EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr G Kelt	v	John Lewis plc

Heard: By video conference (CVP) **On: 15 July 2020**

Before: Employment Judge Hawksworth sitting alone

Appearances
For the Claimant: Mr J Cainer (counsel)
For the Respondent: Ms G Hicks (counsel)

RESERVED JUDGMENT

From February 2018 to November 2018 the claimant was disabled within the meaning of section 6 of the Equality Act 2010 by reason of anxiety, depression and haemochromatosis.

REASONS

The claim and the issue of disability

1. By a claim form presented on 22 March 2019 the claimant brought complaints of disability discrimination, sex discrimination, unfair dismissal, breach of contract in respect of notice and pay for untaken holiday.

2. The claimant says that he is disabled by anxiety and depression which he has had since he was a teenager, and by haemochromatosis, a genetic condition. The claimant was diagnosed with haemochromatosis in 2017.

3. The respondent defends the claim and does not accept that, at the relevant time, the claimant was disabled within the meaning of the Equality Act 2010.

4. There was a private preliminary hearing for case management on 24 February 2020 before Employment Judge Warren. Case management orders were made, including an order that the claimant should disclose medical evidence and provide an impact statement on the issue of disability.

5. The claimant served an impact statement dated 26 March 2020. He also served Patient Access Records obtained from his GP. The respondent provided occupational health records. The respondent continued to dispute disability.

6. A public preliminary hearing took place before me on 15 July 2020 on the issue of whether the claimant was disabled for the purposes of the Equality Act at the relevant time. The hearing was conducted by video conference (CVP). It was fully remote, that is everyone attended by video and no-one was present in the tribunal.

The issue to be decided

7. The issue for me is whether, at the material time, the claimant was disabled within the meaning of section 6 of the Equality Act 2010 by reason of anxiety, depression and/or haemochromatosis.

Evidence and submissions at the hearing

8. I heard evidence from the claimant at the hearing. While the claimant was giving evidence, his counsel Mr Cainer alerted me to the fact that the claimant had sent him an email. Mr Cainer did not read or reply to the email. I told the claimant that he was not allowed to communicate with his counsel while giving evidence.

9. The parties had prepared a bundle of 458 pages.

10. The claimant's representative prepared a chronology and skeleton argument. The respondent's representative prepared written submissions.

Findings of fact

11. I make the following findings of fact from the evidence I heard and read. Page references are to the bundle.

<u>Background</u>

12. The claimant worked for the respondent from 27 February 1984 until his dismissal for serious misconduct on 11 November 2018. His last role with the respondent was as a stock planner based in Bracknell.

13. The claimant does not have a full copy of his medical notes. He has been told by his GP surgery that all his notes prior to 2014 were lost when he transferred to a new surgery. He has obtained a print out of a 'patient access' record; this does not contain detailed records of GP appointments. The claimant tried to get more detailed notes but due to the covid-19 pandemic, he was unable to do so.

14. The bundle also contains copies of the claimant's occupational health records which have been provided by the respondent.

Anxiety and depression

15. The patient access record says that the claimant saw his GP with anxiety with depression in February 2005 (page 39).

16. The claimant had a period of sickness absence from June to August 2012, with depression. An occupational health record dated 28 June 2012 (page 355) records that the claimant was signed off work with depression and that he had been on citalopram (an anti-depressant medication) for a year and a half. On 20 July 2012 while the claimant was still on sick leave he told occupational health that his GP would like to increase the dosage of citalopram to 40mg (page 274). He returned to work on 20 August 2012 (page 273).

17. The claimant had around 6 counselling sessions during the period July to September 2012 (page 274). He learned useful mindfulness techniques and strategies in these sessions. The claimant found that his mental health deteriorated when he was unable to use these techniques. In October 2012 he attended a Stress Control Course (page 271).

18. The claimant had another period of sickness absence due to moderate depression and anxiety in December 2013. He said at an occupational health review that his medication had been changed from citalopram to sertraline, another anti-depressant (page 216).

19. In January 2016 the claimant moved house because of health issues in his family. The move meant that the claimant had a significantly longer journey to work of approximately 90 miles each way. This exacerbated his anxiety and depression (pages 222- 224). He made an application to work from home three days a week.

20. The claimant saw his GP and occupational health again in February 2016 with anxiety and depression; he was taking 100mg of sertraline at the time (pages 37, 222 and 223). He was absent from work from 15 April 2016 because of stress and anxiety after his request to work from home three days a week was turned down.

21. The respondent's occupational health department recorded on 31 May 2016 that the claimant has a long term history of depression and anxiety; he had been taking sertraline for some years and the dosage had been recently increased from 100mg to 150mg (page 225). In August 2016 the claimant was still on sick leave with anxiety and depression. He was still taking sertraline, now 100mg daily (page 228). He returned to work on 8 November 2016 (page 235). An assessment was carried out by occupational health which said that the claimant had anxiety, stress and depression, his concentration and focus may be reduced and that it may take time for him to become fully up to speed with any new processes (page 238).

22. The claimant said, and I accept, that when his mental health deteriorates, this can affect his behaviour and moods in a number of ways, for example:

22.1. His sleep patterns become disrupted;
22.2. He feels lethargic, low, tired and lacking enthusiasm;
22.3. He loses interest in food and does not eat properly;
22.4. He becomes angry and frustrated; and
22.5. His voice becomes aggressive and he can lose his temper.

23. During the period February 2016 to November 2016 the claimant's anxiety and depression affected his day to day life. His mindfulness techniques were not working. He had mood swings and was confused and angry one minute and then depressed. He did not want to interact with people and spent a lot of time away from his family on his own. If he had to take his family to the shops he would wait in the car or wander round outside to avoid being around other people. When he was at work, he spent his lunch hour asleep in the car. He regularly skipped meals and only ate when he remembered. Sometimes he fell asleep at odd times of the day.

24. When he returned to work in November 2016 after sickness absence the claimant's anxiety symptoms increased. He was short tempered. He avoided family and friends and sat on his own. He had irregular sleep patterns, often sleeping in the afternoon but unable to sleep well at night. He did not feel hungry or want to eat. He did not want to do the things he usually enjoyed such as seeing live bands, visiting record shops and playing computer games. He only wanted to sit and do nothing.

25. The claimant was referred to occupational health again in February 2017. He told occupational health that he continued to take sertraline at that time but he had no mental health symptoms and he was continuing to practise mindfulness to help his symptoms (page 243). The OH advisor advised that the claimant's concentration, focus and memory may be affected at times because of his mental health symptoms (page 245). He was still prescribed sertraline in August 2017 (page 253) and was still on medication for depression in September 2017 (page 83).

26. The claimant's evidence, which I accept, was that he was still prescribed anti-depressant medication in February 2018 (page 452). The claimant was signed off sick again from 13 July 2018 to 20 July 2018 with stress related problem (page 420). In August 2018 when the respondent made the decision that the claimant should be dismissed, the claimant's mental health deteriorated. He could not relax or sleep. He began avoiding people. Eating was a low priority and his personal appearance started to suffer. His anti-depressant medication was increased by his GP (page 457).

27. The claimant was signed off sick from 3 September 2018 to 8 October 2018 with stress (page 421). He continued to have symptoms of anxiety and depression in November 2018 (page 457 and 458).

28. The claimant's patient access records show that he had a repeat prescription for sertraline on 27 August 2019 (page 41). The record does not give the date on which the claimant was first prescribed sertraline. I

accept the claimant's evidence that he was prescribed anti-depressants for a continuous period of some years starting in about 2010 and this was ongoing in August 2019. The claimant's evidence is consistent with the records of what he told the respondent's occupational health department about his medication in June and July 2012, December 2013, February and May 2016, and February, August and September 2017 and with his patient access record.

Haemochromatosis

29. In July 2017 the claimant was diagnosed with haemochromatosis. He was referred to and treated by a consultant (page 418). Information provided by Haemochromatosis UK (a charity) describes genetic haemochromatosis as a condition in which the body cannot switch off the absorption of iron, so over time excess iron in the body builds up to toxic levels. This is called iron overload (page 430).

30. The claimant's diagnosis was made following a number of blood tests:

    30.1. On 4 May 2017 his serum ferritin level was 1171 ug/L (the normal range is 30-400 ug/L) (page 52);
    30.2. On 13 June 2017 his transferrin saturation index result was 93%, the normal range is 15-50% (page 44);
    30.3. Also on 13 June 2017 his serum iron level was 40umol/L (the normal range is 5.8 to 34.5 umol/L) (page 47).

31. Haemochromatosis UK says that symptoms develop as iron slowly builds up, so are more likely to occur during adult life (page 425). The symptoms include fatigue, joint pain, pain in the stomach or upper right of the abdomen and depression (including mood swings, irritability and anxiety) (page 429). The claimant experienced these symptoms.

32. The claimant has symptoms of fatigue. His limbs feel tired and physical exertion results in aches and pains. These symptoms have had the following effects. He began to find it hard to recover from physical activity, and stopped playing football about 8 years ago. Around 4 years ago he thought about joining a walking football team but even this felt too much. At the same time, he began to walk less and began taking the bus instead of walking to town. He could not face a 5 minute walk from his home to the beach.

33. The claimant also has joint pain. This started in his fingers around 12 years ago. More recently, his elbows, knees and toes began to be painful. It was joint pain which led to his diagnosis with haemochromatosis. The claimant's joint pain has affected his hand strength. He struggles to open jars, bottles and packets. His hands cramp up after any extended use such as typing, writing or doing DIY.

34. The claimant also had anxiety and depression. He says with hindsight it is likely that his anxiety, depression, stress and variable moods were a consequence of haemochromatosis. The effects which anxiety and

depression have on the claimant's day to day activities are set out in my findings above.

35. On 25 July 2017 the claimant was signed off work by his GP with haemochromatosis (page 253 and 417). He returned to work on 14 August 2017 (page 417). He was signed off sick again from 13 September 2017 (page 81). The claimant's patient access records refer to haemochromatosis on 20 September 2017 (page 37).

36. Haemochromatosis UK describes the treatment for haemochromatosis. It is regular venesection (extraction of around 1 pint of blood, the same procedure as for blood donation). The removal of the blood removes some of the excess iron, and the body uses more of the excess iron to make new red blood cells. Initially, venesection is performed once a week until the iron level is satisfactory, which may take a year or more. After iron stores have been depleted, a maintenance phase of treatment is usually required, iron levels are monitored regularly and occasional venesections completed if necessary (page 426).

37. The claimant had started having venesection by December 2017 (page 93). By August 2018 he was having venesections about every four weeks (page 418). He finds the treatment painful and afterwards his mobility is affected because he has chronic muscle and joint pain for one to three days.

38. On 26 September 2017 the claimant was seen by occupational health. The report records that he had suffered with haemochromatosis, anxiety and depression 'over the past year' (page 83). The claimant was still on sick leave on 28 December 2017. He was reviewed by occupational health and said that he was feeling very tired (page 93). The claimant returned to work in early February 2018 (page 419).

39. The claimant was still having venesection treatment every four weeks in August 2018, by which time it was leading to a reduction in the levels of iron/ferritin in his blood. His consultant advised that in early July 2018 his serum ferritin was falling satisfactorily and measured 510 ug/L (page 418).

40. The claimant was signed off sick again for two months from 15 October 2018 with haemochromatosis (page 422).

41. The claimant was summarily dismissed on 11 November 2018.

42. The claimant continues to have venesection every 2-3 months and his next consultant review is February 2021.

The law

43. The burden of proof is on the claimant to establish that he has a disability within the meaning of the Equality Act 2010.

44. The definition of disability is contained in section 6 of the Equality Act:

"(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."

45. Schedule 1 to the Equality Act sets out additional detail concerning the determination of disability. In relation to long-term effects, paragraph 2 of schedule 1 provides:

"(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 the effect is likely to recur."

46. When considering whether an effect is long-term, the question is whether there had been 12 months of adverse effect as at the date that the alleged discriminatory acts occurred (Tesco Stores Ltd v Tennant [2020] IRLR 363 EAT).

47. Paragraph 5 of schedule 1 deals with the effect of medical treatment. It says:

"(1) An impairment is to be treated as having a substantial effect on the ability of the person concerned to carry out normal day-to-day activities if –
a) measures are being taken to correct it, and,
b) but for that, it would be likely to have that effect.

(2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid."

48. This requires the tribunal to consider what the effect on the claimant's abilities would have been but for the medical treatment (sometimes referred to as the 'deduced effect').

49. Considering the deduced effect in J v DLA Piper [2010] IRLR 936, Underhill P (as he then was) held at paragraph 57:

"There is nothing particularly surprising in the proposition that a person diagnosed as suffering from depression who is taking a high dose of anti-depressants would suffer a serious effect on her ability to carry out normal day-to-day activities if treatment were stopped:

the proposition could of course be challenged, but in the absence of such challenge … it is unclear what elaboration was required."

50. Paragraph 8 of schedule 1 deals with progressive conditions. It provides:

> *"(1) This paragraph applies to a person (P) if –*
> *a) P has a progressive condition,*
> *b) as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but*
> *c) the effect is not (or was not) a substantial adverse effect.*
>
> *(2) P is taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment."*

51. Section 6 (5) of the Equality Act provides that a minister may issue guidance about matters to be taken into account in deciding any question for the purposes of section 6(1). Guidance on matters to be taken into account in determining questions relating to the definition of disability was issued in 2011 (the 'Guidance'). Paragraph 12 of schedule 1 of the Equality Act requires employment tribunals to take account of any aspect of the Guidance which it thinks is relevant.

52. Section A of the Guidance deals with the 'impairment' element of the definition. It includes at A5 a non-exhaustive list of different types of impairment. The list includes impairments with fluctuating or recurring effects.

53. Section B of the Guidance deals with what is a substantial adverse effect: a substantial effect is one that is more than a minor or trivial effect (paragraph B1), as set out in the definitions clause in section 212 of the Equality Act.

54. Section B also deals with the cumulative effects of an impairment. It is important to consider whether the effects of an impairment on more than one activity taken together could result in an overall substantial effect (paragraph B4).

55. Paragraph B6 explains that where someone has more than one impairment, account should be taken of whether the impairments together have a substantial effect overall.

56. Section C of the Guidance deals with long term effects. Paragraph C2 provides that the cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect.

57. Paragraph C3 of the Guidance explains that the meaning of 'likely' is relevant to a number of different elements of the definition of disability, including when used in paragraph 2(1) of schedule 1 (whether an

impairment is 'likely to recur') and paragraph 8 of schedule 1 (whether a progressive condition is likely to result in an impairment which has a substantial adverse effect). The Guidance provides that in these contexts, 'likely' should be interpreted as meaning that 'it could well happen'. This is a lower hurdle than the test of whether something is 'more likely than not' to happen.

58. Section D of the Guidance deals with the meaning of normal day-to-day activities. They are 'things that people do on a regular or daily basis'. Paragraph D3 gives examples of day to day activities, including shopping, reading and writing, having a conversation, preparing and eating food, walking and taking part in social activities. It continues:

> *"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 shift pattern*."

Conclusions

59. I have applied these legal principles to the facts as I have found them and reached the following conclusions.

Material time

60. The time at which I have to assess whether the claimant was disabled is the date of the alleged discriminatory act. In this case, a series of discriminatory acts is alleged.

61. The parties agree that the first of the alleged discriminatory acts was in February 2018.

62. The parties disagree as to the date of the last discriminatory act. The claimant says it was November 2018, the date on which the claimant's dismissal took effect. The respondent says it was 9 August 2018, the date on which the respondent gave the claimant the written outcome of his disciplinary hearing and at which time it had taken the decision to dismiss him. I have not made any findings about the dates of the acts the claimant complains of, or about whether they amounted to discrimination. Those are matters for the tribunal at the liability hearing.

63. I have considered whether the claimant was disabled during the period February 2018 to November 2018. The tribunal at the liability hearing may decide that only the period from February 2018 to August 2018 is relevant for this purpose if it accepts the respondent's arguments on this point.

Impairment

64. Anxiety and depression: Although the claimant's medical records are incomplete, I have concluded that the claimant's evidence, the patient

access record and the occupational health records show that the claimant has a history of anxiety and depression. That is a mental impairment. The claimant had this condition from around 2010 and he was still taking medication for it in August 2019. During that time he had periods when his mental health symptoms were managed, and other periods when the symptoms became worse.

65. Haemochromatosis: In July 2017 the claimant was diagnosed with haemochromatosis, a physical impairment. This is a condition which builds up over time. It is apparent from the claimant's blood test results in his patient access records that he had the symptoms of this condition in May 2017; at that time his serum ferritin level was almost three times the top of the normal range.

66. There may be an overlap between the claimant's mental and physical conditions because the symptoms of haemochromatosis include anxiety and depression. It does not make a difference to the legal tests which I have to apply when considering whether the claimant was disabled at the relevant time whether the claimant's anxiety and depression is a separate condition or whether it is a symptom of his haemochromatosis. I have to consider the effects of the claimant's impairments. For clarity I have explained my conclusions about the mental and physical conditions separately although I have also considered the cumulative effects where appropriate.

Adverse effect on normal day-to-day activities

67. I next need to consider whether these impairments had an adverse effect on the claimant's ability to carry out normal day to day activities.

68. Anxiety and depression: I have found that during the period February 2016 to November 2016 the claimant's anxiety and depression affected his day to day life. The activities which were affected were:

    68.1. The ability to interact with people and have conversations. The claimant's ability to do this was reduced, he avoided people and spent a lot of time away from his family on his own. This activity was also affected at work as the claimant was short tempered and did not want to interact with colleagues.
    68.2. Shopping. The claimant did not go into shops because he wanted to avoid being around other people.
    68.3. Eating. The claimant regularly skipped meals and lost interest in eating.
    68.4. Sleeping. The claimant slept at unusual times during the day and in his car, and was unable to sleep well at night.

69. After he returned to work in November 2016 the effects on the claimant's day to day activities of eating and interacting with people continued. There was also an effect on taking part in social and leisure activities, as the claimant found that he did not want to do things which he usually enjoyed like seeing live bands, visiting record shops and playing computer games.

70. The claimant experienced similar effects in August 2018.

71. These were effects on the claimant's normal day to day activities. Interacting with colleagues, having conversations, going shopping, eating food and taking part in social activities are given in the Guidance as examples of normal day to day activities. Sleeping is also a normal day to day activity. It is something that people do on a daily basis.

72. The effects on the claimant were adverse. They had a negative effect on his quality of life.

73. Haemochromatosis: I have found that the activities which were affected by the claimant's haemochromatosis were:

    73.1. Taking part in social activities. The claimant stopped playing football about 8 years ago.
    73.2. Walking. The claimant began walking less about 4 years ago and took the bus more.
    73.3. Preparing food. The claimant has joint pain and reduced strength in his hands and he struggles to open jars, bottles and packets.
    73.4. Writing and using a computer. The claimant's hands cramp up after extended use.

74. These are effects on normal day to day activities. All of these activities are given in the Guidance as examples of normal day to day activities.

75. These effects on the claimant were also adverse as they also had a negative effect on his quality of life. The claimant was unable to do things he used to do or he found it harder to do them.

Substantial

76. Next, I need to consider whether the adverse effects on the claimant's ability to carry out normal day-to-day activities were substantial.

77. I remind myself that a substantial effect is one that is more than a minor or trivial effect. As well as considering the effect on each activity, I have to consider whether the effects of an impairment on more than one activity taken together could result in an overall substantial effect. Where there is more than one impairment, I should consider whether the impairments taken together have a substantial effect overall.

78. I do not consider that any of the adverse effects on the claimant can be described as minor or trivial. The impact each of them has on the claimant's daily life is more than minor or trivial and is therefore substantial. Further, five different activities are affected by the claimant's mental impairment, and four by his physical impairment. When the adverse effect on the different activities is considered together, the cumulative effect is substantial in relation to his mental and physical conditions

(whether considered separately or together, that is the overall effect of both conditions).

79. Further, measures are being taken to correct the claimant's mental and physical impairments. I have considered the deduced effect, that is what the effect would be on the claimant's ability to carry out day to day activities but for those measures.

80. In respect of the claimant's anxiety and depression, I found that he was prescribed anti-depressant medication from about 2010 and was still taking in August 2019. I conclude that if he had not been prescribed that medication, his symptoms would have worsened, and his ability to carry out the day to day activities listed above would have been further reduced.

81. In respect of the claimant's haemochromatosis, he had started having venesection by December 2017 to reduce iron levels in his blood. This treatment was ongoing at the time of the hearing. If he had not been having that treatment, the iron levels in the claimant's blood would have been higher than they were, the symptoms of haemochromatosis would have been more severe and his ability to carry out the day to day activities identified above would have been further reduced.

82. I have concluded that the effect on the claimant's ability to carry out normal day-to-day activities of both anxiety and depression and haemochromatosis was substantial and that the deduced effect (the effect if he had not been taking anti-depressant medication and having venesection) would have been more substantial.

Long-term

83. The remaining part of the section 6 definition is that the substantial adverse effect must also be 'long-term'. It is the effect which must be long-term, not the impairment or its symptoms.

84. I need to consider whether the substantial adverse effect had lasted at least 12 months at the time of the alleged discriminatory act (Tesco Stores v Tennant). As explained in the 'material time' section above, there was a dispute between the parties as to the end date of the relevant period; I have considered the period from February 2018 to November 2018 which was the longer period suggested by the claimant, although I have not made any findings about whether or when alleged discriminatory acts happened.

85. For the claimant to have been disabled at the time of events which occurred in February 2018, I need to consider whether the substantial adverse effect lasted from February 2017 to February 2018. For events which occurred in November 2018 I need to consider whether the substantial adverse effect lasted from November 2017 to November 2018. The whole period I need to consider is therefore February 2017 to November 2018.

86. Anxiety and depression: I have found that there were substantial adverse effects on the claimant's day to day activities arising from his anxiety and depression during the period February 2016 to November 2016 and when he returned to work in November 2016. There were similar effects in August 2018.

87. I have found that there were times when the claimant's symptoms of anxiety and depression was worse than other times. Given the history and frequency of the claimant's episodes of anxiety and depression and the fact that he was prescribed anti-depressants throughout this period, I have concluded that during any times between February 2017 to November 2018 when the effects arising from anxiety and depression reduced or ceased, substantial adverse effects were likely to recur (in the sense that this 'could well happen'). Recurrence would have been more likely if the claimant had not been taking anti-depressant medication. Therefore the substantial effects of the claimant's anxiety and depression are treated as continuing throughout the period February 2017 to November 2018. This means that from February 2018 to November 2018 the substantial adverse effects of anxiety and depression on the claimant had lasted at least 12 months and were therefore long term.

88. Haemochromatosis: I have found that there were substantial adverse effects on the claimant's day to day activities arising from haemochromatosis. Some of the effects started around 8 years ago and there were further effects around 4 years ago (2016). In May 2017 his serum ferritin level was almost three times the top of the normal range. Iron overload builds up slowly. I conclude, based on my findings as to when the effects started and the very high blood test result in May 2017, that by February 2017 the claimant's symptoms of haemochromatosis would have been such that there were substantial effects on his day to day activities at that time.

89. By August 2018 the serum ferritin level in the claimant's blood had improved but it was still well above normal levels (510 ug/L compared to the top of the normal range of 400 ug/L). If the claimant had not had venesection the effects of haemochromatosis on his day to day activities would have been the same as they were in February 2017 or worse (as symptoms develop as iron builds up). I conclude that the claimant's haemochromatosis had substantial adverse effects throughout the whole period from February 2017 to November 2018 or should be treated as having had those effects because it would have done if he had not had venesection. This means that during February 2018 to November 2018 the substantial adverse effects of haemochromatosis on the claimant had lasted for at least 12 months and were therefore long term.

<u>Summary</u>

90. In summary, I have concluded that:

    90.1. the claimant has a mental impairment, namely anxiety and depression;

90.2. anxiety and depression adversely affects the claimant's ability to carry out five normal day-to-day activities;
90.3. the adverse effect is substantial (for each activity and overall);
90.4. the substantial adverse effects were long term in February 2018 to November 2018 as they began before February 2017 and were continuing in November 2018 or are treated as continuing during this period because they were likely to recur.

91. In addition:

91.1. the claimant has a physical impairment, namely haemochromatosis;
91.2. haemochromatosis adversely affects the claimant's ability to carry out four normal day-to-day activities;
91.3. the adverse effect is substantial (for each activity and overall);
91.4. the substantial adverse effects were long term in February 2018 to November 2018 as they began before February 2017 and were ongoing in November 2018 or are treated as continuing during that period because of deduced effects when venesection is disregarded.

92. For these reasons, I conclude that the claimant was disabled for the purpose of section 6 by virtue of anxiety, depression and haemochromatosis during the period February 2018 to November 2018.

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Employment Judge Hawksworth

Date: 24 August 2020

Sent to the parties on: ....22/10/2020.....
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For the Tribunals Office