



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**  
Ms N Boyland

**AND**

**Respondent**  
Telefizz Limited

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT** Plymouth

**ON**

5 July 2019

**EMPLOYMENT JUDGE** N J Roper

## **Representation**

**For the Claimant:** In person

**For the Respondent:** Mr R Johns of Counsel

## **JUDGMENT**

**The Judgment of the Tribunal is that the Claimant was a disabled person at all times material to this claim.**

## **RESERVED REASONS**

1. This is the judgment following a preliminary hearing to determine whether the claimant was a disabled person at the material times.
2. I have heard from the claimant. For the respondent I have heard from Mr Johns of Counsel who questioned the claimant and who made submissions on behalf of the respondent.
3. There was a degree of conflict on the evidence. I have heard the claimant give her evidence and have observed her demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The claimant worked as a virtual receptionist for the respondent at a call centre from 26 June 2018 until 6 August 2018. On joining the claimant disclosed that she was on current medication which was citalopram for depression; omeprazole for acid reflux; and eyedrops for recurring eye conditions. The claimant did not assert that she was a disabled person, but says that she was merely asked to discuss what medication she was taking and what effect it might have. During her short period of employment she was absent from work on seven occasions. The respondent asserts that it dismissed the claimant because she failed to notify them of her absences in accordance with their required procedures. The claimant asserts that she was dismissed because of three impairments which each amount to a disability. She has issued these proceedings claiming harassment on the ground of disability; discrimination arising from her disability; and in respect of an alleged failure by the respondent to make reasonable adjustments.
5. The first impairment upon which the claimant relies is that of depression and anxiety. The second impairment upon which the claimant relies is Irritable Bowel Syndrome (IBS). The third impairment upon which the claimant relies is an eye condition which is a combination of uveitis, Possner Schlossman syndrome and dry eyes. The claimant also asserts that these impairments have a joint effect which together amount to a disability: for instance, increased depression and anxiety triggers the IBS symptoms.
6. In each case the respondent concedes that the claimant has the relevant impairment, and that it was long-term. The respondent disputes that any of these impairments gave rise to a substantial adverse effect on the claimant's normal day-to-day activities.
7. The first impairment is a mental impairment of depression and anxiety. It is clear from the claimant's GP notes that the claimant has a "background history of anxiety" and in March 2018 was diagnosed propranolol because of her panic attacks. In May 2018 the GP notes record depression and anxiety and in June 2018 record "long-standing anxiety low mood" and the fact that citalopram, an antidepressant, had been diagnosed.
8. The claimant has given evidence and adduced a statement on the impact of her impairments on her normal day-to-day activities (her Impact Statement). This describes that she has suffered from depression and anxiety for approximately 14 years, and that her depression causes low mood and affects her in several ways. She has low motivation particularly with regard to socialising. She has reduced energy and feels isolated with low self-worth. She suffers mood swings and becomes low and sad on a regular basis, and she becomes forgetful with short-term memory difficulties. This depression triggers stress which in turn exacerbates her IBS. She has difficulty in sleeping. She also suffers symptoms of anxiety which make her sensitive in stressful and pressurised situations and renders her unable to communicate effectively. She avoids most social situations and finds it difficult to talk to people face-to-face.
9. The second impairment is a physical impairment namely IBS. The claimant states that she has suffered from IBS for at least six years, and that this is triggered by certain food and drink, but also stress and anxiety. The IBS limits the foods which the claimant is able to eat and she suffers on a daily basis with diarrhoea. She has tried prescription and non-prescription medication as well as specialist diets, but the IBS causes daily fatigue and makes her feel drowsy and uncomfortable. It also gives rise to bloating and abdominal

- pain. The GP notes record abdominal pain from 2015 and symptoms of diarrhoea requiring rehydration medication.
10. The third impairment is a combination of eye conditions, namely uveitis, Possner Schlossman syndrome and dry eyes. The GP notes record that the claimant was under investigation in 2017 for “bilateral anterior uveitis and Possner Schlossman syndrome which causes photophobia, blurred vision and pain.” The claimant has to take a steroid based course of treatment, which in turn cause dry eyes. The claimant gave evidence today wearing sunglasses in order to reduce the effect of the lights in the tribunal building, which was consistent with her concerns in this regard. The claimant’s vision is affected and she has lost clarity in her peripheral vision. She occasionally suffers from “floaters” in her vision and on a daily basis she is unable to read, watch TV or use a computer for more than about 20 minutes before her vision becomes too blurred or unfocused.
  11. Having established the above facts, I now apply the law.
  12. The claimant alleges discrimination because of the claimant’s disability under the provisions of the Equality Act 2010 (“the EqA”). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges discrimination arising from a disability, failure by the respondent to comply with its duty to make adjustments, and harassment.
  13. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if she has a physical or mental impairment that has a substantial and long-term adverse effect on P’s ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
  14. The respondent has conceded that for each of the three impairments, the claimant has suffered from that impairment for more than 12 months, and the impairment is therefore long-term. However, the respondent disputes that the claimant suffered any substantial adverse effect on any of her day-to-day activities for each of the three impairments. The respondent asserts that in support of this position the claimant did not declare that she was disabled at the commencement of her employment with the respondent, and did not explain at that stage the full impact of these various conditions. The claimant in reply states that she was only ever asked to confirm what medication she was on and what effect this would have on her so that the respondent could consider, for example, whether she was safe to work alone. The respondent also suggests that the claimant never thought of herself as being disabled, for instance by refusing to acknowledge that she was disabled on her originating application to this Tribunal. Given that this originating application seeks redress for disability discrimination, I do not find this to be a compelling argument.
  15. I have to determine whether the claimant is a disabled person by applying the relevant statutory test. It is clear from the medical evidence, the claimant’s own evidence and Impact Statement, and the concession by the respondent, that for each of the three impairments the claimant suffers from a mental or physical impairment and that it is long-term, in the sense that it has continued for at least 12 months and is continuing. The only point in issue in each case therefore is the extent to which any one or more of the impairments has had a substantial adverse effect on the claimant’s normal day-to-day activities. Substantial in this context means more than minor or trivial.
  16. I found the claimant to have been a credible and sensible witness when questioned on her Impact Statement. With regard to the impairment of depression and anxiety, as noted in paragraph 8 above the claimant’s normal day-to-day activities including communication, sleeping, and memory are affected. They are affected in a way which is more than minor or trivial. I therefore find that the claimant was a disabled person by reason of depression and anxiety at all times material to this claim.
  17. With regard to the second impairment namely IBS, as noted in paragraph 9 above the client suffers on a daily basis with diarrhoea, fatigue, feeling drowsy, and suffering pain. Her normal day-to-day activities are therefore affected in a way which is more than minor

- or trivial. I therefore find that the claimant was a disabled person by reason of IBS at all times material to this claim.
18. With regard to the third impairment of the combined eye conditions, as noted in paragraph 10 above the client suffers from blurred vision and pain, photophobia, lost clarity in peripheral vision, and an inability to watch TV or use a computer for more than about 20 minutes. The adverse effect on her normal day-to-day activities is therefore more than minor or trivial. I also find that the claimant was a disabled person by reason of uveitis and Possner Schlossman syndrome, and dry eyes at all times material to this claim.
  19. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 10; a concise identification of the relevant law is at paragraphs 12 and 13; how that law has been applied to those findings in order to decide the issues is at paragraphs 14 to 18.

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Employment Judge N J Roper

Dated                      5 July 2019