Case Nos. 2402416/2024
2402477/2024
2407237/2024

EMPLOYMENT TRIBUNALS

Claimant: Miss S Dwyer

Respondent: Foundation 92

JUDGMENT

The claimant's application dated 15 August 2025, for reconsideration of the Judgment made on 2 July 2025, approved on 6 July 2025 and sent to the parties on 23 July 2025, was not made within the time required by rule 69. The application is refused.

REASONS

1. The claimant made an application to reconsider the Judgment of Employment Judge Parkin (that she did not have a disability at the relevant time). Rule 69 of the Employment Tribunals rules of procedure requires an application to reconsider to be sent to the Tribunal within fourteen days of the date when the written record of the Judgment sought to be reconsidered was sent to the parties. That was not done in this case.

2. The claimant has been provided with the opportunity to provide evidence to support her contention that her application for reconsideration be considered, even though it was not entered within the time required. Following correspondence from the Employment Tribunal, the claimant has provided a statement of fitness for work dated 17 September 2025. That statement records that the claimant was not fit for work for the period from 1 July 2025 to 16 November 2025 due to a persistent cough since January 2024 effecting her chest and asthma, giving her stress and anxiety. That document does not provide evidence that the claimant could not draft and send a reconsideration application to the Tribunal within the time she was required. It evidences that she was not fit for work during the stated period. In fact, the claimant attended a hearing (virtually) on 2 July (during the period covered by the fit note) and represented herself at the hearing. Where she was able to do so and in the light of the limited evidence provided, I have decided not to exercise my discretion to extend the time provided under rule 69. The limited time set down in that rule is there for a good reason and part of the overriding objective is to avoid delay (so far as is compatible with proper consideration of the issues).

3. As a result of that decision, the claimant's application for reconsideration has been refused. However, I also went on to consider whether I would have decided

that there was a reasonable prospect of the Judgment being varied or revoked, and whether I would have refused the application based on a preliminary consideration as provided in rule 70 of the rules of procedure. I decided that, even had the application been made within the time required, I would not have found that it was necessary in the interests of justice to reconsider the Judgment, based upon the application made by the claimant. There was no reasonable prospect of the original decision being varied or revoked, based upon the reasons given.

4. The Judgment was issued after a hearing conducted over two days, including an adjournment which provided the claimant with a further opportunity to provide any relevant document or medical evidence. The claimant was able to present evidence and argument at the hearing.

5. The application to reconsider primarily appears to rely upon arguments and evidence which were before the Employment Judge who made the decision.

6. The application for reconsideration does not provide any information about events which have occurred since the hearing, or detail that evidence/documents have come to the claimant's attentions since the hearing. The application appears to be based upon facts and arguments about which the claimant was aware at the time of the hearing.

7. The elements of the application which refer to anxiety or a peanut allergy do not appear to be about the decision which was made. The claimant had neither relied upon anxiety nor a peanut allergy as being the disability which she had at the relevant time (or which was the relevant disability for the claims she was pursuing). She had relied upon lower respiratory chest infection.

8. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 68). The Court of Appeal in **Ministry of Justice v Burton** [2016] EWCA Civ 714 has emphasised the importance of finality, which militates against the discretion being exercised too readily. In exercising the discretion, I must have regard not only to the interests of the party seeking the reconsideration, but also to 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.

9. In **Ebury Partners UK v Davis** [2023] IRLR HHJ Shanks said:

> "*The employment tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT.*"

10. Rule 70(1) of the rules of procedure empowers me to refuse the application to reconsider based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked. Preliminary consideration under rule 70(1) must be conducted in accordance with the overriding objective which appears in rule 3, namely, to deal with cases fairly and justly. This includes, so far as practicable, saving expense. Achieving finality in litigation is part of a fair and just adjudication.

11. The application for reconsideration was not made within the time required and, even had it been, I would have refused the application under rule 29(2) because there was no reasonable prospect of the Judgment being varied or revoked.

Employment Judge Phil Allen

27 October 2025

JUDGMENT SENT TO THE PARTIES ON

8 December 2025

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FOR THE TRIBUNAL OFFICE