



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr K Parker**

**v**

**Picturehouse Cinemas Limited**

**Heard at:** Watford

**On:** 21 November 2016

**Before:** Employment Judge Bedeau

## **Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr G Self, Counsel

**JUDGMENT** having been sent to the parties on 6 January 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## **REASONS**

1. By a claim form presented to the tribunal on 14 April 2016, the claimant, Mr Kenneth Parker, made claims of direct and indirect disability discrimination; failure to make reasonable adjustments; harassment and victimisation. He subsequently on 25 October 2016, presented a further claim form to this tribunal alleging claims of a similar nature.

### **The issues**

2. In respect of the first claim, the matter came before Employment Judge Manley on 19 July 2016 at a preliminary hearing, who set the case down for a preliminary hearing for me to hear and determine: firstly, whether or not the claimant was, at the material time, namely from commencement of his employment in November 2015 to the presentation of his first claim, a disabled person within the meaning of s.6 and schedule 1 of the Equality Act 2010? Secondly, "any other jurisdictional issues as notified to the claimant and the tribunal".
3. Insofar as this hearing is concerned the parties focussed their minds on the first issue, namely whether the claimant satisfies the definition of disability. The claimant has to prove that he comes within the protection of the Equality Act as a disabled person.

## The evidence

4. I heard evidence from the claimant. The respondent did not call any witnesses. In addition, the parties produced a bundle of documents comprising of 163 pages but I was only referred to a few documents.

## Findings of fact

5. The claimant is employed by the respondent as part-time customer service assistant based at its new cinema in Crouch End, north London having commenced employment on 16 November 2015. His case is that shortly after he started work he had been the subject of discriminatory treatment because of his dyspraxia and dyslexia.
6. He was assessed by the respondent's Occupational Health Advisers, Lexxic, on 15 August 2016. They were asked to consider a number of matters, particularly around his alleged behaviour. One such matter was his abusive and inappropriate behaviour towards his work colleagues. The opinion was that an individual with dyspraxia can have difficulty picking up social cues which can potentially lead to misunderstandings such as being unsure whether the other person is asking a rhetorical question.
7. In relation to the extent to which he may be at a disadvantage in the disciplinary process as a result of his condition and the appropriate period of time to allow him to prepare adequately for the hearing, the opinion was:

“Ken’s difficulties related to dyslexia and dyspraxia affect his auditory short-term memory (working memory) visual short-term memory (processing speed) and he shows difficulties with fine motor coordination, which may put him at a disadvantage in relation to the disciplinary process in that:

- a) He may find that difficult to digest and retain all information given to him verbally;
  - b) He may find it difficult to copy information down at speed, particularly when making notes;
  - c) His ability to efficiently structure his thoughts and verbalise these in a coherent and logical manner;
  - d) He may lose his attention and focus more easily;
  - e) He may have difficulties formulating his thoughts in to writing and constructing documents for his case, prior to the hearing.”
8. In a Dyslexia and Dyspraxia Diagnostic Report written on 11 August 2016, the claimant having been interviewed on 4 August 2016, it is recorded that he gave his account of his experiences. The assessment lasted between four and a half to five hours. In relation to the Wais Score Report, in respect of verbal comprehension, his percentile rank was 98 and the description given was very superior. In relation to perception reasoning, the percentile rank was 94, the description given was superior. With regard to working memory, the percentile was 23, the description given was low

average. As regards processing speed, the percentile was 42 and the description given was average. In respect of his reading, the finding was average; sentence comprehension was above average; and spelling average. In relation to sight word, the percentile was 55, the description was average. Decoding efficiency was 45, the finding there was average. In relation to the Beery Developmental Test of Visual and Motor Integration, the Occupation Health Adviser stated the following:

“Kenneth was tested for visual and motor integration difficulties, using the visual perception and motor coordination tests. These tests assess the extent to which the individuals can integrate their visual and motor abilities.

The Visual Perception Test involves identifying with which diagram from the selection was the same as the illustration. Kenneth obtained a standard score of 97, which falls in the average range in comparison with the overall population. Kenneth does not have difficulties perceiving and discriminating visual shapes at speed.

The last test observed, Motor Coordination. This examined Kenneth’s ability to manipulate, grasp and move objects, which involved him completing a number of diagrams by joining the dots or by drawing a line within the outline provided. Kenneth obtained a standard score of 86, which falls in the below average range in comparison with the overall population. He experienced mild difficulties with motor coordination tasks. This means that he will have mild difficulties performing tasks which involved fine motor skills and movement at speed.....

Within dyslexic assessments there are two main ways by which we can identify dyslexia. The first involves looking for a delay in the written language attainment skills that someone is achieving, given their age and ability. The second is by looking at the individual pattern of weaknesses shown, and comparing this was a “typical” dyslexic profile of weaknesses.

Dyspraxia is often highlighted and defined by difficulty with motor skills, ie difficulty with planning and execution of movement. Individuals with dyspraxia can also experience a range of other difficulties including difficulties with gross and fine motor coordination, perception, speech and language, learning, memory and thought, and emotional or behaviour.

We can conclude that due to the nature of Kenneth’s performance within attainment tasks in comparison with Kenneth’s overall intellectual abilities, Kenneth has a specific learning difficulty – dyspraxia. We would describe this as mild in severity. We can also conclude that Kenneth has a specific learning difficulty - dyslexia. We would describe this as mild in severity.”

9. The claimant successfully applied for a Personal Independence Payment. In the decision by the Social Entitlement Chamber, it noted the following:

“The claimant has severely limited ability to carry out activities of daily living. He scores 13 points. He satisfies the following descriptors. Preparing food, needs an aid, needs to use an aid or appliance, taking nutrition, systems by way of enabling him to cut food, managing therapy or monitoring a health condition. He uses an aid to enable him to take his medication on time and his house mates would remind him when to take his medication. In relation to washing and bathing he needs to use an aid and I am told here he uses a back scrubber or his girlfriend would normally wash his back. Dressing and un-dressing it is noted that he needs to use an aid or appliance as specific difficulty there was not

clarified. Engaging with other people face-to-face needs social support to be able to engage with other people. In respect of these matters the claimant was bale to tell me that in preparing food he finds it dangerous to use a knife. That in relation to managing his therapy he has his own way of reminding himself by use of a device when to take his medication and that his housemates would also remind him. As regards engaging with other people face-to-face, he says he has problems interacting with others. He would get on occasion, angry and would freak out particularly when other customers would use their mobile phones.

10. I do find from the claimant's evidence that he has a working memory of 25 percent and he told me that that causes him significant problems in carrying out certain tasks. In relation to social interaction, he expresses himself in a way that is not socially acceptable. His body language is likely to give the impression to others that he would not be listening or concentrating on what is said to him or on what he would be saying to others, therefore, his manner would be misinterpreted. He has difficulty remembering sequences in the right order, particularly in relation to cooking and would try to avoid not injuring himself when he is engaged in that task. In relation to use of particular cutlery, namely a knife, he would ask his housemates to cut things up for him as the process was particularly dangerous for him.
11. I make this further finding that as a result of his dyspraxia, he is clumsier than a normal person would be.

### **Submissions**

12. Mr Self, counsel on behalf of the respondent, submitted that the issue in the case is not the claimant's mental impairments of dyslexia and/or dyspraxia as those conditions the respondent accepts he suffers from. It is whether or not as a result of his mental impairments, he finds it difficult to engage in normal day-to-day activities and whether it is substantial as opposed to minor? He made reference to the reports which showed that the claimant was behaving in a way that is not outside the realms of normal activity for ordinary individuals in similar circumstances and that the claimant knew what to say to the assessors as he has had experience because he issued employment tribunal proceedings against his previous employer.
13. In relation to the decision of the Social Entitlement Chamber, Mr Self submitted that there was nothing unusual about the scores as they do not suggest that the claimant's difficulties were beyond what would be expected of normal individuals in similar circumstances.
14. The claimant in his submission took exception to the submissions by Mr Self in relation to allegedly manipulating employment tribunal proceedings and takes the view that his dyspraxia and his dyslexia are disabilities. He has genuine learning difficulties in his life on a daily basis. He further submitted that it is difficult to fake the tests after four and a half to five hours of assessments.
15. The Social Entitlement Chamber, he submitted, relies on evidence and found that he was entitled to the benefit having considered his disabilities.

## The law

16. Section 6 of the Equality Act and Schedule 1 defines disability. It has to be either a physical or mental impairment. It has to be long-term, that is, it had lasted or is likely to last for at least 12 months or for the rest of the person's life. In addition, the impairment must have a substantial adverse effect on a person's ability to carry out normal day-to-day activities.
17. Section 212(1) Equality Act, defines substantial as "more than minor or trivial."
18. In Appendix 1 to the Equality and Human Rights Commission, Employment: Statutory Code of Practice, paragraph 8 referring to "substantial adverse effect" states,

"A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people."

## Conclusion

19. I am satisfied that the claimant does satisfy the tests of substantiality and long-term adverse effect on normal day to day activities.
20. His working memory was assessed at the 23 percentile – low average and he told me that this causes him difficulty in remembering sequences of events and what to do, particularly in relation to cooking and the taking of his medication. He also experiences problems using a knife and would avoid using one for his own safety.
21. The conclusion in the occupational health advisers report dated 15 August 2016, was that the claimant suffers from mild dyspraxia and mild dyslexia. I do find that there are gradations of severity in a mental condition, such as low or mild, average or severe. Whatever the description the tribunal has to look to see whether the claimant comes within the protection of the Equality Act. I am satisfied, based on the evidence that I have considered and my findings of fact, that the claimant satisfies the statutory provisions. The effects on him of his impairments can be described as more than minor or trivial and are "beyond the normal differences in ability which might exist among people." I focussed on his dyslexia and his dyspraxia. I did not hear detailed evidence in relation to his attention deficit and I do not make any findings in that regard. Accordingly, the claimant was, at all material times, a disabled person within the meaning of section 6 and schedule 1 Equality Act 2010.

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Employment Judge Bedeau

Date: ...23 February 2017

Judgment sent to the parties on

.....23 February 2017 .....

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For the Tribunal office