



EMPLOYMENT TRIBUNALS

Claimant: Mr. M. Yakub

Respondent: HSBC Bank PLC

Heard at: London South, Croydon

On: 22 February 2019 and 25 February 2019 (in chambers)

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Ms. A. Ahmad of Counsel

RESERVED JUDGMENT

The Claimant is not disabled within the meaning of the Equality Act.

REASONS

1. This hearing was called to establish whether the Claimant was at the relevant time a disabled person within the meaning of the Equality Act 2010. At a case management hearing on the 12 October 2018 (page 31-3 of the bundle) the Claimant confirmed that his alleged disabilities were:
 - a. Degenerative Disc problems leading to back and other pain;
 - b. Mild small vessel disease and
 - c. Depression.
2. The respondent disputed that the Claimant is disabled.

Findings of fact

3. The Claimant was signed off sick from the 27 August 2016 for foot pain. The GP fit notes were seen in the bundle at pages 128-137 from the

23 August 2017 until the 25 October 2017 the reason stated for the absence was right foot pain however a fit note dated the 26 October 2017 (page 136) stated that the reasons for the absence was "depression NOS, right foot pain". After January 2018 the sole reason for absence was stated to be depression which reflected that the Claimant's GP did not consider that foot pain continued to cause the Claimant problems. The Claimant remained signed off sick for 2 years.

4. The tribunal were taken to a number of OH reports, the first dated the 12 July 2017 at pages 40-41 of the bundle, this report was stated to be based entirely on the information provided by the Claimant to the OH Manager Mr Ambury, acting for the Respondent. By the time that this report was compiled, the Claimant had been off sick for nearly a year. The Claimant reported to have said that over the past 2-3 months "due to pain symptoms, he has lost his balance and his knee has stopped giving support to his right leg". The Claimant told the OH doctor that he had been referred for a brain scan because his hands had begun shaking and he had been referred for physiotherapy for treatment which was due to start in August 2017. The Claimant stated that he had been taking anti-inflammatory drugs and paracetamol for the pain. The Claimant indicated that the pain left him struggling to get out of bed and he needed pain killers to get out of bed. The Claimant indicated in this consultation that the pain level was 10 (out of a scale of 1 to 10). In the report the Claimant referred to visiting a family member who was a qualified physiotherapist, who had assisted him with his condition. The Claimant did not refer to being 'largely bed bound' in this consultation, the description given in this consultation only referred to difficulty getting out of bed, not being able to get out of bed at all.
5. The Claimant pursued a claim under the Group Income Protection scheme "GIP". The claim was rejected because it was concluded that the reason for the absence did not meet the definition of incapacity. It was noted that the letter rejecting the claim (dated the 3 November 2017 at page 47 of the bundle) was produced with sight of the Claimant's GP records. The report stated that "*it is not apparent from your consultation notes that your mobility has been severely affected by foot pain*". The letter went on to state that the GP "*suggests that your foot pain can be troublesome when you are walking distances or when you drive*". It was noted that the Claimant had not consulted with his GP for foot pain since April 2017, some seven months previously. The letter again referred to the GP's comments that the Claimant's prognosis was "*good and you may be fit for office work*". There was no reference in this report to the Claimant being bed ridden, in fact the report concluded that the Claimant's mobility had not been severely affected.
6. The only time that reference was made to Mild Small Vessel Disease in any medical records was in this letter at page 47 (dated the 3 November 2017) where it stated that this condition did not require treatment and the Claimant did not appear to experience any symptoms. The Claimant was taken to this report in cross examination and he did not suggest that he had suffered any symptoms or that the report was wrong in any way. The tribunal therefore find as a fact that this condition had no adverse effect on the Claimant's ability to carry out normal day to day activities.

The Independent Functional Assessment dated the 27 November 2017

7. The Claimant attended an Independent Functional Assessment conducted by Mr Ambury on the 27 November 2017 (see pages 50-63 of the bundle); this report was commissioned by the GIP. The report was produced only from the information provided by the Claimant. The report stated that the Claimant presented with “*markedly reduced function and reported a back/leg impairment*” and had reported that he was ‘very disabled’ and was in “near constant acute pain”. The assessment concluded that there was ‘no evidence whatsoever of gross loss of muscle bulk apparent for assessment’ (page 52) and that at times ‘clinical significant and intuitive improvements in his function were noted at times’. The Claimant was taken to this quote in cross examination and it was put to him that his lack of muscle wastage was not consistent with someone who was “mostly bed bound” and the Claimant replied that in his Disability Impact statement (see below) he referred to self-training and having a number of hydrotherapy sessions; he confirmed that he was by this time (November 2017) “in a better position”. The Claimant’s oral evidence to the Tribunal that in late November he was getting better, however this did not appear to be consistent with what he told Mr Ambury (that he was “bed bound (4-5 days a month) and housebound for the remainder” see page 55 of the bundle).
8. The report stated that a recent MRI scan had ‘reportedly identified lower lumbar Degenerative Disc Disease “DDD” with a central disc bulge, albeit with no neural impingement’ (page 55 and for the report on the scan at page 70). It was put to the Claimant in cross examination that there was no link between the disc degeneration and the leg and back pain and the Claimant replied that the report was not “independent” and they were trying to stop him receiving a payment. The question was put to the Claimant again and he stated that the “disc could be a possible cause”. There was no medical evidence before the Tribunal to suggest that this was the case. The Claimant was taken to the scan in cross examination and it was put to him that this did not say that DDD had an impact on his leg and in fact no doctor had made the link and the Claimant replied that his “physio had” but no report had been produced by his physiotherapist to suggest such a link.
9. The assessment referred to the Claimant’s gait (page 56) as slow and abnormal however it commented that ‘at times the gait pattern was markedly different by intuitive patterns, i.e. there was partial weight bearing on the right foot [PWB]’. The report also noted that although the Claimant produced low and cautious muscle contractions for the upper limbs however ‘better and intuitive (relatively normal) functional leg and arm strength was however noted by indirect assessment’ (page 56). On the issue of the Claimant’s ability to climb stairs (page 58) although the Claimant had told Mr Ambury that stairs were generally too difficult for him, the following was noted “*upon exit, steps were indirectly assessed and Mr Yakub used the right leg strongly to descend the steps with his left leg leading, indicating intuitive strong use of the right leg*’. The summary of the report was on page 60 and it was concluded that “*Whilst Mr Yakub presented displaying (and reporting) marked reduced function and*

reported a back/leg impairment, the intuitive and clinically significant improvements in his function and strength, coupled with normal musculature, strongly indicate a much better functional capacity than was displayed by direct assessment today". It was confirmed that as a result of the assessment Mr Ambury concluded that the issue was with the back and right leg and not the foot. He concluded that the Claimant was more "functionally capable than indicated". It was put to the Claimant in cross examination that he was exaggerating, and he replied that he was not fit for work however this response did not seem to answer the question.

The Covert Surveillance report.

10. A covert surveillance report was produced on behalf of the Respondent's GIP insurers in connection with the Claimant's appeal against the decision to refuse his application for benefits under the income protection scheme. This was dated the 5 February 2018 and was at pages 72-79 of the bundle. The report showed the outcome of three days covert surveillance in January 2018. The footage showed the Claimant walking a child to school, standing outside his home smoking and driving his company car to his mosque and several addresses (which he confirmed in cross examination were those of his parents, his brother and his sister). He was also filmed driving a female to Tesco and dropping her off. It reported that the Claimant displayed a limp but was able to walk and stand unaided. It was put to the Claimant in cross examination that this was evidence that the Claimant was able to drive and could walk unaided and he replied that "at that time I was better". It was put to the Claimant that he was not being honest about the improvements he had made and he replied, "I made the comment to say I was getting better and told the manager and then they undermined me by getting a surveillance report".
11. The Claimant was taken in cross examination to mileage recorded for his company car (pages 122-3 of the bundle) from August 2016 to November 2017 of 28,379 miles. The Claimant insisted that during this period he was bed ridden and it was his brother who had used the car in connection with his own (car trade) business. The Claimant told the Tribunal that he had lent his brother the car because he was supporting him.
12. The Claimant confirmed in cross examination that he started driving again in January 2018 and the tribunal were taken to the mileage details in the bundle at page 120 which showed that for the period January to December 2018 that the Claimant had driven approximately 17,000 miles. The Claimant did not dispute this. The Claimant's decision to start driving again appeared to be consistent with the evidence that his back problem had resolved by this date, however the Claimant disputed that the mileage records in the bundle were accurate.
13. The Claimant was taken in cross examination to the minutes of a meeting with the Respondent dated the 28 January 2018 at page 119 where he confirmed that he did not state at that time that his back problem was a recurring. Although the Claimant told his employer that he may be able to return to work "with a walking stick or crutches", this seemed to be a further exaggeration of his back and leg problem as the Claimant had confirmed that by November 2017 he was getting better and had been

covertly photographed walking and standing without crutches and driving significant distances by January 2018 and the Claimant confirmed to the Tribunal that at the date of the covert surveillance he was better.

14. The Claimant presented his ET1 on the 4 February 2018 which referred to the “severity of my disability of my right foot” (page 7 of the bundle). He described being in an “immense amount of pain” and “not being in a position to self-cater for myself ..”. The ET1 also referred to suffering from depression due to the “lack of support from the Bank” (page 8).
15. As a result of the surveillance report dated the 5 February 2018, the insurers wrote to the Claimant on the 13 February 2018 (pages 80-3) confirming that his claim remained declined. They stated that from the medical evidence before them (which included his GP records), they were not convinced of the severity of his condition and they did not accept that the symptoms had reduced the Claimant’s functioning to the extent that he had been unable to perform his role for over a year. The letter declining his claim went into great detail of why his claim had been rejected referring to “*validity issues and inconsistencies uncovered in this assessment and subsequent report*”. This quote was put to the Claimant in cross examination and it was stated that it damned him; the Claimant denied this saying “it was 12 months after”. The letter concluded that the Claimant had been able to drive and could walk unaided and could stand for prolonged periods they therefore concluded that “[the Claimant did] not appear to be housebound or dependent” (page 82).
16. The Claimant attended a further telephone OH consultation with Mr Ambury dated the 31 May 2018 at pages 88-9 of the bundle. This was a report again without sight of any medical records and was on the basis of information provided solely by the Claimant. The report stated that the Claimant was currently certified unfit for work due to depression. The Claimant confirmed that he was taking one tablet of Fluoxetine a day (but could not confirm the dosage). He stated that he felt suicidal “a couple of times” and blamed this on the delay in communications from the respondent. This can be compared with the Claimant’s description of his mental impairment in his witness statement at paragraph 12 where he described himself as ‘being suicidal’. The Tribunal felt that this was an exaggeration of his state of mind and was not consistent with his contemporaneous description given to the OH consultant. The Claimant confirmed however that by May he was feeling a little better.
17. In this telephone consultation the Claimant confirmed that he was trying to get out and was walking 2000 steps a day and he was able to drive short distances. The Claimant confirmed that over the “past six weeks his back has been “fine””. It was put to the Claimant that driving 17,000 miles a year more than what could be described as driving short distances. The Claimant described this evidence as irrelevant.

The Disability Impact Statement.

18. The Claimant’s Disability Impact Statement was in the bundle at page 90 dated the 15 June 2018. The Claimant referred in the statement to DDD and sciatica as being recurring conditions. There was no evidence to

suggest that the Claimant suffered from sciatica at any time. He also referred to Mild Vessel Disease and stated that this “impacts” but did not give any indication how (or if) it had any adverse impact on his ability to carry out normal day to day activities.

19. The Claimant claimed in his Disability Impact statement that “*during August 2016 – November 2017 I was bed bound for most of the time apart from when I tried to self train by taking smaller steps and trying to get better...*”. He stated that “*during the time of August 2016 to September 2017 I was unable to do basic things like her (sic) dressed myself, put on my socks, clean, cook and wash etc*”. All of which required help and support”. It was put to the Claimant that he was not bed bound for this period of time he replied he was “*largely*” bed bound. He also added that what he meant by this was that he was “*largely bed bound controlled by pain killers I had to take medication for my stomach*”. The Claimant’s evidence on this point was not credible as this was the first time he made reference to taking any stomach medication. The evidence of the pain medication was seen on page 40 which referred to over the counter medication; there was no reference to him taking strong medication. There was also no clarification of the dosage. Even though in the ET1 he referred to being prescribed “strong medication which can result in drowsiness” (page 8) there was no medical evidence that suggested that the Claimant was prescribed strong pain medication at any time (see above at paragraph 6).

Psychological Assessment on the 3 July 2018

20. The Claimant attended a psychological capacity assessment on the 3 July 2018 and a report written by Dr Mark Cheeseman was seen in the bundle dated 3 July 2018 at pages 91-100; the report stated that the Claimant was on the mild/ moderate range for depression. The report stated that it was unclear the extent to which his depression impacted on the activities of everyday living and the Claimant reported “poor sleep and fatigue”.
21. The Claimant was taken to this report in cross examination and it was put to him that again there was a reference to a lack of consistency across the measures and in this interview he told the medical practitioner he had been bed bound for 6-8 months, however this was inconsistent with the Claimant’s Disability Impact Statement that he produced approximately 2 weeks before which stated that he had been ‘largely bedbound’ for 15 months.
22. The Claimant told the Tribunal that that diagnosis of mild depression amounted to a disability which was likely to last for 12 months as the condition was ‘not resolved’. It was put to the Claimant that he had shown a substantive improvement in his mental health, but the Claimant answered that the condition had ‘not disappeared’.
23. The Claimant was asked what adverse impact depression has on his normal day to day activities and he stated that he had trouble with his sleep. It was put to the Claimant that during the time he was off sick with depression he had driven 17,000 miles, which the Claimant did not accept due to what he described as ‘inconsistencies’ in the mileage contained in

the report. In answer to the tribunal's questions the Claimant confirmed that the adverse impact of depression was not going out and talking to people and not going out on his normal walks, which he took every other day for 5 minutes towards the end of 2017. The high mileage driven in his car appeared to indicate that the Claimant was sufficiently recovered to leave the house and from the covert surveillance taken in January 2018 the Claimant kept in contact with his family and was able to visit them regularly. This evidence also strongly suggested that the Claimant felt able to socialize regularly with his family.

OHS Report to consider reasonable adjustments dated 23 July 2018.

24. A further report was available from Mr Ambury dated the 23 July 2018 at page 103-5 bundle, this was provided with a view to making reasonable adjustments to assist the Claimant's return to work. In the report Mr. Ambury confirmed that the Claimant's depression was in the mild range. He concluded that the Claimant's anxieties were associated with his previous team and returning to a regulated role. He recommended returning the Claimant to a different role. He concluded that the musculoskeletal problem was "effectively resolved". The Claimant denied that his back and leg problem were resolved, he described them as 'recurring'.

The opinion provided by Dr Stoot dated the 23 July 2018

25. Dr Stoot was asked to give an opinion of whether the Claimant would be covered by the Equality Act; this is also dated the 23 July 2018 (see page 108 of the bundle). The report stated that the Claimant's musculoskeletal problems had resolved and no longer impaired his capabilities and there was no evidence that it was likely to last for 12 months.
26. The report at page 109 indicated that the Claimant's diagnosis of depression was in September 2017 and there was no indication that this was likely to last 12 months. The earliest time that the Claimant could provide corroborative evidence of his depression was in October 2017 and which was seen on page 109 (the medical report dated the 23 July 2018). The report stated that the Claimant's GP report dated the 24 October 2017 which "makes no mention of mental health issues.." The Claimant told the tribunal that he may not have been depressed for 12 months "but it was very very likely" that it would last that long but accepted he had no medical evidence.
27. The Claimant confirmed in cross examination that his GP records were not in the bundle and there had been no report produced by his physiotherapist.

Closing Submissions

28. Closing submissions were oral and will not be replicated in this decision.

The Law

The Equality Act 2010

Section 6 Disability

- (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 effect on P's ability to carry out normal day-to-day activities.
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability--
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
 - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

Schedule 1. Impairment

Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.

2. Long-term effects

- (1) The effect of an impairment is long-term if--
 - (a) it has lasted for at least 12 months,
 - (b) it is likely to last for at least 12 months, or
 - (c) it is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
- (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

Decision

Mild Small Vessel Disease.

29. The Claimant refers to three medical conditions that he claimed amounted to disabilities under the Equality Act. The first disability that can be dealt with quickly is the Mild Small Vessel Disease, this was referred to in one medical report in June 2018 but there was no evidence that this condition had any adverse effect on the Claimant's ability to carry out normal day to day activity. This cannot amount to a disability under the Equality Act.

Depression.

30. The second condition relied upon by the Claimant was the mental impairment of depression. The first credible evidence of the Claimant suffering from depression was in the GP fit notes dated the 26 October 2017 where it stated for the first time that depression together with foot pain was the reason for the Claimant's absence. The Tribunal accept that the Claimant starting suffering from symptoms of depression in September 2017.
31. The issue for the tribunal is whether the impairment had a substantial and long term adverse effect on the Claimant's ability to carry out normal day to day activities. The report dated the 3 July 2018 identified poor sleep and fatigue as the symptoms suffered. The condition was identified as mild/ moderate depression. When the Claimant was asked by the Tribunal how depression adversely affected him he stated that he avoided social interaction. The Claimant's disability impact statement provided no indication of how his depression affected his daily life. In the Claimant's witness statement at paragraph 12 he said he 'was suicidal' but in the report dated 31 May 2018 (page 88) he was reported as saying that he 'felt suicidal' and clarified that he experienced these feelings a couple of times in the last three to four months. The tribunal noted that there was a significant difference between being suicidal and feeling that way a couple of times over a period of months. The tribunal felt that his statement was an exaggeration of his symptoms which was not reflected in the contemporaneous documents or in the medical records that were in the bundle. This report on the 31 May 2018 confirmed that the Claimant was starting to feel a little better.
32. A subsequent report dated the 3 July 2018 reported a further improvement in the last few months saying that the Claimant was more positive (page 98) and the final report dated the 23 July 2018 (page 109) concluded that there was no evidence to suggest that the mental impairment of depression would be likely to last more than 12 months. It was also noted from this report that by the 23 July 2018 the Claimant was able to undertake normal day to day activities 'of daily living' in relation to both his musculoskeletal condition and his depression. The Tribunal saw evidence that the Claimant was able to drive considerable distances between January and July 2018 and his impairment did not appear to prevent him from leaving the house to socialize (the Claimant providing no other reason for the mileage travelled in his company car while he was signed off sick).
33. The Tribunal took into account all the evidence and concluded that the mental impairment of mild to moderate depression did not have a substantial adverse impact on the Claimant's ability to carry out day to day activities. There was no consistent evidence to suggest that the Claimant was suicidal, the tribunal preferring the evidence of the medical reports that it was only on a couple of occasions that he had such thoughts, his evidence appeared to be exaggerated on this point. His evidence that he avoided social interaction did not appear to be consistent with the high mileage covered in his car which strongly suggested that he used his car to visit family and friends regularly.

34. The last issue is whether at the relevant time the mental impairment of depression was long term. It was noted that the Claimant started suffering from depression in September 2017 so at the time his ET was presented he would only have suffered from the condition for 5 months therefore the Claimant had not suffered from depression for 12 months. The next issue is whether the condition was likely to last for 12 months. The role of the Tribunal must be to focus on whether the mental impairment could last for 12 months taking into account the Claimant's evidence and on the real risk of the condition continuing. The Claimant's evidence was that his condition was not resolved but the Tribunal saw no consistent evidence that this condition continued to adversely impact his daily activities. The tribunal has also found as a fact that the Claimant's evidence of the severity of his mental impairment was exaggerated and there was no evidence to suggest that his depression was likely to last for 12 months and no evidence that it was likely to recur. The medical prognosis showed continuous improvements from May to June 2018 and the opinion given on the 23 June was that the depression was not likely to last 12 months. On this evidence it is concluded that the condition of depression is not long term and does not amount to a disability under the Equality Act.

Back leg and foot problems.

35. Turning to the last disability which has been described in these proceedings as a "disability of my right foot" (ET1), Degenerative Disc Changes and sciatica (in the Disability Impact Statement) and in the preliminary hearing on the 12 October 2018 as Degenerative disc problems leading to back and other pain (page 32).
36. The GP fit notes only referred to foot pain from August 2016 to October 2017, the cause of the foot pain was never established however the latter OH reports concluded that the issue was with the Claimant back and leg and not his foot. The Claimant's evidence of the severity of the pain he suffered and for how long was inconsistent and was at times contradictory. His evidence that he was 'largely bed bound' was not supported by the evidence. His evidence on this point was not corroborated by the GP records and it was noted that in the document dated the 3 November 2017 (produced by the GIP insurer at page 46) stated that the Claimant's mobility was not severely affected by his foot pain and the Claimant had not consulted his GP about foot pain since April 2017. This strongly suggested that the pain was not as severe or as debilitating as the Claimant suggested.
37. The functional capability report dated 27 November 2017 found that there was no evidence of muscle wastage which strongly suggested that the Claimant was not bed bound. This report also concluded that the Claimant exhibited intuitive strong use of his right leg and he was more functionally capable than he had indicated. The subsequent covert surveillance report confirmed that the Claimant was able to walk and stand without the use of crutches or walking sticks and was seen driving his car on a number of trips to visit his family. Had the Claimant been bed ridden for over a year, this would have been apparent from muscle wastage, the weakness of his muscles and the way he walked, the report suggested that the Claimant had much better functional capacity than he displayed at the assessment. This was clear evidence that the Claimant was

exaggerating his symptoms to the OH doctor and to his employer in January 2018 (see above at paragraph 13).

38. The Claimant's evidence of his physical impairment was contradictory. In the psychological report dated the 3 July 2018 the Claimant was reported to have said that he had been 'effectively bed bound for 6-8 months' (page 92). In the Claimant's ET1 presented on the 4 February 2018 he made no mention of being bed bound referring only to the difficulty in returning post in a timely fashion and not being able to get to the post box. In a report dated the 23 July 2018 (page 108) the Claimant was reported to have said he was 'essentially bed bound from August 2016 until May 2017' (9 months). The Claimant's disability impact statement dated the 15 June 2018 stated that he was "bed bound for most of the time during August 2016 – November 2017". References to being bed bound and unable to move appeared to have been made and subject to significant embellishment after the ET1 had been lodged, going from being severely incapacitated for 6 months to 9 months and then to 15 months. The description of a person who was immobilized to the extent of being bed bound was also not consistent with the sick notes in the bundle at the relevant time which only referred to 'painful right foot'. The Tribunal concludes that the Claimant's evidence relating to the severity of his physical impairment was exaggerated and was not credible.
39. Although the Tribunal accept that the Claimant suffered foot pain, the evidence strongly suggested that this caused pain and discomfort and was 'troublesome' but the Claimant did not have to consult with his GP about foot pain after April 2017 (page 46) and there was no evidence that the Claimant continued to suffer from any substantial adverse effects on his ability to carry out normal daily activities. The Claimant's evidence to the Tribunal about the effect his foot/back/leg pain had on his daily activities was inconsistent and at times not credible. His evidence was not corroborated by his GP, there was no report from his physiotherapist who assisted him during the early stages of his incapacity, this was surprising as in one of the reports the Claimant indicated that this person was a family member. The functional assessment report found that the Claimant showed no muscle wastage which was a further indication that he was not bed bound for months (or years) as he had suggested in his evidence to the Tribunal.
40. It was noted that for the initial period of sickness absence his evidence was that his brother was using the car for his own business but from January 2018 onwards the Claimant drove 17,000 miles in the year ended December 2018, this was during the time when the Claimant was recovering from his back and leg problems. The Claimant's evidence about the impact that the back and leg pain had on his ability to carry out normal day to day activities was inconsistent and unreliable and there was insufficient evidence to suggest that the leg back and foot problem had a substantial adverse impact on the Claimant's ability to carry out normal day to day activities.
41. The evidence was also inconsistent on the issue of whether the physical impairment was likely to last for 12 months. Although the Claimant was signed off for 2 years, this cannot be equated to being disabled. There was no diagnosis made of DDD and no evidence of nerve

damage. The Claimant's evidence was found to be exaggerated and inconsistent. The Claimant's back and foot pain appeared to last for a number of months and the only consistent evidence from the GP was that no pain relief was required after April 2017. The tribunal conclude from this evidence that the condition did not last for more than 12 months, it improved after 8 months and no longer required pain relief. There was no evidence to suggest that there were measures being taken that should be discounted. It is concluded that the physical impairment was not long term and there was no evidence to suggest that it was recurring or likely to recur.

42. In conclusion none of the three medical conditions amount to disabilities. The Claimant is therefore not disabled within the meaning of the Equalities Act.
43. In the light of this decision, this case will be listed for an urgent telephone hearing for 1 hour to discuss any orders and directions that need to be made and to consider the length of the hearing that will be required to consider the remaining complaints.

Employment Judge **Sage**

Date 6 March 2019