



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Schofield

**Respondents:** 1. Bolton Textiles Group Limited  
2. Mr J Dawson  
3. Mr P A Dawson

**Heard at:** Manchester (by CVP)

**On:** 13 January 2021

**Before:** Employment Judge Ainscough

## REPRESENTATION:

**Claimant:** Mr M Ferron (representative)

**Respondents:** Mr R Morton (Solicitor)

# JUDGMENT

The judgment of the Tribunal is that:

The claimant is a disabled person in accordance with section 6 of the Equality Act 2010.

# REASONS

## Introduction

1. This was a preliminary hearing to decide if the claimant was a disabled person at the relevant time. The claimant has brought claims of unfair dismissal and disability discrimination. The respondents dispute that the claimant is a disabled person.

2. The claimant produced an impact statement and gave live evidence. I also considered a bundle of documents which, including the most recent GP report, amounted to 151 pages.

### Relevant Legal Principles

3. Section 6 of the Equality Act 2010 provides:

“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”

4. I also considered Schedule 1 of the Equality Act 2010 - the further supplementary provisions on the definition of disability, and the statutory Guidance on matters to be taken into account in determining questions relating to the definition of disability 2011.

### Relevant findings of fact

5. The claimant worked as a cutter for the first respondent.

6. On 2 September 2009 the claimant had a 14 day absence as a result of hip pain. On 22 September 2009 the claimant was signed off for three weeks also because of hip pain.

4. By April 2011 the claimant had another two weeks of absence because of hip pain, and in June 2012 had two weeks’ absence as a result of lower back pain.

5. In July 2012 the claimant was signed off for four weeks because of back pain and in December 2015 he had two weeks’ absence due to a fall which included hip pain.

6. In June 2017 the claimant had one week’s absence as a result of hip pain, and was diagnosed with disc disease. In July 2017 the claimant had another week’s absence as a result of hip pain.

7. The GP letter of 9 March 2018 details the claimant as suffering from hip and groin pain and under the care of the hospital. The hospital records record “inpatient treatment”. The GP report records that the claimant was waiting for an appointment with the pain team, and confirms that he was on strong painkillers. The GP advised the respondents that the claimant should avoid any lifting activities and his cutter role, because that role required his hips to be bent.

8. On 21 March 2018 the Pain Management Clinic produced a report. The claimant’s account of his condition in that report is consistent with the evidence that he gave today. It is recorded that the claimant had suffered with hip problems for a period of eight years. It is recorded that the claimant had received steroid injections that did not assist and that walking aggravated his condition. The Pain Management Clinic confirmed that the claimant had postural and muscular imbalance. It was the claimant’s evidence that he walked with a limp. The clinic suggested that the claimant try and improve his activity despite the pain from which he was suffering.

9. On 26 March 2018 the claimant spoke to the third respondent. The claimant told the third respondent that he has been off sick because of his condition and could not do his job. The claimant also explained the side effects of his medication.

10. On 28 October 2020 the claimant's GP conducted a full review of the medical records. The GP confirmed the diagnosis of hip dysplasia and advised that the condition would deteriorate over time. The GP confirmed that there had been an increase in the severity of pain and noted in particular, that from 2017 onwards, the claimant took morphine.

11. The GP also noted that it was not until October 2019 that the claimant decided to try and wean himself off the medication due to the side effects. The GP also records that the claimant has reported difficulty with walking and sleeping.

### **Submissions**

12. The respondents' position is that the claimant did not meet the definition of disability because the claimant's impairment did not have a substantial and adverse effect on his normal day to day activities at the relevant time. The respondents also contend that the claimant was not credible because there was missing documentation, and because there was an exchange during the course of the hearing between the claimant and his representative before the claimant had finished his evidence.

13. It is the claimant's case that he had a physical impairment that had a substantial and adverse effect on his normal day-to-day activities. It is submitted that the medical records support the taking of substantial medication at the relevant time. The claimant submits that there should be a focus on what he could not do, and that his condition is long term.

14. The claimant's representative disputed the nature of the exchange with the claimant. It is the representatives position he was trying to tell the claimant that his microphone was live and he could be heard by the Tribunal. It is submitted that the claimant has proven that he is honest.

### **Discussion and Conclusions**

15. It was agreed that the relevant period of time for the purpose of the disability discrimination claim was February and March 2018. The question for the Tribunal is whether the claimant was a disabled person in February and March 2018 in accordance with section 6 of the Equality Act 2010.

16. In reaching my judgment I have looked at each element of the definition of disability.

### **Physical and Mental Impairment**

17. There is evidence in the medical records that the claimant suffered from hip dysplasia. The diagnosis was confirmed by his GP in the report of 28 October for which the GP conducted a full review of the historical records. The historical records record that the claimant suffered with problems with his hips, he had treatment for

the pain in his hips and was referred to a pain management clinic. The claimant had a physical impairment during the relevant period of time.

### Long Term

18. The claimant has suffered from this condition since 2009. In accordance with the GP report of 28 October 2020 it is likely to last, unfortunately for the claimant, for the rest of his life. By February and March 2018 the claimant's impairment was long term.

### Normal day to day activities

19. The guidance on the definition of disability, and in particular section D deals with normal day-to-day activities. The respondents' representative took the claimant through the day-to-day activities listed at paragraph D3. Whilst the normal day-to-day activities can include general work-related activities, it was put to the claimant that the lifting of industrial machinery was not a general work-related activity. I agree that it would not be a general work-related activity.

20. However, the claimant did give evidence, both in his impact statement and during the hearing, that his wife does have to help him with the shopping and the housework. The claimant gave evidence that if he walks to the shops he is in pain, and has a fear of falling. There is evidence within the medical records that the claimant has had previous falls. The claimant's evidence was that as a result, it takes a longer amount of time than would normally be expected, for a short trip to the shops.

21. The claimant described not being able to help his wife put the shopping away unless it was put onto the counter for him, which is consistent with the medical evidence from the GP that the bending of the claimant's hips is a problem. Similarly, the claimant said he could not bend to wash his feet and his wife had to assist him with doing this task.

22. The claimant has not had a holiday since 2016 and he has given up taking his grandchildren swimming because he says it is too painful. He also reports in his impact statement that he has difficulty sleeping, and the medical records reveal that this has consistently been reported to his GP.

### Substantial and adverse effect

23. The guidance on the definition of disability states that a substantial and adverse effect must be something that goes beyond the normal differences in abilities. The effects have to be more than minor or trivial.

24. The claimant was asked about how he had travelled to attend the last Tribunal hearing. The claimant gave evidence that he took the car to the train station near his home because he could park directly outside the station. It was the claimant's evidence that he travelled by train to Manchester Victoria station and it then took him 30-45 minutes to walk to the Tribunal from the station. It takes a person with normal walking ability approximately ten minutes to complete the same journey. The fact

that it took the claimant approximately 30-45 minutes is more than minor or trivial effect on the normal day to day activity of walking.

25. The claimant does carry out walking activities if he has to, but he is in pain. The claimant is concerned about falling and it takes him much longer than it would take somebody who has a normal ability to walk. The claimant has also given evidence that when he has to walk further distances he has to be accompanied by his wife due to his fear of falling. The claimant has given up swimming, and he has had trouble sleeping.

26. During the relevant period of time in February and March 2018 the claimant was still on what the GP has described as “serious painkillers”. However, the records also reveal that the medication had no effect on the management of the claimant's condition.

27. During the relevant period the claimant's physical impairment had a substantial and adverse effect on his normal day-to-day activities.

28. As a result of my findings I conclude that in February and March 2018 the claimant was a disabled person for the purposes of section 6 of the Equality Act 2010.

#### Credibility of the claimant

29. During the course of his evidence the claimant drew the Tribunal's attention to the fact that he had attended a Department of Work and Pensions assessment. I expressed dismay that this documentation was not in the bundle. The respondents' representative submitted that the claimant was withholding evidence and raised questions about his credibility.

30. The claimant's representative submitted that the legal test to qualify for a benefit is different to the legal test to establish disability in accordance with section 6 of the Equality Act 2010. It was submitted that the claimant did not think the report was relevant.

31. I did not agree with the respondent's submission that the claimant was attempting to withhold evidence – the claimant volunteered this evidence without prompting and I accept that his failure to disclose this evidence was due to a lack of understanding about the relevance of such evidence. I concluded that I had sufficient contemporaneous medical evidence to determine the disability question without that report. I accept that there are two different tests.

32. The content of the dismissal letter and the reason that is given to the claimant for his dismissal reveals that the respondents did not dispute the medical evidence or the claimant's account of his condition on the date of dismissal.

33. It was also submitted that there was an exchange between the claimant and his representative during a break in the evidence. The hearing was conducted via Cloud Video Platform and the parties remained logged into the hearing room during that break. The respondents' representative submitted that the claimant's

representative gave the claimant a thumbs up – suggesting that he was giving good answers and this interaction has a bearing on the claimant’s evidence and credibility.

34. The claimant’s representative submitted that the claimant’s microphone was live and he could be heard chatting to his wife. The claimant’s representative submitted he had gesticulated to the claimant to turn his microphone off so he could not be heard and when this happened, he gave a thumbs up. I am unable to comment on this exchange which was only raised by the respondent at the end of the hearing. I was not concerned that evidence given by the claimant after the break changed in any material way to suggest he had been influenced by any exchange with this representative during the break.

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Employment Judge Ainscough

Date 24 February 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
5 March 2021

FOR THE TRIBUNAL OFFICE

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