



EMPLOYMENT TRIBUNALS

Claimant: Ms. S.R. Willock

Respondent: Britannia Hotels Limited

Heard at: Birmingham

On: 18 April 2018

Before: Employment Judge Britton

Representation

Claimant: Mr Mellis (Counsel)

Respondent: Mr French (Counsel)

(second day of two)

JUDGMENT

On the disability issue: -

1. The Claimant presented a claim to the Tribunal on 05 May 2017 wherein she complained of race and disability discrimination contrary to the Equality Act 2010. The Claimant pleaded that she suffered with a mental impairment namely anxiety and depression, but it was not clear that this was the disability relied upon and without further clarity, the Respondent was unable to respond to indicate either that they conceded or denied that the Claimant had a disability.
2. By its response received on 27 June 2017, the Respondent sought further and better particulars of the claim. The Case Management Hearing on the 09 August 2017 the Claimant's solicitors were without adequate instructions regarding the factual premise for the Claimant's claims and therefore little progress was made. The Claimant's agenda was prepared for that Hearing and indicated that the Claimant's disability was stress/anxiety/depression.
3. The Claimant has given evidence at this open Preliminary Hearing as to the nature and effect of the impairment which she suffered and continues to suffer, by reference to an impact statement dated 01 March 2017. I have had regard to the relevant entries within her GP records but I have not had the benefit of medical evidence in the form of a short report or letter from her GP or otherwise.

4. I had regard to the relevant provisions of the Equality Act 2010, in particular S.6, at S.212 and the provisions at Schedule 1. I have also had regard to the relevant guidance as a whole, but in particular, the guidance at paragraphs B1-3, C5 and 6, D3 and D4. I have also had regard to the overriding objective.
5. Although the Claimant's status is an issue in this case, that is still to be determined, for convenience in this Judgment only, I will adopt the terminology where appropriate, that is consistent with an employment relationship.
6. The Claimant was employed as a Hotel Receptionist/Night Porter from July 2014 at the Respondent's hotel in Wolverhampton. In early April 2015, the Claimant was on duty in the early hours of the morning when a fire broke out in the kitchen. The Claimant went upstairs to try to evacuate the premises and took responsibility for dealing with the incident.
7. The Claimant found the experience traumatic and found it stressful when returning to work a few days after the fire. The Claimant was absent from work for a week, having been signed off by her GP from 09 April 2015 due to "stress at work" linked to the fire. The Claimant was not prescribed any medication at this time.
8. At this time and to date, the Claimant has been studying hospitality at the University of Wolverhampton and in May 2015 the Claimant commenced counselling sessions at the University because following the fire, the Claimant had been tearful, had experienced nightmares and had found difficulty sleeping.
9. Although the Claimant references lacking concentration and losing her memory within her Impact Statement, she appears to have performed reasonably well at work, most of the time, however, the Claimant was referred to Wolverhampton Healthy Minds (Psychological Therapy Service NHS) by her GP and their provisional diagnosis on 11 June 2015 was that the Claimant had "mixed anxiety and depression". The agreed intervention was that the Claimant would attend two classes to learn how to cope with her symptoms.
10. In early July 2015, the Claimant had an anxiety attack at work and consulted her GP on 06 July 2015. The Claimant was awaiting an appointment from Healthy Minds and her GP did not prescribe any medication at this time.
11. The Claimant visited her GP in August 2015 in order to report that her symptoms of anxiety were getting worse. The Claimant was still having nightmares and disturbed sleep. On this occasion, the Claimant was prescribed the standard adult dose of 50mg of Sertraline for 28 days. The Claimant's assertion at paragraph 17 of her Impact Statement that she was signed off work for two weeks, is not corroborated by her GP records or in accordance with the Respondent's records of her absence set out within its Response. I would therefore believe that the Claimant is probably mistaken about being absent from work at this time.

12. The Claimant did not visit her GP when her prescription of Sertraline was exhausted after 28 days and nor did she attend one of her appointments with Healthy Minds in 2015. The Claimant's GP did, however, complete a form in order to provide information to the Disability Advisor at the Claimant's University which was dated 23 September 2015. Within this form the diagnosis given was "anxiety" and the prognosis was at that time described as "good" and save for sleep disturbance and general unparticularised anxiety symptoms, the Claimant's GP had no knowledge of the effect of the Claimant's anxiety on her day-to-day activities. The Claimant had evidently not discussed or described any impact on her day-to-day activities with her GP during her consultations in April, July and August 2015.
13. The Claimant's overall mental health appears to have deteriorated at some point in the period leading up to 21 January 2016 which was when she next consulted her GP. The Claimant does not attribute this deterioration to any particular trigger, but on 21 January 2016 she was diagnosed with "anxiety and depression". On this occasion, the Claimant described to her GP symptoms of feeling low, an inability to concentrate on her studies and avoiding family members. The Claimant also informed her GP that her sleeping at this time was "not bad".
14. The Claimant was provided with a letter for her to give to her University to explain her difficulties in order to support her request for an extension of time to complete modules. The Claimant was prescribed 50mg dose of Sertraline and once again, and re-referred to Healthy Minds.
15. The Claimant remained in work until the end of July 2016 but during this time, the Claimant evidently struggled with her mental health as she consulted her GP on 25 February, 22 March, 19 May and 15 July 2016. On each occasion she was prescribed Sertraline at the standard adult dose of 50mg.
16. The Claimant informed her GP in February/March and May 2016 that she was sleeping "fine" and reported in March and May 2016 that her symptoms were getting better.
17. On 19 May 2016, the Claimant informed her GP that she was waiting for an appointment with Healthy Minds and on 15 July 2016 that she was seeing Healthy Minds and going on holiday to America. It is also recorded in her GP records on 15 July 2016 that the Claimant's mood was stable and that there were no concerns. However, the Claimant's GP continued to diagnose depression.
18. The Claimant next visited the GP on 01 August 2016 and it appears from her GP records that she discussed her issue at work with regard to being required to work upstairs and her GP encouraged her to speak to her employer. The Claimant's GP gave a diagnosis of anxiety and provided the Claimant with a sicknote for one week only. The Claimant returned to her GP on 04 August 2016, she informed her GP that her employer had not been supportive and described disturbed sleep and concentration.
19. The Claimant was given a sicknote up until 17 August 2016 and was on leave visiting New York from the 18 August to 16 September 2016.

The Claimant's diagnosis was anxiety and she was again prescribed Sertraline.

20. On 21 September 2016, following her return from holiday, the Claimant consulted her GP and on this occasion, the diagnosis was anxiety with depression. The Claimant's GP noted early signs of "possible relapse, sleeplessness" and a mental health care plan was agreed. Sertraline was prescribed one more.
21. When the Claimant consulted her GP on the 24 October 2016, it was recorded that the Claimant's mood/anxiety were improving but she was building up a phobia about returning to work. Her GP noted that he had suggested that the Claimant should try a few hours voluntary work and at that time, the Claimant's sicknote was due to expire on 25 November 2016.
22. The Claimant's GP records show that she consulted her GP on 18 November 2016, although the diagnosis remained anxiety with depression, the Claimant's GP recorded that she was "feeling better". The Claimant was again prescribed Sertraline and requested a letter from her GP so she could present it to the University to support a further request for an extension due to difficulties with concentration. The Claimant does not appear to have requested another sicknote at this time.
23. The Claimant visited her GP again on 30 November 2016, the diagnosis of anxiety with depression remained the same, but the Claimant described symptoms which suggested a deterioration in her health since her last visit to her GP i.e.: feeling low, struggling to get out to do voluntary work, poor sleep and "off" her food. The Claimant was given a sicknote up until 11 January 2017.
24. The Claimant consulted her GP again on 13 January 2017, 19 March 2017 and 21 April 2017. On each occasion, a diagnosis of anxiety with depression was made and that the Claimant was unfit for work. However, on the 09 March 2017, the Claimant was advised by her GP to look for a job to start soon and on the 21 April 2017 the Claimant sought another letter to support her request to the University for a further extension due to difficulties in concentration.
25. The Claimant had a telephone consultation with her GP on 15 May 2017 and was provided with another sicknote due to anxiety and depression, but her GP noted that the Claimant "feels fine now".
26. When the Claimant consulted her GP on 30 June 2017, she was again diagnosed as suffering with anxiety and depression and reported that she had started voluntary work through the church.
27. The last entry in the Claimant's GP records is dated 31 August 2017 and was made shortly after the Claimant had taken a holiday in America. The note states that the Claimant was feeling "slightly better", the diagnosis was still anxiety with depression and a further sicknote was issued up until 31 October 2017. The Claimant was once again given a prescription for Sertraline.

28. The Claimant describes the effect that her mental health condition has had on her during the period from April 2015 to 01 November 2017 with her Impact Statement at (paragraphs 30-34). She initially describes sleepless nights, days of crying and flashbacks.
29. The Claimant's GP records indicate that she broadly reported these symptoms to her GP during her consultations between April and August 2015 and I accept that these were her symptoms of anxiety during this period and probably beyond August 2015 for a time. However, the Claimant did not report these symptoms when she consulted her GP in January 2016. The Claimant reported that her sleeping "not bad", the Claimant's sleep was also "fine", according to her GP entries thereafter, up until 04 August 2016.
30. The Claimant first reported difficulties with concentration to her GP on 21 January 2016 in relation to completing her studies. The Claimant reported concerns regarding her concentration to her GP thereafter on a regular basis, namely, 04 August 2016, 18 November 2016 and 21 April 2017.
31. There is evidence, therefore, which I accept that the Claimant had difficulties concentrating, certainly from the 21 January 2016 onwards. The Claimant has given evidence that she has difficulty concentrating to this day and that she can only concentrate on reading or listening to an explanation or something for no more than ½ an hour. This evidence was not challenged in cross-examination and I accept it being an accurate account of the Claimant's symptoms since January 2016 onwards. The Claimant has given evidence that she is having difficulty completing her modules at University due to her inability to concentrate, which was also not challenged, and this is corroborated by the Claimant's GP records. In my view, reading for more than ½ an hour and also completing University modules in connection with her degree course are normal day-to-day activities.
32. The Claimant told me in evidence that she has not had panic attacks since commencing therapy with Healthy Minds, which would have been in 2015. There is no corroborating evidence within the Claimant's GP records or any other documents produced to me in support of the Claimant's assertions within her Impact Statement, but that her panic attacks continued beyond 2015. The Claimant has also given evidence and asserted within her Impact Statement that she has struggled to understand day-to-day matters and has had difficulties with her ability to remember things. These assertions are not supported by any corroborating entries within the Claimant's GP records, or any of the documentation presented to me, although the Claimant provided one anecdotal example regarding a "key" when giving evidence, the Claimant did not at any stage report any symptoms concerning her ability to understand or remember things to her GP, notwithstanding a long history of consultations with her GP up to the present day. In my view, therefore, these symptoms must have been of little significant to the Claimant, otherwise she would have sought medical advice directly in relation to them. The Claimant has given no evidence to demonstrate the practical way in which she asserts that these symptoms have impacted on her ability to perform day-to-day activities.

33. My conclusion regarding the symptoms of constant headaches, dizziness and dehydration is as above. These symptoms to the extent that they existed and continued to exist have not it seems at any point been brought to the attention of the Claimant's GP. Further the Claimant has provided no evidence to illustrate how she says these symptoms have impacted upon her ability to carry out normal day-to-day activities.
34. The Claimant gave evidence that when she attended work, she found it difficult due to anxiety and would usually travel there and directly home afterwards because of her anxiety about being out in public. For the same reason, the Claimant told me that her niece had assisted her with shopping and that she had to "coach" herself to go out in public and socialise. I accept the Claimant's evidence in this regard. The Claimant also describes struggling to complete basic tasks such as cooking and cleaning within paragraph 4 of her Impact Statement. The Claimant did not expand on this and provided no detail regarding the manner in which her mental health affected her ability to cook and clean, save that the "lack of motivation" was the key factor. It is my understanding therefore that the impact about which she complains is limited to the motivation that she has to complete those tasks rather than her actual manual ability to do so. The Claimant gave no evidence regarding the frequency of the difficulties that she experiences in completing basic household tasks and has given no evidence regarding the distinction between the type of meals that she is unable to prepare or the extent to which she is able to prepare meals, but that it may take her longer than someone not suffering with her impairment. Likewise, the Claimant has provided no evidential detail to substantiate the detail of the difficulties or the nature of the cleaning obstacles that she faces due to her disability when attempting to perform that task, but again, it is my understanding that the effect of her impairment is her lack of motivation rather than anything else.
35. The Claimant has also referred to feeling "hopeless" within her Impact Statement but has given no evidence to illustrate how this has affected her ability to carry out normal day-to-day activities. I have obviously taken into account the very helpful submissions from both Counsel in informing my deliberations and by way of conclusion, having focused on the legal provisions that I have outlined above, in particular, the definitions relevant to the four main pillars of analysis in S.6 namely
- 1(a) "does the Claimant have both physical and mental health impairment"
 - 1(b) "does that impairment have an adverse effect on her ability to carry out normal day-to-day activities".
 - 1(c) "is that effect substantial"
 - 1.(d) "is that effect long term".

In this regard, I have reminded myself to focus on what the Claimant cannot do rather than what she can do, in accordance with relevant guidance, I have also had regard to S.212 of the Equality Act 2010 to remind myself of the definition of substantive, meaning more than minor or trivial. The answers to the questions that I post above are as follows: -

- 1(a) The Claimant had a mental impairment from April 2015 to December 2015, namely anxiety and from January 2016 to-date,

namely anxiety with depression

1(b) The Claimant's mental impairment had an impact on her ability to carry out normal day-to-day activities in that she has experienced difficulty concentrating for more than ½ an hour when reading and completing her University modules and focusing on any information or instructions being imparted to her for more than ½ hour or so.

36. In addition, the Claimant finds it quite difficult to go out in public and finds it difficult to socialise and has lacked motivation to complete basic tasks such as cooking and cleaning.
37. In my view, due to the lack of detail and clear evidence regarding the manifestation of the Claimant's other difficulties, including also a lack of corroboration from the Claimant's GP records, we suggest that other difficulties were not of sufficient seriousness or did not exist, and were not raised with the Claimant's GP, my conclusion is that it is only the Claimant's inability to concentrate independently from any other symptoms, that has had a substantial adverse effect on her ability to perform day-to-day activities. The period during which the Claimant has had this substantial effect is from January 2016 onwards.
38. In reaching this conclusion, I have taken account of paragraph 5(1) of S.1 of the Equality Act 2010 and the fact that common-sense suggests that in the absence of medication and counselling the Claimant's symptoms would most likely have been far worse.
39. Taking this into account and B3 of the Guidance regarding accumulative effects of impairments, in addition and/or in the alternative, I have found that the accumulative effect of the Claimant's impairment manifested by her difficulties in concentrating, socialising, and lack of motivation to perform basic household tasks have had a substantial adverse effect on the Claimant's ability to carry out day-to-day activities from January 2016 onwards.
40. Lastly, taking into account paragraph 2(1) of S.1, I am satisfied that the substantial adverse effect has lasted more than 12 months ie: from January 2016 to-date and that therefore the amount of impairment has had the requisite long-term effect.
41. For any rights of doubt, the material time during which I have found that the Claimant has been suffering from a disability is from January 2016 to-date.

Employment Judge Britton

20 April 2018

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.