



EMPLOYMENT TRIBUNALS

Between:

Mr L D George
Claimant

and

The Secretary of State for Justice
Respondent

At an Open Attended Preliminary Hearing

Held at: Nottingham

On: Thursday 19 March 2020

Before: Employment Judge J Blackwell (sitting alone)

Representation

For the Claimant: In person

For the Respondent: Mr A Farrer

JUDGMENT

The Claimant is disabled within the meaning of section 6 and schedule 1 of the Equality Act 2010 (the 2010 Act) and has been so disabled since 6 September 2016.

REASONS

1. Mr George represented himself and gave evidence on his own behalf. Mr Farrer ably represented the Secretary of State and prepared a thorough and helpful skeleton argument, for which I am grateful. There was an agreed bundle of documents and references are to page numbers in that bundle.

2. **Introduction**

- 2.1 Firstly, nothing in this decision is to be taken as to deciding whether or not the Secretary of State had actual or constructive knowledge of Mr George's disability.
- 2.2 The issue before me is whether or not Mr George is disabled within the meaning of section 6 and schedule 1 of the 2010 Act. The context is that Mr George was employed as a Band 3 Caterer at HMP Sudbury from August 2012 until he resigned on 2 May 2019. He, along with other staff, had the function of supervising some 50 to 60 prisoners within a kitchen environment. Mr George would prepare food and cook and supervise the prisoners (who would carry out similar functions) and act as mentor for them.

3. **The relevant law**

- 3.1 Mr Farrer has helpfully set out the statutory provisions, in particular section 6 which defines disability as follows:

6 Disability

- (1) *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."*

- 3.2 Mr Farrer then helpfully sets out the relevant guidance, in particular in respect of substantial and long-term and I adopt his paragraphs 2.2 to 2.7 of his skeleton argument.
- 3.3 I am also guided by the decision of the EAT in ***Goodwin v The Patent Office [1999] IRLR beginning at 4.***
- 3.4 The first issue to determine is whether or not Mr George suffers from a mental or physical impairment. In this case it is common ground that it is a mental impairment. It is variously described in his medical records but was diagnosed on 26 February 2018 as "*generalised anxiety disorder*".
- 3.5 The second issue is the one which gives rise to the most difficulty and is where the parties take issue with each other, namely does the mental impairment affect Mr George's ability to carry out normal day to day

activities and, further, is that effect substantial, that is not minor or trivial? Again, I refer to **Goodwin**:

“The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. The focus of the Act is on the things that the person either cannot do or can only do with difficulty rather than on the things that person can do.”

4. I deal firstly with the medical evidence. There is a rather unhelpful summary at page 54 but the significant material is found in the notes themselves.
5. The first relevant entry is at page 64 on 6 September 2016 where Mr George saw Dr Ashok. The conclusion of that meeting with Dr Ashok was that a not fit for work statement was issued and the diagnosis was anxiety/stress at work. It seems that Sertraline was also prescribed.
6. Still on the same page, on 20 September there is a record of a visit with Dr Das. There is reference to depression and stress symptoms and that the Sertraline does not appear to have improved Mr George’s conditions and a further fitness note is issued.
7. Mr George is seen again on 30 September and again there is reference to ongoing stress and the continued prescribing of Sertraline.
8. On 18 October, Mr George is seen again by Dr Das. There appears to be no improvement noticed at that point. He continues to suffer with: *“... work related stress and anxiety, feels low, poor concentration ...”*.
9. However, on 18 November 2016, Mr George is recorded as being: *Back at work, anxiety continues*” and Mr George asked for an increase in the dosage of Sertraline.
10. Still on the same page at 66 is a further entry relating to 15 December 2016 as follows: *“History: anxiety symptoms, no help dfrom (sic) sertraline, advised doesn’t sound depressed, he says he isn’t. Gets worked up about speaking infront (sic) of people etc, then performs badly”*.
11. The next relevant entry is on page 72 and relates to 22 February 2018. The problem is recorded as *“Depressed mood”* and that: *“anxiety + panic attacks increasing in frequency - struggling and feels it is affect his life in general”*.
12. On page 73 is a recorded visit on 26 February and at that point, the diagnosis is record as: *“Generalised anxiety disorder”*.

13. On 17 October 2018, Mr George again visited the surgery and there is reference to him struggling with anxiety but that at that point, he had not had a further course of CBT and that he often has health anxieties.
14. On 22 October is a further visit and again there is a diagnosis of anxiety disorder wherein it is recorded that the physical symptoms may well be related to anxiety. Those physical symptoms being nausea and dizziness. It appears that at that point, Mr George had been prescribed Citalopram.
15. On 22 November 2018, there is a further visit and it is recorded that the Citalopram has helped a bit but he still gets anxious and asked for something stronger.
16. There are further references in January and February 2019 to anxiety.
17. On page 84 on 5 March 2019, is a further visit and I will come back in greater detail to the record of that visit with Dr Riaz.
18. That is effectively the relevant medical records.
19. In his impact statement and responses to EJ Camp's order, Mr George sets out the following main matters which could be described as affecting normal day to day activities are, in summary, as follows:
 - (a) That Mr George does his shopping online rather than visiting shops.
 - (b) He gets very tired and whilst working goes to bed at 8 pm.
 - (c) He suffers from a lack of concentration and often has to repeat the instructions he has been given.
 - (d) He has frequent panic attacks.
 - (e) He gave evidence that in February and March 2019, he twice had to call an ambulance and on another occasion, he visited as a walk-in patient the A&E Department with the same panic attack symptoms.
 - (f) Mr George finds difficulties with socialising.
 - (g) Mr George does not use public transport.
 - (h) Mr George gave evidence that he had difficulty in his family relationships.
 - (i) He relied heavily on his wife to support him to reassure him when he was having panic attacks.

I accept that evidence.

20. On the other hand, Mr George has generally been in employment from the start of his employable age. He has coped with his jobs and at HMP Sudbury there were no capability issues. His work there included the preparing and cooking of food, which is of course a normal day to day activity, though done in different surroundings. He was able to drive to work and had no problem with punctuality.
21. I note also that he concentrated well in today's proceedings and had no difficulty in answering questions or putting his point of view.
22. Mr Farrer submits that Mr George's evidence is in general vague and inconclusive. He further submits that there is only one reference to panic attacks in the lengthy medical records to which I referred. On that point, however, I do accept Mr George's evidence that the panic attacks were frequent and necessitated the calling of ambulances in February and March 2019.
23. I return now to page 84 and the record of Mr George's visit to the surgery on 5 March 2019 and I quote the entry in full:

"History: on citalopram and propranolol for anxiety. thinks anxiety slightly better with citalopram but still anxious++. has health anxiety. currently having CBT. works in prison. not affecting work/family life hx of depression in past. not now.

Examination: well looking gentleman but O/E – anxious ... no self harm thoughts. not depressed. good eye contact. no hallucinations/delusions. has insight and capacity.

Diagnosis: Anxiety disorder ...

Plan: we have agreed to increase citalopram to 30mg, rv in 4 weeks if no better , sooner if worse. pay for prescription, not keen on short duration meds.

i have issued him with 2 months supply as looks well and stable-no concern."

24. Mr Farrer put this entry to Mr George and I accept that it is likely that the record is accurate. However, it does conclude with an increase in the citalopram prescription to 30mg.
25. Mr Farrer relies on this visit to submit that at that time Mr George's impairment was neither affecting his day to day activities nor was it long-term. In my view, it has to be read in context and balanced against Mr George's evidence and medical reports. I note that he continues to be prescribed medication to treat his mental impairment.

26. On balance, therefore, I am satisfied that Mr George's impairment has since 6 September 2016 had a substantial and long-term adverse effect on his ability to carry out normal day to day activities.
27. Mr George is, therefore, disabled within the meaning of Section 6 and Schedule 1 of the 2010 Act.

Employment Judge J Blackwell

Date: 6 April 2020

JUDGMENT SENT TO THE PARTIES ON

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06/04/2020.....

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