



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss A Yianoullou**

**v**

**Thomas Telford Limited**

**Heard at:** London Central (via CVP)

**On:** 7 July 2020

**Before:** Employment Judge A James

## **Representation**

**For the Claimant:** In person

**For the Respondent:** Ms K Moss, counsel

## **JUDGMENT**

- (1) The claimant had a disability at all relevant times covered by her claims (February to April 2019) within the meaning of section 6 Equality Act 2010 times because of anxiety/stress.

## **REASONS**

### **Background to today's hearing**

1. The claimant's claim form, as further clarified in the list of issues, alleges disability discrimination. The claim cannot succeed in the claim unless she can prove that she had a disability at the time of the alleged discrimination.
2. At a preliminary hearing on 29 April 2020, an open preliminary hearing was arranged for today, in order to determine the issue as to whether or not the claimant has a disability. Directions were made and have been complied with

for the purposes of this hearing today. If the claimant does not establish that she has a disability, her claims will be dismissed. Hence the importance of today's hearing for both parties.

3. The respondent indicated on 29 April, as well as in correspondence leading up to that hearing, that it may wish to make applications for deposit orders and/or for strike out. Such applications are not being pursued.
4. Knowledge of disability/substantial disadvantage is also disputed but that issue is to be decided at the full hearing, not today. None of the facts found today are relevant to the remaining issues to be decided at the full hearing.
5. Whilst there is mention in the claimant's witness statement of health issues connected with premenstrual tension, the claimant does not pursue that issue as a disability, in line with the clarification of the issues in the case on 29 April 2020.

### Findings of fact

6. In a letter from the claimant's GP dated 17 December 2019 it is stated:

*Miss Anna Yianoullou is registered with Wentworth Medical Practice.*

*She has asked for a letter of support from the surgery as she is proceeding with a tribunal against her former employer.*

*She has had anxiety for some time and manages this with medication and also has devised coping strategies when she does get anxious.*

*She was very excited when she joined a new job in February 2019 and had no anxiety symptoms. During her employment there, she felt bullied and judged. She felt that she was treated differently from other employees. She did not get adequate training or feedback and became increasingly anxious, distressed and tearful. She was not given a reason for being mistreated this way. When she could not cope with this behaviour, she was seen by the GP in the practice a few times to address this - she was prescribed additional medication to cope. She was also fired from her job with very little notice and with no explanation.*

7. A further letter dated 25 February 2020 states:

*She has asked to provide formal letter of her sick notes issued (sic). This is to confirm that she has anxiety and depression and is on medication for this. She had sick notes issued to cover the period from 2<sup>nd</sup> Oct 2017 to 1<sup>st</sup> October 2018 with this. This is an ongoing issue but is controlled with medication.*

8. Relevant extracts from the claimant's GP records were provided. These record the following:

- 8.1. 20 April 2017 "suffering with anxiety, long term probs, never went for counselling". Propanol
- 8.2. 24 April 2017 "anxiety with depression". Propanol with citalopram (also mentioned on 11 May 2017)
- 8.3. 10 October 2017, Anxiety with depression. Refers to changes to job causing issues – couldn't sleep then been off work.
- 8.4. 19 October 2017 2-week MED3 for anxiety and depression.
- 8.5. 10 November 2017, Med3 10 November to 22 Dec 2017.
- 8.6. 21 Dec 2017 – having had basal cell carcinoma removed from nose, C had a further med3 issued, 28 days, post-operative monitoring for BCChX of anxiety

- 8.7. 12 Jan 2018 - "feeling pressurised by work to go back started applying for new jobs"
  - 8.8. 19 Jan 2018, 2-week MED3 post op BCChx of anxiety and depression
  - 8.9. 20 Feb 2018 MED3 to 16 March 2018. "feeling low last 2/52 having op on 1<sup>st</sup> march at gynae. feels wants to go back into a different role waiting for job description which they haven't given her yet so is going to liaise with HR.
  - 8.10. 16 Mar 2018, MED3, to 13 April 2018, anxiety and depression
  - 8.11. 12 April 2018 Anxiety states. MED3 "anxiety and recent gynaecology Operation; Duration 12 Apr 2018-12 May 2018"
  - 8.12. 11 May 2018 – MED3 to 1 June 2018 – 'doesn't want to go back to work yet'
  - 8.13. 31 May 2018 – MED3 to 28 June 2018, anxiety and recent gynae operation
  - 8.14. 26 June 2018 – MED3 to 27 July 2018
  - 8.15. 20 August 2018 – Hoping to go back to work in September. Had left job and did not know still need to get sick notes.... Degree of anxiety – trying to reduce citalopram. MED3 to 1 September 2018
  - 8.16. 7 September 2018 – MED3 – not fit for work, 2 September 2018 to 1 October 2018.
  - 8.17. 25 September 2018 – Lowered citalopram to 20mg feeling great wants to come off eventually. Will go down to 10 mg
  - 8.18. 2 May 2019 – 'started a new job 2m ago. Feels bullied at work. Manager is shouting at her. Has informed her line manager. Was sacked her last week (sic)'. Diazepam 2mg tablets, citalopram 10mg tablets
  - 8.19. 24 May 2019 – 'Got another part time job was bullied and sacked after 6/52. Very upset.... Diazepam 2mg tablets one to be taken three times a day 10 tablet'
  - 8.20. 17 Dec 2019 – stress related problem. Known to have anxiety for a long time and on medication. In a job which she enjoys now - and has good relationship with colleagues. Job the same as the job early 2019. Joined in feb 2019 — and tried to manage herself. Was bullied at work. Made to feel inadequate and then fired without cause - told would be leaving in a week. Had no appraisals or meetings or constructive feedback - from her manager - though was reassured by HR that meeting her objectives. Saw GP in May when she could not cope anymore and given diazepam and adv increase in citalopram if did not settle.'
  - 8.21. 24 April 2020 - anxious had panic attack in waitrose when people coming too close to her. worried will give elderly mum covid. diazepam prn and if not working consider increasing citalopram from 20 to 30mg daily.
9. In paragraph 3 of her witness statement dated 19 January 2020, the claimant stated that her symptoms included:

*Panic or anxiety attacks, stress and worry, sleeplessness, emotional distress, fatigue, loss of appetite, forgetfulness and confusion. My condition results in the inability to concentrate for long periods, getting tearful, feeling stressed. I often feel fatigued and can panic. I have been receiving treatment for my Anxiety for well over a year. My treatment includes daily medication and medication to be used as and when needed. If I did not take this medication I would not be able to cope and if I did not have the 'as needed' medication I could suffer an anxiety attack.*

10. Paragraph 18 refers to the following effects suffered whilst working for the respondent:

*During the first week of employment, I had begun to experience at least 2 of the symptoms namely fatigue and loss of appetite. By the end of that first week (day 3 of my employment) I experienced emotional distress and stress and worry and by 18 February 2020 when I had returned to work after the weekend, I had experienced nearly all of the symptoms listed in paragraph 3 of this statement. This made me feel distraught and my mental health and wellbeing was seriously affected. I couldn't sleep at night due to worrying that I had made a mistake or had forgotten something. I was constantly breaking down in tears at work. It made me feel that there was a problem with my age and could not learn as fast as others. I even visited my GP to ask if it was possible that I had early dementia ...*

11. In a second witness statement dated 27 May 2020 the claimant states at paragraph 13:

*By 15 February 2020, my third day in the role, I was unable to eat lunch due to my anxiety and expressed this to the team. I was feeling overwhelmed with all the information I had received and recognising this as part of my anxiety, I wanted to speak to Natalie about it.*

12. She continues at paragraphs 16 and 17 as follows:

*On one occasion I broke down while Sherazade was training me, Sherazade will recall this as she asked me to calm down. I confided in Sherazade that I was taking Diazepam before coming to work because I was so petrified and stressed. I had a 1-2-1 with Natalie on both 04 & 06 March — I broke down in tears each time, I was feeling fatigued and was getting confused.*

13. In paragraph 20 there is another reference to the claimant breaking down in tears at work on 6 March 2019; similarly at para 29 (28 March 2019) and in paragraph 38; and on 29 March 2019 - see paragraph 41. Paragraph 42 continues:

*As soon as I left the meeting, I was so upset that I went straight to the HR office, I was in a highly emotional state and down in tears with the inability to speak. They asked me what was wrong, but I was just gasping for breath. Brenda Moore took me to another meeting room and relayed the events of the previous day and the meeting I just had. I was very upset and cried through the whole conversation.*

14. During cross-examination the claimant accepted that she did not have any anxiety symptoms when she started work, just nervousness. In the health assessment questionnaire which she completed prior to starting work, there is no mention of anxiety. In January 2019 she had plenty of diazepam, and was managing her illness with the help of that medication. The claimant uses diazepam to control her panic attacks. She took it for example before today's hearing.

15. If something is going to happen which she is nervous about, she can feel her heart racing, and she takes diazepam. If not, she could start to hyperventilate. That happened about 10 years ago and the symptoms lasted for about two weeks. That is why she takes diazepam now, so that does not happen again. Prior to the hearing for example she had taken diazepam about five times in the last month. She accepted that between ending her previous job with Cancer Research and starting again with the respondent, she felt very positive and was not taking it often. She was able to rest over Christmas, and was regularly taking her citalopram, as prescribed, but not much diazepam.

As can be seen from the GP records, the claimant did not consult her GP during her employment with the respondent between 13<sup>th</sup> of February and 25<sup>th</sup> April 2019.

16. The claimant had by the time of her employment with the respondent, been taking citalopram since April 2017, a period of about two years. She suffered quite badly with her menstrual cycle but her GP thought that what she was suffering with was more than just premenstrual tension (PMT) as her symptoms did not disappear when her period ended. She felt listless and had no energy even before her menstrual cycle commenced. She still experiences feelings of listlessness when her menstruation starts but feels much better the rest of the time. Since she started taking citalopram, she has continued taking it.
17. The claimant was taken to a number of entries in her GP records, including the reference to the removal of a basal cell carcinoma on her nose; suspected breast cancer in March 2018; and work-related stress in a previous role. At the end of that period, between March 2017 December 2018, she is noted to be 'feeling great at the end of that period'.
18. She said that once her employment with Cancer Research was over, she suffered much less anxiety, she was doing okay, she was functioning.
19. As for sleeplessness, she said she could not sleep the night before this hearing due to her worrying about it. At times she is lethargic, she tries to write things down so they are 'out of her head'. When she was off work for nearly 12 months, she would just start crying and was not able to sleep. On the tube at Angel one time she started to panic, she felt unable to cope anymore, she just could not go back to work, the thought of going back raised panic in her chest.
20. As for loss of appetite, then for example, even if she had a project to do, with slight stress, she could eat food. Sometimes though she will chew her food but it is like a ball in her throat and won't go down. Sometimes she can only eat cornflakes with sugar on. For example, towards the end of 2017, the claimant was helping her mum with a court case, and she could not eat for two months during that period. During the first two weeks working for the respondent, she struggled to eat at all. During the last two to three years, on 4 occasions she had real difficulty eating, including once whilst working for the respondent, and at the end of her employment with Cancer Research. Ms Moss argued that the claimant's evidence on this point was contradictory. I find however that during her employment with the respondent, the claimant could not eat her lunch at all on one occasion; in addition, for a period of about two weeks she had difficulty eating due to her appetite being affected, even though she could actually eat something.
21. As for forgetfulness and confusion, this happens at least once a month, during her menstrual cycle. Sometimes she needs to double-check things, people ask her a question and her mind goes blank. She feels that she sometimes 'come across a bit thick'. She did for example forgot what Ms Moss asked her and had to ask her to repeat it.

## Relevant Law

22. Pursuant to section 6 Equality Act 2010, in order to prove that she has a disability, the claimant needs to demonstrate four things. First, that she has a mental impairment; second that the impairment impacts on her ability to carry out normal day-to-day activities. Third, that the effect is substantial. Fourth, that the effect is long term. This means it must have lasted for 12 months or more or is likely to last for 12 months or more.
23. I was referred to one legal authority, the case of *Herry v Dudley Metropolitan Borough Council [2017] ICR 610 EAT*, which also contains a reference to the case of *J v DLA Piper UK LLP [2010] ICR 1052 EAT*. In *Herry*, the claimant alleged that she suffered from depression and the effects of stress. The tribunal held that the symptoms did not amount to a disability, they amounted to stress, in relation to a reaction to adverse events at work. In *J v DLA Piper UK LLP*, the EAT stressed the importance of the difference between a condition such as depression, and reaction to adverse circumstances. Relevant quotations from these cases are incorporated into the conclusions below.

## Conclusions

24. I consider it appropriate in this case to start from the question as to whether or not the claimant has a mental impairment, although the conclusions in relation to the first three issues are inter-related, as will be apparent from what follows.

### Mental Impairment

25. The first question to determine is whether or not the claimant suffers from a mental impairment. Ms Moss, for the respondent, argued that this was a case where the claimant did not have a mental impairment. Instead she suffered a reaction to adverse circumstances. Though that argument was ably put, I reject it for the following reasons.
26. In the *Herring* case, the claimant submitted a number of 'fit' notes. According to the judgment, during the material period of April to June 2014, the claimant's medical certificate stated 'work-related stress' for 30 April 2014 and 'stress' on the certificate dated 8 July 2014. In the claimant's case, she was off work for almost a 12-month period. Most of her MED3 certificates refer to anxiety and depression or to anxiety.
27. According to the GP report of 25 February 2020, the claimant takes medication for anxiety and depression. It is not necessary for me to find that the claimant suffers a recognised mental illness, as listed for example in the ICD-10 classification or DMS IV-TR. A claimant can have a mental impairment, without having to demonstrate that the impairment amounts to a recognised mental illness.
28. At paragraph 54 of the decision in *Herry*, there is a quote from paragraph 42 of the judgment in *J v DLA Piper* which reads:

*If, as we recommend at para 40(2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms*

*characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering 'clinical depression' rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long-lived."*

29. In the claimant's case, she was indeed off work for nearly 12 months due to 'anxiety'/'anxiety and depression' in her previous job.

30. In *Herry* at paragraph 51 it is stated:

*There is a dearth of information in the medical documents as to the nature of the "work-related stress". The GP's letter dated 25 November 2014 and an occupational health report dated 17 March 2015 both referred to the stress of tribunal proceedings. The latter document said that the claimant took no medication for stress and was mentally and physically fit to perform his role. It said that from the medical point of view he could return to work as soon as possible; but there were "still outstanding management (non-medical) issues at the workplace which are causing stress". A certificate dated 31 March 2015 said: "Patient feels the behaviour of certain individuals [is] what is stopping him from returning to work at the school and causing his stress."*

31. By contrast, in the claimant's case, the claimant takes anti-depressant medication with occasional use of Diazepam for a condition that is long-standing and which lead to a lengthy absence from her previous job as a result. I conclude therefore that the claimant suffered from a mental impairment of anxiety/stress, particularly when the next two issues are considered.

Normal day to day activities and substantiality

32. I conclude that the claimant's reaction to life events is much more extreme than for the average person and that reaction stems from her mental impairment. The evidence given by the claimant both in her witness statement and during the hearing, demonstrates that she is particularly susceptible to the type of adverse events that life can present to us. Further, her reaction to those events is much more than minor or trivial. For example, the claimant was absent from work for nearly 12 months, during her employment with Cancer Research. That is far from usual. Participation in professional life is part of normal day-to-day activities, and during that period the claimant was not able to work at all. The effect during that period was substantial.

33. Similarly, her reaction to the criticism which was directed towards her whilst working for the respondent, was far from usual. For example, as set out in the findings of fact above, the claimant was constantly breaking down in tears at work'; she suffered a reduction in appetite; she felt 'distracted, with my mental health and wellbeing seriously affected'; on her third day in the role she felt 'overwhelmed'. Taken as a whole, those reactions are not in my view the sort of reactions most people would experience and are not a usual reaction to life events. Rather, the unusual severity of her symptoms is evidence of a mental impairment, which renders her much more susceptible to react unusually severely to stressful situations. Most people find such situations uncomfortable. The effect on the claimant is, because of her mental impairment, much worse.

34. I therefore reject the argument submitted on behalf of the respondent that the claimant simply suffers an adverse reaction to life events, such as the

operations she underwent in 2017/18. On the contrary, I conclude that the claimant suffers a particularly adverse and debilitating reaction to life events due to her mental impairment. That impairment is sufficiently severe that she has been on prescribed medication for it, at least since April 2017; namely, citalopram, which is on repeat prescription and diazepam, which she uses to calm herself down, when she can feel a panic reaction developing.

Long term

35. As will be readily apparent from the above, I conclude that the substantial adverse effects were long-term, given that the claimant was off work for almost 12 months during her employment by Cancer Research, and her symptoms again became substantial, during her period of employment with the respondent. The fact that she experienced a period of relative calm between October 2018 and February 2019 and since May 2019, does not detract from the substantial effect of the impairment during the period October 2017 to October 2018 and February to April 2019. Further, the recent panic attack at Waitrose illustrates the claimant's continuing vulnerability to suffering extreme reactions to life events that most of us do not, happily, have to experience.

Deduced effects

36. I have, on the basis of the above, already concluded that the claimant has a disability, without considering the deduced effects. In any event, I also conclude that there is sufficient evidence before me to enable me to conclude that were the claimant not taking her medication, the effects of her impairment would be even more substantial. Whilst I was not specifically referred to the relevant case law, I have before arriving at that conclusion reminded myself that a tribunal should not readily conclude what the effect of the impairment might be if the medication taken to control the condition was not taken.

37. The GP letter dated 25 Feb 2020 confirms that the claimant has anxiety and depression which 'is an ongoing issue but is controlled with medication'. So the claimant is on long-term medication for her condition which would be likely to be worse were it not for her taking that medication. Her dose of Citalopram has gone up and down, which in itself demonstrates that at times of particularly stressful life events, the claimant needs to increase her medication because the dose she is taking is not sufficient to suppress her symptoms. The extra dose enables her to cope better.

38. Further, I have considered the evidence given by the claimant about her feelings of listlessness, and that such listlessness continued throughout her menstrual cycle, prior to her being prescribed citalopram. After being prescribed that medication, the claimant's energy levels during most of her menstrual cycle are much improved, such that it is now only during the start of her cycle that she is particularly lacking in energy. That is further evidence of the positive effect that the medication has had on her condition.

39. The claimant supplements citalopram with diazepam, when her symptoms are particularly severe, in order to avoid suffering from panic attacks. The claimant has not suffered a panic attack for 10 years. However, I conclude that is because, at least in more recent years, she is, as she told the tribunal, able to recognise when a panic attack is coming on and takes diazepam to calm herself down. That is the effect of the diazepam, as the claimant states



in her witness statement. Were she not taking that medication, the level of anxiety suffered would, on the balance of probabilities, be worse. The claimant had to increase her use of diazepam during her employment with the respondent, so that by the end of the period she needed to go to her GP for a further prescription as she had run out.

40. My conclusion in relation to the disability issue is therefore reinforced by my findings in relation to the deduced effects.

**Overall Conclusion**

41. I find that the claimant had a disability at the material time, as a result of anxiety/stress.

42. As a result of that conclusion, the claim will now proceed to a full hearing. Directions in relation to that hearing are set out in Annex A below.

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Employment Judge A James  
London Central Region  
Dated: 31 July 2020

Sent to the parties on:

21/08/2020

For the Tribunals Office

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