



EMPLOYMENT TRIBUNALS

London South Employment Tribunal 18
March 2025 (video)

Claimant: Deborah Kay Thorpe

Respondents: Gwenny Jones

JUDGMENT ON RECONSIDERATION

Rules 68-71 of The Employment Tribunals Rules of Procedure 2024

Having carefully considered the application in accordance with Rule 70 of the Employment Tribunal Procedure Rules 2024, I have determined that **there is no reasonable prospect of the judgment being varied or revoked**. The application is therefore refused.

BACKGROUND

1. Miss Deborah Kay Thorpe was employed as a receptionist at Swanley Medical Practice (the Second Respondent) from April 2022 until her resignation in March 2024. The First Respondent, Mrs Gwenny Jones, was the Practice Manager at the Second Respondent. The Second Respondent is properly named as Dr Giakoumi and Dr Jones trading as Swanley Medical Practice, having previously been known as The Oaks Partnership.
2. The Claimant has a history of health issues dating back to 2021. She was diagnosed with supraventricular tachycardia (SVT) in October 2022, following investigations for chest pains and shortness of breath. Prior to this diagnosis, the Claimant had been undergoing investigations for cardiac-related symptoms since May 2021, though no specific diagnosis was made at that time. In February 2022, she began driving to work rather than walking, citing concerns related to these ongoing cardiac investigations.
3. Following her SVT diagnosis in October 2022, the Claimant experienced a second significant episode in April 2023, during which an ambulance was called to her workplace. She underwent a cardiac ablation procedure on 31 August 2023, which greatly improved her condition. By October 2023, her symptoms had significantly reduced in both frequency and severity.
4. The Claimant brought proceedings against the Respondents following her resignation in March 2024, alleging that they had failed to make reasonable adjustments for her disability. The claim included complaints of failure to provide regular breaks, failure to arrange for more staff when she was working, failure to provide a phased return to work after her cardiac ablation, and failure to offer occupational health and stress therapy support.

THE JUDGMENT AS ENTERED

5. At the preliminary hearing on 18 March 2025, which was conducted by video, I considered whether the Claimant's supraventricular tachycardia (SVT) amounted to a disability for the

purposes of Section 6 of the Equality Act 2010. The Respondent accepted that SVT is a physical impairment, but disputed that it had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities, that any such effect was long-term, and that any treatment was masking the effects of the impairment.

6. Following examination of the evidence, including the Claimant's testimony and medical documentation, I determined that the Claimant was not disabled for the purposes of Section 6 of the Equality Act 2010 at the material times. Consequently, I dismissed the claims related to disability, specifically the claim for failure to make reasonable adjustments under Sections 20-22 of the Equality Act 2010.
7. My judgment was delivered orally (extempore) at the conclusion of the hearing on 18 March 2025, and the written judgment has been drafted and approved but has not yet been promulgated. The judgment did not affect any other claims that the Claimant may have brought that were unrelated to disability.

APPLICATION FOR RECONSIDERATION

8. The Claimant, Miss Thorpe, made her application for reconsideration by email dated 11 April 2025. In this email, the Claimant indicated that she had intended to send a similar request on 21 March 2025, though the Tribunal did not receive any such communication on that date.
9. The application is in time as required by Rule 69 of the Employment Tribunal Procedure Rules 2024. Although the application was made more than 14 days after the oral judgment was delivered on 18 March 2025, Rule 69(a) specifies that the 14-day time limit runs from "the date on which the written record of the judgment sought to be reconsidered was sent to the parties." Since the written record of my judgment has not yet been promulgated or sent to the parties, the time limit under Rule 69(a) has not yet begun to run. Therefore, the application is clearly in time.
10. In her application, the Claimant seeks a review of the judgment on the basis that she did not have access to the Respondent's physical bundle during the hearing, and that she had confused the timeline of her heart issues. She contends that medical evidence in the bundle shows her symptoms dated back to April 2021, which would satisfy the 12-month requirement for a condition to be considered long-term under the Equality Act 2010. She specifically refers to pages 79, 138, 144, 146, 147, 150, and 151 of the bundle as containing relevant evidence.
11. Neither party has requested a hearing to decide this application, and I do not consider it necessary in the interests of justice to hold one.

THE LAW

12. Rule 68 of the Employment Tribunal Procedure Rules 2024 provides:

"(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.
(2) A judgment under reconsideration may be confirmed, varied or revoked.
(3) If the judgment under reconsideration is revoked the Tribunal may take the decision again. In doing so, the Tribunal is not required to come to the same conclusion."

13. Rule 69 states:

"Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal within 14 days of the later of—
(a) the date on which the written record of the judgment sought to be reconsidered was sent to the parties, or
(b) the date that the written reasons were sent, if these were sent separately."

14. Rule 70 describes the process for reconsideration:

"(1) The Tribunal must consider any application made under rule 69.
(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.
(3) If the application has not been refused under paragraph (2), the Tribunal must send a notice to the parties specifying the period by which any written representations in respect of the application must be received by the Tribunal, and seeking the views of the parties on whether the application can be determined without a hearing. The notice may also set out the Tribunal's provisional views on the application.
(4) If the application has not been refused under paragraph (2), the judgment must be reconsidered at a hearing unless the Tribunal considers, having regard to any written representations provided under paragraph (3), that a hearing is not necessary in the interests of justice.
(5) If the Tribunal determines the application without a hearing the parties must be given a reasonable opportunity to make further written representations in respect of the application."

15. In addition to these procedural rules, the substantive test for disability is contained in Section 6 of the Equality Act 2010, which provides that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

16. Schedule 1, paragraph 2 of the Equality Act 2010 defines "long-term" as meaning that the impairment has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected.

17. The proper approach to reconsideration applications has been addressed in a number of cases. In *Outasight VB Ltd v Mr L Brown* UKEAT/0253/14/LA, HHJ Eady QC (as she then was) considered the nature of the reconsideration jurisdiction. She stated at paragraph 46:

"In my judgment, the 2013 Rules removed the unnecessary (arguably redundant) specific grounds that had been expressly listed in the earlier Rules. Any consideration of an application under one of the specified grounds would have taken the interests of justice into account. The specified grounds can be seen as having provided examples of circumstances in which the interests of justice might allow a review."

18. The Judge further observed at paragraph 49:

"More specifically, as to an application to introduce fresh evidence after the determination of a case, the approach laid down in *Ladd v Marshall* will, in most cases, encapsulate that which is meant by the 'interests of justice'. It provides a consistent approach across the civil courts and the EAT. Should a different approach be adopted in the ET because the principles of *Ladd v Marshall* are no longer expressly set out in the Rules? I do not think so. Those principles set down the relevant questions in most cases where judicial discretion has to be exercised upon an application to admit fresh evidence in the interests of justice."

19. In *Ebury Partners UK Limited v Mr M Acton Davis* [2023] EAT 40, HHJ Shanks emphasised the importance of finality in litigation as part of the interests of justice. At paragraph 26, he noted:

"It is fair to say that the provision about commission at para 4e of the side letter is ambiguous. The way it was read by the EJ was arguable. But as a matter of textual analysis it could also be argued that the limitation of a year only applied to the commissions on new business from Canada (as Mr Acton Davis has maintained in his application for reconsideration and on the appeal). It could also have been argued that the words 'one year' were merely descriptive of the secondment and that since the secondment was to continue on rolling basis the entitlement to commissions continued in the same way."

20. However, he went on to state at paragraph 34:

"For all those reasons, I allow Ebury Partner's appeal and dismiss the cross-appeal. It follows that the judgment promulgated on 16 February 2021 is re-instated and the judgments of 4 October 2021 are set aside."

21. These cases underline that the reconsideration jurisdiction should be used sparingly and only where the interests of justice require it. A central aspect of the interests of justice is that there should be finality in litigation, and it is unusual for a litigant to be allowed a "second bite of the cherry."

MATERIALS CONSIDERED

22. In considering this application for reconsideration, I have reviewed the following documents:
- a) The claim form and response, which set out the parties' respective positions on whether the Claimant's condition amounted to a disability under the Equality Act 2010.
 - b) The Claimant's disability impact statement and the additional statement she provided, which detailed how her supraventricular tachycardia (SVT) affected her day-to-day activities.
 - c) The bundle of documents prepared for the preliminary hearing, which included medical evidence relating to the Claimant's condition spanning from April 2021 to October 2024. I have specifically re-examined pages 79, 138, 144, 146, 147, 150, and 151 of the bundle, which the Claimant has identified as containing evidence of her symptoms dating back to April 2021.
 - d) The medical evidence shows that the Claimant underwent investigations for chest pains and shortness of breath from April 2021, though she was not diagnosed with

SVT until October 2022. The records indicate that she was initially being investigated for possible angina and was prescribed a GTN spray. There is no clear medical evidence linking these early investigations directly to her SVT condition, which was only diagnosed after a significant cardiac event in October 2022.

- e) I have considered my notes taken at the preliminary hearing held on 18 March 2025. The Claimant gave oral evidence about her condition, its diagnosis, symptoms, and impact on her daily life. The Claimant confirmed during the hearing that she was diagnosed with SVT in October 2022, had undergone heart-related investigations since May 2021, and had experienced significant improvement in her symptoms following a cardiac ablation procedure in August 2023.
- f) The Claimant's email of 11 April 2025 requesting reconsideration, in which she states that she did not have access to the Respondent's physical bundle during the hearing and had confused the timeline of her condition. It is important to note, however, that although the Claimant states she did not have access to the physical bundle during the hearing, she did have electronic access to the bundle during the video hearing.

EVALUATION OF THE APPLICATION

- 23. The application for reconsideration centres on the Claimant's contention that her condition should be considered as having started in April 2021, when she first experienced symptoms and began to undergo cardiac investigations, rather than from October 2022 when she was formally diagnosed with SVT. She argues that this earlier start date would satisfy the 12-month "long-term" requirement under the Equality Act 2010.
- 24. Rule 70(2) of the Employment Tribunal Procedure Rules 2024 requires me to consider whether there is a "reasonable prospect of the judgment being varied or revoked" before proceeding further with the application. This threshold is deliberately set high to ensure that the reconsideration process is not used as a substitute for an appeal or simply to give a party a second opportunity to argue their case.
- 25. In evaluating this application, I must consider whether the Claimant's argument about the timeline of her condition, if accepted, would be likely to lead to a different outcome in terms of whether she was disabled for the purposes of the Equality Act 2010.
- 26. The question of when the Claimant's condition began is relevant to the issue of whether its effects were "long-term" within the meaning of Schedule 1, paragraph 2 of the Equality Act 2010. However, I must also consider the substantiality of the adverse effects throughout the relevant period, as well as the impact of the cardiac ablation procedure in August 2023 on those effects.
- 27. While the Claimant states that she did not have access to the physical bundle during the hearing, she acknowledged in her evidence that she was undergoing heart investigations from May 2021. She also clearly testified that her symptoms significantly improved following the cardiac ablation in August 2023, with a further marked improvement by October 2023. Furthermore, she did have electronic access to the bundle during the video hearing.

FINDINGS AND DECISION

- 28. Having carefully re-examined the evidence, including the specific pages of the bundle highlighted by the Claimant (pages 79, 138, 144, 146, 147, 150, and 151), I do not accept

that the evidence supports what the Claimant now contends - that her condition subsisted from April or May 2021. There is a significant and material difference between the symptoms she reported in 2021 and those she described as part of her SVT condition diagnosed in October 2022.

29. The medical records show that in 2021, the Claimant was being investigated for chest pain and shortness of breath. These symptoms led to investigations for possible angina, and she was prescribed a GTN spray. The Claimant described these 2021 symptoms as primarily consisting of chest pain and shortness of breath, particularly when walking uphill or during exertion, along with occasional dizziness.
30. In contrast, when describing her SVT symptoms following her diagnosis in October 2022, the Claimant detailed a distinctly different set of symptoms. She described the SVT as causing a pronounced fluttering sensation in her chest, accompanied by a rapid heart rate (sometimes exceeding 200 beats per minute), light-headedness, sweating, nausea, and in severe episodes, a feeling that she might lose consciousness. She explained that these episodes would often come on suddenly, sometimes triggered by stress or caffeine, but often with no identifiable trigger. These symptoms are consistent with the medical description of SVT in the evidence, which characterises it as episodes of abnormally fast heart rhythm originating above the ventricles.
31. This distinction in symptomatology is significant, as it makes it more likely that the 2021 investigations and the 2022 SVT diagnosis were addressing different medical issues, rather than representing a continuation of the same condition.
32. Furthermore, there was a notable inconsistency in the Claimant's evidence regarding when and why she began driving to work. Initially, she claimed that she started driving to work because of her SVT condition. However, when presented with documentary evidence showing that she had begun driving to work in February 2022 (eight months before her SVT diagnosis), she conceded that this was correct. She acknowledged that she had not started driving to work because of SVT, but rather due to the different cardiac symptoms she was experiencing in early 2022, which were being investigated as possible angina at that time. This inconsistency further highlights the distinction between her pre-October 2022 symptoms and her SVT condition.
33. I do not find that there is sufficient evidence to establish that the symptoms she experienced in 2021 were manifestations of SVT rather than another cardiac condition that was being investigated at that time. The diagnosis of SVT was only made in October 2022 following a specific cardiac event, and there is no medical evidence that conclusively links her earlier symptoms to this condition. In fact, the medical records suggest that different potential diagnoses were being considered during the earlier investigations.
34. Even if I were to accept, which I do not, that the relevant impairment began in April 2021 rather than October 2022, the Claimant's own evidence establishes that the substantial adverse effects of her condition had significantly diminished by October 2023 following her cardiac ablation. By her own account, the frequency of her episodes had reduced from daily to approximately once a week by that time, and the severity had also diminished. By the time of her discharge from cardiology in October 2024, she was experiencing episodes very rarely.
35. This means that even under the Claimant's proposed timeline, the substantial adverse effects did not continue for the required 12-month period after the alleged discriminatory acts, which the Claimant dated from April 2023 (when she experienced her second major

SVT episode) to March 2024 (when her employment ended).

36. The public interest in the finality of litigation is an important aspect of the interests of justice. As emphasised in *Outasight VB Ltd v Mr L Brown*, the reconsideration jurisdiction should not be used as a substitute for an appeal or to give a party a second opportunity to argue their case after they have had a fair opportunity to present it at the original hearing. The Claimant had the opportunity to present her case regarding the timeline of her condition at the original hearing and did so, referring to her earlier cardiac investigations in her testimony.

CONCLUSION

37. Having carefully considered the Claimant's application for reconsideration, I must determine whether there is a reasonable prospect of the judgment being varied or revoked, as required by Rule 70(2) of the Employment Tribunal Procedure Rules 2024.
38. I am not satisfied that the interests of justice require reconsideration of my judgment. I do not accept that the evidence supports the Claimant's contention that her SVT condition subsisted from April or May 2021. The medical evidence does not establish a clear link between her earlier symptoms and her eventual SVT diagnosis in October 2022. Indeed, the symptoms she described for each period were markedly different, with the 2021 symptoms consisting primarily of chest pain and shortness of breath during exertion, while the SVT symptoms from October 2022 involved a distinct fluttering sensation, rapid heart rate, light-headedness, and other associated symptoms.
39. Furthermore, even if I were to accept her proposed timeline, her own evidence establishes that the substantial adverse effects of her condition had significantly diminished by October 2023 following her cardiac ablation. As such, the condition would still not satisfy the "long-term" requirement during the relevant period of alleged discrimination.
40. Therefore, I refuse the application for reconsideration as I find that there is no reasonable prospect of the judgment being varied or revoked.

Approved by:
Employment Judge Aspinall (sitting as an Employment
Judge)
Date: 12 April 2025

Sent to the parties on
Date: 16 April 2025

Publication and public access to judgments and decisions: Judgments, decisions and reasons of Employment Tribunals are published in full shortly after the judgment or decision has been sent to the parties in the case. These can be found at www.gov.uk/employment-tribunal-decisions