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EMPLOYMENT TRIBUNALS

Claimant: Mr S Mails

Respondent: Mitie Aviation Security Limited

Heard at: London Central

On: 27 June 2017

Before: Employment Judge Lewzey

Representation

Claimant: Mr C Macauley, Union Representative

Respondent: Ms A Smith, Counsel

JUDGMENT having been sent to the parties on 29 June 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. This is a Preliminary Hearing to consider whether Mr Mails is disabled, for the purposes of the Equality Act 2010.

Evidence

2. I have heard evidence from Mr Mails himself, I also have a statement for Mr S Mallik, a colleague of Mr Mails, which I have admitted because the Respondent has no questions for Mr Mallik. In addition, I have the Claim Form and the Response and Mr Macauley, for Mr Mails, refers to paragraph 6.4 of the Response.
3. The other documents before me are a letter dated 12 April 2017 from Sue Warner, Advanced Specialist Speech and Language Therapist, and from Mr A

Shaida, a Consultant Ear, Nose and Throat Surgeon dated 15 May 2017. Mr Mails has also shown me a letter demonstrating that he has an appointment with the speech therapist on 4 August 2017.

Preliminary matters

4. This Preliminary Hearing arises out of the Case Management Preliminary Hearing that took place on 24 March 2017 before Employment Judge Pearl. I note that in paragraph 3 of his orders, he states that,

“actual disability may be claimed and if so is likely to be an issue”.

Paragraph 1 states that,

“the Claimant alleges detriment on the basis of perceived disability, however, this is not clear as the Claimant had no legal advice, it is possible he is also or alternatively saying he was disabled”.

5. Judge Pearl made various orders, including orders for further information from the Claimant, requiring him to say whether he his saying he is now disabled and some other questions concerning that, whether he will be producing any medical evidence at the Preliminary Hearing and paragraph B(6):

“If he is not saying he was disabled, but that he is claiming only on the basis of perceived disability, what is the disability that he says the Respondent perceived.”

6. Mr Mails wrote to the Tribunal on 1 June 2017 saying that he claimed direct discrimination. His letter of 23 June says that his claim is for direct disability discrimination and failure to make reasonable adjustments. I also note that he sought appointments with the Speech Therapist and with the Consultant ENT Surgeon after the Preliminary Hearing before Judge Pearl.

7. Mr Mails has now said that he relies on a disability. He is not saying he relies on perceived disability.

The Law

8. I must determine the matter by reference to the provisions of the Equality Act 2010, namely Section 6 which provides:

“(1) A person (P) has a disability if –

- (a) P has a physical or mental impairment, and
- (b) the impairment has a substantial and long term adverse effect on his ability to carry out normal day to day activities.”

9. Schedule 1 to the Act provides for the determination of disability. It provides:

“Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.”

The Schedule goes on to deal with long term effects and, amongst other things, substantial adverse effects. In addition, I take into account the Guidance on

matters to be taken into account in determining questions relating to the definition of disability dated 2011.

Conclusions

10. The first issue is whether there is an impairment. The question is does Mr Mails have a physical or mental impairment. The guidance at paragraph A5 sets out that a disability can arise from a wide range of impairments which are listed, the first of which is sensory impairment such as those affecting sight or hearing. There is no specific reference to speech disorders.
11. There is no diagnosis other than the letter of Mr Shaida, the Consultant ENT Surgeon, who that there was no physical deformity and referred to a speech disorder. The letter from the Speech Therapist suggests “cluttering” or a stammer. The issue of whether there is an impairment is a low hurdle. Mr Mails has a speech disorder manifesting as fast speech or, possibly, “cluttering” or stammering.
12. The effect is the next matter. This is to be determined in accordance with Schedule 1 and the Guidance. I have Mr Mails evidence that the speech patterns have been a lifelong factor in his life. I am satisfied that they are long term and that the activity concerned is speech. The real issue in this case is the effect on the normal day to day activities. In relation to this I have taken the following factors into account:
 - 12.1 Mr Mails has given evidence before me, his speech is quite intelligible, I was able to understand what he said. He speaks fast. That reflects what Mr Shaida said in his letter, dated 15 May.
 - 12.2 Mr Mails worked for the Respondent for 15 years and has been promoted and had positive appraisals. He has told me that he mentored junior staff. His evidence is that there has been no problem with his speech until the Respondent mentioned it in 2015. The ET3 says that Mr Mails was given coaching by his manager and offered a course on his manner of speaking.
 - 12.3 I also have Mr Mallik’s statement in which he says:

“Steve’s stammer was not an issue before, he only speaks fast, but with his experience in different roles he was able to mentor other members of staff and make them have opportunities.”
13. Mr Macauley relies on the ET3. He says that there is an impairment and refers to the effect in terms of the manner of the alleged treatment. This is not the issue. The issue for me is the effect on normal day to day activities and in relation to that matter the only evidence I have is insufficient to show that the speech disorder affected the normal day to day activities.
14. In those circumstances, it is my judgment that Mr Mails was not disabled and therefore the claim is dismissed.

Case No: 2200158/2017

Employment Judge Lewzey
3 July 2017