



EMPLOYMENT TRIBUNALS

Claimant: Ms R Keighley

Respondent: The Edinburgh Woollen Mill Limited

HELD AT: Leeds

ON: 7 May 2019

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Mr R Turner, Friend

Respondent: Miss L Quigley, Counsel

JUDGMENT

The claimant has a disability within the meaning of the Equality Act 2010.

REASONS

Introduction

1. The claimant was employed by the respondent from on or about 14 July 2014 until 19 May 2018.

Issue

2. The sole issue in this case is whether the claimant was a disabled person within the meaning of the Equality Act 2010 (EA). The respondent accepts that the claimant has a physical impairment which is long term so that the Tribunal concentrates in this decision on whether that impairment has a substantial effect on the claimant's ability to carry out normal day to day activities.

The Law

3. The principle definition of disability can be found in Section 6(1) EA as follows:-

“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”.

4. Miss Quigley has also referred the Tribunal to paragraphs B1 to 3, B7 and D3 of the Guidance on matters to be taken into account in determining questions relating to the definition of disability. These are well known but of particular importance is the meaning of substantial effect, being that it is more than minor or trivial (B1) and what may in general include day to day activities, which are listed in D3.

Facts

5. The Tribunal having carefully reviewed all the evidence, both oral and documentary (that was available to it) finds the following facts, proved on the balance of probabilities:

5.1 The claimant was diagnosed with fibromyalgia in or about January 2015. This affected the claimant’s quality of life, her main problems being pain, sleep and tiredness.

5.2 At work the claimant experienced issues with the cold, lifting and stress and also getting up for work. She was on strong medication known as gabapentin. She told the Tribunal that she has tried to be positive about her illness and to keep out of stressful situations.

5.3 She was advised by her GP to apply for a Personal Independence Payment (PIP) in or about September 2016. For fiscal purposes the Department of Work and Pensions carried out an assessment on the claimant and this resulted in an award.

5.4 The findings of PIP, we find as a matter of fact, do not necessarily coincide with what the claimant told us today. The claimant told us that to cut down her pain she tries to relax and breathe deeply. Pain can occur in either the claimant’s arms or legs or all over her body and then she tries to lie down or have a hot bath or read.

5.5 There are things that the claimant could do before her diagnosis, but what she says she cannot do now, such as lifting a pan, roasting potatoes, using a tin opener, vacuuming, ironing, making the bed or driving. She says her social life has become curtailed.

5.6 Her worst moments occur when she has what is known as a “flare up”, which means complete pain, inability to stand or sit and when her head feels like it is being blown up. She says these flare ups occur once every two to three months.

5.7 She also has days when she struggles, when standing or sitting and when her body numbs. This occurs once every two or three weeks.

5.8 We have the benefit of her general practitioner’s notes. These are brief, as one would expect, but they confirm the original diagnosis, some issues which occurred at work, including stress, pain occurrence and treatment.

5.9 Two former colleagues Miss Connolly and Miss O’Mahony gave evidence of their perception of the claimant’s condition and general behaviour.

6. Determination of the Issues (after listening to the factual and legal submissions made by and on behalf of the respective parties):

6.1 Miss Quigley lays particular stress on the PIP documentation and also called the two witnesses from the claimant’s place of work. So far as the PIP documentation is concerned the Tribunal accepts that this is an important document in its own context but that context does not directly appertain to Section 6(1) EA.

6.2 Similarly the evidence of Miss Connolly and Miss O’Mahony is given by employees of the respondent which cannot be said in the context of the particular issue at large here to be objective.

6.3 The Tribunal has on the other hand had to evaluate the evidence given by the claimant and that provided in the doctor’s notes.

6.4 The doctor’s notes clearly but very briefly mention the claimant’s work experiences but it is not that those are fundamental. It is the day to day activities on which only the claimant can give evidence and she has done so.

6.5 She has described the effect on her day to day activities and her ability to carry out those activities which are clearly adverse.

6.6 The effect is neither minor nor trivial and by definition must be substantial.

6.7 In all the circumstances the Tribunal finds that the claimant is a disabled person within the meaning of EA.

Employment Judge Shulman

Dated: 27 May 2019