



EMPLOYMENT TRIBUNALS

Claimant: Mr Spencer Grennan

Respondent: Commissioners for Her Majesty's Revenue and Customs

Heard at: Cardiff **On:** 20 December 2019

Before: Employment Judge A Frazer (sitting alone)

Representation:

Claimant:
In person

Respondent:
Mr O James
(Counsel)

JUDGMENT having been sent to the parties on 21 December 2019 and reasons having been requested by the parties in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. This is a claim for disability discrimination. The Claimant lodged a claim for unfair dismissal but that has been struck out because he did not have the requisite two years' qualifying service. The claims are a failure to make reasonable adjustments, disability related discrimination and direct discrimination arising out of his dismissal for gross misconduct by the Respondent on 30 April 2018. That is the effective date of termination.
2. The claim form at paragraph 8.2 says that on 7 June 2018 the Claimant was diagnosed with autistic spectrum condition and he complained that he took medical evidence to his appeal hearing but that this was disregarded. He

notified ACAS on 25 July 2018. By that time he had 3 months less 4 days to lodge his notification and a certificate was issued on 25 August 2018. He ought to have lodged his claim by 29 August 2018. He did not lodge it until 16 May 2019 and therefore his claim was presented some 8 months outside the statutory time limit. All of that is not in dispute, and so the only issue before the Tribunal this morning was whether or not it was just and equitable to extend time for the Claimant to present his claims for disability discrimination.

3. I have regard to ***Abertawe Bro Morgannwg University Local Health Board -v- Morgan [2018] EWCA Civ 640***. This holds that the lengths and reasons for the delay are relevant factors (paragraph 19) and also the Tribunal should take into account whether the Respondent has been prejudiced. The Tribunal's discretion is described as 'broad and unfettered' at paragraph 25. In that case the Court of Appeal did not interfere with a decision of the Tribunal in circumstances where a harassment claim was presented out of time because the Claimant was suffering from depression.
4. I heard evidence from the Claimant this morning and considered a number of documents that he presented. I have made my decision on the basis of the evidence before me and the submissions from both of the parties. The Respondent presented a bundle of documents which extended to 109 pages and I had regard to that. I also had some additional documents from the Claimant which included a report from an Occupational Therapist, Lucy Wells, in relation to the diagnosis of autism and the decision of the Social Entitlement Chamber in relation to the dismissal of his appeal against the decision of the DWP that he should not be allowed to receive Personal Independence Payments.
5. The Claimant was dismissed on 30 April 2018. During the dismissal process he had trade union representation. He was on medication for depression prior to dismissal and the diagnosis is reflected in the OH report dated 9 April 2018. On 8 May Dr Ahmed assessed the Claimant for whether or not he was on the spectrum for autism and found that while he did not fulfil the diagnostic criteria he had strong autistic traits. In May and June 2018 the Claimant consulted Lucy Wells, Occupational Therapist and Martin Connolly, Autism Nurse and on 21 August 2018 Mr Connolly issued a general letter to confirm that the Claimant was autistic. There is also a report from Lucy Wells dated 7 September 2018 which confirms the diagnosis.
6. The Claimant had his appeal meeting on 24 August 2018. He was accompanied by Rhys Delve, Trade Union Representative. He was informed of the appeal decision on 3 September 2018. He awaited the appeal outcome before putting his Employment Tribunal claim in. On 28 September 2018 the Claimant had an assessment by Capita, having decided to make an application for Personal Independence Payments in the

context of wanting to secure some sort of income for himself. On 11 October 2018 he was informed that the decision was not in his favour. He found the experience to have been distressing and appealed against the decision not to award him the benefits. For this he was assisted by SpeakEasy and he wanted to press on with his application to appeal the decision because he wanted to get himself on track and return to a normal life. The Claimant's evidence was that he did not proceed with his Employment Tribunal claim when the PIP process was ongoing because he was unable to cope with more than one task, or one set of proceedings at any one time. He also gave evidence to say that he suffered the loss of his pet dog in December which caused him distress.

7. The Claimant's evidence was that he saw the Disability Law Service in London in June 2018 and it was following on from their advice that he made the Early Conciliation notification to ACAS. They informed him of the 3 month time limit. He said that he spoke to the Citizens' Advice Bureau in September, but they did not feel able to take his claim on. Despite the advice given by Disability Law Service the Claimant did not lodge his claim by the end of August.
8. I did consider that very carefully and it is something that might weigh with a Tribunal in other circumstances, however, I did take into account the Claimant's evidence that he could only deal with one thing at a time. He was waiting for the outcome of the appeal with his former employer, then he had the Social Security process, or the application, and then the appeal process. He had started college but had to drop out because of the lack of income, so it seems as though at this time he was coping with quite a lot in the context of having recently been diagnosed with autism and also depression. He had had the loss of his job and was experiencing financial difficulties and was then pursuing an application for Personal Independence Payments. I have had regard to the letter from Martin Connolly which refers to the Claimant having a 'rigid thinking style' and 'executive function difficulties' which makes it difficult for him to make decisions, prioritise, problem solve and organise his time. There is therefore medical evidence which corroborates the Claimant's evidence about his difficulties in prioritising or being able to cope with only one thing at any one time. The Claimant gave some evidence that in fact these were difficulties he had experienced at school, and his evidence was also to the effect that he has to prioritise one task at any one time to prevent overload.
9. I did consider the length of the delay. This is a long time for a claim to go without being submitted to the Employment Tribunal. I did not hear any evidence from the Respondent as regards prejudice (having regard to the authority I have mentioned that is something that I need to pay attention to). There was an appeal process so I did take into account that there would have been some degree of scrutiny of the Respondent's decision to dismiss.

10. Having weighed all of this carefully and considered my discretion I find that it is just and equitable to extend time owing primarily to the difficulties the Claimant experienced in being able to or focus on one thing at a time and notwithstanding the advice that he had been given about putting his claim in within the three months' time limit. It seems that following on from his dismissal he had wanted to pursue his employment claim because he had sought advice from the Disability Law Service and had put the notification in. He had spoken to the CAB in September. This is not a case of somebody who has deliberately chosen to flout the process. It is instead a case of somebody who has had some considerable difficulties not just with health, but with other circumstances in his life at a particular time and whose impairment, impacted on his ability to be able to put a claim in within the three month time limit or at any time close to that. So, for those reasons time is extended on a just and equitable basis for presentation of the claim for disability discrimination

Employment Judge A Frazer
Dated: 31st January 2020

REASONS SENT TO THE PARTIES ON 4 February 2020

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS