



EMPLOYMENT TRIBUNALS

Claimant: Mr H Sayki

Respondent (1): Birmingham Women's And Children's NHS Foundation Trust

Respondent (2): Unison

JUDGMENT

The claimant's application dated 8 November 2024 for reconsideration of the judgment dated 26 September 2024 and sent to the parties on 27 September 2024 is refused.

REASONS

1. The claimant's reconsideration application is dated 8 November 2024 ("the 8 November Application"). It is 37 pages and contains 17 appendices. The claimant provided an email "in support" of the 8 November Application dated 10 November 2024 which contained a further 2 appendices.
2. The 8 November Application is referred to as an "Amended Request for Reconsideration." It follows on from the claimant's first reconsideration application which he made on 7 October 2024 (which consisted of 10 pages and 13 appendices). Judgment was issued in this case on 26 September 2024 and Written Reasons were provided on 18 October 2024 and sent to the parties on 21 October 2024. The claimant's first reconsideration application was refused because there was no reasonable prospect of the decision being varied or revoked in a Judgment dated 4 November 2024.
3. The time limit for making a reconsideration application under rule 71 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 ("the ET Rules") is 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).
4. Under rule 72(1) of the ET Rules, if the Tribunal considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal.
5. In the 8 November Application, the claimant has added further grounds to his reconsideration application of 7 October 2024. There is no right to add to a

Case No: 1307865/2022, 1300014/2023, 1303211/2023 and 1305156/2023

reconsideration application outside of the 14-day time limit and so the 8 November Application is out of time.

6. In any event, in terms of the content of the 8 November Application, whilst it is not necessary or proportionate to provide a response to each of the claimant's assertions, I make the following comments -
 - 6.1 The first respondent's application for the claimant's claim to be struck out and/or for a deposit order to be issued was heard on the afternoon of the second day. After this, the Tribunal proceeded to issue case management directions for the rest of the claim in discussions with the parties. During these discussions, the case was listed for a full hearing. The claimant misunderstands that his "*disability claim*" was struck out at that time. The claimant's claims for disability discrimination were dismissed because of the decision made earlier in the day that the claimant was not a disabled person under the Equality Act 2010. The claimant produced a witness statement, provided medical evidence, gave evidence and made submissions in respect of this claim all of which were taken into account before any decision was made.
 - 6.2 The claimant's views about his ability to fully engage in the tribunal process being impacted by his ill health are noted but I am satisfied that the claimant did fully engage in proceedings both in respect of the case preparation for the hearing on 16-17 September (as required following the 2-day Preliminary Hearing in March 2024) and at the hearing itself.
 - 6.4 There was a 132-page disability bundle (contained alongside another 1000 pages of documents) which were before the Tribunal at the Preliminary Hearing. The Tribunal considered the evidence given by the claimant and the documents (including medical evidence) which were referred to by both parties and found that the claimant was not suffering from an impairment until January 2023. In arriving at this view, full consideration was given to whether the existence of an impairment could be inferred from any adverse effect on the claimant's normal day to day activities prior to January 2023 (and, had this been the case, whether such adverse effect was substantial and long term), but it could not. In the 8 November Application, the claimant makes additional assertions about his condition, refers to documents within the bundle (including some which purport to contain observations of some individuals about his health) not referred to at the hearing and seeks to introduce new evidence (including screenshots from his NHS app) which was not before the tribunal at the hearing but which with reasonable diligence could have been provided. A reconsideration is not intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered. The 8 November Application seeks to do this.
 - 6.5 The claimant in real terms seeks to challenge the conclusions reached on the arguments before me at the preliminary hearing for which in reality the appropriate avenue is by way of appeal.
7. The interests of justice require finality between the parties, subject to any appeal and the reconsideration provisions do not entitle a disaffected party to reopen issues which have already been determined, including in respect of

Case No: 1307865/2022, 1300014/2023, 1303211/2023 and 1305156/2023
the findings of fact that have been reached on the evidence and argument before it. The claimant's application is refused. It was made out of time, it is not in the interests of justice to extend time and, in addition and in any event, there is no reasonable prospect of the original decision being varied or revoked.

Employment Judge Chivers

Date 30 November 2024