



EMPLOYMENT TRIBUNALS

Claimant: Miss K Riley

Respondent: Fence gate Lodge Limited

Heard at: Manchester

On: 13 August 2019

Before: Employment Judge Hoey

REPRESENTATION:

For the claimant: Miss Corrie (litigation executive)

For the respondent: Mr Menon (counsel)

JUDGMENT having been sent to the parties on 30 August 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. This case called as a Preliminary Hearing to determine whether or not the claimant was a disabled person in terms of Section 6 of the Equality Act 2010. Both parties were ably represented and a bundle was presented to the Tribunal of 118 pages. The Tribunal heard evidence from the claimant and her mother who were cross examined and had provided witness statements. The Tribunal also had the benefit of oral submissions from both agents upon conclusion of the evidence.
2. Both parties worked together to achieve the overriding objective of dealing with the issues that arose justly and fairly.
3. Having heard evidence and adjourned to deliberate, I issued an oral judgement and then gave directions as to the future progress of the case.

4. The oral judgment gave the parties a summary of the reasons why I had preferred the submissions of the claimant and found the claimant to be a disabled person. These reasons provide more detail as to why I so found.

Issues

5. The issues to be determined were agreed between the parties, namely whether or not the claimant satisfied the legal definition of a disabled person set out at Section 6 of the Equality Act 2010 for the period 19 to 27 November 2018.

Findings of fact

6. I make the following findings of fact having heard the evidence of the claimant and her mother and having been referred to the papers within the bundle. I make these findings on the balance of probability, namely what I find to be more likely than not to be the case. Reference to page numbers refer to the bundle.

7. The claimant was diagnosed with depression in May 2003. At page 1 the claimant's doctor says the medical position had not improved as at 12 November 2013. That letter confirmed that the claimant's depression had continued to have the same effect ten years later.

8. At page 2, on 10 May 2019 the claimant's registered GP confirms a diagnosis of depression and states that the symptoms persisted since 2016. That letter noted that the claimant had taken medication and that the doctor's opinion was that the position and the effects were likely to continue for at least a further twelve months in the future.

9. The symptoms the claimant experienced in the 12 months up to November 2018 included: she struggled to eat, she felt isolated from society, she did not wish to socialise, she struggled to wash herself and get up in the morning, she had low mood, she had confusion, memory problems, fatigue, anxiety and insomnia.

10. Her mother would often help her get up in the morning and a friend would help her too. The claimant also suffered significant paranoia.

11. This was the impact of her mental impairment which had continued for at least twelve months prior to the relevant date in November 2018 and persisted in and beyond November 2018. These effects were the effects when the claimant had taken her medication. Had the claimant not taken her medication the impact upon her ability to carry out day to day activities would have been worse.

12. The claimant did attend work for the period in question with the respondent but she still struggled to get up in the morning and experienced the impacts set out above.

13. The claimant's symptoms worsened from around November 2018 and she suffered physical manifestations of the mental impairment, namely for example a panic attack where she collapsed and was found by her mother on the floor.

14. The claimant did not attend the GP at the relevant time as she had the support of her mother who was a professional in this area. She relied upon her mother to help her. The claimant's view was that she did not require further medication or other input having stockpiled medication from previous visits to the GP. The claimant was also assessed as a disabled person for the purposes of benefits.

15. The impact of her mental impairment (as set out above) had lasted for 12 months as at November 2018 and was likely to last for at least 12 months thereafter.

The law

16. Section 6 of the Equality Act 2010 states 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...

(1) A reference to a disabled person is a reference to a person who has a disability.

(2) In relation to the protected characteristic of disability –

a. A reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

b. A reference to persons who share a protected characteristic is a reference to persons who have the same disability

17. Paragraph 5 of Schedule 1 to the Act states:

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if:

(a) measures are being taken to correct it, and

(b) but for that, it would be likely to have that effect.

(2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid.

18. Paragraph 12 of Schedule 1 of the Act provides that when determining whether a person is disabled, the Tribunal “must take account of such guidance as it thinks is relevant.” The “Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability” (May 2011) (the “Guidance”) was issued by the Secretary of State pursuant to section 6(5).

19. In **Goodwin v Patent Office** 1999 ICR 302, Morison J (President), provided some guidance on the proper approach for the Tribunal to adopt when

applying the provisions of the (then) Disability Discrimination Act 1995. Morison J held that the following four questions should be answered (which apply as much today for the Equality Act 2010 as it did then), in order:

- a. Did the claimant have a mental or physical impairment? (the 'impairment condition');
- b. Did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition');
- c. Was the adverse condition substantial? (the 'substantial condition');
- d. And was the adverse condition long term? (the 'long-term condition').

Submissions

20. The claimant's position was that the statutory tests had been satisfied given the evidence. The claimant had depression which had varying symptoms but which clearly had a long term adverse and substantial effect upon the claimant's ability to carry out day to day activities.
21. I was asked to make a decision based on the evidence that had been led. The absence of medical evidence as such does not detract from the legal test and the evidence which was led. There was clear medical evidence presented to the Tribunal that shows the relevant provisions had been established.
22. The respondent argued that mental impairments are unique in that they are largely based on subjective symptoms which cannot be identified by physical examination and rely almost entirely on the claimant's evidence.
23. It was argued that the absence of medical evidence is important and care is needed to assess the claimant's and her mother's evidence. The respondent did concede that if I were to accept the evidence that was led, the definition would be satisfied but that I should assess it carefully and critically bearing in mind the absence of specific medical evidence.
24. It was noted that the impairment may have ceased to have a substantial adverse effect as the claimant attended work and I was asked to carefully assess the evidence in this regard.

Discussion and decision

25. I carefully considered the evidence that was led and the documentary evidence to which the Tribunal was directed. I have also taken into account the respondent's carefully made submissions in connection with this matter.
26. I found the claimant and her mother both to be credible and reliable witnesses who gave evidence in an honest and straightforward fashion.

Mental impairment

27. I have found that the claimant did suffer from a mental impairment at the relevant time. The claimant had suffered from depression. This had been medically diagnosed. I accept the claimant's explanation as to why she did not seek further or specialist GP input even although her condition worsened at the relevant time. The claimant received substantial support from her mother and from her friends. She chose not to seek medical input at that time which was a matter for her. It was clear that she was suffering from a mental impairment throughout the relevant period.

Adverse effect

28. In looking at this question I look at what the claimant can do but also what the claimant struggles doing or does with difficulty. I also make my decision (as I do for each of the elements of the definition) on the basis as to the claimant's position at the time of the alleged discriminatory act and not on the position now.

29. I find that the impairment did impact on her ability to carry out normal day to day activities. There was very clear evidence presented by the claimant supported by her mother that for the full twelve months before the relevant period the claimant struggled with normal day to day activities: she struggled sleeping, she struggled eating, she struggled socialising.

30. I accept the evidence of the claimant that had she not taken the medication the position would have worsened but even ignoring that evidence the impairment had a very clear and real impact upon her ability to carry out day to day activities.

31. The Guidance refers to general day to day activities such as getting washed and dressed and taking part in social activities.

32. Her mental impairment had affected her ability to carry out the normal day to day activities set out in the findings of fact above 12 months before November 2018 and beyond.

Substantial

33. The next question is whether the impact the impairment had upon her day to day activities was substantial, that is, more than minor or trivial. I have concluded that it was. The claimant's day to day activities were substantially and significantly affected and in a debilitating way at the relevant time.

34. The Guidance notes that this condition reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. I also note that the Equality and Human Rights Commission Employment Code at Appendix 1 states that in determining this part of the definition, account should be taken of where a person avoid doing things which arises because of a loss of energy and motivation.

35. I accept in full the claimant's submissions around the difficulties the claimant encountered in connection with her sleeping, shopping, socialising, getting up and her paranoia resulted in the claimant's impairment having a substantial effect upon her ability to carry out day to day activities.

36. The fact the claimant attended work did not mean the difficulties the claimant encountered during the course of each day were not present. I must look and assess not just what the claimant can do but what she cannot do or can only do with difficulty in applying the statutory test.

37. The difficulties the claimant encountered had a serious detrimental effect upon her life on a continuing basis. I was careful to assess the evidence critically and take account of the absence of direct medical evidence. I was satisfied the mental impairment had a substantial effect for the duration of the relevant period.

Long term

38. Schedule 1, part 1 paragraph 2(1) defines "long term" as arising where the effect of the impairment has lasted for 12 months, is likely to last for 12 months or likely to last for the rest of the person's life. The effects are to be treated as continuing where the impairment ceases to have a substantial adverse effect if it is likely to recur (paragraph 2(2)).

39. The impact of the claimant's impairment had lasted 12 months by the relevant date. It has in fact lasted much longer. The first limb of the provision is satisfied.

40. At the relevant time it is also likely that the impact would have continued for a further twelve months (seen by the GP letter at page 2) where the GP says that it is "highly likely the problems will be ongoing for more than twelve months going forward". There was no evidence to suggest the severe impact the impairment had would have reduced to any extent. The second limb of the above paragraph is also satisfied.

Summary

41. As at November 2018 the claimant had a mental impairment which had lasted for twelve months and was likely to last for twelve months which had a substantial and long term adverse effect on the claimant's abilities to carry out day to day activities.

42. The respondent's agent accepted that were I to accept the claimant's evidence then the claimant would satisfy the conditions set out in Section 6 of the Act. I have accepted the claimant's evidence. I agree that the claimant has satisfied the statutory conditions from the evidence that was presented and in light of the statutory wording and legal tests which I have applied.

43. In short, the claimant was a disabled person at the relevant time for the purposes of Section 6 of the Equality Act 2010.

44. Separate orders have been issued as to the progress of the claim.

Employment Judge Hoey

Date: 12 September 2019

REASONS SENT TO THE PARTIES ON
30 September 2019

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FOR THE TRIBUNAL OFFICE