



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss L Williams

v

Travis Perkins Plc

Heard at: Cambridge

On: 27 March 2019

Before: Employment Judge Ord

Appearances

For the Claimant: Mr Thakerar, Counsel

For the Respondent: Ms R Dawson, Solicitor

JUDGMENT ON PRELIMINARY HEARING

1. The claimant's contention that she was at the material time a disabled person within the meaning of Section 6 of the Equality Act 2010 is not made out.
2. The claimant's complaints for unlawful discrimination on the protected characteristic of disability are therefore dismissed.

REASONS

1. This matter comes before me today to determine the question of whether or not at the material time the claimant was a disabled person within the meaning of Section 6 of the Equality Act 2010.
2. The claimant was employed by the respondent from 13 February 2017 to 5 September 2017 when her employment ended by way of resignation. The claimant was initially employed on a probationary period to last six months. On 1 July 2017 she suffered a breakdown of relationship with her boyfriend which caused a depressive reaction, it was suggested to her that she should see her General Practitioner, that recommendation came from a friend or relative. She says she could not get a doctor's appointment for

approximately two weeks and therefore it must have not been suggested to her before the end of July or early August because she was first seen by her General Practitioner on 17 August 2017.

3. In the meantime, the claimant had remained at work and had seen Mr Posnett, her Manager, for the purpose of a review of her probationary period. That took place on 11 August 2017. Whilst the claimant was noted to have exceeded expectations as regards attendance and time keeping and to meet standards for work performance, she had “failed standards” for conduct with a number of issues set out for improvement. Her probationary period was therefore extended for three months which she has said today she felt unfair. She did however, sign the probationary review form and there is nothing to indicate that she raised any issue at that meeting regarding her health or well-being, notwithstanding the fact that she was booked to see her General Practitioner on 15 August 2017.
4. She did see her GP on that day, he recorded her as suffering from low mood after splitting with her boyfriend and whilst she had been attending work, she would like some time off. She indicated that she was suffering from poor motivation and concentration and “kept crying all the time”. She was asked to self-refer to counselling and was given a 28 day course of Sertraline (50mg), to be taken once per day.
5. The claimant was also issued a fit note to last until 29 August 2017, with the Doctor at the foot of that note confirming that he would not need to assess her fitness for work again at the end of the period covered by the fit note.
6. The claimant delivered this fit note to Mr Posnett. He says she did not at that time speak to him at all to explain her condition or diagnosis or any description of the likely prognosis going forward. He says that she simply put the fit note on his desk in an envelope and left. Whilst the claimant gave no evidence in chief about this, she did say under cross examination when Mr Posnett’s evidence was put to her, that she had spoken to him to explain her condition. For reasons which will become clear, I do not need to resolve this dichotomy.
7. The claimant contacted her GP again on 28 August 2017 asking for a further fit note. This was refused because the General Practitioner said the practice did not issue fit notes in advance. She therefore saw the General Practitioner again on 29 August 2017 and he issued a further fit note for a further two weeks, again confirming that he would not need to assess her fitness for work at the conclusion of that period.
8. Thereafter, on 4 September 2017, the claimant submitted by email a grievance regarding alleged comments made by Mr Posnett about the

claimant's medical condition and his apparently laughing about the fact that the claimant had not been paid for her time off. On the same day, it is not clear whether it was before or after sending that email, the claimant sent, or delivered, her written resignation giving one day's notice stating her last day of work would be 5 September 2017.

9. The claimant has thereafter been employed by another business, a position she was returning to having been previously employed by them and where she had been employed prior to working for the respondent.
10. Although the claimant has continued, for some time thereafter, to be prescribed medication for her depressive state, she has not been certified as being unfit for work since leaving the respondents employment.
11. I have referred to the case of Richmond Adult Community College v McDougall [2008] IRLR 227, which confirms that the point for determining whether any condition was likely to last 12 months is when the decision or actions complained of took place. I have also been referred to the authorities of Goodwin v The Patent Office [1999] ICR 302, and Boyle v SCA Packaging Ltd. [2009] ICR 1056.
12. The claimant has clearly suffered from depression from August 2017 onwards and did so for a period of time. She has given evidence of the impact her condition has had on her day to day activities such as housework and socialising etc. and I accept her evidence. The impact of the condition is, on that evidence, more than trivial. The question, however, is whether that condition was likely to last more than 12 months at the time the matters complained about occurred. The word 'likely' in the statute means 'could well happen'. A relatively low hurdle, but it means more than it is merely possible. All of the evidence which has been put before me suggests that no person, including the treating GP, suggested that in August or September 2017, that their view was that the claimant's condition could well last for more than 12 months or more. The General Practitioner's notes, as set out on the fit note, indicate an expectation that two to four weeks would be the timescale for recovery.
13. The claimant has not produced any evidence from her GP, Counsellor, or any other person, that the condition was expected at that time to be a long term one and indeed today, she has not given that evidence herself to indicate that that was what she was told or understood her position to be at the time.
14. Accordingly, that import limb of the test set out at Section 6 of the Equality Act 2010 and confirmed in Goodwin v The Patent Office has not been met. The claimant has not established that at the time of the matters complained of, her condition was likely to last 12 months or more. The claimant has

not, therefore, satisfied me that she is or was at the material time a disabled person within the meaning of Section 6 of the Equality Act 2010.

15. For that reason, her complaints of discrimination on the protected characteristic of disability must fail and are dismissed.

5 April 2019

Employment Judge Ord

Date:

Sent to the parties on: 16 April 2019

.....
For the Tribunal Office