EMPLOYMENT TRIBUNALS

Claimant: **K Hargreaves**

Respondents:
1. Ian Ambrose
2. Dynamic Assistance Limited
3. Christopher Smith
4. First Legal Solicitors
5. Karl Swindlehurst

JUDGMENT ON A RECONSIDERATION

The claimant's application dated 28 October 2024 for reconsideration of the Judgment sent to the parties on 14 October 2024 is refused.

REASONS

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

1. I have considered the claimant's application for reconsideration of the Judgment. The application was emailed by the claimant and received by the Tribunal on 28 October 2024. It consists of 3 pages of tightly typed submissions. I have taken the contents of the application into account.

Rules of Procedure

2. Rule 72(1) of the 2013 Rules of Procedure empowers me to refuse the application without convening a reconsideration hearing if I consider there is no reasonable prospect of the original decision being varied or revoked.

3. The test is whether it is necessary in the interests of justice to reconsider the Judgment (rule 70). Broadly, it is not in the interests of justice to allow a party to reopen matters heard and decided, unless there are special circumstances, such as a procedural mishap depriving a party of a chance

to put their case or where new evidence comes to light that could not reasonably have been brought to the original hearing and which could have a material bearing on the outcome.

4. Achieving finality in litigation is part of a fair and just adjudication. The importance of finality was confirmed by the Court of Appeal in Ministry of Justice v Burton and anor [2016] EWCA Civ 714. It has also been the subject of comment from the then President of the Employment Appeal Tribunal in Liddington v 2Gether NHS Foundation Trust EAT/0002/16 (paragraph 34) in the following terms:

> *"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 by 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."*

The application

5. The claimant failed in her contention that she was a disabled person at the material time. Her application for reconsideration largely expresses her dismay and disagreement with the conclusion that her disability complaint should be dismissed and her dissatisfaction with the way the preliminary hearing was conducted as regards reasonable adjustments for the claimant.

6. Despite the lengthy and detailed points raised in her application, there is no reasonable prospect of the claimant establishing that the Tribunal made an error of law, or that any of the conclusions on the facts or evidence presented were perverse. Such contentions are in any event better addressed in an appeal than by way of reconsideration. However, the claimant's application contains a limited number of substantive points. I have considered each point in turn.

Reasonable adjustments

7. The claimant contends that inadequate adjustments were made in light of her mental health at the hearing. It is to be noted that this was the fifth preliminary hearing. In the orders made at the first preliminary hearing for case management on 7 February 2023, Employment Judge McDonald recorded, at paragraph 35, that the claimant had indicated what reasonable adjustments she required to participate effectively in future

hearings. Those reasonable adjustments were revisited, for example, by Employment Judge Feeney, at the second preliminary hearing on 21 July 2023. I conducted the fourth preliminary hearing for case management on 21 November 2023 and, at that preliminary hearing, I also reviewed, with the claimant, the reasonable adjustments which the claimant required. My orders from the fourth preliminary hearing on 21 November 2023, paragraph 9, acknowledge the reasonable adjustments as set out in the claim form at section 12.1 and established since then, as re-confirmed by the claimant at the fourth preliminary hearing. At no point during this fifth preliminary hearing, did the claimant challenge the agreed and recorded reasonable adjustments which were in any event discussed again at the start of the hearing and implemented for her; nor did she seek to add to, or vary them. Regular breaks were taken upon the claimant's request and at least once per hour. The respondent's submissions were heard before lunch and the claimant was afforded the lunch hour and extra time in order to consider matters and collect her thoughts before presenting her submissions.

8. The bundle of evidence for the preliminary hearing included the claimant's detailed 7-page disability impact statement and a comprehensive psychological assessment/report on the claimant by Dr Peter Dargan, a clinical psychologist, dated 11 March 2022 which is 6 pages long. The claimant nevertheless suggests, in her reconsideration application, that she did not understand the full extent of her difficulties at the time of the fifth preliminary hearing, nor until she obtained a further report from Professor Dargan dated 22 July 2024. That is long after the fifth preliminary hearing and I consider that the claimant's view, as expressed in her application for reconsideration has been formed retrospectively, following the judgment that the claimant did not meet the test of disability in the Equality Act 2010.

Adjustments for how the evidence was to be viewed

9. In the course of her submissions, the claimant was asked to identify any documents or evidence in support of what she was saying. The claimant was given time to find things and time to consider matters before answering enquiries. However, for example, when the claimant was asked to identify any reference to her disability in her GP records, of which only a very small selection was provided to the Tribunal, the claimant stated that there was nothing in her GP notes because she had asked her GP not to record such matters. In addition, the claimant stated that, whilst she had been offered medication, she had refused such so there was no record of any relevant prescription. In any event, the claimant said that her diagnosis of Post Traumatic Adjustment Disorder was a self-diagnosis, based on her own research.

10. The fact is that the claimant presented very little evidence to support her contention as to disability – see the Judgment paragraphs 15, 16 and 23 to 25.

11. The claimant also contends that more weight should have been attached to what she could not do. That was the case, however, there was nothing in the documentary evidence on this aspect and the claimant's description in oral evidence, of day-to-day effects. The issue of what the claimant could or could not do is addressed in paragraph 24 of the Judgment. The relevant findings of fact on this aspect are in paragraphs 11 and 12.

12. The claimant seeks to criticise the Tribunal's reasoning by suggesting that assumptions have been made regarding the severity and legitimacy of her symptoms. This is not the case. The Tribunal's conclusions are based on the evidence before it, taking account of, in particular, contemporaneous evidence of the claimant at the material time. Indeed, in the absence of evidence, the claimant now seeks to persuade the Tribunal to make a number of assumptions in her favour which it would not be appropriate so to do.

Further points

13. The claimant refers to an email which she sent to the Tribunal prior to the hearing. This was not in the bundle of documents prepared by the parties for the preliminary hearing nor in the further documents submitted by the claimant nor was it raised or referred to by the claimant at any point in the preliminary hearing. The Tribunal did not therefore take it into account.

14. The claimant suggests that I made a comment about her as a litigant in person at the start of the hearing. I did not make that comment and do not recognise it as something I would ever say to a litigant in person.

15. I am satisfied that the Tribunal reviewed and clarified the reasonable adjustments that the claimant sought at the preliminary hearing and implemented those reasonable adjustments for the claimant. In addition, at the start of the hearing, the Tribunal set out the elements of the disability issue to be determined, the applicable law and the procedure for the preliminary hearing. In the course of the hearing, the Tribunal assisted the claimant with her submissions by taking her through each of the issues to be determined in the case and the evidence as presented whilst giving her extra time to collect her thoughts and prepare thoroughly for her submissions.

16. The burden of proof is on the claimant, not just to show an impairment, but also to show that the effects of that impairment meet the test in section 6 and schedule 1 of the Equality Act 2010. The claimant failed to do so.

Conclusion

17. Having considered all the points made by the claimant I am satisfied that there is no reasonable prospect of the original decision being varied or revoked. The application for reconsideration is refused.

____

Employment Judge Batten
Date: 22 January 2025

JUDGMENT SENT TO THE PARTIES ON:
3 February 2025

FOR THE TRIBUNAL OFFICE