EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Adan	**v**	**Cleshar Contract Services**

Heard at: Watford **On**: 11 May 2017

Before: Employment Judge Henry

Appearances

For the Claimant: In person
For the Respondent: Mr P Linstead, Counsel

PRELIMINARY HEARING JUDGMENT

1. The claimant is a disabled person suffering the mental impairment of dyslexia.

2. The claimant is not a disabled person and was not at the material time a disabled person suffering with the mental impairment of depression.

3. The claimant is not a disabled person and was not at the material time a disabled person suffering with a physical impairment to his knee.

4. The claimant is not a disabled person and was not at the material time a disabled person suffering the composite impairment of depression and injury to his knee or otherwise to include back pain.

REASONS

1. The matter comes before the tribunal on the preliminary issue whether the claimant is, or was at the material time, a disabled person as defined by section 6 of the Equality Act 2010.

Evidence

2. The tribunal heard evidence from the claimant, whose evidence in chief was received by a written impact statement and further oral evidence, and on which evidence the claimant was then cross-examined.

3. The tribunal had before it a bundle of documents, exhibit R1 consisting of some 430 pages.

The law

4. The law relevant to the issues arising have been succinctly set out at paragraph 7 to 15 of the respondent's skeleton argument, which are here referred to, as if more particularly here set out.

The findings

5. The respondent concedes that the claimant is a disabled person as defined by s6 of the Equality Act, and was so disabled at the material time, suffering with dyslexia.

6. The claimant is 27 years of age. He was born in Mogadishu, Somalia, and has resided in the United Kingdom since 2000. The claimant by British standards, has had a traumatic life, being brought up during the wars in Somalia, during which his family members were killed and the claimant witnessed dead bodies. The tribunal notes that, by the psychiatric report furnished to the tribunal, the claimant had advised that he did not think that he had been affected or traumatised at that time. It is also noted that the claimant did not receive a formal education, attending a Madrassa to get a religious education.

7. In February 2014, the claimant was referred to a child psychiatrist, for feeling nervous for two months. He was subsequently seen by a child and adolescent psychologist in July 2014, who then reported no concerns about his behaviour.

8. The claimant's medical records further identify that issues of ADHD have been raised on the claimant appearing to be overactive and impulsive, albeit the condition has not been diagnosed.

9. The claimant was a keen sportsman, being a long-distance runner; training up to six days a week, running for the Middlesex County. He was also a keen footballer.

10. In April 2008, the claimant suffered a stab wound to the back of his head, in a case of mistaken identity.

11. It is here noted for completeness that the claimant has had issues with aggression and has been incarcerated.

12. In April 2011, the claimant suffered pain in the front of his knee and had problems with an ankle after an injury. He also received physiotherapy to his knee in respect of an injury sustained while cross-country running four years previously. It is here noted that the claimant was able to play football weekly, but reported that his knee felt as if it was going to snap again.

13. On 29 April 2011, the claimant was referred to the musculoskeletal clinic because of the pains in his right knee as existed over the previous four years, he was not however on medication. There was no pathology found on examination, and he was advised to go to the gym.

14. On 2 January 2013, the claimant's right knee became swollen and was painful being a problem he had experienced on and off for six years, becoming worse when he did physical activity.

15. On 8 April 2014, it is recorded that the claimant, had been hit by a metal object resulting in a little bruise, and of pain in his ribs, this was then no longer painful. and

16. On 8 July 2014, it is reported that the claimant was unable to drive because of pain in his elbow effecting gear changes, which pain had improved by 28 July 2014.

17. On 8 October 2014, the claimant complained of tingling from the knee down, with prolonged trunk flexion as well as back pain, for which he was referred back to his GP by his physiotherapist.

18. On 27 January 2016, the claimant was hit in his right knee whilst at work with a metal object. The claimant's knee was x-rayed, which x-ray was normal.

19. On the claimant having self-certificated following the incident on 27 January, the claimant attended work on 1 February 2016, which after working that day, stated he felt that he was not then fit to carry on with his duties. It is the claimant's evidence to the tribunal that, having attended work, his specific issue was that of pushing a trolley, which although the claimant was a trolley operator, it was not his usual role to push trollies, but had been specifically requested so to do on that day; the pushing of the trolley the claimant found difficult. The claimant does not raise any further issues with working that day. The claimant informed the tribunal that he would have been able to do lift and escalator roles.

20. On 5 February 2016, the claimant was seen by his GP, presenting with knee pain, which on examination it is recorded *"examination: well. Mobile. Mild to moderate RT knee effusion. No knee hotness or redness. Knee extension is slightly painful,"* for which the claimant was then issued a "not fit for work" certificate to 4 March 2016.

21. On the claimant being referred for physiotherapy, the claimant underwent private physio pending a NHS appointment. The claimant's "not fit for work" certificate was extended to 4 May 2016.

22. On 12 April 2016, on the claimant attending his GP, it is recorded that, he has had symptoms of depression for the past three months since his accident in January, that he has been off work and has lost motivation, and *"does not want to get out of bed, children aged 2 and 1, cannot sleep at night, difficulty falling asleep, not EMW, appetite ok, no suicidal ideation, wife says his behaviour has changed, does not want counselling at the moment because does not want to talk to anyone".* The claimant was prescribed Citalopram to be reviewed in three weeks and to renew his sick certificate.

23. On 21 April 2016, it is recorded by Ealing Physio that, the claimant *"reports he has been depressed + since accident and struggling to sleep – takes him several hours (not secondary to pain)*.

24. The claimant was then signed off sick from 5 May to 2 June 2016.

25. On 6 May 2016, it is recorded by the claimant's GP that the claimant *"…requested sick note to cover until knee pain is better as his job as an engineer demands carrying heavy stuff. Citalopram did not work, requested different medication. Work referred him for counselling, but he declined. Not happy to discuss his issues.*
Examination, well. Normal mobility. Knee examination is normal apart from mild diffuse tenderness in muscles around RT knee."

26. On 13 May 2016, it is further recorded by the claimant's GP that, as the claimant's right knee pain was no better, the claimant had requested an MRI scan, the report further stating *"examination: mild right knee effusion. No knee tenderness. Knee movements were not painful."*

27. The claimant was discharged from physiotherapy on 15 May 2016.

28. On 9 May 2016, on the claimant having been referred to the organisation "fit for work", and on the claimant explaining his injuries and work environment, the following was noted:

> "Your role is manual and requires you to lift heavy cement bags, walking long distances up and downstairs over the duration of your shift. You work in an environment on the underground on tracks when trains are not running, you feel that you have difficulty walking long distances on the ballast and bending down for periods of time. You told me you tried returning to work, but due to difficulties doing pushing heavy trollies up and down the track which you said is not your usual type of work, you only managed one shift because of pain in your knee.
> …
> …. You explained that you feel as though your knee locks and causes you pain when you bend it, you do not believe that you could undertake your full working duties until you have completed your treatment. You feel there has been some improvement but that you continue to have some pain in your knee however, this does not require you to take pain relief regularly to manage this.….
>
> You told me that you are able to undertake activities of daily living independently, that you are able to care for your siblings and children and that you are able to help at home with chores. You have avoided driving as you are concerned about not being able to drive safely. You agreed to talk to the physiotherapist about this……

> At this time you feel that you could return to work on amended duties… you do not believe that you could undertake your contracted duties until you have completed your full physiotherapy treatment…
> …
> You told me that you have been unable to work as a rail track maintenance engineer on the underground in London, due to knee injury that you sustained at work on 27 January. This you told me has caused you to become depressed as you felt punished by your manager because after the accident it was reported to health and safety…..
>
> You told me that you became socially withdrawn since the incident and that you were prescribed anti-depressants by your GP for this. You were unable to expand further on the symptoms you have been experiencing….. "]

29. On 15 May 2016, a new medical incident arose on the claimant being involved in a road traffic accident, in which he hit his chest against a seat and complained of low back and neck pain, for which the claimant was then self-medicating with ibuprofen.

30. On 19 May 2016, the claimant suffered a further injury whilst on a bus, which braked suddenly, causing the claimant to hit his chest.

31. The claimant was subsequently furnished further sick certificates, and has been certificated unfit for work during the relevant period under consideration by the tribunal.

32. On 30 June 2016, it is recorded by his GP that, the claimant was managing well and that he had;

> "Started exe and then started more activity around the house and Ramadan with prolonged standing agg the knee.
> Is thinking of going back to work on light duties.
> O.
> Squat – no pain
> SKB – no pain
> Squat with rotation – no pain
> SLR – slight lag
> IRQ in lying – able to do without weight
> …
> Joint line up palp – no pain
> Rx: IRQ strengthening
> Discuss LLRP – referred to EHT. Given exe sheet inc exe – quad strengthening/SLS/Squats/Cycling/lunges"

33. On 5 September 2016, on the claimant attending physiotherapy, it is recorded that on the claimant attending his first lower limb class, he had no complaints and had managed all the exercises well.

34. On 6 September 2016, the claimant was issued with a fit statement, stating that he may be fit for work from 2 September 2016 to 24 October 2016; the claimant diagnosed with knee pain.

35. It is here noted that the claimant's medication for Sertraline was reduced from 100mg to 50mg, to be taken one each morning.

36. On 30 September 2016, the claimant was assessed by Occupational Health, which by their report, identified that the claimant had advised that, *"the ongoing issues have resulted in depression for which he is currently being treated with Sertraline. He also was told that due to the medication he was on this would further restrict his return to work".*

37. In respect of a clinical assessment, the report provides;

> "From a clinical perspective, I reviewed Mohamed's knee. There was no significant swelling there, the knee appeared stable although he was tender in the joint line and over the quadriceps tendon and tender on direct pressure to the patella. It may be that he has some miniscule damage or cartilage damage to the underside of the kneecap, but obviously this would not have been shown on the x-ray and no MRI has been organised.
>
> From a mental perspective, Mohamed is certainly demonstrating low mood and possibly mild depression. I understand he has a number of personal and financial issues that are ongoing and unfortunately he tries to wean himself off the Sertraline as he had been told that taking this medication would preclude him returning to work. I have stressed that this is not the case and that if he is stable on Sertaline there is no reason why he cannot return to his safety critical role.
>
> Diagnosis – right knee injury ongoing, mild depression."

38. By the summary and recommendation, the report identifies that:

> "After reviewing Mohamed regarding his right knee injury, it would appear that there is no significant resolution to this and indeed the ongoing issues have caused a subsequent secondary depression for which he is being treated with Sertraline."

39. The report concluded stating that the claimant was fit for administration and for light duties.

40. On 13 October 2016, the claimant had a welfare meeting in respect of the Occupational Health report, and from which the tribunal notes the following in respect of the claimant suffering with depression, it being recorded;

> "... RT mentioned that when the previous meeting had taken place on 26 September 2016, MA had stated that he had personal issues and referred to the business that MA had mentioned in Manchester and that he had stated that his aunt was now looking after it, MA acknowledged this, and also referred to the taxi licence MA had applied for and that his uncle was going to support him financially in this and buy him a car (as per previous meeting conversation) and asked for an update on this. MA stated that he was still waiting for the licence but due lack of finance and the fact that he had borrowed a lot of money already, it looked like his uncle would not be now financially supporting him on this….."

41. In respect hereof, the tribunal received evidence of the claimant pursuing a taxi licence, the claimant stating that he had been making enquiries in respect of a licence for an adapted vehicle. The claimant however, was unable to refer to any correspondence in respect of him obtaining a licence where reference was had to a vehicle being modified and indeed, the claimant having obtained

a taxi licence drives a normal car without modification. In this regard, by the medical questionnaire supporting the claimant's application, it is noted in respect of the question whether the applicant has any disability with reference to the condition of arms, hands, legs or joints, the medical officer completing the form records "no".

42. On the evidence before the tribunal, the tribunal does not find the claimant to have been prevented from driving because of the impairment of which he complains.

43. On 24 October 2016, on the claimant attending physiotherapy lower limb class, it is recorded that, there were no issues and that the claimant managed all the exercises. By the physiotherapist's notes, it further records that the claimant was requesting an MRI of his knee as he was not making any progress in the class and that his pain was unchanged.

44. On 28 October 2016, the claimant's GP recorded that, following his road traffic accident, the claimant has had *"low back and neck pain since the accident. Has been on ibuprofen and paracetamol"* and under "examination" it is recorded *"well. Normal mobility*".

45. On 1 November 2016, in respect of Industrial Injuries Disablement Benefit, the claimant was judged to have loss of faculty being loss of power and function to a part of his body to the extent of 40% disabled from 5 May 2016; the loss of faculty being pain and reduced range of movement in his right knee. The claimant was again assessed on 17 February 2017, as having a loss of faculty, to the extent of 40% disabled from 2 April 2017 to 2 April 2018.

46. On 28 November 2016, on the claimant attending physiotherapy, it is there noted that the claimant was referred by the GP for "back pain" having such pain since May, following the incident on the bus, recording that there were *"nil red flags present*" in respect of the claimant's symptoms. It was thereon advised that, as the priority was the pain in the claimant's knee, as this was the factor stopping him from working, they would focus thereon; it being recorded that the claimant *"completed LLX exercises as per exercise programme managing 44kg on leg press, 10 reps x 3 sets and managing resistance exercises against red TB*".

47. The claimant was issued a certificate that he may be fit for work from the 29 November.

48. On 2 December 2016, it is recorded on the claimant attending his GP, that. having been requested for a medical report from the respondent:

> "He has been off since he had the accident ten months ago because of right knee pain. Attended MSK clinic and had physio….he noted slight improvement and tried to go back to work with altered hours and duties, but he was not allowed. He is happy to try light duties should employer agree. He is not yet ready to do full time job.

> Adjustments required = to avoid excessive use of stairs, standing or walking for a long period of time, avoid heavy lifting.
>
> Specific recommendations: happy to do any work which does not include physical work."

49. On 8 January 2017, on the claimant attending for a prescription complaining of "struggling with sleep," advised that Sertraline did not make much difference, although stating that he wished to keep taking it, he was then prescribed Amitriptyline of 10mg to be taken each night, being prescribed 56 tablets and a further 56 tablets of 50mg Sertraline.

50. Equally on 8 January 2017, the claimant was involved in a road traffic accident when, as a passenger in a stationery car, it was hit from his side by another car. Ealing urgent care centre records noting that, the claimant;

> "…had ten days h/o right-sided neck pain radiating to same side of heda, started a few days after he was involved in rta… no immediate onset of pain. Pain is sharp and painkillers had helped slight, taking panadol and ibu
> …
> also long standing low back pain, gp aware, referred to physio, but not seen yet.
> pmh depression.
> meds sertraline and sleeping tablets….."
> …
> Clinical examination
> looks well
> nil neck stiffness or photophobia
> …
> parespinal muscle stiffness in c spien area, nil c spien tenderness
> nil neurology
> gait normal
> normal power in all limbs
> ….."

51. On 16 January 2017, at the claimant's physio class, it is recorded that the claimant felt the same with no improvement with the classes. The medical record, providing;

> "Pain is still the same but he is able to do exercises.
> Managed all the exercises without any problem.
> Yellow plastic band 53kgs at the leg press"

52. On 22 January 2017, the Department of Works and Pension and Job Centre plus, decided that the claimant was capable of work and that his condition had improved with physiotherapy, but that his back problem persisted; it being observed that the claimant had been involved in three road accidents in the past year.

53. On 23 January 2017, the claimant having attended his last lower limb class, it is recorded that "patient feels 50% better with the exercises, but he still gets pain at the knee and the low back pain is getting worse.

54. On 26 January 2017, a welfare meeting was held with the claimant to consider the claimant's GP report as had been furnished, dated 3 December 2016, and for the claimant to give an update following his physio sessions, which, on the claimant being questioned as to his knee, the following is noted;

" MA when I overuse, it flares up.
RT, is it the exercise causing more damage? Are you assessed after each session?
MA I am asked questions on a scale of one to ten based on walking and climbing up and down the stairs. Prolonged walking gives issue as does bending.
RT have you seen an improvement?
MA yes but I am not fully recovered. I can do more walking.
….
MA I still have other issues
RT what are these issues?
MA level of pain was three, now it is seven. Occasionally taking painkillers - ibuprofen and paracetamol
…..
RT you say you have other physical issues - what are they?
MA most recently, a bus accident in May 2016
…..everything was ok, but three months later the paid started kicking in my lower back, causing back pain. I did mention this to my physio….
RT …how is your back now?
…..
MA still not great and am dealing with it.
RT ok, so your knee is the main issue at the moment and stopping you returning to your job?
MA yes, it's not preventing me, I am just not fully recovered to return".

55. On 27 January 2017, on the claimant having a follow-up post physio class, it is recorded that the claimant;

"reports the exercises helped his strength – still having ongoing issues with the intermittent knee pain on walking. Has seen private clinicians who recommended MRI.
Is still anxious and depressed regarding situation.
Also reports lower back and neck pain following RTA (x3 in the last year).
….Did have previous LBP but was never an issue. Not sureof agg/eases. No referral into peripheries. Some discomfort at night.
Currently managing sx with paracetamol, codeine, ibuprofen.
..
AROM Lsp - full - some discomfort in EOR.
Csp - no pain - tightness into ROT L+R.
Knee slight discomfort EOR.
Ext - full - OP - NAD.
…...
Sweep - no effusion SLR - no lag.
Strength 4+/5 IRQ.
Gait - some antalgic/alt mvt pattern
Rx: Pt referred for MRI knee to clear for intra-articular disruption and on-going knee issues
….."

56. The claimant received a MRI scan in February 2017, which showed a strain to the anterior cruciate ligament, but no tear or rapture, nor was there a tear to the cartilage.

57. The claimant's employment terminated on 17 February 2017, for reasons of ill-health capability.

58. On 23 February 2017, the claimant had a MRI scan which showed a strain in the ACL, but not tear or rapture, neither was there a cartilage tear

59. The tribunal has been furnished with a psychiatric report on the claimant, which is at R1 page 384. The report provides:

> "…
> There were long term problems over his knee, related to him being an enthusiastic athlete.
>
> There are very clear personality problems and a physical vulnerability to his knee.
>
> In addition, he maintains to have some learning difficulties. These are variously described, it may relate to difficulties in having learnt to read and write, which is probably due to a disruptive education, rather than any specific learning disability or intellectual problem…..
> …
> From a psychiatric perspective, it appears that he did become depressed shortly after the injury…. The indications are that his depression was genuine. According to him, it did not prevent him from going back to work, doing lighter duties. The cause of his depression is less clear. It may have in part been triggered by matters unrelated to his injury. I did not explore that with him as he did not volunteer the information about his domestic circumstances and hairdressing salon.
>
> There is no strong indication that his depression was of a nature that it impaired his ability to do his day to day activities, nor was his depression the reason for his inability to work, which was caused by the pain in his knee. The indications are that his depression was *an impairment*, but from the information available to me, it did not have a *substantial effect upon his ability to carry out day to day activities.* I note that he is still depressed, but managing to work part-time as a driver. It is not stated or clear that his depression prevented him from working. He blames this on his knee pain.
> …..
> The medication he was taking would not have prevented him from working….
>
> There is no strong indication that his medication or other interventions have had a significant impact on improving his condition to the point when it would have been a disability had he not been taking the medication."

60. With respect to specific questions, as to whether the impairment had any adverse effect on the claimant's ability to carry out day to day activities, after the report addressed the issue that the claimant's knee condition did not impair his day to day activities to a substantial degree, on the premise that the claimant maintained that he was able to work, the report then addressed his psychiatric impairment, namely depression, as follows:

> "His psychiatric impairment, namely his depression, did not, as I understand it, have any significant impact on his day to day activities.
>
> He maintains that it prevented him playing effectively with his children. It did not prevent him from believing he was able to go back to work, or doing lighter duties. He makes no mention of any substantial impairment in his day to day activities in his claim, nor did he

> give me a clear indication of any substantial impairment in his day to day activities when I spent some considerable time trying to establish this point with him…..
>
> I do not believe, on the basis on the evidence before me, that the effect was substantial, according to his account."

61. In respect of the impairment being long lasting, the reports states:

> "I do not believe it was substantial, although his impairment; his depression has lasted at least 12 months.
>
> I note that he has managed to go back to work, albeit with reduced hours, over the last couple of months, doing lighter physical work, whilst he remains moderately depressed. So, whilst his impairment continues, it is not having a substantial effect upon his ability to do some work.
> …….
> He has now stopped taking anti-depressants and has managed to go back to work. By the account given to me, I do not believe that the anti-depressants had a material impact upon his condition. There does not appear to have been a deterioration in his condition, having stopped taking them, nor clear evidence that he benefitted from them.
>
> … Whilst his depression would appear to be an impairment, I do not think it has a substantial impact on his day to day activities, on the basis of the evidence given to me by him orally and in writing."

62. With regards the claimant's knee, the tribunal received a medical report from a Consultant Orthopaedic Surgeon, copy of which is at R1 page 424.

63. By the consultant's examination, it is recorded that the claimant walked in to the room limping, that he could effectively extend both knees, having normal quadricep function, that there was no obvious wasting of the claimant's quadricep muscles, that there was no swelling or fluid on either knee, that the range of movement of the right knee was 0-100 degrees, limited by pain, his left knee moved normally with full flexion, both knees were stable, with normal cruciate and collateral stability, that there was no significant tenderness in either knee, that hip movements were equal and pain-free and that there was no sentry abnormality in either knee. On reviewing the MRI scan of the claimant's right knee, it is noted:

> "The scan is normal apart from an effusion which is a collection of fluid in the knee. There is no obvious soft-tissue abnormality. The patellofemoral mechanism is intact. The cruciate and collateral ligaments are intact and normal. There is no meniscal damage and no joint pathology. The bone surfaces are normal. This is essentially a normal scan with some fluid in the knee."

64. The report concluded that there were no significant abnormalities save from a loss of full flexion and that previous GP and Physiotherapist reports have found no significant abnormalities, and that the MRI scan was normal and on an examination for chronic regional pain syndrome, there was no evidence this, further stating:

> "With reference to the period January 2016 to 17 February 2017.

1. I cannot give an objective diagnosis as I cannot find any significant physical abnormality and the MRI is normal.

2. …

3. With respect to his physical injuries, it is quite clear he did have a significant soft tissue injury to his knee. However, it is clear to me that there is no structural damage, as there is nothing to find physically or on the MRI. I would therefore ascribe a period of time off work from three to the maximum of six months for this soft tissue injury. I would have expected him to be in pain with discomfort in his knee, and it would be uncomfortable walking and generally moving. However, by three months I would have expected that situation to have improved. In extreme circumstances, I would have thought it would have taken six months to recover with everyday activities.

4. If he did have significant impairment as described above, then I would have expected this to be quite bad for several weeks, but by three months I would have expected it to have improved.

5. I would not have expected this to have lasted more than 12 months.

6. I do not know what is wrong with his knee, and therefore apart from advising physiotherapy which he has already had, I can think of no substantive treatment protocol that will help him physically

7. ..."

65. By the claimant's impact statement, the claimant states that from 27 January 2016 to 17 February 2017, he had experienced, and continues to experience, severe pain to his right knee and that with painkillers, *"the anguish is to some extent more bearable. Overall the most impact is felt through administering morning errands, school runs with the kids, house shopping, as well as through public transport which greatly effects my low self-esteem."*

66. The claimant thereon sets out the following, being more specifically the impact his impairment to his knee has on his day to day activities, that:

> "More specifically, when I wake up in the morning it is often with intense pain in my right knee with severe sore and strive (sic) joints, some nights are worse than others, especially during the middle of my sleep due to leg moving which forces me to wake up several times during the course of the night, despite being a very deep sleeper. This is both chronically fatigue as well distressful as it hampers my sleeping pattern and ability to rest well. Equally when having a shower it causes me, intense knee pain due to inflexibility as a result of my injury. For similar reasons, I struggle and find it extremely hard to play with my kids, as a father should do, not being able to effectively take them to any park leisure and look after them on my own terms as I am constantly physically limited to how much I can exercise certain basic daily activities before requiring assistance and supervisorial (sic) aid. It detrimentally emotional when as a father I cannot play sport and/or practice fitness activities; this is correspondingly damaging to my own health and overall wellbeing as a grown adult as my right knee gives ways often, hurts intensely and sometime locks and have difficulties going up and down stairs mostly up."

67. The claimant then addresses issues as to intimacy with his wife before going on to the impact from a spiritual stand point, stating that,

> "…as a practitioner Muslim, I cannot prepare for prayers without pain even when having taken 1 painkillers. This is such an integral part of my life, yet prayers is the most difficult out of all predicaments faced as a direct result of my knee condition. Overall, this immensely effects my ability to be the man of the house, provider to my family and exercise my duties as a father, partner, brother, son and an active member of society as well as my local community; such as, I have noticed a colossal effect on my physiological mental state due to my knee injury."

68. In respect of the claimant's mental impairment, the claimant states:

> "From January 27 2016 to 17 February 2017, I have equally being under continues (sic) state of depression and experience major physiological effects on my overall outlook towards life, especially seen through the early hours of morning periods, my involvement with family, self-motivation issues and getting things done in general, despite not being fully diagnosed until late April 2016.
>
> As from when I wake up in the morning, typically I feel as if something bad has happened, either through a fault of mine or others. This naturally leaves me quite confused when I wake up and not knowing where to start off with my day and having a sinking feeling in my chest/stomach. Being in these conditions for so long, has to a large extent, contributed towards social withdrawal symptoms. This is detrimental in all aspects and very unhealthy for me, especially coming from someone that has always been a very active member of society.
>
> Over time, this started to cause me mental distress which has now left me severely incapable of making simple choices and experience difficulties in making basic daily decisions. Similarly, I have experienced severe loss of efficiency completing tasks, withdraw from seeing most friends and family members or do any social activities for similar reasons which have also led me to heavily dislike talking to people that I personally know, with time, I fear this is equally affecting the time I spend with my family and kids as I typically feel as if I do not have the energy to last a typical 24-hour day - neglectful feeling of being emotionally numb.
>
> It has reached a point to far whereby I no longer eat at the right time as I use to before the depression. This does not help with the already loss of energy and motivation which largely leaves me unable to function with at most functions. At the very extremely extend, (sic) I have experienced multiple panic attacks and mental breakdowns, largely due to anxiety as a result of feeling overwhelmed from too much to do. All in all, these all naturally impacts and spills into sleeping problems as well as loss of interest in the things that I use to be interested in….."

69. The claimant has been unable to elaborate hereon despite being pressed in cross-examination by the respondent; the claimant unable to give any detail as to how his normal daily activities have been impacted beyond general statements, save for his ability to wash in preparation for prayers when out in public (away from the mosque or his home) and his ability to kneel for prayers.

Conclusions

70. It is evident from the medical evidence presented to the tribunal is clear, that physically, the claimant having suffered an injury to his knee, the extent of

which injury was such that, in the most extreme case, the injury to the claimant's knee would have been expected to have recovered within six months, and for which there is no medical explanation for the claimant's continued suffering, as alleged.

71. For completeness, whilst the claimant has made reference to his injury to his back, following the bus incident, resulting in a new incidence of pain, there is no suggestion that that injury is a disability or that the condition or pain contributed to the condition of his knee, and it is the condition of his knee that the claimant claims has physically affected his ability to carry out his normal day to day activities, and for which he claims a physical impairment and disability.

72. With regards the claimant's mental impairment, that of depression, the psychiatric report of the depression identified, is clear that there was no strong indication that the depression was of a nature that it impaired the claimant's ability to do his day to day activities. I also note that the claimant states that there had been little improvement in his condition, which impairment has not then affected the claimant's ability, at present, to carry out normal day to day activities, and would effectively have been the same as experienced by the claimant during the material period.

73. Looking at the impairments individually, I do not find from a medical point of view, evidence to support there being a substantial adverse effect on the claimant's ability to carry out normal day to day activities.

74. Despite this, I have considered to what extent cumulatively, the impairments have had a substantive adverse effect on the claimant's ability to carry out normal day to day activities, which on giving consideration to the claimant's impact statement, and of particulars going to day to day activities, I am unable to find cumulatively, that they change the position of the individual impact of the impairments. In reaching this determination, I find that by the claimant's impact statement, he has sought to exaggerate the effects of his impairments, which he was then unable to substantiate by events, which further, were not borne out by the claimant's GP records, where, had the claimant been suffering to the extent advanced by his impact statement, one would expect to have seen some reference thereto in the GP's notes, or otherwise on the claimant's consultations with Occupational Health or wellbeing meetings. This has not been the case.

75. Whilst it is evident that the claimant's impairment has lasted for twelve months, the tribunal does not find the impairment to have had a substantive adverse effect on the claimant's normal day to day activities. The tribunal does not find the claimant to have been a disabled person by reason of injury to his right knee or otherwise depression or the composite thereof.

76. On the respondent conceding that the claimant was a disabled person suffering with dyslexia, the tribunal finds the claimant to have been a disabled person for that sole condition.

77. Save for the claimant being a disabled person defined by dyslexia, the tribunal does not find the claimant to be further disabled for the purposes of section 6 of the Equality Act 2010.

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Employment Judge Henry

Date: 19 / 6 / 2018

Sent to the parties on: .....

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For the Tribunal Office