



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121982/18

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Held in Glasgow on 15 February 2019

Employment Judge Susan Walker (sitting alone)

10 **Mrs M Mcfarlane-Mikuszewska**

**Claimant
In person**

HM Revenue and Customs

**Respondent
Represented by
**Ms Moscardine
solicitor****

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant has not established that it was “not reasonably practicable” to present the claim in time. The Tribunal therefore has no jurisdiction to consider the claim and it is dismissed.

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REASONS

1 The claimant claims unfair dismissal. It is agreed that the effective date of termination was 9 April 2018 and that the statutory time limit to present the claim expired on 8 July 2018. The claim was presented on
30 24 October 2018. The claimant accepts that the claim is late. This hearing was therefore concerned with whether time should be extended to present the claim.

2 The claimant gave evidence on her own account and provided an occupational health report. The respondent provided documents and
35 authorities.

E.T. Z4 (WR)

Findings in fact

3 The Tribunal made the following findings in fact:

4 The claimant suffers from sleep apnoea. She had difficulty sleeping and
5 as a result her concentration and memory were badly affected. This was
6 diagnosed in December 2017 leading to the provision of a machine in
7 February 2018. This machine made a dramatic improvement to the
8 claimant's symptoms almost immediately.

9 The claimant has also suffered from anxiety and depression. She has
10 received counselling from late 2017 that has assisted with this.

11 The claimant's anxiety was made worse by the health problems
12 experienced by her father and by an abusive husband.

13 While her symptoms were severe, and while the claimant was still
14 employed by the respondent, she claimant applied for a Carer Passport,
15 requesting reduced hours to help to care for her father. This involved
16 filling in an online form setting out her father's medical history.

17 At this time she also contacted Citizens Advice to get information about
18 divorce and she had a telephone call with a solicitor about that.

19 The respondent dismissed the claimant by letter dated 5 March 2018,
20 with the dismissal taking effect on 9 April 2018.

21 The claimant submitted a detailed 3-page appeal letter on 25 March
22 2018 and she attended an appeal hearing on 20 April 2018. She
23 declined to have someone accompany her.

24 At the time of the appeal, the claimant's symptoms of sleep apnoea were
25 significantly improved. Her father's health was much improved and her
26 husband was in rehabilitation in Poland.

27 Since her dismissal, the claimant finds it difficult to go to the shops and
28 mainly shops online. She claims benefits which requires form filling and
29 attendance at the Job Centre. She feels comfortable in that environment
30 as she used to work there.

31 Her husband has come back from Poland and this causes her stress.

32 The claimant contacted Citizens Advice about her dismissal in October
33 2018. They advised her to contact ACAS which she did. She contacted
34 ACAS on 24 October 2018 and obtained an Early Conciliation certificate

that day. She also submitted her claim to the employment tribunal that day.

Relevant law

15 Section 111(2) of the Employment Rights Act 1996 (“the ERA”) provides
5 that an employment tribunal cannot consider a complaint of unfair
dismissal unless it is presented before the end of the period of three
months beginning with the effective date of termination or within such
further period as the tribunal considers reasonable in a case where it is
satisfied that it was not reasonably practicable for the complaint to be
10 presented before the end of the period of three months.

16 The leading case is **Palmer and Saunders v Southend-on-Sea
Borough Council [1984] 1 All ER 945** where Lord Justice May said that
the test of reasonable practicability did not mean “reasonable” and it did
not mean it was “reasonably capable of being done”. The meaning was
15 somewhere between the two, equivalent to “reasonably feasible”.

17 The onus of proof is on the claimant.

Submissions

18 The respondent submitted that the claimant had not demonstrated that it
was not reasonably practicable to present the claim in the three month
20 period. Ms Moscardine pointed to the claimant’s ability to submit an
articulate letter of appeal and to represent herself at and take part in an
appeal hearing. This was during the three-month period.

19 At the appeal, the claimant had explained that she had had health
difficulties but her sleep apnoea was under control, her father’s health
25 was now stable and she was having no contact with her husband.

20 After the appeal was concluded, there were still 11 weeks to present a
claim. By that stage, the claimant had all the facts about her dismissal
that would have enabled her to make a claim to the tribunal should she
have chosen to do so.

30 21 Even when her symptoms were much worse, and before she had the
machine to help her sleep apnoea, the claimant was able to present an

application for a Carers passport and to contact Citizens Advice and a solicitor about possible divorce proceedings.

22 The claimant has been able to apply for benefits and to shop online.

23 The claimant has failed to demonstrate that it was not reasonably
5 practicable to present the claim in time.

24 If the Tribunal is not with the respondent on that, then the claim has not been presented within a reasonable period. The claim has been presented 15 weeks after the deadline.

25 The claimant submitted that the Carer's Passport was a simple task –
10 she just had to list her father's conditions and say what she was looking for. It was just cutting and pasting from medical records. The divorce proceeding were simply a conversation with Citizens Advice and a phone call to a lawyer. There was no filling out of forms or creating legal documents. As for claiming benefits, she knew how to do that. The DWP
15 processes are simple and didn't take a lot of thinking.

Decision

26 It is clear that the claimant had a number of health problems while she was employed and some difficult personal circumstances to deal with.

27 However the starting point is that there is a short time in which to bring
20 claims and this is a policy decision to ensure that employment claims are dealt with quickly.

28 The test of "reasonable practicability" is a high bar. I need to be satisfied that it was not feasible for the claimant to present her claim. The test is not whether it was reasonable or understandable that she didn't. Nor is it
25 a test of fairness. The onus of proof is on the claimant.

29 Unfortunately for her, I agree with the respondent that the evidence does not support the granting of an extension. There is clear evidence that the claimant's health was significantly improved by the time of her dismissal, when the time to present a claim started to run.

30 She was able to present an articulate appeal and appear at the appeal hearing without assistance. She had all the necessary information to enable her to present a claim 11 weeks before the time ran out.

31 Since her dismissal, her condition may have got worse but she is able to
shop online and to claim benefits. If she can do that, it is hard to see
why she is prevented from presenting a claim to this tribunal. This can
be done online with minimal information. While her concerns about her
5 husband may have returned, her father's health appears to be stable.

32 I am not satisfied that it was not reasonably practicable to present the
claim in time and therefore the claim is dismissed.

10	Employment Judge	Susan Walker
	Date of Judgment	15 February 2019
15	Entered in register and copied to parties	16 February 2019