



EMPLOYMENT TRIBUNALS

Claimant: Mr D Dickinson

Respondent: Nuffield Health

Heard at: Manchester

On: 9 April 2019

Before: Employment Judge Sherratt

REPRESENTATION:

Claimant: Litigant in person

Respondent: Ms C Hollins, Solicitor

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the claimant was a person with a disability at all material times for the purposes of this claim.

REASONS

1. This preliminary hearing was listed by Employment Judge Franey to determine whether the claimant is a person with a disability for the purposes of section 6 of the Equality Act 2010, which provides that:

“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. “Substantial” means more than trivial and “long-term” is generally 12 months or more.

3. For today’s hearing I have received a comprehensive bundle from the claimant containing his disability statement and accompanying documents and medical and occupational health reports. I have considered the respondent’s letter in

the Tribunal file setting out why in their view the claimant does not come within the section 6 definition, and I have today heard oral submissions from both sides.

4. In the claimant's bundle he has provided some medical information, and the first document I refer to is a letter dated 25 June 2008 from the Sheffield Asperger Syndrome Service in which Dr Khalid Aziz, Associate Specialist, concluded that:

“...the history available and his presentation during the assessment are suggestive that Mr Dickinson suffers from mild Asperger Syndrome. There is life long qualitative impairment in reciprocal social interaction, non-verbal communication and a tendency towards rigid and obsessional behaviour.”

5. Because that letter was over ten years old Mr Dickinson has provided a letter to update the information provided, and it is now from the Sheffield Adult Autism and Neurodevelopmental Service which seems to be the successor to the Asperger Syndrome Service.

6. Mr Dickinson had asked them some questions and the response, dated 14 February 2019 from Dr Mary Fearon, Consultant Clinical Psychologist, was that:

“We use the criteria set out in the Diagnostic and Statistical Manual (DSM) to structure our diagnostic assessments. In the most recent version of this DSM 5 the term ‘Asperger Syndrome’ is no longer used and is instead seen as an Autism Spectrum Disorder (ASD). The DSM 5 states:

‘Individuals with a well-established DSM – IV diagnoses of autistic disorder, Asperger’s disorder or pervasive developmental disorder not otherwise specified should be given the diagnosis of Autism Spectrum Disorder’.

However, it is thought the term Asperger Syndrome will continue to be commonly used to refer to those people who have an ASD with no learning disability i.e. high functioning ASD. Therefore the terms Asperger Syndrome and ASD can be used interchangeably. Whatever term is used it is a lifelong condition that cannot be cured. Obviously, therefore, a valid diagnosis given in 2008 would continue to be valid. However, while ASD is a lifelong condition it is not stable. In particular observable symptoms of autism may not become fully apparent until – or they may appear significantly worse when – social, cognitive or environmental demands exceed the individual’s capacity.”

7. The next medical report comes from Dr Mark Evans, a Consultant Psychiatrist in Psychotherapy, dated 11 June 2012:

“From my assessment I understand that Mr Dickinson has a diagnosis of mild autism which has been diagnosed previously in Sheffield. On top of this he has traits of borderline personality disorder, particularly he shows symptoms of emotional dysregulation and self-harming when under stress, he also has interpersonal difficulties although some of this will be related to his autism”

8. Moving on to a letter dated 13 October 2015 from Dr Sultana working within the Manchester Mental Health and Social Care Trust Department of Psychiatry:

“He has known history of Asperger’s Syndrome and borderline personality disorder and some of his current presentations are due to past mental illness.”

9. The claimant has in his written submission provided extracts from The Diagnostic and Statistical Manual of Mental Disorders 5th Edition in respect of the definitions of Autistic Spectrum Disorder, Borderline Personality Disorder and Depression/Anxiety, and I have considered them.

10. The claimant sets out in his statement how he is affected in connection with his ability to carry out normal day-to-day activities. The claimant tells me that he understood that his task, when preparing the statement, was to relate such matters to his employment with the respondent, and that is what he has done. Today, when responding to a submission made by Ms Hollins, he has confirmed to me that the same issues are applicable to him in his current employment carrying out similar life guarding duties but he states that he is now under more supportive and/or sympathetic management than he was with the respondent.

11. Looking at the claimant's witness statement in support of his claim to be a person with a disability he refers to going into meltdown or shutdown as a reaction to circumstances. That seems to me to affect his ability to carry out normal day-to-day activities when the problems occur. The claimant has set out at some length his difficulties with social interaction on a normal day-to-day basis. He has described problems with communication skills, difficulties in interacting with others, difficulties with imaginative thinking and cognition, problems with motor and sensory perception, repetitive or restrictive patterns and behaviour, anxiety and how he has developed and uses coping strategies to enable him to function on a day-to-day basis.

12. Taking into account all of the information provided to me and having considered the submissions on both sides I find that the claimant has satisfied me that he is a person with a disability for the purposes of section 6 of the Equality Act 2010 on the basis of mental impairment, ASD, recognised by the Diagnostic and Statistical Manual of Mental Disorders 5th Edition which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

Employment Judge Sherratt

10 April 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON
24 April 2019

Miss E Heeks
FOR THE TRIBUNAL OFFICE

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