



EMPLOYMENT TRIBUNALS

Claimant

Miss L Crew

Respondent

Newsquest Media Group Limited

v

Before: Employment Judge Laidler (On the papers)

On: 23 December 2021

JUDGMENT ON RECONSIDERATION APPLICATION

It is not in the interests of justice to reconsider the Judgment of the Open Preliminary Hearing conducted on 7 July 2021 and the claimant's application of 22 September 2021 is refused.

REASONS

1. Each of the points as raised by the claimant's representative will be dealt with in the order in which they appear in the application.

The cumulative effect of related impairments was not taken into account

2. The claimant's representative cites section C2 of the Guidance on the Definition of Disability (2011). Of relevance however is the example also given in the Guidance following that paragraph which states as follows:-

“A man experienced an anxiety disorder. This had a substantial adverse effect on his ability to make social contacts and to visit particular places. The disorder lasted for 8 months and then developed into depression, which had the effect that he was no longer able to leave his home or go to work. The depression continued for 5 months. As the total period over which the adverse effects lasted was in excess of 12 months, the long term element of the definition of disability was met.”

3. The tribunal made it clear in its reasons at paragraph 51 that it accepted the respondent's classification of the relevant periods that the tribunal needed to consider. The claimant's impairments were not all alleged to be overlapping throughout the whole period of her claims.
4. As stated at paragraph 53 the hearing loss did not last for more than 10 weeks.

Medical opinion on likelihood of long term substantial adverse effects was not taken into account

5. The claimant is referring to the report of Dr Weatherall of 29 June 2021. The reasons record at paragraphs 2-9 the arguments and the tribunal's conclusions as to the relevance of this report for the matters that the tribunal had to determine.
6. The tribunal set out in its decision the authority of All Answers Ltd v W & Anor [2021] EWCA Civ 606 from which it is clear that the assessment of whether the impairment is likely to last at least 12 months must be assessed by reference "to the facts and circumstances existing at the date of the alleged discriminatory acts".
7. This is also made clear in C4 of the Guidance which provides:-

"In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age)."

8. It had been explained to the claimant at the hearing that Dr Weatherall's report was unlikely to assist the tribunal in its determination. By this reconsideration application the claimant is again seeking to rely on Dr Weatherall's report and the tribunal's position is the same as it was in its original decision and there is no reason to reconsider that.

Documents not considered

9. The claimant relied on "Meningitis Now", "Viral Meningitis" and "After Meningitis" documents at the hearing. These were printed from websites and are written by reference to generalised experience of Meningitis. The tribunal is not concerned with the general condition but with the effects on the claimant within the meaning of the Equality Act.

The Relevant Rules

10. The relevant provisions of the Rules are as follows:-

“RECONSIDERATION OF JUDGMENTS

Principles

70. A 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. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

11. Having considered both the application and the respondent's response to it of 22 November 2021 it is not in the interests of justice that the decision be set aside. The claimant does not accept the tribunal's findings nor agree with the decision and her right is to appeal in that case.

Employment Judge Laidler

Date: 30 December 2021

Sent to the parties on:
9 December 2025

S Bloodworth.....
For the Tribunal Office