



EMPLOYMENT TRIBUNALS

Claimant

Ms C Culley

Respondent

v

Buckinghamshire County Council

Heard at: Norwich (by CVP)

On: 20 July 2020

Before: Employment Judge Postle

Appearances

For the Claimant: Mr Stevens, Counsel.

For the Respondent: Mr Khosdel, Counsel.

COVID-19 Statement on behalf of Sir Ernest Ryder, Senior President of Tribunals.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

1. The claimant does not have a disability within the meaning of Section 6 of the Equality Act 2010.

REASONS

1. This is a preliminary hearing to determine whether the claimant has a disability within the meaning of s.6 of the Equality Act 2010.
2. In this Tribunal we have a pdf bundle consisting of 188 pages. The Tribunal heard evidence from the claimant through a prepared witness statement as to the impact of the alleged disabilities namely, Post Traumatic Stress Disorder (PTSD), anxiety and depression which the claimant asserts was diagnosed in January 2016. The respondent does not accept the claimant satisfies the definition of disability.

3. The claimant asserts she suffered PTSD as a result of her ex-husband's behaviour towards her. The claimant says her condition is not obvious, on occasions she will appear functional and healthy, and the condition is triggered by stressful events. The claimant says that when she is badly affected she lives in a state of fear, shakes and is always looking over her shoulder, she loses energy and tends not to go out especially at weekends, stops eating and loses weight, finds it difficult to sleep. When seriously triggered the claimant says she is unable to go to work.
4. The claimant says that her medical treatment from her GP is prescription drugs, Fluoxetine (anti-depressant), Propranolol (beta blocker) and sleeping pills. Since leaving the respondent in July 2019 the claimant's GP has reduced her drugs and now only uses Propranolol when she feels a panic attack is starting.
5. The claimant has attended one to one counselling sessions with Kim Harries a counsellor since 2016 being the first session and then again in May 2019.
6. The claimant having taken annual leave from 17 January 2019 to 24 January 2019 having specifically requested this leave in order to assist her adult son who was having a foot operation. The claimant had also worked from home on 4, 7 and 11-16 January. The operation left the claimant's son bed-bound for 2 weeks requiring prescription drugs and injections that the claimant had to perform as her son was unable to look after himself at this time.
7. The claimant then went on sick leave from 25 January 2019 returning on 19 February 2019 and again was signed off work from 5 March 2019 till she left the respondent on 13 July 2019.
8. In the period the claimant was signed off work she says she did not leave the home or see anyone and was not getting dressed until late afternoon. The claimant admits the only activity she did do was to teach in a gym three times a week but says she did not have the energy to go to the gym and train herself. She would teach up to three evenings a week, teaching for 1 hour but then leave and go home back to bed.
9. The claimant further asserts in the first 4 months of being off sick she was unable to do her normal day to day activities, "some days I would just lie on the sofa and stare out of the window for hours, I didn't even want to answer the phone", despite the claimant teaching in a gym 3 days per week.
10. The report from Kim Harries, Counsellor dated 24 November 2019 shows six counselling sessions in 2016 and refers to anxiety, depression and flashbacks as a result of an abusive relationship. The report records:

“Session 1 – severe depression.

By Session 3 – more grounding and flashbacks not so frequent.

Session 4 – she was now going into town.

By Session 6 – positive feedback and goal setting for 2017, records now mild anxiety, minimum depression and no longer a clinical concern.”

11. An Occupational Health report prepared for the respondent and dated 17 April 2019 at page 73 of the bundle records the claimant “showing moderate depression and severe anxiety” and had been encouraged by her GP to access services such as face to face counselling.
12. The claimant’s GP records contained in the bundle show that:
 - “• By December 2016 the claimant was much better had finished her counselling generally doing well.
 - March 2017 – there were no new issues and still doing well, and nothing further significant was recorded by her GP in 2017.
 - February 2018 the GP records – struggling with anxiety and depression but has good support.
 - By May 2018 doing well.
 - And by September 2018 – stop Fluoxetine, anti-depressant only use Amitryp.
 - January 2019 the GP records – stress at work.
 - March 2019 – struggling at work.
 - The GP records in May 2019 – seeing counsellor, helpful, seeking new employment, better in sleep.”
13. A further fit note was provided by the GP in June 2019 and by July 2019 the claimant had found alternative employment.
14. On 18 November 2019 in a telephone consultation with the GP she simply records “needs letter of support about work issues”. There being no significant attendances between June 2019 and November 2019 regarding any mental health issues recorded by the GP.
15. The GP’s letter at page 40 of the bundle requested by the claimant dated 19 November 2019 makes reference to the claimant being the subject of domestic violence arising in 2015 and requiring a lot of help and support at the time and receiving counselling to look after her anxiety and PTSD at the time. Following this episode, he comments things have been “going fairly well”. The GP goes onto make reference to problems at work in January 2019 requiring further counselling and medication. Notably the GP does not refer the claimant to a specialist at the time for further support or a clear diagnosis other than to surmise the symptoms presented would clearly suggest PTSD. He confirms the claimant was signed off work until July 2017 and since leaving the respondent has come off all medication and is in a much better place from a mental health point of view.

Submissions

The respondent's submissions

16. The respondent's Mr Khosdel, Counsel – it is submitted by the respondent that it is not proven the claimant has PTSD. There is little evidence in the bundle to support this diagnosis, there are only notes from the claimant's counsellor and no witness statement. This is equally the same with the GP's letter, he says he has known the claimant well for a number of years. In 2019 symptoms, presentation of PTSD but no referral to a specialist, not even a proper diagnosis.
17. Counsel accepts it is open for the Tribunal to decide stress and anxiety in 2015, as the claimant clearly complains to Doctor White she was suffering from stress and anxiety but that was not the case in 2019. There was no mental impairment.
18. Insofar as the substantial adverse effect is concerned, she was living with her son in early January 2019. The son was bed-bound for 2 weeks during which time the claimant had to administer his drugs/injections and look after him set against her impact statement in which she suggests the first four months of 2019 she was unable to carry out many of her normal day to day activities. Particularly she said she did not want to get out of bed, did not sleep, permanent state of anxiety and loss of concentration. Set against the claimant's initial evidence that she had to do many things for her son therefore whilst she was off work her day to day activities were not affected and it would be difficult to conclude the stress, anxiety or PTSD if it existed had a substantial adverse effect.
19. After May 2019 there is no further evidence presented of any impairments and indeed the claimant started her new employment in July 2019. Nothing to indicate the claimant was off sick thereafter. It is clearly not long term.
20. The question is whether there was a long term effect, there was two incidents; one in 2015 and the second in 2019. They were separated by long periods of time, in 2015 it appears the claimant was not off work and nothing significant happens in 2016 to 2019 until she goes off work, undertakes normal day to day activities, looking after her son and indeed working at gym teaching 3 times per week.

The claimant's submissions

21. Mr Stevens has helpfully provided submission in writing to summarise what he suggests that the claimant's evidence of low mood, anxiety and distress are sufficiently severe to lead the claimant to contemplate suicide on occasions, she had difficulty with sleeping and the claimant struggled to leave the house and was unable to go into the office. He submits these symptoms adversely affect the claimant's ability to carry out normal day to day activities. The more the adverse effects must lead to the inference that the claimant suffered an impairment.

22. In relation to the substantial condition, is shown in the claimant's symptoms affecting her ability to engage in day to day activities clearly cannot be found as trivial or minor and the impairment having lasted for 12 months at the relevant time.

The Law

23. The Employment Appeal Tribunal have said that words used to define disability require a Tribunal to look at the evidence by reference to four different questions (or conditions) as follows:
- Did the claimant have a mental and/or physical impairment?
 - Did the impairment affect the claimant's ability to carry out normal day to day activities?
 - Was the adverse condition substantial?
 - Was the adverse condition long term?
24. These four questions should be posed sequentially and not together.
25. In practical terms when the impairment is said to be a mental impairment the focus of the Tribunal should be on what affects that mental impairment has on the claimant's day to day activities.
26. In considering whether the impairment has a substantial adverse effect the Tribunal has considered the 2011 guidance on matters to be taken into account in determining the issue of disability.
27. The Tribunal also reminds itself that a substantial adverse effect is defined in s.212(1) of the Equality Act 2010 as "meaning more than minor or trivial". The Tribunal must therefore compare the claimant's ability to carry out normal day to day activities with the ability she would have if not impaired.

Conclusions

28. There is little evidence to support the claimant suffers from Post Traumatic Stress Disorder (PTSD) certainly in 2019. The claimant was certainly suffering from stress and anxiety in 2015 but the Tribunal concludes there was no substantial mental impairment in 2019. Even if it is accepted that the claimant was suffering from stress and anxiety in early 2019 the Tribunal questions whether it had a substantial adverse effect particularly in the claimant's ability to carry out normal day to day activities.
29. On the claimant's own evidence, she told the Tribunal that in early January 2019 her son underwent an operation on his foot, he was bedbound for 2 weeks and during that period she had to administer his drugs and injections, and look after him thereafter. At the same time during 2019, again on the claimant's evidence, she was able to conduct gym classes three nights a

week. That clearly does not support the claimant having an impairment of stress and anxiety or that any impairment was substantial and affected her day to day activities. It simply does not sit with the claimant's evidence that she could not get out of bed, was in a permanent state of anxiety and loss of concentration. If that were so, it seems inconceivable that she could administer drugs and injections to her son in January and look after him in the months thereafter. Furthermore, it would be inconceivable that the claimant could conduct gym lessons at the gym three times a week if on the claimant's evidence in 2019 she could not even get out of bed, loss of concentration and was in a permanent state of anxiety.

30. If the Tribunal were wrong in that respect then there is little evidence the stress and anxiety continued throughout 2019 as clearly the claimant was able to obtain alternative employment almost as soon as she left the respondent's employment in July. Clearly from July until November 2019 when the claimant sought a telephone consultation with the GP, she does not appear to have seen her GP throughout that period in relation to the stress or anxiety as there are no mental health issues recorded by the GP.
31. The claimant apart from receiving some counselling in May 2019, the claimant does not appear to have seen a counsellor thereafter and certainly has never been referred to specialist in respect of Post Traumatic Stress Disorder (PTSD) or stress and anxiety in the year 2019.
32. The Tribunal therefore concludes on balance the claimant has not satisfied the Tribunal that even if she did have a mental impairment in 2019 that impairment affected the claimant's ability to carry out normal day to day activities, was an adverse condition and was long term, at best lasting a few months in early 2019.

Employment Judge Postle

14-09-2020

Date:

13/10/2020

Sent to the parties on:

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For the Tribunal Office