



EMPLOYMENT TRIBUNALS

Claimant: Mrs N White

Respondent: Nurse Plus and carer Plus UK Ltd

Heard at: Bristol (via CVP video link) On: 6th July 2020

Before: Employment Judge P Cadney

Representation:

Claimant: In Person
Respondent: Mr V Callow

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant was at all material times a disabled person within the meaning of s6 Equality Act 2010.

Reasons

1. By a claim presented on 22nd October 2018 the claimant brings claims of disability discrimination..
2. The case has been listed for hearing to determine the question of whether the claimant was at all relevant times disabled within the meaning of s6 Equality Act 2010, and if she is to clarify the issues and give further directions. The latter two issues are dealt with in the separate Case Management Order.

Disability

3. The first issue before me today is whether the claimant was or was not at the relevant time a disabled person within the meaning of s6 Equality Act 2010. A

disabled person is an individual who has a “physical or mental impairment” which has a “substantial and long-term adverse effect on the ability to carry out normal day to day activities”. In this context “substantial” means more than minor or trivial; and long-term means lasting or likely to last for twelve months or more.

4. In this case the disability contended for is a back condition. An MRI scan performed on 30th August 2019 resulted in a diagnosis of “*a calcified disc extrusion abutting and displacing the spinal cord to the left...This bulging disc also impinges on the T9 and T10 spinal nerves.*” In terms of the symptoms, “*Mrs White’s main complaint is radiating radicular pain which is located on the right side of the chest wall*” (Both from letter Dr C Gogh 20/1/20). She underwent a CT guided nerve root block on 29th January 2020 which was partially successful in that “*This gave her pretty good relief for about a week and then the pain started to slowly creep back but the pain is significantly better than it was previously.*” (Dr Stone report 17th April 2020). At that point the lower half of the claimant’s chest wall was the more painful but the nerve root block injection had allowed her to come off previously prescribed Amitriptyline and Oramorph (liquid morphine) both of which are painkillers. She had increased the dosage of Gabapentin (used to treat nerve pain).
5. In terms of the issues before me the claimant clearly has a physical impairment. Did that physical impairment have a substantial adverse effect on her ability to carry out normal day to day activities? The claimant’s evidence as set out in her Impact Statement has not been challenged and sets out a number of ways in which her day to day activities have been affected. These include that she needs assistance to dress, and wash and brush her hair; she is unable to stand for long periods time affecting her ability to cook; household chores severely aggravate her condition; shopping is difficult; and her sleep is disrupted. I accept the claimant’s evidence and in my judgement she has clearly established a substantial effect on normal day to day activities even before any examination of the deduced effect (i.e. what the situation would have been but for the treatment set out above).
6. That leaves the question of whether the condition or its effects were long term. The claimant’s case is that the first time she had to take time off work because of the symptoms of what was later diagnosed as the bulging disc was in March 2019. Clearly the events of August to December 2020/January 2021 are not themselves more than 1 year after the first onset of the symptoms of the condition. In those circumstances I have to judge (based on the evidence available at the time) whether it was likely to last more than twelve months (in the sense that it could well happen). As at that point, as is set out above, the results of the MRI scan were known. There is no suggestion that there is any prospect of any spontaneous resolution of the condition. The respondent relies on the letter referred to above from Dr Gogh which, it correctly points out does not express the view at that stage that the claimant was a disabled person within the meaning of the Equality Act 2010. However the letter also points out that that is a legal, not a medical, question which ultimately will be resolved by a tribunal. In my judgement judged at any point after the MRI scan it is impossible to say that there is any other prospect than that the effects of the

underlying condition were likely to last longer than twelve months as there was no indication of any resolution of the underlying condition itself.

7. It follows that in my judgement the claimant satisfies each element of the statutory test and was, therefore, at all relevant times a disabled person within the meaning of s6 Equality Act 2010.

Employment Judge P Cadney
Dated: 7th July 2020

ORDER SENT TO THE PARTIES ON 15 July 2020 by e-mail only

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS