



# EMPLOYMENT TRIBUNALS

**Claimant:** SUKVINDER SINGH JOHAL

**Respondent:** MITIE SECURITY

**Judge:** Employment Judge McCluggage

**Date:** 20 October 2026

## RECONSIDERATION DECISION - RULE 70(2)

The Claimant's application dated 09 July 2025 for reconsideration of the judgement is refused because it has no reasonable prospect of success.

## REASONS

### The Application

1. By application dated 09 July 2025 (received by the tribunal within the 14-day time limit) and forwarded to me on 26 August 2025, the Claimant applied for reconsideration of the judgment sent on 26 June 2025 which found he was not a disabled person within the meaning of the Equality Act 2010 during the material period.
2. The Claimant seeks either: (a) that the judgment be set aside and replaced with a finding of disability; or (b) an adjournment of the disability issue for 8-10 weeks to enable new solicitors to commission a consultant psychiatrist's report.
3. The application advances three grounds: (i) that the legal test was applied too narrowly; (ii) that expert evidence was withheld through representative error; and (iii) that the interests of justice favour reconsideration.

### Legal Framework

4. Part 12 of the 2024 Tribunal Rules governs Reconsideration of Judgments. Under Rule 70(1) and (2), I must first consider whether there is any reasonable prospect of the original decision being varied or revoked. If there is no such reasonable prospect, the application shall be refused.
5. The sole ground on which a judgment may be reconsidered is whether it is necessary in the interests of justice to do so (Rule 68). The interests of justice must be assessed having regard to the interests of both parties and the public interest in finality of litigation: *Newcastle upon Tyne City Council v Marsden* [2010] ICR 743; *Phipps v Priory Education Services Ltd* [2023] EWCA Civ 652.
6. Reconsideration is not intended to act as a quasi-appeal on a point of law: *Trimble v Supertravel Ltd* [1982] ICR 440. Where fresh evidence is relied upon, the *Ladd v Marshall* principles apply: the evidence must (a) not have been obtainable with reasonable diligence for use at the original hearing; (b) be relevant and such as would probably have had an important influence; and (c) be apparently credible.
7. Representative failings do not generally constitute grounds for reconsideration (*Ironsides Ray & Vials v Lindsay* [1994] ICR 384; *Ministry of Justice v Burton* [2016] EWCA Civ 714). It is not, however, a blanket rule.

### Decision

8. I refuse the application at this preliminary sift stage. There is no reasonable prospect of the original decision being varied or revoked.

### Ground 1: Alleged Legal Error

9. This ground is misconceived as a ground for reconsideration. This ground seeks to raise an error of law, which is more fitting for an appeal than a reconsideration.
10. Having reviewed this matter, I am satisfied the judgment applied the correct legal principles from *Goodwin v Patent Office* [1999] ICR 302, *J v DLA Piper UK LLP* [2010] ICR 242, and *Boyle v SCA Packaging Ltd* [2009] ICR 1056. The judgment did not apply the test "too narrowly". At §§55-59, I found the evidence did not establish substantial

adverse effect on day-to-day activities. At §§60-62, I found the evidence insufficient to establish that effects would last 12 months (even applying the lower *Boyle* threshold of "could well happen").

11. At §62, the judgment stated there was "no proper evidence to determine" prognosis. That is a finding about evidential sufficiency, not a refusal to apply the correct legal test. The burden of proof lay on the Claimant. He did not discharge it.
12. At §54, the judgment expressly applied *J v DLA Piper* by rejecting the Respondent's submission that the Claimant was bound by the PTSD label. The functional approach was correctly adopted.

## Ground 2: Alleged New Evidence

13. This ground fails for two fundamental reasons.
14. Firstly, there is no new evidence. The Claimant relies on a letter from Thompsons Solicitors dated 1 July 2025 admitting a conflict and confirming they failed to obtain a psychiatric report. That letter is not "new evidence" within the meaning of *Ladd v Marshall*. It merely confirms what was plain at the hearing on 27 May 2025: no expert report had been obtained.
15. More fundamentally, the Claimant still has no psychiatric report. What he seeks is an opportunity to obtain one now. That is not "new evidence"; it is a request to adjourn to gather evidence that should have been obtained before the preliminary hearing.
16. Secondly, the evidence could have been obtained with reasonable diligence. The Claimant was represented at the hearing by counsel, Mr O'Keefe. If the absence of expert evidence rendered the Claimant's case problematic, counsel could have applied for an adjournment. He did not do so. Instead, the hearing proceeded on the evidence available. The consequences of that course cannot now be revisited by way of reconsideration. The Claimant may have a cause of action against Thompsons in negligence, but I cannot assess that.
17. The *Ladd v Marshall* test is not satisfied. The "evidence", whether that be considered as Thompson's admission or a psychiatric report, was obtainable before the hearing given the absence of a report was known. As the psychiatric report does not yet exist,

it is not new evidence. I cannot speculate as to whether such a report would have had an important influence on the hearing.

**Ground 3: Representative Failure/"Interest of Justice"**

18. At ground 3, the reconsideration request says that both parties failed to offer diagnostic criteria and the Claimant did everything he could by pushing his representatives for an expert.

19. It is for the Claimant to prove he is disabled. I rejected his evidence given the curious witness statement. PTSD as an impairment at the material time was not established. I considered whether anxiety/depression could be the impairment in the alternative and did not lay down any diagnostic criteria as a threshold.

20. In *Ironsides Ray & Vials v Lindsay* [1994] ICR 384, Mummery J stated at [24]:

"Failings of a party's representatives, professional or otherwise, will not generally constitute a ground for review. That is a dangerous path to follow."

21. Here, the Claimant had every opportunity to present his case. The difficulty was the quality of the evidence presented, not any absence of opportunity to present it. The Claimant chose not to apply for an adjournment. It is not apparent that this was his representatives' fault. If it was, the remedy lies elsewhere. In any event I do not consider that it is in the interests of justice for the Claimant to have a "second bite at the cherry". That would undermine the principle of finality in this case.

**Conclusion**

22. The Claimant's remedy, if the judgment is wrong in law, is to appeal to the EAT.

23. In effect, this application seeks to re-run the case with better evidence. As Mummery J warned in *Lindsay*, reconsideration must not become a mechanism whereby disappointed applicants reargue their case by blaming their representatives.

24. The application has no reasonable prospect of success. Pursuant to Rule 70(2), it is refused at the preliminary sift stage.

**Case Number 1304996/2024**

Employment Judge McCluggage

20/10/2025