



EMPLOYMENT TRIBUNALS

Claimant: Mr L Newman

Respondent: St Vincent's Community Support Limited

Heard at: Cardiff

On: 31 January 2020

Before: Employment Judge S Jenkins

Representation

Claimant: In person

Respondent: Mrs M James (Director)

JUDGMENT having been sent to the parties on 3 February 2020, 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

Background

1. The hearing was listed in order for me to consider whether the Claimant was disabled for the purposes of the Equality Act 2010 ("Act"), within the meaning of Section 6 and Schedule 1 of that Act. I heard evidence from the Claimant himself, and from Mr Kenneth James on behalf of the Respondent, and I considered the documents in the preliminary hearing bundle.

Issues and law

2. I was conscious that Section 6(1) of the Act notes that someone would be categorised as disabled for the purposes of the Act if they had, for the purposes of this case, a physical impairment, which had a substantial and long-term adverse effect on their ability to carry out day-to-day activities.
3. With regard to the issue of "long term", this required me to consider whether the condition had lasted for at least 12 months, and with regard to the issue of "substantial", I noted that section 212(1) of the Act specifies that that means more than minor or trivial. In that regard, I took into account the Secretary of State's guidance on matters to be taken into account in determining questions relating to the definition of disability and I assessed the factors set out within that.

4. I also noted that I needed to assess the question of disability from the perspective of the Claimant's unmedicated state, i.e. disregarding the impact of medication on the management of the Claimant's activities.

Findings

5. With regard to my findings, which I found on the balance of probabilities wherever there was any dispute, I could see that the Claimant suffered an accident in 2007, which impacted on his back and which led to several operations on his back and his knee. It also led to a lengthy course of treatment, by way of injections and physiotherapy and by way of medication, which is ongoing.
6. The evidence of medical treatment before me took me up to approximately 2016, and it seems that after that there has been little, if any, medical intervention, the indications being that there is no further treatment available for the Claimant, and it is therefore a matter of pain management and exercise.
7. In terms of the Claimant's activities, the Claimant confirmed that he attempts to walk up to a mile each day as part of his rehabilitation processes, but that he is not always able to do that, and that there were, and are, times when he can walk for no more than 100 metres. The Claimant is unable to sit for long periods, and in particular cannot do so if his chair does not have a firm and high back. The Claimant is unable to bend, and uses a small, high trolley when doing supermarket shopping, and has a need to keep his bags of shopping relatively light.
8. In terms of medication, the Claimant regularly takes Zapain, Gabapentin, and Paracetamol for the purposes of managing his physical condition and did so in the period relevant to his claim (September 2017 to November 2018). He takes Gabapentin daily, and takes Zapain over two to three-day periods, stopping taking it for three-day periods to allow his liver to recover, before taking it again. He takes Paracetamol regularly. The Claimant's taking of medication was, and is, regular and not directly linked to particular flare-ups of the impact of his condition upon him.
9. Contrary evidence was put before me, from Mr James and in one other written witness statement, which referred to witnesses having seen the Claimant jogging in 2019, and also having seen the Claimant carrying a young child, presumed to have been his niece, in approximately July 2019. The Claimant denied jogging at any time, but confirmed that he does go walking with his mother whilst she is jogging. He also directly denied carrying his young niece in the middle of 2019. In the event, I did not need to resolve those matters, because my focus was on the Claimant's condition between September 2017, when he started work for the Respondent, and November 2018, when he finished. Therefore, matters which are alleged to have taken place in 2019 were not relevant to my deliberations.

Conclusions

10. I considered closely the Secretary of State's guidance on the definition of disability, and noted the appendix to that guidance, which sets out lists of

non-exhaustive factors, one specifying that if they applied it would be reasonable to consider that the person had had a substantial adverse effect on his day-to-day activities, and one setting out factors which would demonstrate that it would not be reasonable to consider that condition had a substantial adverse effect. I noted that the lists were “non-exhaustive”, and therefore that I could take into account other factors as well.

11. In terms of matters relating to physical mobility, the appendix notes that it will be reasonable to regard the condition as having the required substantial adverse effect if it involves an inability to walk for more than a short distance without difficulty, or if it involves difficulty in picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand.
12. The appendix also indicates that it would not be reasonable to consider that the condition had the required substantial adverse effect if it involves experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about a mile, or an inability to move heavy objects without assistance, such as a large suitcase.
13. In my view, the impact of the Claimant's condition on him depends on the severity of his condition from day to day. There were, at times, circumstances where the impact of his condition would point to the conclusion of a substantial adverse effect. However, there were also times where the Claimant would seem to have been in a position where it would not be reasonable to consider that his condition had the required adverse effect. In itself, the fact that the Claimant suffered, from time to time, from impacts which fell within the examples from the guidance which pointed to disability would lead me to a conclusion that the Claimant was someone who fell within the definition of disability within the Act. However, I was also conscious that I needed to consider the Claimant's position without medication.
14. No medical evidence had been put before me on the impact that the withdrawal of medication would have had on the Claimant's condition. I noted however, that the Claimant had been regularly taking prescription painkillers to manage his pain condition over a considerable period of time. In my view, and considering matters as best I could, I considered that, if the Claimant was not taking his pain medication, it would be likely that he would be suffering a significant adverse effect on his ability to carry out day-to-day activities on a very regular basis, such that the definition of disability within the Act was made out. I therefore concluded that the Claimant was disabled for the purposes of the Act at the material times, such that his claim of disability discrimination can continue.

Case No: 1600280/2019

Employment Judge S Jenkins

Date: 13 February 2020

REASONS SENT TO THE PARTIES ON 14 February 2020

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FOR THE TRIBUNAL OFFICE