



EMPLOYMENT TRIBUNALS

CLAIMANT **BETWEEN** **RESPONDENT**
MR J REID **V** **BRITISH TELECOMMUNICATIONS PLC**

HELD AT: **CARDIFF** **ON:** **19 APRIL 2018**

BEFORE: **EMPLOYMENT JUDGE: N W BEARD (SITTING ALONE)**

Representation:

For the claimant: In Person

For the Respondent: Ms Bradley (Solicitor)

PRELIMINARY HEARING JUDGMENT

The Claimant is not disabled within the meaning of the Equality Act 2010.

REASONS

The Law

1. The definition of disability set out in section 6 Equality Act 2010 provides that:
(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.

(6) Schedule 1 (disability: supplementary provision) has effect.
2. Schedule 1 Equality Act 2010 deals with some aspects of disability, indicating in particular that the effect of an impairment is likely to be long-term where it has lasted or is likely to last 12 months. Previous decisions in the appeal courts have indicated that when deciding if the effect of an impairment is substantial that decisions should be based on whether the effects are more than merely trivial or minor although the word minor was a gloss that had been placed on the phrase in **Anwar v Tower Hamlets College UKEAT [2010]** it is now part of the statutory language in the 2010 Act.

3. The Equality Act Guidance on matters to be taken into account in determining the question of disability states (para D2) that 'it is not possible to provide an exhaustive list of day to day activities', but it gives a list, in an appendix, of illustrative examples of when it would and would not be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day-to-day activities, I have those lists in mind. It is important in dealing with the issue of disability to consider what the claimant cannot do rather than to consider his abilities. I do not accept the respondent's submission in this regard that this means that I must be considering what the claimant is incapable of doing and not what he finds difficult to do. If that submission were correct and taken to its extreme it would mean the person missing a lower limb but could move about effectively for a time by hopping would not be disabled. In the latter example what a person cannot do is to walk or to run, what is to be examined is an inability not an ability to do something.
4. The claimant referred to **Hood v London Club Management [2001] IRLR 719** as supporting his argument that his impairment amounts to a disability. His argument was that this was a case that dealt with cluster headaches, that the international diagnostic classification places his impairment in the same category and therefore his condition was automatically a disability. There are two difficulties with that submission: the first is that simply having an impairment (except in deemed disabilities) is not sufficient to establish disability; a substantial effect on day to day activities must also be established; the second is that the case is one where disability was conceded and the EAT were concerned with the discrimination aspects of the claim and so it does not establish a precedent that the claimant's impairment amounts to a disability.
5. I am required to decide if the claimant was a disabled person at the relevant time. This requires me to consider the claimant's lack of ability at that time, or if episodic, whether he was intermittently suffering that lack of ability in a way which could be described as substantial.

The Relevant Facts

6. The claimant has been diagnosed with paroxysmal hemicrania in 2012 which was described in 2012 as an "unusual headache disorder". The only information as to symptoms amongst the medical documents is a reference to right sided headaches "without vomiting or any red flag features" this followed an examination on the 8 November 2017. The same report sets out that there was no loss of consciousness nor any vision change, but does describe the headaches as persistent.
7. The treatment of the claimant was described as the intermittent prescription of Indomethacin. The record of prescription shows that the claimant had prescriptions in 2012 and 2013 but show no record of any prescribed medication after that date and before the claimant's dismissal in August 2017. There is reference to the claimant obtaining Topiramate online at some point when he was working for the respondent in the eighteen months prior to August 2017, however no specific dates are provided.

8. There are medication descriptors attached to the letter of the claimant's GP dated 27 February 2017. One of the "undesirable effects" set out for Indomethacin is confusion, however it is set amongst a number of other possible side effects. The claimant was prescribed this for a considerable time and there is nothing in the medical records which show that the claimant was at any stage suffering from confusion when taking the medication. Topiramate does have the potential side effect of memory loss.
9. The claimant sets out the following matters as impacts upon his day to day activities:
 - 9.1. Sensitivity to light and drooping eyelids making the use of a computer difficult;
 - 9.2. For the same reason difficulty in watching TV he would have to get up for five minutes to have a break from the screen. However, when asked by the respondent in cross examination, he said that this was the situation after his dismissal:
 - 9.3. He refers to headaches "having become so painful that he cannot sleep through the night, however in cross examination he accepted that this is since his employment has come to an end;
 - 9.4. Similarly, the claimant describes difficulty in getting dressed which exacerbates headaches. However once again in his evidence he indicated that this was a reference to the period after his employment had ended.

Analysis

10. In my judgement the claimant has not demonstrated that he was disabled at the relevant time. His evidence relates to his condition after he had been dismissed. I cannot say that at the relevant time there was any, let alone any substantial, adverse impact on his day to day activities. The medical evidence supports the existence of a condition but the intermittent provision of medication does not indicate that the claimant would suffer symptoms on a continuous basis. Of course, being episodic does not prevent the condition being a disability, if there is a substantial impact on day to day activities, as is demonstrated by conditions such as epilepsy which can amount to disability. However, again, whilst the claimant gives evidence of difficulties now, he does not give any evidence that these difficulties had happened earlier on other occasions in an episodic way. The claimant has not provided evidence which would show that these impacts had occurred previously.

Employment Judge Beard

ORDER SENT TO THE PARTIES ON

.....12 May 2018.....

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS