



EMPLOYMENT TRIBUNALS

Claimant: Ms S Rowley

Respondent: Department for Work and Pensions

Heard at: Leeds Employment Tribunal

On: 29 April 2019

Before: Employment Judge Buckley

Representation

Claimant: Mr Johns (Counsel)

Respondent: Mr Maxwell (Counsel)

JUDGMENT

1. The Claimant is not disabled for the purposes of the Equality Act 2010.
2. The claims of disability discrimination under s 15 Equality Act 2010 and failure to make reasonable adjustments are dismissed.

REASONS

1. The issue for me to determine is whether or not the claimant had a physical or mental impairment which had a substantial and long term adverse effect on her ability to carry out normal day to day activities. The material time was agreed to be the end of September-November 2018 because (a) that is when the failure to make reasonable adjustments took place and (b) the only detriment which the claimant continues to rely on in the s 15 claim is the failure to make reasonable adjustments.
2. Although the claimant has provided a witness statement about the impact of her stated impairment she did not attend. No reason was given for the claimant's failure to attend and no application was made for an adjournment. The claimant has therefore not given evidence under oath or affirmation. More importantly her evidence has not been tested by cross-examination. I therefore attach reduced weight to that statement.
3. Further, there are a number of significant limitations to that statement:

- a. Much of description of the effects of the claimant's stated impairment is in the present tense, e.g. 'I suffer from...'. It is not clear, in the absence of the claimant, whether this applies equally to the position at the material time. Para 8 of the statement, which describes the effect on her since she left work, suggests that the effects described in the statement may not have existed to the same extent at the material time.
 - b. In the absence of the claimant to flesh out her statement, broad statements such as 'I find it extremely difficult to travel or go anywhere outside of my home and work premises' cannot support a finding of a substantial adverse effect on day to day activities.
 - c. The statement is not supported by the medical evidence. It is sometimes directly contradicted. For example, the statement at paragraph 9 says 'I was prescribed buprenorphine for my depressive illness for many years, since around 2003. I have always taken them for depression and for 16 years the NHS were happy to prescribe them for that reason' This is directly contradicted by the medical evidence (see for example p 135). Secondly she states 'although my GP is supportive in my continued use of the drug, they ultimately cannot prescribe it for depression under UK law'. Again the fact that the GP is supportive of her use of the drug is contradicted by the content of the GP records.
 - d. Aside from the direct contradictions, a number of assertions in the statement are not supported by the GP records. For example, the statement that the claimant lives in a state of constant and persistent anxiety and always feels tired and exhausted is not supported by any references to this constant and persistent state in the GP records. Further the claimant's statement that 'I have a diagnosis of depression' is not supported by the medical records.
4. For all those reasons, I place very limited weight on the statement.
 5. I do have before me the claimant's GP notes and other medical evidence. I accept the Respondent's submission that I should place little weight on Occupational Health reports. Occupational Health had been told by the claimant that she was being treated for depression by her GP and being prescribed medication to treat her depression. On the basis of the GP and other medical records this is not factually correct. She had been prescribed buprenorphine, but it was not to treat any depression, it was as a result of her addiction to the drug.
 6. The medical evidence shows that the claimant was diagnosed by Dr Muhammed Afridi in June 2018 with 'Mental and behavioural disorders due to multiple drug use and use of other psychoactive substances'. There is no diagnosis of depression in the medical records.
 7. I find on the basis of this diagnosis, and on the history set out in the GP records, that any impairment that the claimant suffers is as a result of her drug addiction rather than as a result of depression and therefore it is not covered by the Act. The medical history set out in the June 2018 letter makes clear that the buprenorphine was not initially medically prescribed, and therefore these facts do not fall within the exception in regulation 3(2) of the Equality Act 2010 (Disability) Regulations 2010 (addiction which was originally the result of administration of medically prescribed drugs).

8. The 'deduced effects' provisions cannot apply to these facts, because at the material time the claimant was not being treated for depression/work-related stress with buprenorphine.
9. For those reasons I find on the balance of probabilities that the claimant did not have the stated impairment of depression. Any adverse effect on her day to day activities arose from her diagnosed 'mental and behavioural disorders due to multiple drug use and use of other psychoactive substances'.
10. I accept that the claimant was diagnosed by her GP as having work related stress and was signed off sick for a substantial period. This could amount to an impairment under the Equality Act 2010. However there is no description of any symptoms in any of the medical records that might amount to a substantial adverse effect. The simple fact that she was signed off work - in the context of the content of those records - is not sufficient. Those records suggest that the GP has signed the claimant off work because of an ongoing dispute, not because of any reporting by the claimant of symptoms that might amount to a substantial adverse effect on the claimant's day to day activities. The claimant's statement (on which I place limited weight in any event) does not focus on the adverse effect of any work related stress - it focusses on the claimed impairment of depression. There is insufficient evidence before me to find on the balance of probabilities that any work related stress, separate from any depression/addiction-related impairment had the required substantial adverse effect, nor that it was long term.
11. The tribunal therefore has no jurisdiction to consider the claims made under s 15 and the claim for failure to make reasonable adjustments.

Employment Judge Buckley

29 April 2019