

5. We do not know why Professor Oyeboade felt able to diagnose without, for example, having seen the claimant's GP records or speaking to her partner or indeed any of the matters that had been identified by Dr White as necessary for such a diagnosis.

6. It seemed to us to be potentially unfair to the claimant to proceed with cross examination without consideration of whether the medical expert should be called to give evidence. The claimant understood these concerns and raised no objection to the Professor being called.

7. The respondent, however, objected on the basis that it would give the claimant a second chance to produce sufficient evidence to meet the statutory test but we note the report relied on by the claimant was actually commissioned by the respondent.

8. In addition the respondent submitted that it would put Professor Oyeboade in a very difficult position. This was because it was not simply a matter of explaining the alleged lack of rigour and thoroughness suggested by the absence of consideration of matters deemed important by Dr White but also that there was a risk, having already reached one conclusion, that he would be compromised in reporting objectively once in possession of all of the facts.

9. For example, it appears that the report was prepared without sight of certain things which the respondent was suggesting were contra-indicators to the diagnosis, such as the fact that at the relevant time the claimant appeared to be presenting to her GP with symptoms of depression, whereas she reported to Professor Oyeboade a period of 6 months when she was "flying" and "on fire", symptoms of mania.

10. Before us she sought to explain this by suggesting that she was having what she called a 'mixed episode' but that is not something that has been addressed in any of the reports that we have seen.

11. This it appeared to us was going to leave us in a very invidious position whereby we are called to either accept the findings of Professor Oyeboade based on incomplete and inaccurate information or reject the findings of a highly qualified medical expert.

12. We would accept that the respondent is entitled to challenge the information that was provided to the expert and that they have made clear throughout these proceedings that this was their intention but, whilst we may well be in possession of the full facts by the end of this hearing, we, of course, would be in no position to determine a diagnosis.

13. It would potentially be unfair for us to simply reject the diagnosis the claimant received from the expert instructed by the respondent without hearing from that expert. It would, equally, be unfair to expect that expert to attempt to objectively revisit their original opinion.

14. We do not know why an independent report was not commissioned once it was clear that disability remained in dispute.

15. We also note that since that time a further report has been disclosed from the relevant time that included a different diagnosis. That was something that was not before Professor Oyeboade although it was mentioned in his report.

16. We are mindful of the overriding objective and do not want to abandon the case part-heard unless it is absolutely necessary. Both parties agreed,

however, that if further medical evidence was required we should not continue at this time.

17. We note that this is a case where the claimant is claiming loss of career. It involves an alleged serious mental illness and the schedule of loss runs to hundreds of thousands of pounds.

18. Accordingly, it is far too important a decision for us to get wrong or to proceed to make medical determinations on insufficient information. As a result, regrettably, it seems to us that it must be in the interests of justice for there to be a full report from a new independent expert who is in possession of all of the relevant information.

19. The parties agreed that they should be responsible for the preparation of a joint letter of instruction to a mutually agreed expert within 21 days and they will provide a copy of that letter of instruction for the approval of EJ Broughton at the same time. The expert will report by no later than 23 June 2017 and respond to any supplemental questions within 2 weeks. They will be available for attendance at the reconvened hearing if necessary.

20. Whilst the parties will doubtless include a copy of this decision in those instructions they did not want us to make any findings of fact, such as whether or not the claimant's behaviours exhibited in July 2015 were out of character, as it was agreed between them that the assessment of the claimant's credibility should be left to the medical expert.

21. Accordingly we made the orders as set out at paragraph 18.

Employment Judge Broughton

6 April 2017

Date

JUDGMENT SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS