



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Xidakis

Respondent: Rolls-Royce Plc

JUDGMENT ON A PRELIMINARY ISSUE

Heard at: Nottingham

On: 28 February 2020

Before: Employment Judge Batten (sitting alone)

Representatives:

Claimant: Mr Somerville, Counsel

Respondent: Ms A Niaz-Dickinson, Counsel

JUDGMENT having been sent to the parties on 4 March 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:

JUDGMENT

The claimant was a disabled person at the material time by reason of anxiety.

REASONS

Background

1. This was a preliminary hearing to deal with the issue of disability. The claimant relies on the impairment of anxiety as her disability.
2. On 16 December 2019, the respondent's solicitors e-mailed to confirm that the respondent was unable to concede that at the relevant time the claimant was a disabled person. The respondent accepted that the claimant's impairment of anxiety satisfies the "*mental impairment*" and "*the long term aspects of the test set out in section 6 of the Equality Act 2010*". However, the respondent went on to say that it did not have enough information on the "*substantial effect*" of the claimant's anxiety on her ability to carry out "*normal day to day activities*" - those points italicised were so italicised in the respondent's email, which appears in the bundle of documents at page 134. The respondent explained that, whilst the claimant had provided a very detailed disability impact statement it contended that the GP records supplied did not directly support this.

3. This preliminary hearing was therefore listed by agreement of the parties at a case management discussion on 23 January 2020, to determine the issue of whether the claimant was disabled in terms of the aspects which the respondent disputed. These are set out in paragraph 10.1 in those orders as follows:
 - 3.1 whether the Claimant's anxiety had a substantial adverse impact on her normal day to day activities; and
 - 3.2 if it did, whether at the relevant times, the claimant's anxiety was a disability.

Evidence

4. The Tribunal was provided with an agreed bundle, the claimant's disability impact witness statement and a detailed witness statement from the claimant together with a witness statement from Mr Robert Aldread, a former work colleague. Both the claimant and Mr Aldread gave oral evidence and were subject to cross-examination. The Respondent relied on the bundle of documents and did not produce witness evidence.
5. Counsel for the respondent also provided written closing submissions together with copies of the caselaw referred to.

The applicable law

6. The law is contained in the Equality Act 2010 ("EqA"), section 6 and also in schedule 1 to that Act as follows:

Section 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.*

- (2) *A reference to a disabled person is to a person who has a disability*

...

- (6) *Schedule 1 (disability: supplementary provision) has effect*

Schedule 1, Part 1, Determination of Disability

2. Long term effects

- (1) *The effect of an impairment is long-term if-*
 - (a) *it has lasted for at least 12 months,*
 - (b) *it is likely to last for at least 12 months, or*
 - (c) *it is likely to last for the rest of the life of the person affected.*
- (2) *If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.*

7. The word “likely” in paragraph 2 of Schedule 1 of the Equality Act 2010 means “could well happen” rather than “probable” or “more likely than not”: SCA Packaging Ltd v Equality and Human Rights Commission [2009] IRLR 746, and paragraph C3 of the ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’ 2011 (“the 2011 Guidance”) which is produced by the Equality and Human Rights Commission (“EHRC”).
8. Guidance is given on the meaning of normal day-to-day activities in section D of the 2011 Guidance. Paragraph D3 says:

“In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.”

9. In submissions, Counsel for the respondent referred the Tribunal to the following case law authorities:

J v DLA Piper UK LLP [2010] UKEAT/263/09
Royal Bank of Scotland plc v Morris [2012] UKEAT/0436/10
Morgan v Staffordshire University [2010] UKEAT/322/00

The Tribunal took these cases as guidance but not in substitution for the statutory provisions.

Findings of fact relevant to the issue of disability

10. Having considered all the evidence, the Tribunal made findings of fact relevant to the issues as follows.
11. The claimant is aged 40 and has been employed by the respondent for a significant period of time.
12. The claimant suffered 2 extremely traumatic events, first in her childhood and again in her early adult life. The claimant found it very difficult to disclose these matters or to talk about them and Counsel for the claimant had to gently press her for detail, which the Tribunal does not consider needs repeating in a Judgment that shall go on the public record. The claimant found it very difficult to articulate what had happened to her and the effect upon her in terms of how she felt about it and how she had coped with matters since. The Tribunal understood that the claimant had coped in life apparently to the best of her ability on the outside but the Tribunal considered that, from the medical records and the evidence given and the distress encountered by the claimant in giving evidence of such at this preliminary hearing, those events have been life-changing for the claimant and have affected her whole outlook and approach to life and

other people.

13. As a result, throughout her life thereafter, the claimant had experienced a significant level of anxiety which has always been there within her, from slight anxiety on a 'good' day up to the point of feeling so anxious that she had believed she was going to die. She described it as being a question of how much anxiety there was at a particular time on the basis that the claimant at all times experienced an underlying anxiety.
14. Mr Aldread had been the claimant's manager at the respondent and he had come to know her well. In November 2017, Mr Aldread noticed a change in the claimant's behaviour because the claimant was visibly distressed and anxious at work. Mr Aldread's evidence of his observations at that time are consistent with the contents of the claimant's medical records and with the claimant's description of her condition, her behaviour and the impairment of anxiety.
15. In June 2018, the claimant suffered a mental breakdown as a result of which she was signed off work, sick, for the rest of the year.
16. In early 2019, the claimant began to feel increasingly overwhelmed with anxiety and, by April 2019, she had become unable to work effectively and was experiencing regular panic attacks. These symptoms continued throughout 2019. In October 2019, the claimant started to receive Cognitive Behavioural Therapy ("CBT") by way of treatment.
17. There is significant evidence of the claimant's mental impairment of anxiety in the medical records. The Tribunal was referred to the claimant's GP records, occupational health reports and reports from CBT and counselling, including from a specialist psychological service. All these consistently and clearly confirm that the claimant has been suffering significant anxiety, from at least 2018 onwards. Those records are also consistent with what Mr Aldread reported that he had seen in the previous 7 or 8 months, in 2017, before those reports were produced and before the claimant had formally referred herself for specialist medical assistance.

Conclusions

18. The Tribunal has applied its relevant findings of fact and the applicable law to determine the preliminary issues in the following way.
19. It is not, in the Tribunal's view, necessary to set out in forensic detail the matters recorded in the claimant's medical records. Counsel for the claimant has taken the Tribunal through the various reports and records in detail, in evidence and in submissions, in order to demonstrate that the claimant's anxiety was a disabling condition which affected the claimant daily and in every aspect of her life. The Tribunal accepted that contention.
20. There was ample medical evidence before the Tribunal to confirm, certainly from June 2018 when the claimant sought medical assistance, that the claimant's state of mind caused serious concerns to those medical professionals to whom she presented, and several of them referred her on for treatment. Such was not a general referral for medical treatment, but was instead a referral for psychological therapy and CBT. The Tribunal

accepted the submissions of Counsel for the claimant that the fact that the claimant did not refer herself for medical assistance earlier points to the fact of the claimant's denial, over many years, of the impact of childhood and other events on her.

21. Counsel for the respondent argued that the Tribunal should consider whether further expert medical evidence is required to assist the Tribunal in determining the issue of disability. The Tribunal considered that submission carefully, but concluded that there was sufficient information contained in the evidence presented, including the claimant's GP records, occupational health reports and records from Trent Psychological Therapy Service, a specialist NHS organisation which referred the claimant for further treatment. The Tribunal considered that all the medical evidence recognised the same symptoms in the claimant, being symptoms of a significant anxiety disorder.
22. The claimant's evidence, which went largely unchallenged, was that she always had some form of anxiety. Work triggered her breakdown in 2018 - a serious event in itself - however, the Tribunal accepted the claimant's evidence that her anxiety was a disabling condition which was there, within the claimant's mind, at all material times and, importantly, prior to that breakdown. It was apparent from the claimant's evidence, which the Tribunal accepted, that she labours under significant anxiety and has done so for many years. The Tribunal rejected the submission of Counsel for the respondent to the effect that such anxiety was occasioned by a reaction to work and the Tribunal did not accept the submission that the claimant's anxiety manifested itself only in isolated incidents. The medical evidence did not support such a conclusion.
23. The Tribunal has not formed its view on the preliminary issues from the way that the claimant gave her evidence, although the Tribunal appreciates that she was very distressed in having to give that evidence. The Tribunal has considered the claimant's oral evidence in light of the contents of the medical records evidence and the medical reports. Notably, even when the claimant's role changed at work and she had described issues with her manager, the claimant is recorded by the medical experts as continuing to suffer anxiety both in and outside of work. In those circumstances, the Tribunal considered that the claimant's impairment could not be said to be a reactive condition but is a continuing and ever-present disabling condition. On that basis, the Tribunal concluded that the Claimant is disabled because of her anxiety, within the meaning of section 6 and schedule 1 of the Equality Act 2010.
24. The Tribunal noted that the claimant has been acting as a litigant in person up to this preliminary hearing. She was not aware of the caselaw, nor any suggestion made now by the respondent, that expert evidence might be helpful to a Tribunal in dealing with what is the often very difficult area of mental health impairments. In any event, had the respondent made such a suggestion, in advance of this preliminary hearing, that further medical evidence may be required, the Tribunal considered that the claimant might well have taken the opportunity to obtain such a report from the professionals treating her. Nevertheless, in light of the medical evidence which has been provided for the preliminary hearing, the Tribunal did not consider that further expert opinion was required to determine the issue.

25. It has been pointed out that an Employment Judge is not medically qualified. That may be the case, however, the Tribunal considered that it is able to determine whether somebody is disabled under the Equality Act 2010 by hearing, reading and reviewing the evidence before it and, in reaching its conclusion on the preliminary issues, the Tribunal has taken account of all the medical and other evidence it. The Respondent has not sought to persuade the Tribunal that it would be wrong to follow that evidence. Rather, Counsel for the respondent has, in cross-examining the claimant, focussed on dates when the claimant agreed that her anxiety had increased and when possible “triggers” were present. The Tribunal listened carefully to that evidence and cross-examination. The Tribunal considered that, in the claimant’s circumstances, the presence of such triggers do not belie an underlying condition of anxiety which, throughout the relevant period, has been disabling of the Claimant. The Tribunal therefore rejected the respondent’s contention that the claimant’s impairment had the nature of a reactive condition.
26. In light of all the above, the Tribunal has found that the claimant is and has been a disabled person within the meaning of section 6 of the Equality Act at all material times and, for the avoidance of doubt, that is from November 2017 onwards and also, quite possibly, for a long time before then.

Employment Judge Batten
Date: 8 April 2020

JUDGMENT SENT TO THE PARTIES ON
09/04/2020.....

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FOR THE TRIBUNAL OFFICE

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