



EMPLOYMENT TRIBUNALS

Claimant: Mr S Langi

Respondent: OH Parsons LLP

RECORD OF A PRELIMINARY HEARING

Heard at: Reading (by CVP) **On:** 8 April 2021

Before: Employment Judge Gumbiti-Zimuto (sitting alone)

Appearances

For the claimant: Mr Ian Morton, solicitor

For the respondent: Mr Daniel Barnett, counsel

JUDGMENT

1. The claimant was not a disabled person at the relevant time.
2. The claimant's complaints of disability discrimination are dismissed.
3. The case is listed for a telephone preliminary hearing to consider further case management. The telephone preliminary hearing shall take place on **4 June 2021 at 10am**.

REASONS

1. This preliminary hearing was listed to consider whether the claimant was a disabled person in respect of any particular impairment at the relevant time, and whether any part of the claimant's claim ought to be struck out on the basis that there is a no reasonable prospect of a tribunal finding either that (a) it was brought within the necessary time limits, or (b) (to the extent that it is alleged to be a continuing act) it amounts to a continuing act when taken together with an act that is within the necessary time limits, or (c) (in either case, that the time limit should be extended in accordance with the relevant provision for extension of time.
2. I have not considered the question of time limits so the extent issues about time limits arise they remain at large to be determined at the final hearing by the Tribunal hearing the case.

3. In the particulars of claim attached to the claimant's ET1 form the claimant said that he was a disabled person within the meaning of section 6 Equality Act 2010 due to back injury, hypertension, and anxiety and depression. During this preliminary hearing the claimant abandoned reliance on anxiety and depression as a disability for the purposes of any claim under section 15 Equality Act 2010 stating that he relied on anxiety and depression in respect of the question of injury to feelings. I have therefore not considered whether the claimant is disabled by reason of anxiety and depression.
4. The claimant's disability impact statement ('the statement') sets out the nature of his back injury. While the fact that the claimant sustained a back injury following a road traffic accident on 13 May 2019 is not contested, the evidence set out in the statement is contested by the respondent on the basis that it is an exaggerated account of his condition.
5. In compliance with an order made by EJ Anstis the claimant provided further particulars regarding his disability. In paragraph 9 of the document setting out the further information the claimant states that he "*is unable to do the following normal day-to-day activities due to the pain and discomfort caused by his back injury*", the claimant then lists, sleeping in certain positions, getting washed and dressed, walking upstairs without support, walking for anything more than ½ a mile, and doing DIY or gardening. During his cross examination the claimant was confronted with his GP records and accepted that he could do some of the things listed but he was unable to do them when his condition was inflamed.
6. In paragraph 16 of the statement the claimant says that "*while I worked from home around August 2019, I was pretty constantly bed bound from August 2019 through to around April 2020*". In cross examination the claimant clarified that during the specified period he worked from home but he also had to work at a "Bath Road" on occasions this involved driving from his home in North London to the Heathrow Area a journey of about 1 hour at least. The claimant also clarified that he made appearances at the London East Employment Tribunal during the specified period. The claimant accepted that he did not seek to be excused from either duty but stated that he carried out his duties with difficulty, in pain and discomfort, wearing some form of support aid.
7. The claimant brought proceedings in the civil courts arising from his road traffic accident. The claimant's description of his injuries to the GP who prepared the medico-legal report for the personal injury case includes a stark contradiction to the evidence which the claimant has put forward in this case. In his medico-legal report which was prepared following an examination on 4 January 2020, the claimant gave his medical history to the doctor in such a way that the doctor recorded "*There is no significant history of relevant musculoskeletal or psychological problems.*" It was however pointed out to the claimant that 59 days earlier he had told the occupational health physician, while discussing the impact of the back injury following the accident on his ability to carry out his work duties, information that cause the physician to write as follows, "*Sam states he may have had an episode of back pain over a decade ago which resulted in becoming bed bound for a few weeks, hence this resolved over time.*"

Therefore it is likely that the car accident may have exaggerated this existing vulnerability which in turn can take some time to resolve considering the environment factors discussed in the report.”

8. The apparent contradiction was put to the claimant, he confirmed that he had been bed bound for a few weeks 10 years earlier, he was unable to explain why he said different things to different doctors 59 days apart but he denied lying to bolster his personal injury claim.
9. The respondent contends that in the light of the evidence presented as a whole I should reject the statement because it is not supported by the contemporaneous evidence available and there is no corroborating evidence. I do not consider that I am able to simply reject the evidence that the claimant has given about his back injury in the statement. The claimant does have a back injury and there is evidence that it impacts on his ability to do day-to-day activities. The evidence does show that the impact is more likely than not substantial, even if one discounts the exaggerations which the claimant is said to have been guilty of.
10. For the claimant to be a disabled person the claimant must have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities. The effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the claimant. The evidence in this case is that at the relevant time the impairment of a back injury had not lasted 12 months and there is no evidence presented that the back injury is likely to last the rest of the claimant's life. The evidence produced suggests that the injury will resolve, the occupational health physician refers to the injury taking some time to resolve and suggests a review in three months. The medico-legal report refers to the claimant's moderate pain and stiffness in the lower back at the time of the accident (13 May 2019) having worsened and on the date of examination (4 January 2020). The medico-legal report refers to the claimant being "*mildly restricted at work and will improve slowly*". The restrictions are related to cooking (moderately restricted), shopping (was severe improved and now mild restriction), sleep (was severe now moderate restriction), domestic chores (was moderate now mild restriction), sex life (severely restricted), walking and gym (severely restricted). The back injury is not given a prognosis by the doctor who recommends referral to an orthopaedic surgeon. The claimant is stated to have no long term deformity or problem due to the accident.
11. The evidence that is presented does not show that at the relevant time the claimant was a disabled person because the evidence does not show that at the relevant time (at the date of dismissal 20 January 2020) the back injury is likely to last for at least 12 months. The evidence from the various sources appears to show that the claimant's condition was improving and was expected to clear up but no time scale is presented. I note that the contemporaneous GP records do not evidence a continuing concern about back injury to allow me to conclude that at the relevant time there is evidence to show the impairment was likely to last 12 months.

12. Hypertension is also put forward by the claimant as a disability. The claimant has produced evidence of his hypertension, and he sets out in paragraphs 92-95 of the particulars of matters relating to it including the medication he has to take. In the statement the claimant has a section headed "*Anxiety and Hypertension*". The statement includes the sentence at paragraph 41, "*hypertension rarely has noticeable symptoms, but my condition is intrinsically entwined with my anxiety, which makes it more difficult to control.*" The claimant describes the effect that this has on his ability to carry normal day-to-day activities in the following way, "*when my blood pressure is elevated... it effects my day to day activities by limiting my concentration, it affects , my appetite and when the palpitations are really high, this causes headaches which prevent me from doing anything- I have to go to sleep as my heartrate needs to be regulated and sleep is the only way that can be achieved.*" There is no medical evidence to support the physical effects that the claimant attributes to his hypertension. The claimant does not purport to be relaying hearsay evidence of the effect of hypertension has on him. Unlike a back condition where a person can say I have a bad back and that causes me pain, hypertension, as the claimant himself says, "*rarely has noticeable symptoms*" so where a symptom is attributed to the hypertension I would expect to see some evidence to support it from a medical practitioner with the expertise to make the attribution. None has been presented.
13. I am not satisfied on the evidence before me that the claimant has shown that his hypertension is a disability within the meaning of the section 6 Equality Act 2010. While it has been shown that he has a life-long condition he has not shown that it has a substantial effect on his ability to carry out normal day to day activities. The claimant has referred to concentration, appetite, and headaches but has not produced evidence that allows me to conclude that this was related to the impairment of hypertension, I do not know that it is and the claimant has not even said that he is relying on hearsay from doctor to make the link.
14. I have come to the conclusion that the claimant was a not a disabled person by reason of back injury at the relevant time and he has not adduced evidence to show that his hypertension is a disability.
15. I am asked to strike out the complaints about public interest disclosure. I decline to do so for the following reasons.
16. I am satisfied that in the events that took place in the period leading up to the claimant's dismissal the claimant presents an arguable case that there is information provided by the claimant that the health or safety of an individual has been, is being or likely to be endangered. The claimant will have to articulate an argument that the disclosure was in the public interest and not just in his personal interest, however I am satisfied that it is possible for a matter that is of personal self-interest to the claimant to also be in the public interest, whether it is or not is a matter to be canvassed on presentation of the evidence in the case.

17. Stepping back from the case and attempting to consider the totality of the matter as it currently presents itself to me I have reservations about this case. I am of the view that there appears to be an attempt to 'shoehorn' this case which is fundamentally a case about claimant's performance into a legal argument around protected disclosure which does not fit easily into the factual matrix. In my view the claim has little reasonable prospect of success. While the public interest arguments can be made in this case in my view they have little prospect of success.
18. Even if the claimant is able to show the existence of protected disclosures the material available to me shows that there was over a period of time a very real concern about the claimant's performance, such that in my view it is not likely that the claimant will show that the causation necessary to link the various detriments of which he complains and any proven protected disclosure. The claims relating to protected disclosure in my view have little reasonable prospect of success.

Employment Judge Gumbiti-Zimuto

Date: 12 April 2021

Sent to the parties on:

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For the Tribunal:

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