



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Fenwick

**Respondent:** Humber NHS Foundation Trust

**HELD AT:** Hull

**ON:** 15 April 2019

**BEFORE:** Employment Judge Shulman

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr J Jenkins, Counsel

## JUDGMENT

1. The Claimant does not have a disability within the meaning of s6(1) Equality Act 2010.
2. The claim of Unauthorised Deduction of Wages is adjourned until 4 June 2019 at 10.00am at Hull Employment Tribunal.

## REASONS

### 1. Introduction

This is a Preliminary Hearing to decide whether or not the Claimant has a disability within the meaning of Section 6(1) of the Equality Act 2010 (EA).

### 2. Issues

The issues in this case are:

- 2.1 was the Claimant's stress an impairment within the meaning of EA?

2.2 was the impairment, if indeed it exists, one which has a long term adverse effect on the Claimant's ability to carry out normal day to day activities?

### **The Law**

3. The Tribunal has had regard to Section 6(1) EA which defines disability as follows:

“A person (P) has a disability if –

- (a) He 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. The question of what is long term is dealt with in paragraph 2(1) of Part 1 of Schedule 1 to the EA.

5. The Tribunal was also referred by Mr Jenkins to the case of Herry -v- Dudley MBC [2017] ICR 610 (Herry), which in turn referred to J -v- DLA Piper UK [2010] ICR 1052 (J).

### **The Facts**

6. The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

6.1 The Claimant is employed by the Respondent as a Community Mental Health Nurse.

6.2 Up to May 2015 the Claimant worked in In-Patients in a mental health setting.

6.3 The Claimant was subject to a great deal of stress at work and in particular leading up to May 2015. It is not necessary for the Tribunal to go into the details of those events. Suffice it to say that the Claimant went off sick from May 2015 until November 2015 for what was described in his sick note as “stress at work”.

6.4 The Claimant returned to work in a different capacity thereafter and between November 2015 and December 2017. Although the Claimant “was stressed” he did not seek medical advice in that period. He has never been on medication but he did receive counselling.

6.5 The Claimant was unfortunately ill again with a stress related illness from December 2017 until May 2018 and although the sick notes we have do not spell out that that period of stress was work related, although the Claimant

had other concerns, particularly his father's health (which had been of concern to him since 2012), the main issues causing him stress he accepts were work related around grievances and supervision issues.

6.6 Happily when the Claimant returned to work he had no repetition of stress related illness, although he continued to be stressed.

6.7 We had been provided with the Claimant's medical records but no medical report.

6.8 There was some non-medical evidence of the Claimant's stress lasting for a period of three years.

### **Determination of the Issues**

7. Having listened to the factual and legal submissions made by and on behalf of the Claimant and the Respondent we determine the issues as follows:

7.1 We need to refer to the case of Herry to which we have referred above. That case in turn, at paragraph 54, refers to the judgment of Underhill P in J . Underhill P said at paragraph 42:

“42 The first point concerns the legitimacy and principle of the kind of distinction made by the Tribunal ... between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as “clinical depression” and “is unquestionably an impairment within the meaning of the Act”. The second is not characterised as medical condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – “adverse life events”.

8. So, was the Claimant's stress a mental impairment? Having regard to the words of Underhill P in J, his two states of affairs are:

8.1.1 a mental condition, or

8.1.2. a reaction to adverse circumstances (such as problems at work) or adverse life events.

8.2 The onus is on the Claimant to show that he has a medical condition. As we have said there is no medical report and we must, in coming to our conclusions, rely on the evidence available, namely, the Claimant's oral evidence, his GP's medical records and sick notes and the evidence of three years of suffering by the Claimant. The latter is unfortunately of a non-medical nature and insufficient for the purposes of our evidential evaluation.

8.3 It seems to the Tribunal that the Claimant substantially agrees that his illnesses were due to events at work although not exclusively.

8.4 There is no evidence of a mental condition and therefore the Claimant's stress was and appears to be a reaction to adverse circumstances, in this case substantially but not exclusively what went on at work.

8.5 In the circumstances we are bound to find that the Claimant does not have a disability within the meaning of Section 6(1) EA and it is therefore not necessary for us to adjudicate on the second issue which we have identified, namely, the long term adverse effect on the Claimant's ability to carry out normal day to day activities, nor indeed on the other component parts of the definition of disability contained in Section 6(1) EA.

8.6 We realise that the finding of the Tribunal will be a serious disappointment for the Claimant, particularly as he has given his evidence sincerely and honestly, and it puts an end to his disability discrimination claims.

8.7 As we understand it there remains an unauthorised deduction of wages claim. This is adjourned until 10 am on 4 June 2019 at Hull Employment Tribunal. This claim is listed for two hours.

Employment Judge Shulman

Date: 23 April 2019