



THE EMPLOYMENT TRIBUNALS

Claimant: Mr T Powell
Respondent: Moguntia Food Ingredients UK Ltd

Heard at: Newcastle Hearing Centre (by CVP) **On:** 5 November 2020

Before: Employment Judge Morris (sitting alone)

Representation

Claimant: Dr J Brown of counsel
Respondent: Mr T Wood of counsel

RESERVED JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. At the time material to his complaints the claimant was not a disabled person as that term is defined in section 6 of the Equality Act 2010.
2. That being so, it follows that as each of the complaints in the claimant's claim to the Employment Tribunal is predicated upon him being a disabled person, those complaints cannot be well-founded and are dismissed.

REASONS

Representation and evidence

1. The hearing was conducted by way of the Cloud Video Platform. The claimant was represented by Dr J Brown of counsel who called the claimant to give evidence in relation to which he relied upon (in effect as a witness statement) documents that he had produced in response to orders arising from a previous Preliminary Hearing that he should provide further information regarding his asserted disability. The respondent was represented by Mr T Wood of counsel, who called Mr G Miller, New Product Development Manager of the respondent to give evidence on its behalf, which he did relying upon a witness statement that he had signed on 21 September 2020.

2. The Tribunal had before it a bundle of agreed documents comprising some 162 pages. The numbers shown in parenthesis below refer to page numbers (or the first page number of a large document) in that bundle.

The issue for this hearing

3. The claimant has presented complaints of disability discrimination. The discrete issue to be determined at this Preliminary Hearing, however, is limited as follows:

“The purpose of the PUPH is solely to determine whether at the material time the claimant qualified as a disabled person within the meaning of section 6 of the Equality Act 2010.”

The law and guidance

4. Section 6 of the Equality Act 2010 (“the Act”) provides as follows:

“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.”

5. In section 212(1) of the Act, “substantial” is defined as meaning more than minor or trivial.
6. Schedule 1 to the Act contains supplementary provisions relating to the determination of disability, including as to the meaning of long-term effects, substantial adverse effects and the effect of medical treatment.
7. Relevant guidance is contained in the Guidance on Matters to Be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) (“the Guidance”).

The evidence

8. I set out below what I consider to be the key points arising from the evidence before the Tribunal (documentary and oral) by or on behalf of the parties. I took into consideration all relevant evidence, the submissions made on behalf of the parties at the hearing and the relevant statutory and case law (notwithstanding the fact that, in pursuit of some conciseness, every aspect might not be specifically mentioned below) in making my findings of fact either as agreed between the parties or found by me on the balance of probabilities.

8.1 The respondent is a large employer, the business of which includes the development and production of seasonings, sauces and other ingredients for the food industry.

8.2 The claimant was employed by the respondent as a Senior Development Technologist. His employment commenced on 1 December 2017 and

ended when he was dismissed on 26 September 2019 for what the respondent states were grounds of his poor performance and negative attitude.

- 8.3 Mr Miller and the claimant were based in the same small office of eight members of staff. The claimant sat next to Mr Miller for the duration of his employment and, therefore, I accept that he has a good general knowledge of the claimant's work. Mr Miller became the claimant's line manager on 26 June 2019.
- 8.4 The impairment upon which the claimant relies in respect of his complaints is dyslexia. The respondent accepts that dyslexia can be considered a mental impairment and, therefore, people who are affected by the condition may be considered disabled within the meaning of the Act. It does not, however, concede that the claimant is a disabled person within section 6 of the Act.
- 8.5 Mr Miller did not become aware of the claimant's dyslexia until the claimant disclosed it to him at the meeting at which he was dismissed. He had not observed the claimant's dyslexia having any impact on his day-to-day activities during his employment.
- 8.6 In support of his claim the claimant relies upon a report produced by Mr M Lock of MLCP Consultant Psychologists Limited following an assessment undertaken on 19 February 2004. The report explains that the purpose of the assessment and the report is "to help towards an explanation of any presenting learning difficulty and offer explanations about workable plans of action that promote learning". As the claimant explained at the hearing, he obtained the report prior to starting at university in order that those reading it could understand the effect that dyslexia might have on his academic studies.
- 8.7 One of the statements that the claimant has produced in response to the orders of the Tribunal is dated 8 April 2020 (80) and relates to "questions regarding his dyslexia and other employment following on from university". I have carefully considered the whole of that statement and brought it into account in coming to my decision. The matters that were specifically referred to during the course of the hearing include the following:
 - 8.7.1 Obvious signs of the claimant's dyslexia include his handwriting, difficulty sometimes with spelling and that he can tire when required to do a lot of computer work, completing projects or producing presentation documents.
 - 8.7.2 The claimant not getting help from the respondent's existing employees meant that it took him longer to learn the new work systems and put pressure on him to meet deadlines.
 - 8.7.3 He had sent out emails on 7 June 2018 in relation to which others within the respondent had picked up on his poor grammar and spelling.

In evidence he accepted that such issues were not uncommon amongst people generally but suggested that they were pretty prevalent amongst people with dyslexia.

8.7.4 He had problems trying to retain information whilst dealing with daily work pressures and needed time to fully understand what is being asked of him.

8.8 Another of the statements produced by the claimant is dated 21 April 2020 and is headed "The Issues Which Affect Me on Daily Basis and Which I Say Amount to Disability under the Equality Act" (91). Once more I have read and brought into account the entirety of this statement. At the Tribunal hearing, much time was spent considering what the claimant refers to in that statement as being his "ongoing problems" arising from his dyslexia. In oral evidence he explained that those six problems described his daily issues as a dyslexic person. I have used the claimant's description of those six ongoing problems as the side headings that follow.

Reading and writing typical forms of information and communication.

8.9 In answering questions, the claimant accepted that as part of his role it was necessary for him to receive and read emails with instructions from the respondent's commercial team. He explained that the problem was not being able to read, which he could do, but being able to read, understand, process and act upon what he read. In this and other respects he had developed coping strategies such that he did not display his dyslexia in the course of his day-to-day behaviour; for example it was not the case that having received an email he did not know what to do. Indeed, when he explained to people that he had dyslexia they showed surprise.

8.10 He said that under workload or pressure he can tire and that can appear as laziness or inability, neither of which is accurate. He accepted, however, that many people can tire in such circumstances.

Tasks that involve numerical data.

8.11 The claimant explained that this problem refers to him using letter and number codes, percentages and dates, which he is required to do for raw materials at work. He said that he might be thinking of a number code that might be input incorrectly.

Learning and recalling factual information

8.12 The claimant explained that if he was asked to learn something he would take it in more slowly than the average person should.

Meeting deadlines managing time.

8.13 The specific example the claimant gave in this respect was that Mr Miller had sent an email to staff to the effect that they should not start on

projects until two weeks before they were due, which caused problems for him. He had raised this with Mr Miller suggesting that he was targeting the claimant. He had explained, however, that the team were all under pressure because of holidays and sickness so he had simply written a collective email to them asking them to concentrate on the most immediate projects that were due in the next two weeks. Both the claimant and Mr Miller agreed that this issue had thus been resolved at the time.

Following complex instructions.

- 8.14 In his statement the claimant had expanded upon this as meaning that instructions that are too detailed or given out of order could be overwhelming for him and a challenge to follow. He accepted in evidence, however, that someone without dyslexia could also have such problems in such circumstances.

Other difficulties including with concentrating, verbal communication and visual stress when text appears distorted or 'moves'.

- 8.15 At the hearing the claimant expanded on this as meaning that he has difficulties with concentration, verbal communication (becoming tongue-tied), and that visual stress happens.
- 8.16 The evidence of Mr Miller in respect of the above ongoing problems was clear. He said that he never observed the claimant having any difficulty in the course of his role with reading (in relation to which the role did not involve extensive reading), understanding complex instructions, recalling factual information, concentrating, verbal communication, visual stress or numeracy. He did not show any signs of being slow to read, understanding instructions or producing typed materials and he had never asked for adjustments to assist with his day-to-day activities at work. Mr Miller had regularly heard the claimant speaking on the phone to members of the sales team about different instructions he had received and he appeared to have no trouble in reading the instructions from the email and discussing them with the individual. In fact, Mr Miller noticed that he had a good rapport with some of the sales team when receiving their calls and considered his verbal communication skills to be good. Likewise, he never observed the claimant having any difficulty in entering the ingredients for a recipe into the respondent's computer system or sending emails to customers.
- 8.17 As to pressure of work, Mr Miller accepted that the work involved deadlines but the claimant had never flagged up any issues with pressure at work. Similar he had never observed any issues regarding the claimant's ability to manage his time or deal with the time pressures of the job. Similarly, referring to the 2004 report, Mr Miller had not observed the claimant displaying any problems with working memory, phonological awareness or digit symbol coding. Indeed, Mr Miller's evidence was that the reason he had not observed the claimant having problems with skills relating to numerical data, numeracy, learning and recalling factual

information and following complex instructions was that none of those skills was a requirement of his role.

Submissions

9. After the evidence had been concluded the parties' representatives made submissions. It is not necessary for me to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from my findings and conclusions below. Suffice it to say that I fully considered all the submissions made and the parties can be assured that they were all taken into account into coming to my decision.
10. That said, the key points made by Mr Wood on behalf of the respondent included as follows:
 - 10.1 The Tribunal is considering the issue of effect and whether it was substantial and long-term at the material time; that being in May and June 2019 in relation to the harassment and 26 September 2019 in relation to the dismissal.
 - 10.2 In relation to normal day-to-day activities the Tribunal must measure what the claimant can or cannot do or can only do with difficulty. It is not enough for him to have difficulty with reading, writing or numbers, the Tribunal needs to assess actual difficulties so as to assess the effect.
 - 10.3 More than minor or trivial is not the highest test.
 - 10.4 Dr Brown has referred to the case of Paterson v Commissioner of Police of the Metropolis [2007] UKEAT 0635. There the tribunal erred by comparing the claimant with the ability of an average person rather than looking at what the claimant could and could not do. By reference to the statutory guidance, the claimant should tell the Tribunal the following: these are my effects; this is why they are substantial; this is why I struggle; this is the extent of the problem.
 - 10.5 Also, the question of longevity has been overlooked. The Tribunal has to look back 12 months or forward focusing on the effect not be impairment. It is not sufficient to say that there is a report from 2004 and, therefore, the effect is long-term. The report just says that there is an impairment and the effect then. It is out of date for today's purposes and there is no evidence that the effect has been continuous from then until now. The report does not assist with the question for the Tribunal today as it is a learning assessment indicating how effects could be improved. The claimant must produce evidence that in his daily life this or that happens and the report does not assist with that.
 - 10.6 The Tribunal has Mr Miller's evidence to the effect that the claimant did not appear to have difficulty taking instructions or displaying any other signs.

- 10.7 The claimant's impact statement reads as if it was taken from the Internet as it sets out what a person with dyslexia might suffer. There is nothing personal, which would have been easy to do. Instead, the claimant had produced a copy and paste job and had not changed it into the first person, referring instead to 'some people'. The description of the issues is too wide: there are no examples and no hard evidence. The claimant has added information today but there is nothing the Tribunal can get hold of. Dyslexia is a spectrum from mild to significant and the Tribunal cannot tell where, on the spectrum, the claimant lies in order to see if the effects are substantial.
- 10.8 The Tribunal cannot know the extent of the effect of dyslexia on the claimant and cannot tell the claimant's ability outside the average mix. The Tribunal may suspect that dyslexia has a substantial adverse effect on the claimant and that it goes back 12 months but the claimant has the burden to prove that, which he had not done.
11. Dr Brown had submitted a skeleton argument dated 2 November 2020 to the Tribunal Office, which I did not have at the time of the hearing but which I obtained subsequently, read and brought into account. I also brought into account Dr Brown's reference to the case of Owen Brooking v Essex Police Service and the case law upon which he relied being Toy v Chief Constable of Leicestershire Police UKEAT/0124/17 and Paterson. The key points made by Dr Brown on behalf of the claimant included as follows:
- 11.1 Dyslexia can be a disability which does not cure itself. The fact that the claimant relies upon a report from 2004 does not mean that his dyslexia had been cured by 2017 or 2018 because it is a lifelong condition affecting millions of people in the UK and hundreds of millions across the World.
- 11.2 The claimant's dyslexia has lasted for more than a year and, as such, no challenge could be made to its long-term effect.
- 11.3 The claimant had grown up using coping strategies but had explained how dyslexia affects him in various ways. He can cope if the pressure is not too much and adjustments are made but cannot cope with being shouted at and admonished if things go wrong, which they had on two occasions.
- 11.4 Substantial means more than minor or trivial. The program used by the respondent was not dyslexia friendly and little if any training was provided, which further impacted on his ability to work due to his dyslexia. Mr Wood had said that he had not been specific enough and that he had not gone into the minutiae but the claimant says that the effects were on his performance and he made mistakes and there was no acknowledgement that dyslexia was an issue of which the respondent should be aware.
- 11.5 The evidence of Mr Miller shows that he simply thinks that dyslexia is a difficulty with reading and writing when, in fact, literacy difficulties are no more than surface symptoms. Mr Miller says get on with it but it is more

than that. It is a long-term issue, which is more than trivial and therefore is substantial.

Application of the facts and the law to determine the issues

12. The above are the salient facts relevant to and upon which I based my Judgment having considered those facts and submissions in the light of the relevant law and the case precedents in this area of law.
13. As the representatives agreed, it is for the claimant to establish that he is a disabled person as that term is defined in section 6 of the Act. In this respect there is some context, which I address first.
14. On 11 February 2020 an Employment Judge ordered the claimant to provide further information about his disability. Although he had attempted to do that it was observed at a private Preliminary Hearing on 9 March 2020 that the information he had supplied was inadequate in terms of the appropriate test for "disability". That being so, an application had been made on behalf of the respondent for all the claimant's claims to be struck out. At that Preliminary Hearing the Employment Judge did not consider it appropriate to strike out any of the claims at that Hearing and recorded that he was "satisfied that it is in accordance with the overriding objective to give the claimant one further opportunity to provide further information about all his claims."
15. He continued as follows:

"The claimant must set out with clarity exactly what is the impact of his dyslexia on his ability to carry out normal day to day activities. The information he has provided so far deals only with the difficulties he encountered because of his dyslexia in obtaining GCSE qualifications and subsequent degree qualification. The claimant does not describe anything to do with his normal day to day life or activities, including those encountered at his current or previous places of work. Without that information, the employment tribunal cannot decide whether or not his dyslexia amounted to a disability. That information must be provided."
16. The above is reflected in one of the Orders made by that Employment Judge as follows:

"Disability. The claimant must provide clear examples, at the times when alleged acts of discrimination are said to have taken place (December 2017 to September 2019) of the adverse impact of his dyslexia on his ability to carry out normal day to day activities and any other information upon which he relies to show that he met the statutory definition of disability at the time when acts of discrimination are said to have taken place."
17. Despite those very clear instructions, the information the claimant has provided for the purpose of this hearing is generalised. For example, at paragraph 8 of the statement dated 21 April 2020 (92) the claimant set out a list of adjustments

which he says, if made by the respondent, would mean that his dyslexia would not affect his work but it is clear that the list is of general application rather than specific to him. For example, one of the adjustments is, "Did not ask me to take minutes of meetings", but the claimant confirmed in evidence that he had not been asked to take minutes. Likewise, the last two items in the list refer to "Some people with dyslexia" rather than to the claimant himself. The explanation given by the claimant at the hearing was that he had taken a document from the British Dyslexia Association but, unfortunately, had not adapted it to refer to, "me". As to the list of adjustments, he explained that he had identified the list, looked at it and considered that if the adjustments were made that "would bridge the gap" to the average person. He had thought that they were all relevant and made the point of inclusion.

18. Similarly, although I accept that the Further Information document (95) was drafted by Dr Brown, and in places uses the first person (for example, "the disadvantages I faced" and "I used" a particular computer program) it nevertheless fails to focus sufficiently upon the claimant's own situation. It two is very generalised and refers, for example, to "allowing sufferers to record instructions" and "giving the employee more time to perform written tasks (where their duties involve this)."
19. Importantly in this connection, I find the six "ongoing problems" referred to above (91) to be little more than a list of conditions or issues that someone with dyslexia might experience. There is no indication of the degree or extent to which these issues impact upon the claimant undertaking normal day-to-day activities and, especially, no reference to examples of such activities. By way of analogy, a person having the physical impairment of a prolapsed disc might state that he or she has difficulties in respect of mobility, sitting, bending or carrying heavy objects. That compares with the claimant describing the ongoing problems but that does not go far enough. The person in my analogy would have to go further and explain the effects of such difficulties on his or her day-to-day activities: for example, no longer being able to walk 10 minutes to the local shop for a daily newspaper; being unable to sit watching the television without leaning forward in the chair and no longer being able to drive the 15 minutes or so to the local supermarket; no longer being able to bend without support to pick up an article from the floor; no longer being able to carry a suitcase or lift and carry a grandchild. Such an approach has been used in drawing up the illustrative list of factors that can be used in helping to identify whether or not it would be reasonable to regard such experiences as having a substantial adverse effect on normal day-to-day activities, which is contained in the Appendix to the Guidance. Unfortunately, I repeat, that the claimant has not advanced similar factors in support of his claims. I suppose that given that the claimant has referred to, for example, such matters as reading and writing typical forms of information, I could have made assumptions: for example, that he has difficulty in reading the ingredients on pre-prepared food or reading and understanding complex information displayed on the departure board at a principal railway station but I cannot do that the two reasons: first, it would be wrong of me to make assumptions; secondly, as mentioned above I have no evidence as to the degree or extent of the effect of the claimant's dyslexia on his abilities to read and absorb information.

20. I consider the claimant's failure to provide such evidence to be both significant and disappointing given the clear warning given by the Employment Judge in the excerpts set out above including (in the context of a strike-out application) that the claimant should be given "one further opportunity to provide further information about all his claims". Further, that he "must set out with clarity exactly what is the impact of his dyslexia on his ability to carry out normal day to day activities" in which he should describe things "to do with his normal day to day life or activities, including those encountered at his current or previous places of work" and "provide clear examples of the adverse impact of his dyslexia on his ability to carry out normal day to day activities". It is also a factor that at this time the claimant had legal representation.
21. These requirements are clear, the claimant was to set out the impact of "his" dyslexia on "his" ability to carry out normal day-to-day activities but he has failed to do so, choosing instead to adopt information located on the website of the British Dyslexia Association.
22. Finally in terms of context, the claimant has produced and relies upon the report of MLCP Consultant Psychologists Limited following an assessment undertaken on 19 February 2004. Even accepting Dr Brown's submission that dyslexia is a lifelong condition which cannot be cured (in respect of which I had no evidence) my concern about this report is twofold. First, it was prepared some 16 years ago and does not present an up-to-date assessment of the claimant's condition and its impact upon his day-to-day activities. Secondly, and perhaps more importantly, the purpose of that report clearly relates to the claimant's impending undergraduate studies being, "to help towards an explanation of any presenting learning difficulty and offer explanations about workable plans of action that promote learning". As such, it does not contain information that is directly relevant to the claimant's situation in a working environment and socially today. That being so, although Mr Wood accepted that the report enabled the claimant to establish that he has dyslexia, I find that I cannot put any great weight upon it in terms of establishing that, at the time material to the claimant's claim, his dyslexia had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.
23. I move on from the above considerations of context. The elements contained in the definition of disability in section 6 of the Act are well known and considerable assistance is given as to their meaning from the Guidance, which I have brought into account in coming to my decision.
24. In the judgment of the EAT in Herry v Dudley Metropolitan Council UKEAT/0100/16 it is stated (referring to the decision in J v DLA Piper UK [2010] ICR 1052), "an Employment Tribunal might start with the question of whether the Claimant's ability to carry out normal day-to-day activities has been impaired". I adopt that approach.
25. In this connection I remind myself that in Goodwin v The Patent Office [1999] IRLR 4 it was stated that the Act [*then the Disability Discrimination Act 1995*] was concerned with a person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. The focus of the Act is on the things that the claimant either

cannot do or can only do with difficulty, rather than on the things that the person can do. That said, I note and accept that in Ahmed v Metroline Travel Ltd [2011] EqLR or 64 it was stated that findings of fact as to what the claimant actually can do may throw significant light on the disputed question of what he cannot do.

26. It is primarily in respect of the effect of the claimant's dyslexia on his normal day to day activities that the point that I have made above as to the context of the observations made at the previous Preliminary Hearing and the Order arising therefrom comes into play. I repeat that I am not satisfied that the claimant has responded to those observations and Order by setting out with clarity exactly (with clear examples) what the impact of his dyslexia has been on his ability to carry out normal day-to-day activities and how it was substantial and long-term. I suppose that given that the claimant has referred to, for example, such matters as reading and writing typical forms of information, and could have made assumptions: for example, that he has difficulty in reading the ingredients on pre-prepared food or reading and understanding complex information displayed on a departure board at a principal railway station. I cannot do that, however, first because it would be wrong of me to make assumptions and secondly because as mentioned I have no evidence as to the degree or extent of the effect of the claimant's literacy on his abilities to read and absorb information. I acknowledge, as did Mr Wood in submissions, that in oral evidence the claimant provided information additional to that contained in the written statements upon which he relied in evidence and I have brought that into account but that has to be considered, in the round, alongside the clear evidence provided by Mr Miller both in his witness statement and in answering questions to which I refer above.
27. Also in this connection I remind myself that my focus has to be upon the time material to the claimant's complaints. The previous Employment Judge referred to December 2017 to September 2019 but Mr Wood described it as being in May and June 2019 in relation to the harassment and 26 September 2019 in relation to the dismissal; albeit acknowledging that that could probably be regarded as a single period of time.
28. The claimant is not assisted in this regard by the fact that, as mentioned above, he has adopted the statements that he has submitted from the website of the British Dyslexia Association without, in many instances, tailoring them by substituting the first person so as to refer to him personally. This deficiency is compounded by the fact that the claimant did not produce a witness statement for the purposes of this hearing but relied only upon the statements referred to above.
29. In contrast, I have the witness statement of Mr Miller setting out his evidence as to these matters upon which he stood firm during cross examination. The key points of his evidence are set out above and is not necessary for me to repeat those points here. Suffice it that he satisfied me that he had never observed the claimant having any difficulty with any of the "ongoing problems" to which he had referred and, importantly, that he had never observed the claimant being detrimentally affected by such time pressures as existed in the workplace; rather, he appeared to manage his time appropriately.

30. A further factor in relation to the question of day-to-day activities is that such evidence as I have relating to the claimant's day-to-day activities is limited to his work. Although limited in that way I do accept that it is nevertheless important. As was said in Herry, "we do not underestimate the extent to which work related issues can result in real mental impairment for many individuals, especially those who are susceptible to anxiety and depression". Similarly, in Law Hospital NHS Trust v Rush [2001] IRLR 611 CS, it was said that evidence of the nature of the claimant's duties at work and the way in which they are performed, particularly if they include "normal day-to-day activities", can be relevant to the assessment that a tribunal has to make of the claimant's case. I have borne these points in mind but repeat that, the work environment apart, the claimant has provided no additional evidence as to the effects of his impairment on his normal day-to-day activities.
31. Although my focus in the my consideration thus far has been upon any adverse effects of the claimant's dyslexia on his day-to-day activities I have had in mind that the definition in section 6 of the Act refers to the adverse effect being "substantial" and "long-term".
32. It is trite law that "substantial" is defined as meaning more than minor or trivial. As was stated in Aderemi v London and South Eastern Railway Ltd [2013] EqLR 198, unless the matter can be classified as "trivial" or "insubstantial" it must be treated as substantial. That is obviously a low threshold but it is a threshold nevertheless.
33. The Guidance provides examples of matters that should be considered when assessing whether any effect of an impairment is substantial. These include comparing the time taken by a person in carrying out an activity and the way in which such an activity is carried out as between a person who has the impairment and a person who does not. An example in the Guidance provides, however, that the fact that a person with an impairment might assimilate information slightly slower than somebody without the impairment would not, of itself, be regarded as being a substantial adverse effect. As indicated above, the claimant has stated that it took him longer to undertake a particular activity or he did it more slowly than the average person but he has not provided any evidence of extent or degree.
34. Of some relevance to this case is that it is provided at paragraph B7 of the Guidance as follows: "Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out normal day-to-day activities." In evidence, the claimant stated that he does use coping strategies such that he did not display his dyslexia in the course of his day-to-day behaviour. It might be that the use of those strategies on his part has altered the effects of his dyslexia such that those effects are no longer apparent (which would accord with the evidence

of Mr Miller) and, of greater relevance to my consideration, mean that they are no longer substantial. Indeed, the claimant's own evidence was that when he explained to people that he had dyslexia they showed surprise.

35. In this respect I have also had regard to paragraph B10 of the Guidance, which is as follows: "In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that the person's ability to manage the effects of an impairment would break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment." I have taken this possibility into account and acknowledge that the claimant made reference to it in relation to dealing with daily work pressures and tiring when under pressure but again I accept the evidence of Mr Miller that he had never observed any issues regarding the claimant's ability to manage his time or deal with the time pressures of the job, and that the claimant had never raised with him any issues regarding pressure of work.
36. It is explained in paragraph 2 of Schedule 1 to the Act that the effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last at least 12 months or it is likely to last for the rest of the life of the person affected. It is important to recognise, however, that the issue of "long-term" is not a freestanding consideration of time in isolation; rather, it is inextricably linked to the "effect of an impairment". In this respect, therefore, I reject Dr Brown's submission that the fact that the claimant's dyslexia has lasted for more than a year meant that no challenge could be made to its long-term effect. To the contrary, although I accept that the claimant has had dyslexia for at least 12 months and that it is likely to last at least 12 months or for the rest of his life, he has failed to discharge the burden of proof upon him to satisfy me that the adverse effect of that impairment has or is likely to last for such period and, therefore, that the effect is long-term.

Conclusion

37. The fact that the claimant has provided insufficient evidence by reference to which I could perhaps have found that he is a disabled person is at least unfortunate. As the previous Employment Judge observed, without the required "information, the employment tribunal cannot decide whether or not his dyslexia amounted to a disability". In this respect, in submissions, Mr Wood observed that I might suspect that the dyslexia has a substantial adverse effect on the claimant and that it goes back 12 months but the claimant has the burden to prove that, which he had not done. I accept that submission.
38. In accordance with the guidance as to good practice given in Goodwin, the question of impairment having been conceded, I have sought to provide separate conclusions on the questions of adverse effect, substantiality and long-term nature.
39. Having done so, for the reasons set out above, the claimant has failed to discharge the burden of proof upon him to satisfy me that he was, at the time

material to his complaints, a disabled person as that term is defined in section 6 of the Act.

40. As such, the judgment of this Tribunal (limited as it is to the preliminary issue) is that at the time material to his complaints the claimant was not a disabled person as that term is defined in section 6 of the Act.
41. That being so, it follows that as each of the claimant's claims is based upon him being a disabled person, those claims cannot be well-founded and are dismissed.

EMPLOYMENT JUDGE MORRIS

JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 17 November 2020

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