EMPLOYMENT TRIBUNALS

Claimant: Mr D Farquhar

Respondent: Ministry of Defence

JUDGMENT
on
APPLICATION for RECONSIDERATION

Upon the Claimant's application dated 6 May 2025 to reconsider the judgment given orally on 1 April 2025 and sent to the parties on 10 April 2025, the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked. The application is therefore refused.

REASONS

1. Rule 68 of the Employment Tribunals Procedure Rules 2024 ("the Rules") empowers a tribunal, either on its own initiative or on the application of a party, to reconsider any judgment where it is necessary in the interests of justice to do so. Any suggestion that a tribunal has made an error of law or that its findings were perverse is generally a matter for appeal – Ebury Partners UK Limited v Acton Davis [2023] EAT 40.

2. The Claimant submitted an application for reconsideration on 6 May 2025. Unfortunately, the application was only relatively recently referred to me after the Claimant chased the Tribunal for a response.

3. Rule 70 of the Rules provides that if a tribunal considers that there is no reasonable prospect of the judgment being varied or revoked, the application must be refused.

4. In Outasight VB Limited v Brown UKEAT/0253/14, the Employment Appeal Tribunal considered the Tribunal's equivalent powers under Rule 70 of the Employment Tribunal Rules of Procedure 2013 and observed:

> "The interests of justice have thus long allowed for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, insofar as possible, be finality of litigation."

5. The need to have due regard to the interests of both parties was recognised by the Employment Appeal Tribunal some years earlier in Redding v EMI Leisure Ltd EAT/262/81 in which it was said:

> "…When you boil down what is said on [the Claimant's] behalf, it really comes to this: that she did not do herself justice at the hearing so justice requires that there should be a second hearing so that she may. Now, "justice" means justice to both parties. It is not said, and, as we see, cannot be said that any conduct of the case by the employers here caused [the Claimant] not to do herself justice. It was, we are afraid, her own experience in the situation…"

6. The reconsideration procedure can be used to correct any error that occurs in the course of the proceedings, whether or not it is a significant error. An important consideration is whether or not a decision has been reached after a procedural mishap, meaning that a party has been denied a fair and proper opportunity to put their case. Reconsideration should not ordinarily be used to correct alleged errors where the parties were afforded that opportunity.

7. The written record of the case management preliminary hearing that took place on 6 January 2025, at which I directed that there should be a public preliminary hearing on 1 April 2025 to determine the disability issues, confirms that I took some care to explain a range of matters to the Claimant, including the purpose of the April hearing. As well as making a detailed order for the preparation by the Claimant of a disability impact statement, in which I spelled out that the Claimant would need to address each condition/impairment in turn, I also recommended that the Claimant familiarise himself with section 6 and Schedule 1 of the Equality Act 2010, and that he might also find it helpful to consider the provisions of the 2011 Guidance on matters to be taken into account in determining questions relating to the definition of disability.

8. At the preliminary hearing on 1 April 2025 I decided that the Claimant had failed to establish that he was disabled at the material time by reason of hearing loss. The Respondent had already conceded that he was disabled by reason of a number of other conditions/impairments. It was common ground that the period with which the Tribunal was concerned was September 2021 to 10 May 2024.

9. Written reasons for my decision, which was delivered orally on 1 April 2025, have not been requested. However, in summary, the evidence in relation to hearing loss was relatively limited. The preliminary hearing bundle contained extensive medical evidence, including five increasingly detailed occupational health reports spanning a period of 8 years, none of which referred to hearing loss. There was also a 12-page Capability Assessment Team report by Optima Health dated 4 April 2024, namely towards the latter end of the material period with which the Tribunal is concerned, which does not identify any need for adjustments in respect of hearing loss (or indeed, reference hearing loss); the Claimant's identified need for a quiet working space was linked in the report to distractibility as a result of ADHD. I agreed with Mr Gillie, Counsel for the Respondent that the Tribunal could not be satisfied that any hearing loss experienced by the Claimant during the material time had a substantial (that is to say, more than minor), long-term adverse effect on his normal day to day

activities. His hearing loss was diagnosed in July 2024, but there was no narrative record within his medical notes as to his history in that regard. In his disability impact statement and at Tribunal, the Claimant conflated his current experiences of hearing loss with the effects at the material time. He said at Tribunal that at the point the hearing loss was diagnosed in July 2024 he was struggling in conversations, albeit he did not identify a particular point in time when those struggles had reached a level that they were having more than a minor impact upon his ability to engage in conversation or, for example, watch television or a film. In his closing submissions he denied that the hearing loss had developed suddenly in 2024, but was not otherwise more specific on the issue.

10. In the course of his evidence the Claimant said that approximately five years before he was diagnosed with hearing loss, he had had his ears syringed of wax, but he could not locate the relevant entry in his medical records as they had been extensively redacted. Accordingly, I was aware of the matter and was able to consider it in the round in coming to a judgement.

11. In my judgement, the Claimant was afforded a fair and proper opportunity to put his case, with adjustments in place in an effort to put the parties on an equal footing. If he feels that he did not do himself justice in the matter on 1 April 2025 that is not because of any conduct on the part of the Respondent or a procedural mishap. He was able to tell me that he had had his ears syringed some years earlier.

12. Even had the Claimant persuaded me that it was necessary in the interests of justice to reconsider my decision, on reconsideration I would have confirmed my original decision since there is no further evidence before me that would support the conclusion that the Claimant was disabled within the meaning of the Equality Act 2010 at the material time by reason of hearing loss. His production of his medical record from 6 April 2017 which evidences that both his ears were syringed of wax, does not alter my previous findings and conclusions, rather it reinforces them. It points to a temporary hearing impairment that was resolved by the removal of wax. It would be a further 7 years before he would consult his GP again regarding his hearing. In the intervening years there were four detailed occupational health reports which noted a range of conditions and impairments, hearing loss not being one of them.

13. The Claimant's reconsideration application is refused. The Tribunal will be writing to the parties separately regarding the transfer of the case to Central London Employment Tribunal.

Approved by:

Employment Judge Tynan

Date: 2 October 2025

Sent to the parties on:
6 October 2025

For the Tribunal Office.

Public access to Employment Tribunal decisions

Judgments and Reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.