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EMPLOYMENT TRIBUNALS

Claimant:

Miss F Iqbal

Respondent:

Allianz Management Services Ltd

Heard at: Birmingham

On: 17 March 2017

Before:

Employment Judge Butler

Representation

Claimant:

In person

Respondent:

Mr A Smith (Counsel)

JUDGMENT ON A PRELIMINARY HEARING

The judgment of the Employment Tribunal is that claim of disability discrimination is not well founded and is dismissed.

REASONS

1 This Preliminary Hearing was listed to determine in the first instance, whether, the claimant was disabled. Section 6 and schedule 1 of the Equality Act 2010 provide that “a person is disabled if they suffer from an impairment that has a substantial adverse effect on their ability to carry out normal day-to-day activities.”

2 The claimant’s case is that she suffered and continues to suffer from an undiagnosed chronic pain and vomiting. In evidence she said the pain would be minor in the morning and would gradually worsen, so that by 3pm to 4pm in the afternoon it would be unbearable and cause her to shake and vomit. The claimant produced an impact statement at page 80 of the bundle which at page 82 lists the adverse effects on her normal day-to-day activities; these include difficulty showering in the mornings, cleaning, cooking, shopping, walking to the railway station and an inability to concentrate on the content of TV programmes.

3 I noted in this case many inconsistencies in the claimant's evidence and also her demeanor whilst giving evidence. She was inconsistent in describing the timing of her symptoms. She said on the one hand they were constant from September 2015 until May 2016 and, on the other hand, that they came in cycles of 2 to 3 weeks. She described the pain as unbearable and, alternatively, that she managed it with pain killers. Further, the claimant could not satisfactorily explain how she had difficulty showering in the morning when her evidence was that the pain was minor at these times. Her explanation that movement for example, when washing her hair made it worse was not credible. Her impact statement also referred to having to take breaks when walking to the station, but her oral evidence was that her brother gave her lifts to the station. She confirmed that during some 6 months of employment she had no days off work due to her condition. This does not rest well with her evidence of constant pain and vomiting or even experiencing these symptoms every 2 or so weeks. The claimant was also unable to produce any written evidence of requesting a referral to the respondent's Occupational Health Service. She said she asked for it but her manager refused it. However, referring to pages 186 to 187 in her return to work form, she admitted she signed it without reading it. The form asks whether, a referral to Occupational Health is necessary and the return to work forms produced all answer this question in the negative. I did not find credible the claimant's explanation, that she was denied access to Occupational Health when she signed a form without reading it. I also note at page 133, her own HR experience which included dealing with absence management. Further, the claimant was given opportunities to raise concerns in her regular performance reviews and did not once mention her illness or any problems associated with it. At page 210 she said she was advised not to write anything about her illness and the line scribbled out shows where she began writing about the investigation surrounding it. I simply do not accept what she says. At page 230, she again sets out no concerns explaining the lack of reference to her illness by saying she was dealing with the pain, able to control it and her performance was going well. She also stated in evidence that her manager prevented her from seeking assistance from HR, suggesting that after making the request to him she had to make the call and he then went to HR himself and returned saying it wasn't necessary. Again, I remind myself that the claimant's own CV made reference to her HR skills and she would have known how to ask for their help. I further noted in re-examination that the claimant gave more inconsistent evidence on when her symptoms arose, saying not that they were constant or that they recurred every 2 to 3 weeks, but they would happen on most days. The claimant also said that sometimes the symptoms would be so severe that she would be bed-bound for up to 2 days. This is not consistent with the fact that she had no sickness absence for around 6 months.

4 The claimant has failed to explain precisely how she can suffer such unbearable pain and vomiting whilst getting to and from work and completing shift patterns encompassing the 3 to 4 pm period of the day. The claimant's demeanor was questionable while giving evidence. She often became frustrated

and anxious to the point that she wanted to have the last word. This extended to interrupting submissions by Mr Smith on 2 occasions when she disagreed with what he was saying. I also noted that she was reduced to saying she could not explain the nature of the symptoms when asked to explain them in the light of her inconsistent evidence. In the light of these matters, I find the claimant has not satisfied the burden of proof upon her, that her impairment is such as to have a substantial adverse effect on her ability to carry out normal day-to-day activities. She may well have a medical issue, but I am of the view that she has greatly exaggerated her symptoms to bolster her claim. The claim is dismissed.

Employment Judge Butler

Date 14 July 2017

JUDGMENT & REASONS SENT TO THE PARTIES ON
25 September 2017

FOR THE TRIBUNAL OFFICE