



EMPLOYMENT TRIBUNALS

Claimant: Mr A Kalam

Respondent: Care and Repair (Leeds) Limited

HELD AT: Leeds

ON: 20 April 2018

BEFORE: Employment Judge Cox

Representation:

Claimant: Mr Morgan, counsel

Respondent: Mr Islam-Choudhury, counsel

REASONS

1. Mr Kalam presented a claim to the Tribunal alleging disability discrimination. A Preliminary Hearing was held to decide whether during the period material to his claim he met the definition of a disabled person in Section 6 of the Equality Act 2010 (the EqA). The parties agreed that the material period was April 2013 to 30 October 2017.
2. Under Section 6EqA, a person has a disability if he has a physical impairment that has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. Mr Kalam said that he meets the definition because of physical impairments with a clinical diagnosis of Post Poliomyelitis Syndrome (PPS). The Respondent (“the Company”) accepted that he has impairments resulting from PPS and that they have had a long-term adverse effect on his day-to-day activities. It did not, however, concede that their effects on his day-to-day activities were substantial. The issue for the Tribunal was therefore whether, on the evidence with which it was presented, it was satisfied that the effects were substantial. In deciding that question, the Tribunal had to take into account any part of the Secretary of State’s “Guidance on the definition of disability” that it considered relevant (Paragraph 12 of Schedule 1 EqA).
3. The Tribunal heard oral evidence from Mr Kalam on the effects of his impairments. It was also presented with medical evidence, namely: a “Summary of key points” on PPS published by the British Polio Fellowship; three reports from Mr Kalam’s General Practitioner, dated 18 August 2015, 19 December 2016 and 28 February 2018; a report from Mr Kalam’s specialist clinical physiotherapist

dated 13 January 2017; two reports from occupational health physicians dated 30 March 2016 and 27 July 2017 resulting from referrals by the Company; and a report from Mr Kalam's consultant in neurology dated 27 February 2018.

4. The Tribunal found Mr Kalam's evidence on the effects of his impairment to be clear and credible and supported by the evidence from those responsible for his clinical care. The Tribunal did not consider that the credibility of Mr Kalam's evidence about the effects of his impairment on his home life was undermined by the fact that not all of these were mentioned in the medical evidence. Two of the GP reports were compiled in order to give the Company an understanding of Mr Kalam's clinical condition. Those from the occupational health physicians were compiled for the purposes of assisting the Company to identify what their responsibilities were towards Mr Kalam in the context of his workplace. Mr Kalam was the person best-placed to give evidence on the effect of impairment on his home life.
5. On the basis of the evidence it heard, the Tribunal made the following findings in relation to Mr Kalam's impairments.
6. As a result of contracting poliomyelitis when he was a baby, Mr Kalam has a permanent motor neurone deficit affecting the left side of his face, his left arm and his left leg. He has a significant weakness and loss of dexterity in his left arm, shaking and spasms in both arms, weakness in both legs but in the left leg in particular, a sideways curve (scoliosis) in his lower and upper back, and associated pain in his back, arms and legs that varies depending on what he is doing. He has a heightened sensitivity to cold on his left side as a result of his condition and also experiences generalised mental and neuromuscular fatigue. His right upper back, shoulder, arm and hand have developed over the years to compensate for the weakness on his left side, resulting in a loss of flexibility in the muscles and joints in those areas, making it difficult for him to twist his back. His scoliosis also reduces his ability to twist his back. He experiences aching, muscle spasm and altered sensation on his left side. His symptoms are exacerbated by coldness, tiredness or stress, and have also resulted in him being emotionally labile and, on occasions, depressed.
7. Mr Kalam takes ibuprofen orally and in gel form and medicated oil as and when he needs it to ease the muscular pain. He has received at least one course of physiotherapy, although this has not made a significant difference to his functioning. The physiotherapist also prescribed him a personalised exercise programme to prevent further deterioration of his muscles and joints and help him keep as strong and fit as possible as he grows older, as the aging process will affect him sooner than someone without his condition and his symptoms are likely to worsen over time. In any event, in assessing the effect of Mr Kalam's impairment the Tribunal had to disregard the effect of any measures, including medical treatment, that are being taken to treat or correct it (paragraph 5 of Schedule 1 EqA).
8. Mr Kalam has adjusted his activities and lifestyle to function as normally as possible in spite of his condition by prioritising tasks, pacing his activities and resting. His condition does, however, continue to have an effect on his day-to-day activities.
9. Because of his muscle weakness and fatigue, Mr Kalam has difficulty with repeated or sustained movements such as walking for any significant distance or

sustained carrying. When he goes shopping he always seeks out places to sit down so that he can relieve his back and legs. He has difficulty with climbing stairs and does so with discomfort, although he can manage one flight. He has moved to a bungalow for this reason.

10. The imbalance between right and left sides and lack of muscle control connected with Mr Kalam's condition cause him to be clumsy and lack co-ordination and he knocks and bangs himself frequently. For the same reason he is at increased risk of tripping and, if he falls, he is at increased risk of injury because, as a result of the impaired function of his arms, he has a reduced ability to check his fall. He finds it difficult to place a box on a shelf because of his difficulty in controlling the lift and balancing.
11. Mr Kalam's sleep is affected by muscle spasms, particularly if he has been active in the day, and he wakes frequently. This results in him feeling tired on the following day and suffering headaches. On days when his fatigue is greater, his memory and concentration are impaired.
12. Because of the shaking and involuntary movement of his left hand, Mr Kalam has cut himself when chopping food and so avoids the preparation of food involving the use of a knife. Because of his poor co-ordination and difficulty in gripping objects including saucepans and kettles he has had accidents in the kitchen resulting in scalding. He therefore does not attempt to cook using raw ingredients and uses pre-prepared microwaveable food instead. Because of the shaking in and weakness of his left hand, he has difficulty with actions that involve stability in his left hand, like pouring or carrying a cup of coffee or a plate of food.
13. Mr Kalam's impairments have impeded his interaction with his children. Because of difficulty in co-ordinating the movement of his hands, he is unable to comb his daughter's hair. Because of the muscle weakness and fatigue associated with his condition he is unable to play football or other games with his children in the park. On one occasion he attempted to stop a swing that his daughter was using but, because he could use only his right hand and found it difficult to judge the swing's motion, this resulted in his daughter falling off the swing and being injured.
14. Mr Kalam is unable to carry out DIY tasks such as painting and decorating or any other task that requires grip in and co-ordination of both hands, such as tightening a screw on a headboard.
15. Due to the lack of flexibility and grip in his arm, Mr Kalam has difficulty in cleaning himself in the bath, putting on socks and taking clothes off, particularly over his shoulder.

Conclusions

16. In assessing the effect of Mr Kalam's impairment, the Tribunal took into account the provisions of the Guidance. It was concerned to decide whether the effect was substantial, that is, more than minor or trivial (Paragraph B1). It considered what Mr Kalam cannot do, or can do only with difficulty (Paragraph B9). It also took into account the effect that tiredness, stress and cold have on the effects of his impairment (Paragraph B11).
17. On the basis of the findings set out above, the Tribunal was satisfied that the effect of Mr Kalam's physical impairments on his day-to-day activities is substantial. His PPS has had a significant effect on his mobility and his ability to

perform any of the many day-to-day activities that require a sustained grip and/or control in his left hand or balance and co-ordination.

18. As the Company has conceded, the effect of Mr Kalam's impairment is long-term.
19. The Tribunal therefore concluded that Mr Kalam met the definition of a disabled person at all times material to his claim.

Employment Judge Cox

Date: 7 June 2018

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