



EMPLOYMENT TRIBUNALS

Claimant: Miss S Gacevic

Respondent: Rockley Dene Homes Ltd (T/a Cherry Hinton Care Home)

RECORD OF A PRELIMINARY HEARING

Heard at: by CVP **On:** 1 February 2021

Before: Employment Judge Tuck QC

Appearances

For the claimant: In person.

For the respondent: Ms V James, solicitor.

JUDGMENT

1. The claimant is not disabled within section 6 of the Equality Act 2010. Her claim for disability discrimination is therefore dismissed.
2. The claimant's claim for holiday pay is dismissed, as she confirmed that she was paid her holiday pay in full.
3. The claimant's claim for unlawful deductions from wages will be heard at a half day hearing on 21 June 2021, to be heard via CVP.

REASONS

1. By an ET1 presented on 21 March 2020, following a period of early conciliation from 20 February 2020 until 18 March 2020, the claimant presented complaints of disability discrimination, unlawful deductions from wages and unpaid holiday pay. She lacked two years' service in order to bring a claim of 'ordinary' unfair dismissal.

2. The claimant was employed at the Respondent care home as a care assistant from 1 April 2018 until her resignation on 5 December 2019 giving four weeks' notice, with an EDT of 5 January 2020. In fact in her ET1 she states that she commenced new employment on 12 November 2019.
3. The parties agree that on or around 19 June 2019 the claimant made a report to the police expressing concern that staff and residents were being poisoned by the water in the Respondent care home. The police told the Respondent's safeguarding team on 20 June 2019 that the claimant had reported "withholding fluids to residents" because she was concerned "there was something in the water", and the police expressed concern that the claimant appeared to be paranoid. The claimant today told me (as indeed she told the OHA on 25 September 2019- see below) that she had concerns about staff and residents suffering from "digestive symptoms" and had been instructed by nursing staff to withhold liquids from residents who were displaying gastric symptoms until their symptoms had settled, or at least until the morning.
4. On 20 June 2019 the Respondent suspended the claimant on full pay until it could obtain medical advice to understand whether there were any medical issues affecting the claimant. The claimant told me today that she considered this to be discrimination for "something I did not have"; the claimant repeated on several occasions today – as she had already set out in her email of 28 January 2021 to the ET, that she "did not have any disability".
5. The claimant told me today that her GP refused to give her medical records to her employer. The Respondent produced a letter from the Claimant's GP dated 24 July 2019 which says "I have attempted to make contact with Miss Gacevic on numerous occasions without success, and have left messages asking her to telephone the Practice without success. As this situation is complex, I would recommend assessment by an Occupational Health Consultant". The claimant said she received no such calls from her GP / surgery.
6. The claimant was seen by an Occupational Health Advisor (OHA) on 25 September 2019. I had the report in the papers before me today; it stated that "Snjezana is currently signed off sick from work by her GP until 1st October 2019 with the fit note citing "stress and mental health issue – under Cameo"". The OHA records that Cameo is an early intervention service in Cambridge offering support and treatment for those with a serious mental health condition, and goes on to say that the claimant had been assessed by them but had "declined the medication and talking therapies offered to her for various reasons". The OHA recommended a GP report to confirm any diagnosis, and gave the opinion that the claimant's condition was unlikely to be classed as a disability as "she does not have a physical or mental impairment that has a substantial impact on her activities of daily living for more than 12 months".
7. The ET3 records that the OHA, by an email dated 12 November 2019, confirmed that they had received a medical report from the GP and spoken to the claimant about it, but that the OHA "took the view that the Claimant was not in a position to give informed consent so occupational health decided not to share the report with the Respondent". Further medical notes from the GP confirming the claimant was not fit for work were, the respondent says, received

by them, and the claimant remained off sick at the date of her resignation on 5 December 2019, and during her 4 weeks' notice period thereafter.

8. EJ Ord by letter dated 7 November 2020 gave directions for the provision of a medical report to address the question of whether the claimant was disabled within section 6 of the Equality Act 2010 to be provided by 7 December 2020, and by the same date the Claimant was to produce a statement explaining what effect the alleged disability has on her ability to perform day to day activities. The claimant has produced neither any medical report nor statement, and has repeated again that she has not had, and does not have, any disability.
9. The claimant stated that she "was discriminated against for something I did not have". I have considered whether the claimant's claim might be one of discrimination because of a perceived disability; she did not put her claim in this way, but as she was representing herself I considered it appropriate to explore whether this might be her intended claim. However the Respondent had advice from the OHA in September 2019 that the claimant was unlikely to be considered to be "disabled", given the period of less than six months between the first approach from the police and the claimant's resignation, the respondent would almost certainly not perceive the claimant's condition to satisfy the 'long term' requirement. Further, in considering a potential cause of action, the claimant's suspension – on full pay - was stated to be because of the concerns raised by the police and its desire to obtain medical evidence to understand any issues which may be affecting the claimant. If the claimant contended that she had a disability, she could have sought to bring a claim under section 15 of the Equality Act to argue that her suspension was because of something arising from her disability (the report to the police) in which case it would likely fall to the Respondent to justify its treatment – but the claimant was very clear that she did not put her complaint in this way and was not in fact disabled.
10. I have concluded, having listened carefully to the Claimant today, and considered all the documents before me, that the claimant has not demonstrated that she had, at the material time, a "disability" within section 6 of the Equality Act 2010.
11. In relation to the claim for holiday pay, the claimant confirmed that she requested her holiday pay (she could not recall the date, but did not disagree with the September date in the ET3). She complained that she had to "beg for holiday when I wanted to go back to work". The Claimant confirmed that upon making her request, she was paid her holiday pay in full.
12. The only remaining issue relates to a claim of unlawful deductions from wages, which will be heard by a half day CVP Hearing on 21 June 2021. Directions for the progression of that claim are given in the accompanying Case Management Summary.

Employment Judge Tuck QC

Dated: 1 February 2021

Case Number: 3303383/2020

Sent to the parties on:

26 February 2021

For the Tribunal: