



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

AND

Mr S Stutt

Wessex Retail Ltd

ON: 17 May 2025
EMPLOYMENT JUDGE GORAJ

JUDGMENT ON APPLICATION FOR RECONSIDERATION **DATED 5 May 2025**

THE JUDGMENT OF THE TRIBUNAL IS THAT:- The claimant's application for reconsideration dated 5 May 2025 is refused as the Tribunal is satisfied that there is no reasonable prospect of the Judgment dated 4 April 2025 being varied or revoked for the purposes of Rule 70 (2) of the Employment Tribunal Procedure Rules 2024.

REASONS

Background

1. The claimant has applied for a reconsideration of the reserved Judgment dated 4 April 2025 which was sent to the parties on 23 April 2025 ("the Judgment") following a remote oral hearing on 21 March 2025 before Employment Judge Goraj.

2. The Judgment was sent to the parties on 23 April 2025 and the claimant's application for reconsideration dated 5 May 2025 ("the reconsideration application") was received by the Tribunals on that date. The reconsideration application was therefore received within the requisite time limit for the purposes of Rule 69 of the Employment Tribunal Procedure Rules 2024 ("the 2024 Rules").
3. The reconsideration application has been considered by Employment Judge Goraj as she was the Employment Judge who conducted the Preliminary Hearing on 21 March 2025.
4. By a claim form which was presented to the Tribunals on 5 April 2024, the claimant, who was employed by the respondent between on or around 13 February 2023 and 3 June 2024 as a store assistant, brought complaints of disability discrimination. The allegations are denied by the respondent. The matter was the subject of a case management hearing on 26 September 2024. Following the provision of further medical evidence by the claimant, the respondent continued to dispute that the claimant was a disabled person for the purposes of section 6 of the Equality Act 2010 ("the 2010 Act") at any relevant time and made an application for this issue to be determined at a preliminary hearing which was granted by the Tribunal.
5. The principal purpose of the Preliminary Hearing on 21 March 2025 ("the PH") was therefore to determine whether the claimant was a disabled person for the purposes of section 6 of the 2010 Act by reason of any of the contended impairments at the relevant time. The relevant time was agreed to be from 13 February 2023 to 3 June 2024 ("the relevant time").
6. The Tribunal held in the subsequent reserved Judgment, that it was not satisfied that the claimant was a disabled person by reason of any of the contended impairments at the relevant time and accordingly dismissed the claimant's complaints of disability discrimination.

The Impairments

7. The Tribunal reconfirmed the issues with the parties at the commencement of the PH on 21 March 2025 including the impairments/conditions relied upon by the claimant for the purposes of his claims. At this time, the claimant confirmed that, in addition to the conditions / impairments identified in the case management Order dated 26 September 2024 (namely lower back pain, ADHD, OCD and

Aspergers/ autism), he also sought to rely on alleged hearing loss in his left ear, Ehlers – Danlos Syndrome and depression, as referred to in his email dated 18 September 2024 and associated medical evidence. The claimant was given leave to rely on all of the above conditions for the purposes of the disability issue for the reasons and on the basis set out at paragraph 15 of the Judgment and was permitted to give evidence to the Tribunal accordingly.

The reconsideration application

8. The claimant contends in the reconsideration application that it is in the interests of justice for the Tribunal to revoke / vary the Judgment of the Tribunal that the claimant was not a disabled person for the purposes of section 6 of the 2010 at the relevant time by reason of the contended impairments on the following grounds:-
 - 9.1 Error of law or fact
 - 9.2 Procedural irregularity
9. The claimant's principal grounds for reconsideration appear to be that evidence has been overlooked/ignored by the Tribunal including that the claimant was dismissed for medical reasons. The claimant also contends in the reconsideration application that although he was under the impression that he would be able to give an in-depth explanation of the reasons why he has day to day struggles he was told that he was not permitted to do so at that point in time. The claimant sets out in the reconsideration application the matters upon which he seeks to rely in support of the above contentions which are in summary as follows:-
 - (1) The claimant makes further submissions regarding "Hypermobile Ehlers – Danlos Syndrome including regarding the likelihood that he has the condition as it is hereditary in nature, that his sister has been diagnosed with it and that he and his brother both have conditions which he contends are linked to Ehlers – Danlos Syndrome. The claimant also states that he also has associated symptoms such as stretchy skin and hypermobility. The claimant does not however, contend that any such condition had any relevant adverse effects on his normal day to day activities at the relevant time.
 - (2) The claimant seeks to rely on his dismissal for ill health in support of his contention that he was a disabled person at the relevant time. The claimant incorporated in the reconsideration application a copy of his letter of dismissal by the respondent dated 3 June 2024 which refers in summary, to an ill health capability hearing and his associated dismissal upon the grounds of ill health capability in the light of his continuing long-term absence from work with no likely return to work in the foreseeable future. The letter, which does not appear to be in the hearing bundle,

does not however, make any reference to any of the alleged impairments/ medical conditions upon which the claimant seeks to rely/ any effects thereof. The letter further states that the claimant's GP had declined to provide a medical report and had recommended that the claimant should be referred to occupational health which it was further recorded that the claimant had declined for a second time.

- (3) Depression – The claimant makes further submissions regarding his history of depression and of the nature of the alleged adverse treatment which he says he received from the respondent during his employment which he contends contributed to his health issues. The reconsideration application does not however contain any further information regarding the alleged effects of such alleged condition on his normal day to day activities during the relevant time. Moreover, although the claimant refers in the reconsideration application to correspondence with his private therapist he does not provide any information regarding the nature/ effects of any such therapy.
- (4) Gastro – Intestinal issues. The claimant makes submissions in the reconsideration application regarding his gastro – intestinal issues and the alleged conduct of the respondent which he contends gave rise to the stress which was a leading contributor to his acid reflux. The claimant had previously however, confirmed to the Tribunal at the PH on 21 March 2025 that he did not contend that he was a disabled person at the relevant time by reason of any gastro – intestinal issues (paragraph 14 (a) of the Judgment).
- (5) ADHD – the claimant contends in the reconsideration application that although the Tribunal stated in the Judgment that he had not made any effort to contact the correct authorities he had in fact provided a screen shot of a letter from his GP showing his referral to the Adult ADHD clinic. The claimant incorporated in the reconsideration application a copy of a letter from the Countrywide Adult Attention Hyperactivity Disorder Service dated 24 January 2025. This letter is however a letter from that service informing the claimant that he has been placed on the waiting list for a diagnostic assessment with the Adult Clinic and is not a letter of referral /does not make any reference to the source of any referral. As recorded at paragraph 39 of the Judgment, the claimant had previously included in the hearing bundle a copy of an automatic reply letter from the ADULTADHD(CORNWALL PARTNESHIPD NHS FOUNDATION TRUST) dated 22 November 2024. The Judgment further recorded that the claimant had not provided the Tribunal with a copy of any associated referral letter and that there was no evidence before the Tribunal to indicate that any referral had been made by his GP or similar professional. This remains the case.

- (6) The claimant has also incorporated in the reconsideration application what appears to be a copy of extracts from screenshots of the further documents which were previously forwarded to the Tribunal during the course of the PH on 21 March 2025 and which have already been considered in the reserved Judgment.

THE LAW AND THE CONCLUSIONS OF THE TRIBUNAL

THE LAW

10. The Tribunal has had regard/ reminded itself in particular of the following: -

- (1) Rules 68 – 70 of the 2024 Rules referred to above including, that the grounds for reconsideration are limited to those set out in Rule 68, namely, that it is necessary in the interests of justice to do so. The interests of justice apply to both parties.
- (2) It is in the interests of both parties for there to be finality in litigation and it is not therefore normally in the interests of justice for a Tribunal to permit a party to submit further oral or documentary evidence/ submissions following an oral hearing and issue of a judgment unless :- (a) there is new evidence which comes to light following the hearing/ judgment which could not have been obtained with reasonable diligence for use at the original hearing (b) that the evidence would probably have had an important influence on the hearing and (c) that the evidence is apparently credible **Ladd v Marshall 1954 3 AllER 745 CA** and **Outasight VB Limited v Brown 2015 ICR D11 EAT.**
- (3) The guidance contained in the EAT judgment of **Trimble v Supertravel Ltd [1982] ICR 440 EAT,** and in particular, that if a matter has been ventilated and argued at a Tribunal hearing any error of law falls to be corrected on appeal and not by review on reconsideration.

THE CONCLUSIONS OF THE TRIBUNAL

Issue 1 – Procedural irregularity

- 11.** The Tribunal has considered first the claimant's contentions regarding alleged procedural irregularity. The claimant has not explained the nature of any alleged procedural irregularities other than by reference to the following... "I was under the impression I would be able to go into depth explaining my reasons as to why I have my day to day struggles, only to be cut off and told that citing specific examples of what would cause those day-to-day issues to be invalid at this point in time".
- 12.** As stated above, this matter was the subject of a case management hearing on 26 September 2024. It is recorded at paragraph 10 of the associated order dated 26 September 2024 that the claimant reported that he is neurodiverse and the associated difficulties which he stated that he experienced as a result. Such stated difficulties were recognised and acknowledged by the Tribunal at the PH.
- 13.** The Tribunal explained to the claimant on 21 March 2025 that the purpose of the PH was to determine the question of whether he was a disabled person for the purposes of section 6 of the 2010 Act by reason of the alleged impairments at the time of the alleged acts of discrimination (which the claimant confirmed were correctly identified in the Order dated 26 September 2024 – paragraph 13 of the Judgment). The Tribunal further explained to the claimant at the PH on 21 March 2025 that the question of whether he had been subjected to any discriminatory treatment on the grounds of any established disabilities would be considered at a subsequent hearing if the claimant was able to satisfy the Tribunal that he was a disabled person at the relevant time.
- 14.** The claimant was given a full opportunity to explain his case on all aspects of the question of whether he was a disabled person for the purpose of section 6 of the 2010 Act at the relevant time at the PH on 21 March 2025 including during the confirmation of the issues, his oral evidence and closing submissions (paragraph 12 of the Judgment). As part of that process and, in recognition of the reported difficulties experienced by the claimant, he was given an opportunity to clarify his position on the disability issue including the medical conditions upon which he sought to rely for such purposes and was permitted to rely on additional alleged medical conditions for the reasons / on the basis recorded at paragraphs 13 – 15 of the Judgment (and as further referred to at paragraph 7 above). Moreover, as recorded at paragraph 11 of the Judgment, the claimant was permitted to rely not only on his Disability Statement but also on his email dated 18 September 2024 and written closing submissions, as part of the claimant's oral evidence to the

Tribunal. The claimant was also afforded regular breaks to assist his participation in the PH.

15. The Tribunal confirmed to the claimant at the PH that as the purpose of the hearing was to consider the preliminary issue of whether the claimant was a disabled person at the relevant time by reason of the contended impairments/ medical conditions relied upon, the Tribunal would not therefore make any findings of fact at that time regarding any alleged adverse treatment by the respondent. It was further explained that the question of whether he had been subjected to any adverse treatment by the respondent on the grounds of any disabilities would fall to be determined at later hearing if the claimant's claims were allowed to proceed.
16. Having given careful consideration to all of the above, the Tribunal is satisfied that there were no "procedural irregularities" at the PH on 21 March 2025 necessitating, in the interests of justice, any variation or revocation of the Judgment and this aspect of the reconsideration application is therefore dismissed.

Issue 2 Evidence has been overlooked or ignored by the Tribunal

17. The Tribunal has gone on to consider the claimant's contention that evidence has been overlooked/ ignored by the Tribunal including in respect of the matters summarised at paragraphs 9 (1) – (6) above.
18. Having given careful consideration to the contentions of the claimant in the reconsideration application, the Tribunal is satisfied that, in so far as such matters are potentially relevant to the preliminary issue of whether the claimant was a disabled person for the purposes of section 6 of the 2010 Act at the relevant time, they were matters which the claimant raised, or in any event, had an opportunity to raise at the PH on 21 March 2025.
19. This includes the additional correspondence incorporated in the reconsideration application upon which the claimant now seeks to rely namely, the respondent's letter of dismissal dated 3 June 2024 and the letter dated 24 January 2025 from the Adult ADHD Service. These documents, which were both in existence at the time of the PH, do not in any event, provide any further relevant new information relating to the issue of whether the claimant was a disabled person at the relevant time. The Tribunal was aware of the nature of the claimant's dismissal (which is one of the alleged acts of disability discrimination identified in the Order dated 26 September 2024). Further, as stated at paragraph 9

(2) above, the letter of dismissal dated 3 June 2024 does not, in any event, provide any further information regarding the nature or effect of any of the impairments relied upon by the claimant for the purposes of this claim.

20. Further, in respect of the claimant's contended ADHD (and other medical conditions confirmed at paragraph 14 of the Judgment as the impairments/conditions upon which the claimant relies for the purposes of the disability issue, the Tribunal has, in any event, considered (regardless of whether the claimant had received any formal diagnosis) whether any of the established effects thereof, in any event, had, a substantial adverse effect on his normal day to day activities at the relevant time for the purposes of section 6 of the 2010 Act. The Tribunal however concluded, for the reasons explained at paragraphs 21- 60 and 64-105 of the Judgment, that it was not however satisfied that the claimant had such conditions at the relevant time and /or that any established conditions, in any event, had the necessary substantial adverse effect on his normal day to day activities for the purposes of section 6 of the 2010 Act.

21. Having given careful consideration to all of the above, this aspect of the reconsideration application is also dismissed as the Tribunal is not satisfied that it raises any matters which require, in the interests of justice, the Judgment to be varied or revoked.

Issue 3 – Error in Law or Fact

22. The findings of fact which the Tribunal made for the purposes of determining the disability issue together with the Tribunal's associated findings, are set out at paragraphs 17 to 60 and 64 -105 of the Judgment.

23. Having given careful consideration to the reconsideration application and the further matters referred to above, the Tribunal is not satisfied that the claimant has identified any relevant errors of fact / any errors which necessitate, in the interests of justice, any variation or revocation of the Tribunal's factual/ associated findings on the disability issue.

24. Alleged errors of law- the Tribunal has set out at paragraphs 62 – 63 of the Judgment the statutory and associated legal / other provisions which it has taken into account for the purposes of the determining the disability issue. The Tribunal has further set out at paragraph 64 – 105 of the Judgment its conclusions, with reasons, on the legal issues. The claimant has not identified any alleged errors of law by the Tribunal in respect of such provisions/ findings.

25. Further, and, in any event, as stated at paragraph 10(3) above, where, as is the position in this case, the issues were fully ventilated and argued at the PH on 21 March 2025, any errors of law on the part of the Tribunal would, in any event, fall be corrected on appeal by the claimant to the Employment Appeal Tribunal in accordance with the guidance in the case of Trimble, (referred to above) and not by review on reconsideration by the Tribunal which made the decision, Further details of the process to be followed by the claimant if he wishes to pursue an appeal to the Employment Appeal Tribunal will be provided with this reconsideration judgment.
26. Having given careful consideration to all of the above, the Tribunal is not satisfied that the interests of justice necessitate any variation or revocation of the Judgment in respect of any alleged errors of fact or law by the Tribunal and these aspects of the claimant's reconsideration application are therefore also dismissed.
27. In all the circumstances, and having had regard to the provisions of Rule 70 (2) of the 2024 Rules, the Tribunal is satisfied, for the reasons explained above that there is no reasonable prospect of the Judgment being revoked or varied and the claimant's application dated 5 May 2025 is therefore dismissed.

Employment Judge Goraj
Dated: 17 May 2025

Judgment sent to Parties on
31 May 2025

Jade Lobb
FOR THE OFFICE OF THE TRIBUNALS

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1. Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge.
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[Practice Directions and Guidance for Employment Tribunals \(England and Wales\) - Courts and Tribunals Judiciary](#)