



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Wills

**Respondents:** British Telecommunications plc (1)  
Brookson Solutions Limited (2)  
EPAM Systems Limited (3)

## RECONSIDERATION JUDGMENT

The claimant's application dated 25 May 2023 for reconsideration of the tribunal's Judgment to strike out her claims dated 10 May 2023 and sent to the parties on 10 May 2023 is refused.

## REASONS

There is no reasonable prospect of the original decision being varied or revoked for the following reasons.

1. The claimant has applied for a reconsideration of the decision to strike out her claims on the basis that they were presented outside the statutory time limit, the tribunal having concluded it would not be just and equitable to extend time.
2. The grounds of her application are as follows:
  - 2.1. the provision of additional items of medical evidence;
  - 2.2. clarification of certain points and facts;
  - 2.3. drawing the tribunal's attention to key considerations that may have been overlooked;
  - 2.4. providing further detail and clarification where the claimant was not previously able to do so due to lack of opportunity, her impairments or the lack of sufficient support.
3. She has also, in support of her application, submitted an annotated version of the original decision, with her comments set out within the document.
4. The application has been presented in two documents and it is not always clear exactly what the claimant is referring to as many of her comments are framed in general terms. I have

taken the fact that the claimant is a litigant in person with disabilities into account and I will address the points she makes, as I understand them.

5. The claimant refers to an application under Rule 17 of the Employment Tribunal Rules of Procedure. This is not the correct rule as it deals with the rejection of the original claim form during the vetting process. The claimant is seeking a review of my decision not to extend time and the provisions of Rules 70-72 are the appropriate rules. I will follow the process set out in those rules.

*Time limit*

6. The claimant has submitted her request for reconsideration outside the statutory time limit of 14 days for requesting a review. Pursuant to Rule 6, I have granted an extension of time and will consider the reconsideration application by the claimant.

*Medical evidence*

7. The claimant provided the following notes as attachments to her reconsideration request:
  - 7.1. 'Adferiad' (Recovery) Long COVID Service National Evaluation – July 2022 update
  - 7.2. NHS Overview of Attention deficit hyperactivity disorder (ADHD)
  - 7.3. NHS Overview of Dyslexia
  - 7.4. NHS note on Dyspraxia in adults
  - 7.5. Article: How can a dietitian help with Mast Cell Activation Syndrome by Chloe Hall
  - 7.6. Summary of Mast Cell Activation Syndrome
  - 7.7. NHS Overview of Post-traumatic stress disorder (PTSD)
  - 7.8. Pathological Demand Avoidance (PDA) guide from the National Autistic Society
  - 7.9. PDA guide for employers
  - 7.10. Note on PTSD from the National Autistic Society
  - 7.11. NHS note on Postural tachycardia syndrome (PoTS)
8. She also submitted a fit note covering the period from 16 August to 30 August 2021, which stated that she 'may be fit to work on amended duties because of the condition of autism spectrum disorder and related conditions'.
9. She stated that further evidence, including letters from her specialist and her GP and a further impact statement would be submitted separately within 14 days. It is now two months from the date she submitted her reconsideration and I have not seen any further documentation. I have held back from the reconsideration process in case this evidence was submitted and affected my decision. In the event, as I have not received it, I have not been able to take it into account.
10. My conclusion on the generalised summaries of the claimant's conditions itemised in paragraph 7 above is that they do not assist the claimant because they do not explain why these conditions prevented her from submitting her claim in time. The claimant has not drawn my attention to any specific information contained in these notes. It is not for me to read through all this information to see if there is anything which helps the claimant. To the extent that I have read these documents, none of them appear to address the capacity issue which she says prevented her from submitting her claim in time.

11. I must also consider whether any of the information the claimant now wishes to rely on was available at the time of the preliminary hearing. Her explanation (set out in paragraph 2 of her reconsideration request) why it could not have been made available then is, in my view, misconceived:

*The claimant was expecting that the Tribunal would understand these conditions and their combined implications, and where it did not, seek further information. The claimant was not aware that the medical evidence that had been supplied so far, her witness statement and the testimony she has given at preliminary hearings would not be sufficient for the purpose of ruling on the issue of late submission*

12. It is for a party relying on evidence to ensure it is before the tribunal. Tribunals are unlikely to seek further information if the party has not presented it.

13. I have also taken into account the case management order of EJ Hodgson dated 30 December 2023, following a case management hearing on 16 December 2023. Paragraph 3.2 of the order states that the claimant shall file any medical evidence she relies on in support of her reason for not presenting her claim earlier. She was therefore on notice that the onus was on her to provide any relevant medical evidence to support her position.

14. The claimant suggests it was for the respondent to rely on countering evidence about the claimant's medical conditions. I do not consider that it is for the respondent to lead that evidence. The administrative resources of the respondents are not relevant to which party bears the burden of proof. In this case, it was the claimant.

15. It is worth repeating that the primary issue was not whether the claimant had any of the conditions she relies on but whether they provide an explanation for the late submission of the claim. If they did provide such an explanation, this would be one factor in weighing up the balance of prejudice to determine whether it would be just and equitable to extend time.

16. In the hearing, the claimant relied on her own testimony. This was taken into account. However, the tribunal found that, in the circumstances of the length of the delay and the claimant's capacity to do other things within the period, some medical evidence explaining the claimant's particular situation was required. Nothing that has been provided as part of the reconsideration application has changed my view. I do not need therefore to consider the issue of why the information was not available at the hearing.

17. The reconsideration request also relies on the claimant's own testimony with no independent medical evidence relating to the issue being put forward.

#### *Other representations*

18. The claimant states she was not aware that the bar was set so high for allowing late submissions. She was aware of the time limit and had received some advice during the period in question. In addition, EJ Khan set out the legal principles in some detail in his case management order dated 26 October 2022, following a case management hearing on 26 October 2022. This included specifying that the burden of proof was on the claimant and that there is no presumption that a tribunal will exercise its discretion to extend time. It is the exception rather than the rule.

19. The claimant indicates that she thought not complying with the time limit would be a 'reasonable adjustment' to accommodate her disability. The statutory time limits are not subject to variation as a reasonable adjustment. The impact of a party's disability will be a factor in determining whether it would be just and equitable to extend time, but it will not be the only factor. In any event, there are specific exemptions in the Equality Act from the duty to make reasonable adjustments in relation to the exercise of a judicial function.
20. The claimant's lack of knowledge of these matters does not mean that they do not apply.
21. The claimant challenges the finding that the respondents would be prejudiced by the late submission of her claim. The matters relied on to support this representation were before the tribunal at the time of the original decision and nothing has been put forward to persuade me to reconsider my original conclusion.
22. The claimant seeks to rely on evidence that will be forthcoming to support her contention that the tribunal was mistaken in reaching its conclusion. As this evidence has not been supplied, I am unable to take it into account. The claimant has not shown any reasons why the original decision should be varied (other than she disagrees with it).
23. The claimant has requested a hearing at which she can present the new evidence and answer any questions or uncertainties. She has not shown me any basis on which another hearing would be justified. There is a principle that there must be finality in litigation and it is not open to parties to ask for new hearings when the original hearing did not give the desired outcome.
24. The claimant includes a complaint about the decision of EJ Hodgson to deal with two matters at the same preliminary hearing (listed over two days). This was his decision and is not something that can be the subject of a reconsideration application to me. To the extent that the impact of the decision affected the claimant, this was included in her representations at the hearing and was taken into account at the time.
25. My perception of the claimant's ability to present her case at the hearing was that she was able to do so intelligently and cogently. She has not explained what additional representations or issues she failed to address at the hearing.
26. In any event, in reaching my decision on the balance of prejudice, I took into account the claimant's claims at their highest and took the view that the claims lacked merit and that the prejudice to the respondents would be considerable if the claims were allowed to proceed.
27. The claimant makes reference to the Equal Treatment Bench Book (ETTB) but has not identified a particular paragraph to support her application. The ETTB does not suggest amending statutory time limits to accommodate a claimant's disability. It does deal with adjusting the format and conduct of the hearing and I accept that this was appropriate for the claimant. The conduct of the hearing took into account the claimant's disabilities. Although she alleges that not all the adjustments she needed were allowed, she has not specified which were not allowed. She has not identified what should have been done differently and what different outcome that would have led to.

28. In conclusion, there is no reasonable prospect of the original decision to strike out the claims as being presented out of time being varied. The reconsideration application therefore fails.

Employment Judge Davidson  
Date 20 July 2023

JUDGMENT SENT TO THE PARTIES ON  
20/07/2023

FOR EMPLOYMENT TRIBUNALS

Notes

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