



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr S Gale

v

Coopers Transport Services Limited

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

**On:** 30 April 2021

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** Mr M Gale-Jones, Brother

**For the Respondent:** Mr Rozycki, Counsel

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

This has been a remote hearing on the papers which has not been objected 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 during the current pandemic and all issues could be determined in a remote hearing on the papers.

## JUDGMENT on PRELIMINARY HEARING

The Claimant does not have a disability to satisfy the definition contained in Section 6 of the Equality Act 2010 and therefore his claims of disability discrimination are dismissed.

## REASONS

### **Background**

1. This is a Preliminary Hearing to determine whether or not the Claimant has a disability within the meaning of Section 6 of the Equality Act 2010.
2. We heard evidence from the Claimant and we also have the benefit of the Claimant's Impact Statement. The Impact Statement says that the Claimant had an inability to concentrate, inability to remember days of the week, birthdays and appointments, relies on his Mother to prepare meals and an inability to learn new things or understand new information. There was also a GP's Report which was dated some time after the Claimant's dismissal, 24 December 2020, and that suggested the Claimant had a reduced appetite as well as an impact on the Claimant's mood and ability to concentrate, learn and understand.

3. We know that the Claimant says that his particular disability is mental health, depression and anxiety. He says he started suffering it around December 2019 and did not want to admit it. In February 2020 he saw his Doctor for the first time for depression. His Doctor prescribed, at that stage, Sertraline. It had an adverse effect on the Claimant and he stopped taking it after four days. He says he saw the Doctor the following week, but then he last saw his Doctor on 23 March 2020. He had counselling for a while and the mental health expert said all he needed was someone to talk to. That appeared to end in April 2020 and his GP signed him fit to return to work on 7 April 2020.
4. Since that time we know the Claimant has held down two jobs and they appear to be driving jobs. The Claimant is not on any medication and he says every now and again he telephones a mental health line when he feels that he needs to calm down. There is no particular specific diagnosis given by his GP other than a two month history of low mood and lack of motivation.

### **The Law**

5. Section 6 of the Equality Act 2010 says,
  - (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.
6. What does that mean in effect? The Employment Appeal Tribunal has said that the words used to define disability require a Tribunal to look at the evidence by reference to four different questions or conditions:
  - 6.1 Did the Claimant have a mental and / or physical impairment?
  - 6.2 Did the impairment affect the Claimant's ability to carry out normal day to day activities?
  - 6.3 Was the adverse condition substantial? And
  - 6.4 Was the adverse condition long term?Those four questions should be posed sequentially and not together.
7. It is clear on the evidence, the Claimant did suffer some adverse effects in his mental condition, impacting on his concentration and memory. I agree, those adverse effects are far from being substantial.
8. If we then look at long term, that long term effect on impairment is one which falls within one of the following categories:
  - a. that it has lasted for at least 12 months;
  - b. the period for which it lasts is likely to be at least 12 months; or

- c. it is likely to last for the rest of the life of the person affected.
9. When we determine what is likely, this is interpreted as meaning it could well happen rather than it is more probable than not that it will happen.
  10. Looking at the time line on the evidence, the Claimant was first seen in February 2020 with a two month history of low mood and lack of motivation. He was signed off sick for the period 11 February 2020 to 7 April 2020. He had further suicide thoughts on 24 February 2020 and he was last seen with regards to his mood on 23 March 2020.
  11. It is true that the medical report and the Impact Statement are both dated less than 12 months after the Claimant's dismissal in March 2020. Both do not suggest the condition had any effects on the Claimant's life beyond the Claimant's dismissal in March 2020, or after the Claimant was medically certified fit to return to work on 7 April 2020. After that period, he indeed held down two driving jobs.
  12. It is the case that at best the Claimant's impairment commenced around November / December 2019, two months before he was seen in February 2020 and ended on 7 April 2020, or thereabouts. After that period the Claimant does not seem to have been under the guidance of specialists or his GP.
  13. It is for that reason that although there is a mental impairment that may affect the Claimant's ability to carry out some normal day to day affairs, it is not substantial on the evidence before me and the adverse condition is not long term, i.e. likely to persist for 12 months or more and for those reasons the Claimant's claim under the Equality Act 2010 for the protected characteristic of disability is dismissed as the Claimant does not satisfy the definition required under Section 6 of the Equality Act 2010.
  14. At the conclusion of the case, it was also confirmed, as the Claimant did not have two years continuous employment and was not able to bring a claim under Section 98(4) of the Employment Rights Act 1996 and therefore the claim for ordinary unfair dismissal is dismissed.
  15. Employment Judge Postle also clarified given the Respondent's Response that there is no alternative case, for example, a claim for automatic unfair dismissal for Health and Safety reasons being pursued by the Claimant and Mr Gale-Jones on behalf of his brother confirmed that no alternative case was being advanced or pursued.

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Employment Judge Postle

Date: 15/05/2021

Sent to the parties on: .....

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For the Tribunal Office