



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr T Benney

v

Imperial Civil Enforcement Solutions Ltd

Heard at: Bury St Edmunds (by CVP)

On: 04 September 2020

Before: Employment Judge Laidler

Appearances:

For the Claimant: In person.

For the Respondent: Mr C Edwards, Counsel.

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

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face to face hearing was not held in view of the current pandemic.

JUDGMENT having been sent to the parties on 13 October 2020 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The respondent submitted its request for written reasons on the 7 September 2020 and followed this up on the 24 September 2020. It again wrote to the tribunal on the 23 November 2020. The request and subsequent correspondence was only forwarded to the judge by the administration on the 24 November 2020.
2. The claimant commenced proceedings on the 27 March 2019 claiming unfair dismissal and disability discrimination based on his mental health condition. The claim of unfair dismissal was rejected due to the claimant having insufficient continuity of service to bring that claim. The respondent denied the claims in its response.

3. There was a Preliminary Hearing before E J Johnson on the 20 January 2020 to clarify the claims and issues. He listed this hearing to determine whether the claimant was disabled within the meaning of section 6(1) of the Equality Act 2010. It was agreed at this hearing that the issue of the knowledge of the respondent was not for this tribunal to decide.
4. Prior to that Preliminary Hearing the claimant had been directed to file appropriate medical evidence and an impact statement describing the effect of his disability on his ability to perform day to day activities.

Medical report of Dr George Takla 13 August 2019.

5. The letter from the claimant's GP stated that he started to suffer from depression and anxiety in February 2007 and took anti depressants for almost 14 months. There was no record that he suffered from depression after March 2008 until June 2019 when he consulted his GP again complaining of depression and anxiety.
6. Dr Takla confirmed that he reviewed the claimant on 2 August 2019 when the claimant explained he had suffered continuously from depression and anxiety since February 2007. He had tried to cope with his symptoms however without asking for medical advice or taking treatment.

Claimant's impact statements

7. The claimant prepared a short impact statement and a further longer one in April 2020.
8. The claimant recalled how he had first become so depressed he wished to end his own life on 18 January 2003. He was taken to the accident and emergency department of Northampton General Hospital by police having been found by them sitting on a footbridge above a dual carriageway drinking. A discharge report seen dated 23 January 2003 was satisfied that he was no longer suicidal.
9. Whilst working for Talk Talk between July 2006 and October 2007 the claimant had approximately 11 months off with depression. His then employer paid for him to see a psychiatrist. The claimant has been unable to obtain documentary evidence of that due to the length of time that has expired since.
10. During that time the claimant was prescribed anti depressants by his GP. A screening assessment was carried out by the Mental Health Team on 24 September 2007. The GP's referral stated there had been a failure to improve and considered there was still a self-harm risk. It is the case that the assessment conducted on the 24 September 2007 rated the claimant quite low in relation to various categories and did not suggest any further care by the mental health team. However, the claimant has explained to this Tribunal that he was at that time on medication which would have improved his mood. The tribunal accepts the evidence that the claimant has given however that he wanted to take steps with his condition so that he was not on medication which was making him feel very zombie like to use his words.

11. The claimant feels that the consultations with the psychiatrist helped him understand his condition more and from then he started to try and live with it but continued to experience bouts of severe depression often brought on by life events which he would 'over think'.
12. The claimant hardly socialises as he is nervous about mixing with new people. He has difficulty going to the shops and out at all when the depression is at its worse.
13. As a result of 'overthinking' the claimant at times feels he has a constant headache and this makes him feel even worse.
14. The claimant's wife has been very supportive and assists him with what he calls his bad days, they talk and devise ways of coping. The claimant also has a support network of other friends that he talks to either in person or online who have themselves experiences of depression. He exercises by cycling and swimming and took up a new hobby of photography.
15. The tribunal was however satisfied from the claimant's evidence that the depression remains and can be triggered by anything from the death of close friends, relatives or pets to stressors in the workplace. When triggered the claimant feels exhausted, does not want to do anything, go anywhere and remains very quiet. He does not want to see anyone, he can stay up late or after going to bed and sleep not wanting to get up. His wife will notice, they will try to keep to a routine and discuss how the best way is to deal with that particular incident. It is the claimant's wife however who will assist him with regulating his sleep pattern and make sure he gets up. The claimant will not want to eat, will not want to go out and mix with people and not want to go to the shops. He has constant headaches from over-thinking and feelings of worthlessness and failure.
16. There is a lack of medical information, but the Tribunal is satisfied that that is because the claimant has tried to manage his condition without medication which he said made him feel like a zombie.

Relevant law

17. Section 6 of the Equality Act 2010 states as follows:-

“6 Disability

- (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.”

18. Schedule 1, Part 1 of the Equality Act under 'Determination of Disability' states as follows at section 2:-

- “(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.”

19. 'Substantial' is defined as 'more than minor or trivial' (section 212(1)).

20. The Guidance on the definition of disability (2011) suggests that the time taken to carry out an activity, the way in which an activity is carried out, the cumulative effects of an impairment and the effects of behaviour should be taken into account.

The Tribunal's conclusions

21. The Tribunal accepts that the claimant has a mental impairment of depression which has certainly been in existence since 2003 and it accepts that he comes within the definition of disabled within the meaning of the Equality Act 2010.

22. Although there is limited medical evidence the Tribunal accepts that the condition has a substantial adverse effect on the claimant's normal day to day activities. The Act makes it clear that substantial is something that is more than minor or trivial. Not being able to eat, oversleeping, not socialising, not shopping are all matters that are normal day to day activities and not being able to do them is a substantial adverse effect. The claimant needs the support and help of others to manage his condition. The condition has been long-term in that it has at least lasted since 2003 and has continued since that time even though the claimant has not sought medical intervention since 2007.

23. The claimant did therefore satisfy the definition of disabled but as discussed at this hearing the issue of the respondent's knowledge will be for the full merits hearing.

Employment Judge Laidler

Date: 22 December 2020

Judgment sent to the parties on
12/01/2021

.....
T Henry-Yeo

.....
For the Tribunal office