EMPLOYMENT TRIBUNALS

Claimant: **Mr. R Davies**

Respondent: **Planning Solutions Limited**

JUDGMENT ON AN APPLICATION FOR RECONSIDERATION

The Claimant's application for reconsideration is refused because there is no reasonable prospect of the decision being varied or revoked.

REASONS

1. This matter came before me as a Preliminary hearing on 11 January 2024. The matter to be determined was whether the Claimant had a disability within the meaning of Section 6 and Schedule 1 of the Equality Act 2010. Due to an unfortunate delay in the Tribunal process, I issued a Reserved Judgment on 8 April 2024, in which I determined that the Claimant was not disabled and therefore dismissed his complaints of unlawful disability discrimination, contrary to the Equality Act 2010. The Claimant's remaining claims were unaffected by this decision. The Claimant now applies for a reconsideration of the decision.

2. By Rule 70 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the judgment may be confirmed, varied or revoked.

3. Rule 71 provides that an application for reconsideration under Rule 70 must be made within 14 days of the date on which the decision (or, if later, the written reasons) was sent to the parties.

4. Under Rule 70, a judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also 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.

5. The Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases fairly and justly. This obligation is provided in Rule 2 of the 2013 Regulations. The obligation includes:

    - *ensuring that the parties are on an equal footing;*
    - *dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
    - *avoiding unnecessary formality and seeking flexibility in the proceedings;*
    - *avoiding delay, so far as compatible with proper consideration of the issues; and*
    - *saving expense.*

6. The process by which the Tribunal considers an application for reconsideration is set out in Rule 72. Where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked, the application shall be refused. Otherwise, the Tribunal shall send a notice to the parties setting out a time limit for any response to the application by the other parties, and seeking the views of the parties on whether the application can be determined without a hearing.

7. Rules 71 and 72 give the Tribunal a broad discretion to determine whether reconsideration of a decision is appropriate. Guidance for Tribunals on how to approach applications for reconsideration was given by Simler P in the case of *Liddington v 2Gether NHS Foundation Trust* UKEAT/0002/16/DA. Paragraphs 34 and 35 provide as follows:

    "34. […] a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a

different way or adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. Tribunals have a wide discretion whether or not to order reconsideration.

35. Where […] a matter has been fully ventilated and properly argued, and in the absence of any identifiable administrative error or event occurring after the hearing that requires a reconsideration in the interests of justice, any asserted error of law is to be corrected on appeal and not through the back door by way of a reconsideration application."

8. The Claimant's application was received on 22 April 2024, which was within the relevant time limit. I therefore consider it under Rule 72. I should add that the application was only brought to my attention on 8 July 2024 and so I again must apologise to the parties for the delay in the Tribunal process.

9. The Claimant advances 26 grounds in support of the application for a reconsideration. These can be broadly categorised into four main areas:

i. An attempt to adduce further evidence.

10. The Case Management directions set out clear time limits for the submission of evidence. The Claimant was directed to disclose any evidence, including copies of GP and other medical records that were relevant to whether he had a disability, by 20 October 2023. That provided ample opportunity for the Claimant to obtain relevant information. If the Claimant was not so able, he was at liberty to apply for an extension to this deadline; he did not do so. To allow evidence obtained some 8 months after the deadline imposed would be contrary to the overriding objective, especially when the evidence relates to a medical condition that was asserted by the Claimant at an early stage in proceedings.

11. Whilst the Claimant asserts that there was an administrative error in the Claimant's GP records, I do not accept that the SNOMED codes would add anything further to the evidence already provided in the bundle, nor to the oral evidence heard on the day. Similarly, whilst the NICE guidelines, relevant to specific medical conditions, provide a generalised indication of symptoms, they do not add anything further to the impact on the Claimant.

12. It is not in the interests of justice that the Claimant should be given a second bite

of the cherry simply because he failed to adduce all the information in support of his application at the original hearing. A reconsideration application is not an opportunity for the parties to re-argue their case, and a party's failure to raise a particular point or put certain documents before the Tribunal as evidence does not normally constitute grounds for review. Accordingly, the Claimant's grounds for reconsideration in this area would be contrary to the guidance set out in paragraph 7, above.

ii. Fairness of procedure both at the hearing and at the Case Management stage.

13. I have no doubt that any indications provided at the Case Management hearing were made with a view to assisting the Claimant and his representative to present the case effectively. I do not accept that there was any indication to limit the Claimant's evidence. It is for the Claimant to determine what evidence is necessary to prove his case within the guidelines set out in the Case Management directions.

14. At the hearing on 11 January 2024, the Claimant's representative raised her concerns about the effect of the Claimant's medication. That concern is reflected in the Reserved Judgment. The Claimant confirmed that he had taken his prescribed dosage and I am content that the guidance in the Equal Treatment Bench Book, February 2021 edition, revised in April 2023, was followed. Again, these matters are referred to in the Reserved Judgment.

iii. Failure to consider relevant evidence / consideration of irrelevant matters.

15. Findings of fact were made based upon the evidence as presented, and the legal principles applied to those findings in the conclusions. The Claimant refers to various points made in submissions, to suggest that the decision was reached on an incorrect evaluation of the evidence. However, this does not mean that I accepted those submissions, but instead considered the evidence as a whole. I do not consider that they provide any basis on which to revoke or vary the judgment.

iv. Error of law.

16. The legal principles upon which the decision was reached are set out in full in the Reserved Judgment. In relation to those points specifically raised by the Claimant, he concedes that the Employment Tribunal has discretion in the admissibility of evidence. The Employment Tribunal is not bound by its previous decisions and the finding of disability in one hearing has no bearing on the evaluation of the factual position in the Claimant's matter.

Conclusion

17. Having regard not only to the interests of the Claimant, but also to the Respondent's interests and the public interest requirement that there should, so far as possible, be finality of litigation, nothing the Claimant says in the reconsideration application persuades me that there is any reasonable prospect of the Claimant prevailing upon the Tribunal at a reconsideration hearing that the Tribunal's Judgment was incorrect. In light of these matters, I determine that there is no reasonable prospect of variation or revocation of the original decision. Moreover, the application for reconsideration does not raise any procedural error or any other matter which would make reconsideration necessary in the interests of justice.

18. Accordingly, such a course of action would not be in the interests of justice and the application for reconsideration is refused.

Employment Judge Heathcote

14 July 2024

Sent to the parties on:

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For the Tribunal Office:

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