



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr MK Howells

AND

Respondent
EACT, a Company
Limited by Guarantee

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham **ON** 23 February 2018

EMPLOYMENT JUDGE Findlay

Representation

For the Claimant: In person
For the Respondent: Mr P Wilson of Counsel

JUDGMENT

The judgment of the tribunal is that

The claimant had a disability within the meaning of the Equality Act 2010, namely anxiety or depression, from in or about early April 2016 up to and including 26 May 2017, and the oral judgment given on 23 February 2018 is varied accordingly under rule 69 of the Employment Tribunal Rules 2013.

REASONS

1. Full reasons were given orally at the hearing on 23 February 2018, but I accidentally stated at the start of the judgment that the claimant was a disabled person from in or about October 2015. In fact, I had found that the claimant had a mental impairment which was having a substantial adverse effect on his ability to

carry out normal day to day activities from in or about October 2015, but I went on to say that this effect had lasted for more than 12 months by the time of the alleged act of discrimination, namely 26 May 2017. In making those findings I was referring to section 6(1)(b) and schedule 1 paragraph 2 of the 2010 Act.

2. For the avoidance of any doubt, I find that the effect of the impairment was likely to last for at least 12 months by no later than early April 2016.

3. The burden of proof is on the claimant and there was little medical evidence of how long his illness was likely to last at any given point, but taking account of Dr Hall's report from January 2013 at page 67-68 (which suggests that any future absence was likely to be prolonged) and that by March 2016 the claimant was being given repeat prescriptions of Citalopram 20mg, each prescription being for 8 weeks at a time, I find that by early April 2016 the substantial adverse effect was likely to (in the sense of "could well") have lasted (as it did) for up to a year (beginning from October 2015). The claimant was therefore a disabled person within the meaning of the 2010 Act by early April 2016 and continued to be so until the "relevant time" in May 2017.

4. I should also note that, at the hearing on 23 February 2018, part way through the hearing it became apparent to me that the "relevant time" as defined in paragraph 5(vi) the case management order of 11 October 2017 was incorrect – I gave the parties a copy of Richmond Adult Community College v McDougall [2008] EWCA Civ 4, and both parties agreed that the point in time at which the question of whether the claimant was disabled was to be assessed was the date of the alleged discrimination (26 May 2017) rather than April 2016, as this was not an allegation of discrimination arising from past (but rather continuing) disability.

Employment Judge Findlay
23 February 2018

Full reasons having been given at the hearing, written reasons beyond those provided above will not be provided unless a written request is made within 14 days of the sending of this written record of the decision.