



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr R Gerard-Sharp

v

EMCOR Group UK Plc.

**Heard at:** Norwich

**On:** 10 December 2018

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** Mr Rozycki, Counsel

**For the Respondent:** Mr Hobbs, Counsel

## PRELIMINARY HEARING JUDGMENT

1. Although it is accepted the claimant has a disability of epilepsy, the question of the respondent's knowledge is yet to be determined at the full merits hearing.
2. The claimant does not have a disability of anxiety, stress or depression within the meaning of section 6 of the Equality Act 2010.

## REASONS

1. This is a preliminary hearing to determine whether the claimant has a disability of stress / anxiety / depression within the meaning of section 6 of the Equality Act 2010. The respondent accepts the claimant does have a disability of epilepsy and that satisfies the definition under the Act, although the issue of knowledge remains to be determined at a full merits hearing as agreed by both Counsel at the outset of this preliminary hearing.
2. In this tribunal we heard evidence from the claimant through a prepared witness statement and also from his wife through a prepared witness statement.

3. The tribunal also had the benefit of a bundle of documents consisting of 450 pages.
4. The law, section 6 defines the definition of disability as, '*a person has a disability if he or she has a physical or mental impairment and the impairment has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities*'.
5. The EAT has said that requires the tribunal to look at the evidence by reference to four different questions or conditions:
  - a. did the claimant have a mental and / or physical impairment?
  - b. did the impairment affect the claimant's ability to carry out normal day to day activities?
  - c. was the adverse condition substantial, or minor, or trivial?
  - d. was the adverse condition long term?

These four questions should be posed sequentially and not together.

6. The tribunal are also required, and have considered the 2010 guidance on disability contained in the Equality and Human Rights Commission and the Employment Code of Practice, and although they do not impose legal obligations they are matters to be taken into account. The focus should be on what a person cannot do, or can only do with difficulty rather than things he or she can do.
7. It has been agreed in this tribunal that we are looking at three areas. There is August to 7 February 2017; 7 February 2017 to 5 September 2017; and 5 September 2017 to 3 November 2017.
8. We know, in August 2016 the claimant was put in charge as I understand it of the Siemens' contract. There was a period of getting ready for this contract called 'the mobilisation' and that was to go live so to speak, on 1 December. It was no doubt a busy period for all concerned with the contract. The claimant says that on 30 November in an email to his line manager, that he was going to see the doctor as he was falling apart. The evidence does not suggest that he did go and see his doctor. He said he went to see his doctor, but we have comprehensive and complete GP records and there is simply no evidence that the claimant visited his GP in November at all nor in December for anything to do with stress.
9. The claimant himself says in evidence, that at the time he did not feel he was suffering from stress and was more concerned about spasms that might lead to an epileptic fit.
10. On 7 February 2017, the claimant was informed by his line manager that there were issues with his work over the performance of the contract with Siemens and these had been raised by the client Siemens and they were to be discussed at a meeting on 10 February. The claimant was, perhaps

at that stage, concerned. In the meantime, the claimant was told to stay at home until the meeting.

11. The claimant cancels the meeting and attends his GP on 13 February, he raises the issue of work, that he is stressed for the first time and the claimant discussed with his GP that he was stressed at work. The claimant was signed off. The claimant in the following period receives periods of counselling with psychiatrists and he is, in the course of this, asked to complete self-analysis forms which are commonly known as the GAD questionnaire about the level of anxiety and stress.
12. The first that we see in the bundle is 449 and 450, that is in March. They suggest at that stage that he was suffering from severe anxiety and severe depression. He scored 18 and 17 and that is high.
13. By June, after the neurologist has confirmed that a medication Sertraline is compatible with his epilepsy, he is prescribed it. He ultimately has the benefit and improves. By 7 September, on the self-analysis GAD forms, the claimant scores 1 and 3 and is not at all anxious and doesn't have severe depression. We see those at 425.
14. Indeed, the claimant and the GP agreed that the claimant was fit to return to work. The claimant, if he did not feel he was fit to return to work at that stage would no doubt have told his GP. It appears, around this time as well, his medication for Sertraline was not renewed.
15. During the period while the claimant was off, noticeably, there were occupational health reports and they themselves, after seeing the claimant, did not believe although they accept it is a legal matter, that the claimant would be protected by the Equality Act 2010 in respect of his depression / anxiety.
16. The claimant was signed back fit to work. The claimant did not challenge that with his GP and at a consultation meeting on 3 October with the respondents, notes of which are at 124, the claimant confirms that he has not been diagnosed with depression or anxiety before and, "*it's not affecting me now*". The claimant's GP records show thereafter, and after his dismissal, that he only visits his GP for routine matters. Nothing related to depression, anxiety and stress in the following year until August 2018. During those routine visits, up until that date, I emphasise there is no mention of any stress related depression or anxiety and it is only after the case management hearing in July which required the provision of medical reports, GP notes an impact statement which were requested by the claimant's solicitors that on 9 August the claimant visits his GP for the first time since 2017 in relation to, certainly, depression, stress and anxiety and says he now has problems of anxiety and depression. That, it has to be said, is more than a coincidence.

17. Therefore, in the tribunal's view, the substantive and adverse effect is simply not made out. The period of disability is not long term lasting 12 months or more, at most it is seven to eight months, commencing in February 2017 and clearly at no point after 5 September 2017 until the claimant's dismissal in November, did the claimant suffer stress or anxiety or depression. The claimant, I repeat, signed back as fit for work on 5 September, if he was not so fit he would have said so. The condition was no longer there and could not be considered long term as it no longer had a substantial or adverse effect on the claimant's ability to carry out normal day to day activities.
  
18. The only disability that will go forward to the full merits hearing, and I emphasise the issue of knowledge remains to be determined, is the epilepsy.

---

Employment Judge Postle

Date: ...18.01.19.....

Sent to the parties on: .18.01.19.....

.....  
For the Tribunal Office