



EMPLOYMENT TRIBUNALS

Claimant: Ms G. Marett

Respondent: Incipio Group Limited

Heard at: London Central
Before: Employment Judge Goodman

On: 29 April 2019

Representation

Claimant: Mr M. Walker, counsel

Respondent: Mr S. Wyeth, counsel

PRELIMINARY HEARING

JUDGMENT

1. The holiday pay claim is dismissed on withdrawal.
2. The notice pay claim is dismissed on withdrawal.
3. The hearing of the issues listed for hearing today (disability, strike out, deposit order) is postponed to **21 June 2019**.
4. The claimant is ordered to pay the respondent's solicitors the sum of £1,020 as costs of postponement, pursuant to rule 76(1)(c), **by 13 May 2019**.
5. The final hearing on 8-11 July 2019 (4 days) is vacated and relisted for **21-23 October 2019** (3 days).

REASONS

1. This hearing was listed in February 2019 to decide whether the claimant was disabled within the meaning of Equality Act, and orders had been made for disclosure of medical records and a witness statement. The claimant had disclosed only a letter from her doctor dated 22 February 2019, no medical records, and a short witness statement.
2. At the start of the hearing counsel for the respondent indicated that he did

not wish to cross examine the claimant, whereupon counsel for the claimant said he wished to ask a number of supplementary questions. I indicated that in the absence of any medical records it would not be fair to the respondent to allow the claimant to adduce new evidence which could not be checked either against records or the recollection of the respondent's employees, and that this hearing would proceed on the basis of the documents and witness statement already disclosed pursuant to order, otherwise the claimant should seek a postponement. After seeking instructions, her counsel applied for a postponement which was opposed by the respondent, who sought costs if the postponement was granted.

3. Although the claimant did not attend the preliminary hearing in February, she was represented there by a caseworker. She has also been advised by a retired solicitor since March last year. The respondent's solicitor had in correspondence explained to her what had to be proved to establish disability. The Claimant told me that she requested her GP records in February 2019. The GP surgery, she said, had been made aware of the tribunal order for disclosure by 14 March and the hearing today. She had not been in touch with the surgery since March, when she was told there was no objection to disclosure and it was solely an administrative task, but she had still not received the records. She has not followed up why they are still not available.
4. The claimant indicated she has discussed anxiety with her doctor since 2009, the only date mentioned in the GP letter disclosed.
5. Against this background and in the light of the claimant's instructions to seek a postponement, I consider it in the interests of justice to allow a postponement so that the claimant can obtain the records and submit a fuller witness statement. The evidence adduced to date is so sparse it is unlikely to establish disability. The respondent then has the opportunity to prepare on the basis of the full evidence. There can then be a fairer hearing than could take place today.
6. I have made a costs order because the claimant could have prepared a fuller witness statement without medical records, especially as she has had access to advice, and if the advice was not adequate, she was told by the respondent's solicitors the statutory definition of what she had to prove. Nor has she pressed the GP surgery for disclosure of records, despite having the tribunal order against her, and despite having been told by the practice it was merely an administrative matter. If she considers her GP was at fault in not disclosing the file within the time allowed by the Data Protection Act 2018, she has a remedy in the GP complaints procedure and then the Information Commissioner.
7. Regrettably the restrictions on listing availability mean that the preliminary hearing has to be postponed to a date so close to the final hearing that this too has had to be postponed.
8. I have varied the order for disclosure of medical records to **24 May 2019**, and allowed the claimant to serve a further witness statement by **31 May 2019**. All medical records from 2009 should be disclosed.
9. The claimant's counsel was not able to clarify today whether the disability

claim is brought under section 13, 15 or 20 of the Equality Act and I suggested the claimant should be ready to clarify this at the hearing on 21 June, when if appropriate further case management orders will be made.

10. On instructions counsel for the claimant withdrew the claims for notice pay and holiday pay. Accordingly these are dismissed under rule 52.

Employment Judge Goodman

Date 29 April 2019

JUDGMENT SENT TO THE PARTIES ON

9 May 2019

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FOR THE TRIBUNAL OFFICE