons that are set out clearly in the judgment and which it is acknowledged form the subject of a separate appeal A request for reconsideration is not an opportunity for a party to seek to re-litigate matters; it does not entitle a party who is unhappy with or disagrees with the decision to re-open issues that were determined. A reconsideration is potentially a route for a party to raise new matters, but only where these have subsequently come to light after the hearing and where that party can explain why the matter was not raised before. It a fundamental requirement of litigation that there be certainty and finality.

5. I have read through the application for reconsideration in detail. Firstly the claimant makes points about the findings of fact, and why he says that the Tribunal should have made different findings I make the general point again that an application for reconsideration is not a route for challenging again findings of fact which a party disagrees with. The hearing itself was the opportunity to call evidence and make submissions to assist the Tribunal in making findings of fact. The claimant makes several points in his application about how he says the Tribunal decision amounted to an error of law or that findings of fact were perverse. If conclusions are disputed on a point of law, i.e. it a party can identify flaws in the legal reasoning of the original decision, or on grounds that facts found were perverse, they are matters for an appeal, not a reconsideration. The claimant has indicated that he intends to lodge such an appeal so that is a matter that can be determined as part of the appeal process. and I deal with each of the points made by the claimant in turn below:

a) The Tribunal's conclusions on the s20 EQA claim set out at paragraphs 66 to 79 of its judgment and reasons addresses the very specific matters that the EAT had instructed it to consider. Making a number of references to the EAT judgment in that. Each question identified was addressed in detail on the basis of the findings of fact necessary to be made (which were set out at paragraph 49 of the judgment and reasons). The decision of the Court of Appeal in Griffiths v DWP was considered and specifically reference in the Tribunal's judgment.

b) The Tribunal fully considered but ultimately did not accept what the claimant said in his written representations in relation to his s15 EQA

claim connected to 'inflexibility with break timings' in relation to the incident with MB and its reasons for that were set out at paragraph 80.3.2.

c) The Tribunal does not agree that it did not consider his written representations in relation to his s15EA claim connected to 'blocking out the diary' or considered a relevant authority. The Tribunal's detailed analysis in relation to this matter is set out at paragraph 80.6. The Tribunal made specific reference to the decision in Hall that the claimant refers to in its written judgment and reasons.

d) Whilst the claimant may disagree that Tribunal's decision in relation to justification was incorrect, this was fully considered in the written judgment and reasons at each point where it was relevant.

e) The Tribunal's conclusions in relation to flexibility and the issue of the claimant 'declining to undertake work not scheduled for me' are addressed at paragraphs 80.3.2 and I am satisfied that this was given due consideration.

f) In relation to an allegation the respondent's representative "harassed" the claimant during the hearing. Having checked its notes, the comment related to a sense of entitlement appears to have been made as part of a submission relating to the reasonable adjustments complaint, making a point about appropriate adjustments being part of a two way discussion process, requiring co-operation and dialogue which it was submitted that the claimant refused to engage with. This was linked to submissions about the claimant's behaviour which had been made in the original judgment. The Tribunal made no findings of fact that the claimant had such a sense of entitlement and any such comment was not part of its reasoning in reaching the decision it did.

6. Therefore having considered the matters raised, there is nothing in the application for reconsideration which indicates that it is in the interests of justice to re-open matters for a reconsideration. The substance of the claimant's application is to challenge findings of fact that were made or the conclusions that the Tribunal reached from those findings. The application is an attempt to re-litigate what was explored at the hearing. The claimant's application does not identify any new matters but largely makes points already raised (or which clearly could have been raised) at the hearing itself.

7. There is no clear reason given as to why it would be in the interests of justice to reconsider. I have therefore exercised my discretion to refuse the application for reconsideration as there is no reasonable prospect of the judgment being varied or revoked. The claimant's application for a reconsideration is therefore rejected.

Employment Judge Flood
12 July 2024