



EMPLOYMENT TRIBUNALS

Claimant: Ms Jane Barnes

Respondent: The Arts Council of England

Heard at: Manchester

On: 16 July 2018

Before: Employment Judge Hill

REPRESENTATION:

Claimant: In person

Respondent: Mr Ben Gorner (Solicitor)

JUDGMENT

The judgment of the Tribunal is that the Claimant is not disabled for the purposes of the Equality Act s6 and the Claimant's claims for direct disability discrimination, harassment because of disability and failure to make reasonable adjustments are struck out.

REASONS

1. Following a preliminary hearing held on 25 April 2018, today's hearing was listed, the purpose of which was to determine whether or not the claimant is disabled for the purposes of the Equality Act 2010 at the material time.
2. In addition by letter the Respondent had also made an application for a strike out of her claims for disability discrimination and whistleblowing on the basis that they have no reasonable prospect of success. In the alternative, that the tribunal make an order for a deposit in order for the claimant to continue with either or both her claims.
3. The Tribunal struck out the disability discrimination claim on the grounds that the claimant is not disabled for the purposes of the Equality Act and made a deposit order in respect of the claims for both claims for whistleblowing, detriment and unfair

dismissal. See separate order. The Tribunal also made case management orders. See separate order.

The Evidence

4. The Tribunal was provided with a bundle of documents; an impact statement prepared by the claimant and a copy of some of the claimant's medical records.

Findings of Relevant Facts

5. The Claimant confirmed in oral evidence that she was first diagnosed with Work related stress and depression on 6 January 2017. The Claimant also stated that in or around 2010 she was also on anti-depressants for around 6 months but did not provide any medical evidence to support this and stated that she did not consider it was relevant.

6. The claimant's medical records were disclosed. She did not provide a doctor's report or letter and stated that she did not think she would be able to get one because it took a long time to get to see her doctor. The claimant confirmed that she did not ask her GP for any additional information for these proceedings.

7. The Tribunal therefore looked at the evidence provided by the Claimant. The Claimant's medical notes showed that she visited the doctors on 4 occasions in the period 6 January 2017 to 14 May 2018. On 6 January 2018 it records 'stress at work' and refers to problems at work and some family stress. On 17 March 2017 it again refers to stress at work with the claimant stating that she was being micromanaged, long periods of travel and being phoned at home. The GP discussed medication but as the claimant was attending counselling they may consider medication at a later date if necessary. The next visit was 22 December 2017 where it is noted that there were ongoing anxiety symptoms and the GP and the claimant agreed it was mostly reactive symptoms to her current situation so no medication was prescribed. The last visit was on 14 May 2018 after the previous Preliminary hearing stating that she was understandably anxious and referred to ongoing stress. The claimant reported to her GP that she was required to provide copies of her medical records.

8. The claimant provided an impact statement where she stated that in December 2016 she was very depressed had dark thoughts and felt overwhelmed. She states that she suffered from fatigue, insomnia and anxiety. She also states that she attended her GP who diagnosed work related depression although from the GP notes it states stress. The Claimant also states that she had difficulty putting into place arrangements to move to Leeds and felt anxious about being away from home. She stated that she had problems concentrating, sleep and planning. In cross-examination the Claimant was unable to provide examples of how her day to day activities were affected.

9. The Claimant underwent counselling and said that she found this very useful. The Claimant continues to practice yoga and have counselling sessions.

The Law

10. In order to establish that a person has a disability for the purposes of the Equality Act s6 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 impact on P’s ability to carry out normal day to day activities.”

11. The Tribunal is required to consider this along with the statutory guidance on the meaning of disability as it thinks relevant. The following should be considered:

- Does the Claimant have a physical or mental condition?
- Does it have an adverse effect on day-to-day activities?
- Is it substantial?
- Is it long term?

12. The burden of proof is on the claimant.

13. In this case the Claimant provided little evidence of the effect of her medical condition had on her day to day activities. Whilst lack of evidence in itself is not fatal to her claim the impact statement barely set out any details of impact on day to day activities and the medical evidence was sparse.

14. A Preliminary Hearing was held on 25 April 2018 and at that hearing the claimant was directed to provide a disability witness statement and copies of medical reports or records and she was referred to the Secretary of State’s guidance on Matters to be taken into account in determining Questions Relating to the definition of disability (2011) and provided with the internet link.

15. The claimant had visited her GP subsequent to the PHR but stated that it did not occur to her to ask for a report or ask the GP to write a letter in support. She did provide a copy of her counselling records but a letter that merely showed a confirmation that the Claimant had attending counselling during January 2017 until April 2018 and that it was a complete success.

16. I am required to look at the adverse effect on Claimant’s ability to carry out day-to-day activities and the claimant has not provided details of how it impacted on her ability to carry out day-to-day activities. She has not sufficiently addressed the issue in her statement and did not provide any further information during cross-examination.

17. Her medical evidence showed that she had ‘stress at work’. There is no evidence of a diagnosis of depression but evidence of reactive stress as discussed with her GP in December 2017.

18. Whilst the Tribunal understands that for a person to be considered disabled with a mental impairment it does not need to be a clinically recognised illness, the Tribunal finds that there is no evidence to support the Claimant’s assertion that she is disabled and that her stress was reactive to the difficulties she perceived at work. The Claimant stated that she had ‘dark thoughts’ and that this situation was a pathway for repressed emotions but failed to provide evidence of the substantial

impact this had on her ability to carry out day to day activities. The Claimant gave examples of not being able to put into place arrangements for a move to Leeds and feeling anxious about being away from home; that her speed of work was less than other relationship managers and referred to her ability to function as a relationship Manager. The Tribunal finds that this was not sufficient evidence to discharge the burden of proof.

19. The Claimant agreed that she had understood what was required and that she had read the guidance. The Tribunal finds that the Claimant failed to provide sufficient evidence to show that she had a mental impairment and that the evidence provided supported that she was suffering from a reactive stress from her perceived unfair treatment.

20. Claimant has failed to discharge the burden of proof and the tribunal finds that she was not disabled at the material time and the claim for disability discrimination is struck out.

Employment Judge Hill

Date 13 August 2018
JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 August 2018

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