



Case Number: 2301038/2016

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Miss T Gillett

and

Respondent
Bridge 86 Ltd

Preliminary hearing held at Ashford 1 December 2016

Representation

Claimant:
Respondent:

Mr Hall, solicitor
Mr Smith, counsel

Employment Judge Wallis

JUDGMENT TO WHICH THESE REASONS REFER

The Claimant was a disabled person at the material time.

REASONS

ISSUES

1. On 5 December 2016 the Respondent wrote to the Tribunal office to request written reasons in respect of the finding that the Claimant was a disabled person at all material times. Unfortunately, the request was not passed to the Employment Judge until 12 January 2017. There was then a further delay while the document bundles were retrieved.
2. These written reasons should be read with the previous Judgment which was issued with limited reasons, in response to the request for written reasons in respect of one issue, made by the Claimant at the end of the hearing.

DOCUMENTS & EVIDENCE

3. I heard evidence from the Claimant Ms Gillett and was able to read her witness statement and the relevant documents in the agreed trial bundle. The documents included copies of her medical records.

FINDINGS OF FACT

4. I noted and accepted the Claimant's evidence that 'since 2012 my anxiety has made every day challenging but with medication, CBT and psychotherapy I have been able to manage my condition in order to function, most of the time'.

5. I accepted the Claimant's description of the effect of her condition on normal day to day activities. I found that since 2012, but more particularly since 2014, she experienced difficulties in communicating, often repeating herself and worrying that she was not expressing herself clearly. She described how she wrote notes before making telephone calls. I noted that she found it difficult to cope with changes in routine and found any change stressful. She described how she found it difficult to perform daily household tasks and how she avoided stressful situations which had been known to cause panic attacks.
6. The Claimant described being unable to concentrate for long periods of time and on occasions experiencing physical symptoms such as sweating, dizziness, headaches and tremors. She explained that she avoided driving on the motorway and could not travel to unfamiliar places alone. She explained that she was able to cope with visits to clients because the catchment area to which she was assigned was familiar to her; she had grown up there.
7. The Claimant estimated that without her medication she would experience one or two panic attacks a week. Before and during an attack she was unable to leave the house and became irrational; she explained how she lived in fear of another panic attack.
8. The Claimant described her condition of depression. When in a particularly low mood she relied upon family members to carry out all household tasks and to help her with her own self care.
9. I noted the Claimant's evidence that she had undertaken CBT in 2012 because she wanted to avoid medication if possible. She said that she had learned coping strategies from that counselling. However, in 2013 her symptoms became worse and so she began to take medication. I noted that the medical records did not support the Claimant's recall about these dates; in addition, the records showed that there was a break in the prescribing of the medication, although the Claimant could not recall such a break. I also noted that the letter from the Claimant's GP dated 17 June 2016 appeared in part to contradict the records in respect of the dates that the medication was prescribed. It said that medication was started in July 2014 and continued since then, with increases in dosages in August 2015 and October 2015.
10. Doing the best that I could in the circumstances, I found that the Claimant had undertaken CBT, probably in 2014, and had started taking medication in July 2014. On 25 September 2014 the records stated that she was 'much better with' the medication. On 7 July 2015 an entry records that she 're-started' the medication. It is unclear whether that was correct; the Claimant said that it was wrong and that there was no break. However, the entry on 9 March 2015 shows she was prescribed 56 tablets of the medication on that date. That would have taken her to 4 May 2015. She was then prescribed the medication regularly after 6 July 2015. I found that if there had been a break in medication, it was a short one and not significant.

11. I noted that the Respondent's occupational health report in November 2014 referred to the Claimant's condition being 'controlled with treatment'.
12. I found therefore that the Claimant had been taking medication for her condition since July 2014, possibly with a break between May and July 2015, and had also undertaken CBT. I found that clearly she had a mental impairment.

CONCLUSIONS

13. I concluded that the impairment had a substantial effect (that is, more than minor or trivial), on her ability to carry out normal day to day activities. I found it difficult to assess the effect of the condition on the Claimant without the medication and without counselling, as I am required to do, because she had benefited from those supports for a lengthy period of time. Such an assessment inevitably requires a degree of speculation. I accepted the Claimant's evidence that without that treatment she would be subject to regular panic attacks and bouts of low mood that would seriously impact on her ability to cope with life generally.
14. I concluded that the impairment had been present for at least 12 months by the date of dismissal in April 2016.
15. On balance therefore I concluded that the Claimant had been a disabled person at least from July 2014, and possibly before that date.

SUBMISSIONS

16. When coming to my decision I noted the submissions from Mr Smith on behalf of the Respondent, and from Mr Hall on behalf of the Claimant. Mr Smith referred to his skeleton argument. He suggested that the contemporaneous documents did not support the Claimant's recollection. He noted that she had 7 sessions of CBT in 2014. He said that she had not taken medication before 2014 and had functioned well to that point. He referred to the gap in the prescription dates. He noted that the GP had not recorded any panic attacks during that time. He accepted that there was a deterioration in her condition in 2016, which post-dated most of the allegations, and was probably because of the stress of the disciplinary process. He suggested that the condition had not lasted for 12 months at the time of dismissal and was unlikely to last that long.
17. On behalf of the Claimant, Mr Hall referred to the medical records and the GP's letter. The Claimant's medical certificate in October 2015 referred to 'anxiety/panic attacks/depression'. He referred to the Claimant's evidence about her condition.

THE LAW

18. I should also record the relevant law to which I referred.
19. Section 6 and Schedule 1 of the Equality Act 2010 set out the provisions with regard to the meaning of disability. In addition, Guidance has been issued to assist Tribunals to determine whether a person meets that definition.
20. Section 6 provides that a person has a disability if she has a physical or mental impairment and it has a substantial long term adverse effect on her ability to carry out normal day-to-day activities. Those activities are not defined, but the Guidance suggests that they include activities that would normally be carried out by most people on a daily basis.
21. Schedule 1 of the Act provides that the effect of an impairment is long term if it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected. Paragraph 2(2) provides that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
22. Paragraph 5 of the Schedule sets out the provisions for ignoring the effects of any treatment of the impairment.
23. The Guidance provides that a "substantial adverse effect" is something that is more than minor or trivial (B1). The Guidance provides (A7) that it is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. Paragraph C2 provides that the cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long term effect for the purposes of meeting the definition of a disabled person, and provides an example to illustrate this provision.

Employment Judge Wallis
22 February 2017