



# EMPLOYMENT TRIBUNALS

**Claimant**

Mrs M James

v

**Respondent**

GEO AMEY PECS Limited

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

**On:** 13 April 2021

**Before:** Employment Judge Ord

**Appearances**

**For the Claimant:** In person.

**For the Respondent:** Mr S Foster (Non-Practising Solicitor).

**COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.**

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

## JUDGMENT

The claimant was at all material times a disabled person within the meaning of s.6 of the Equality Act 2010.

## REASONS

1. This matter came before me today to determine the question of whether or not the claimant is a disabled person and was at the material times a disabled person under s.6 of the Equality Act 2010.
2. The definition of disability under s.6 states that a person has a disability if they 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.

3. Under the Equality Act Technical Guidance a substantial adverse effect is something which is more than a minor or trivial effect, ... a limitation going beyond the normal differences in ability which might exist among people.
4. Long term means that the impairment has lasted or is likely to last more than 12 months. The assessment of “likely” is at the time of the decisions, actions or failures to act of the respondent.
5. The claimant was injured at work on 6<sup>th</sup> and 13<sup>th</sup> July 2019, in two separate incidents. She suffered an injury to her shoulder. She was absent from work thereafter.
6. The respondent obtained two Occupational Health reports on the claimant’s condition on 29 October 2019 and 5 February 2020. In the second of those reports the Occupational Health Physician confirmed that the claimant remained absent from work (six and a half months after her injury) and continued to suffer with scapula shoulder pain and pain in her left leg and back. She was being treated at the Orthopaedic and Fracture Clinic at Northampton Hospital and had muscle and nerve testing in November 2019. She had been diagnosed with hypersensitivity left forearm in the lateral cutaneous nerve of the forearm. She was also being treated at the pain clinic.
7. On the date of examination, 5 February 2020, the claimant could not lift her arm above her shoulder and was experiencing pins and needles and heaviness with less grip to the left arm, back pain radiating to the left leg for which she was currently receiving physiotherapy treatment. She had also received acupuncture treatment which did not assist long term.
8. The claimant was at that time unable to sit or stand for prolonged periods due to leg and back pain, reported effects to her mental health from her condition and reported perceived work related issues including lack of support and lack of communication.
9. The claimant had been hospitalised in December 2019 following an attempt on her own life and was at the time of examination care and review of her general practitioner and the NHS Mental Health Team.
10. The physician had been asked specifically whether the claimant would be able to return to her full range of duties within 2-4 weeks, she could not. This was due to what the physician called “the severity of her symptoms” as well as the nature of her role requiring to undertake heavy manual handling including restraining duties. Advice was given that she would benefit from re-deployment to an alternative role which did not require her to undertake heavy manual handling, lifting, restraining, pushing, bending and squatting. The claimant was happy to return to work in an alternative role if those conditions could be met.
11. The advice that the claimant would benefit from re-deployment was repeated twice more in the report.

12. The claimant confirmed that her condition continues. To the following daily symptoms, with some days worse than others:
  - 12.1 Numbness in her left arm into her fingertips.
  - 12.2 Hypersensitivity to hot water on her hand or shoulder blade.
  - 12.3 Tiredness from lack of sleep due to pain in the night.
  - 12.4 Loss of grip.
  - 12.5 Lowered strength in her left arm.
  - 12.6 Lower sciatica nerve pain radiating into her left leg and toe.
13. The claimant says that this has had what she describes as a massive impact on her life. She cannot drive her car for long periods of time. She cannot hold more than two bags of shopping, cannot do a hand tied bouquet of flowers (the claimant has historically worked in floristry). She cannot dig her garden. She cannot bend down to plant flowers, cannot mow her grass and has to do washing up mainly one handed because hot water temperature will set her arm into a spasm. She can no longer have a bath and having a shower is painful if the hot water is on her left arm. She needs help carrying anything heavy and relies on her husband to carryout activities she would normally have done. Having tried to lift things with her left arm she has dropped them so she has realised she has to be careful with what she tries to do.
14. The claimant has to her credit attempted to carry out some work. She is able to carryout work as a nail technician because she can do this work essentially one handed. She is limited to the amount of work she can do, approximately 15 hours per week.

## **Conclusions**

15. I am satisfied on the balance of probabilities on the basis of the evidence before me that:
  - 15.1 The claimant has a physical condition, a left shoulder injury which has led to hypersensitivity in the shoulder and arm and associated back pain.
  - 15.2 This has lasted for more than 12 months. Indeed at the time the claimant's employment ended in July 2020 it had been persisting for 12 months.
  - 15.3 The condition has an adverse effect on the claimant's normal day to day activities including sleeping, mowing the lawn, washing dishes, bathing, carrying objects in her left or both hands, driving and as she told me engaging in normal activities with her grandchildren.

16. This effect is substantial. It is obviously more than trivial. It impacts on many aspects of the claimant's day to day life including sleep, personal hygiene and simple domestic chores.
17. I find therefore that the claimant meets the definition of disability within s.6 of the Equality Act 2010.

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Employment Judge Ord

Date: 15 April 2021

Sent to the parties on: ..4 May 2021....

THY

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For the Tribunal Office