



EMPLOYMENT TRIBUNALS

Claimant

Mr Patrick Ring

Respondents

City Response Ltd t/a Guinness
Property

v

Heard at: Watford

On: 28 May 2021

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Ms E Sole, Counsel

JUDGMENT ON PRELIMINARY ISSUES

- (1) The Claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of his type 1 diabetes for the entirety of his employment with the Respondent.
- (2) The Claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of the tremor in his right hand with effect from 7 February 2019 and for the remaining period of his employment with the Respondent.
- (3) The Claimant was not a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of depression and/or anxiety while he was employed by the Respondent.

REASONS

Introduction

1. By notice of 21 November 2020, the following issue was listed for determination:
 - i) “Whether the Claimant is a disabled person within the meaning of s. 6 of the Equality Act 2010 and give such further case management directions as are required.”
2. The Claimant was employed by the Respondent as a Multi-Skilled Technician from 8 August 2017.
3. At the outset of his employment the Claimant made the Respondent aware he suffers from type 1 diabetes.
4. Sometime during 2018 the Claimant began to notice mild tremors that particularly affected his right hand. At a routine health check provided by the Respondent in September 2018, the nurse noticed the tremors and advised the Claimant to have the matter looked into.
5. On 7 February 2019 the Claimant was examined by the Respondent’s Occupational Health Physician (OHP). By this time his hand tremors had become considerably worse. The report states:

“He reports noticing tremors in his right hand almost on a daily basis. The tremor in his left hand is relatively mild compared to that in his dominant hand right hand. The tremor can come at rest but gets worse if he tries to do something such as trying to write, or even when holding a cup or a mug of drink. He tries to use less of his right hand while at work. He reports struggling to unload the tools from the van on his own. He tells me that he struggles even to undertake minor repairs and tasks in the property.... When sitting down, the tremor in his right hand is noticeable even at rest; but this was when asked to put both his hands out or when he tries to write. His tremor was very bad when attempting to do the Purdue pegboard test....Patrick thinks that his tremor is progressively getting worse.”
6. The OHP stated that in his opinion the Claimant most likely had Parkinson’s disease and needed to be referred to a neurologist for further assessment.
7. On about 18 February 2019, the Claimant became suicidal and there was a Crisis Referral to Barnet, Enfield and Haringey NHS Mental Health NHS Trust. The discharge notification states: “Referred by wife due to suicidal thoughts on 17 February. However when he was offered a medical review by HTT on the 18 February he declined. Mr Ring reported that he was quite stressed over the weekend and everything came over him. He was in distress and he reported suicidal ideation to his wife. He said talking to his wife over the weekend helped significantly and he denied having suicidal thoughts at the moment. Mr Ring reported that he was working full-time and it would be difficult to engage with HTT anyway. He said that he had at times suicidal thoughts but never planned anything and also he denied

having intent...He said that he did not need our input at present as he had support from his wife and he found that very useful. He also declined any psychological support and said that he would talk to his wife if he felt unwell again...I stressed the risk of Mr Ring developing depression and becoming suicidal again if he is diagnosed with Parkinson's disease..." The Management Plan stated "To be monitored for depression and suicidal risk by GP especially if diagnosed with Parkinson's disease. Psychological therapy to be considered in the future".

8. On 5 June 2019 the Claimant saw a Consultant Neurologist who referred him for a "MRI head" and "DaT scan". The medical report dated 10 June 2019 refers to the Claimant describing a "a tremor in the right hand for about a year, which initially presented at rest but now manifests on action...His handwriting has deteriorated." The letter also states "The contribution of his low mood is worthy of consideration. I wonder if you can address this."
9. In October 2019 the Claimant was put at risk of redundancy. The Claimant applied for a new position as 'Working Supervisor', however his application was unsuccessful.
10. He subsequently resigned with effect from 29 November 2019 and was signed off work with anxiety and depression from 18-29 November 2019.
11. A letter from the same consultant neurologist dated 17 January 2020 reports that the Claimant returned for review on 3 January 2020. It further states that "The intermittent tremor of the right hand persists and is particularly apparent when his hand is in use." The letter concludes, "Concurrently it is important that any underlying mood disorder and the possibility of work-related exacerbations are considered."
12. A further letter from the same consultant neurologist dated 17 December 2020 states "The tremor persists and it is debilitating, impacting on both his activities of daily living and also his trade where he uses power tools. He explained to me that the tremor does affect him socially as it is observed by others." It appears from that letter that at some point the Claimant had been informed that in fact his scans did not show evidence of Parkinson's disease.
13. There is also a letter in the bundle from the Claimant's GP dated 29 January 2021 which states:

"Mr Ring suffers from diabetes mellitus for over 20 years. His tremor was first diagnosed in February 2019 and his anxiety and depression was first diagnosed in July 2019. Mr Ring's depression has been resolved with on-going medication treatment however Mr Ring suffers from anxiety due to his other complex medical conditions."
14. In fact the Claimant stated the letter was incorrect because while he had been offered medication for depression he had not taken any; he did not

want to add to his list of medications and preferred to manage his condition on his own.

Conclusions

Disability

15. The Section 6 of the Equality Act (“EqA”) says that:
 - (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.”
16. The Respondent accepts that the Claimant was, throughout his employment, a disabled person by reason of type 1 diabetes.
17. As regards whether the Claimant was disabled by reason of the tremor in his right hand, the Respondent appeared to accept that by February 2019 the tremor had a substantial adverse effect on the Claimant’s ability to carry out day-to-day activities, but argued the Claimant had not shown the effects were long-term.
18. The concession as regards substantial adverse effect was plainly well made in view of the report of 13 February 2019. Further the Claimant gave detailed and unchallenged evidence about the effect, by that time, of the tremor in his right hand; he was struggling to write (he is right-handed), to do up buttons on his clothes, to carry or pour drinks, to serve himself food, and to undertake elements of his personal care, such as scrubbing his teeth.
19. As to the meaning of long-term, paragraph 2 of schedule 1 EqA says:
 - “(1) The effect of an impairment is long-term, if-
 - (a) it has lasted for at least 12 months,
 - (b) it is likely to last for 12 months, or
 - (c) it is likely to last for the rest of the life of the person affected.
20. I am satisfied that by February 2019, although the Claimant’s impairment had not, at that stage, been substantial for a period of 12 months, it was likely to last for 12 months. First, the tremor had already lasted a number of months and was getting worse. Secondly, the OHP considered that the Claimant was suffering from Parkinson’s disease. Even though, in the event, that was not the correct diagnosis, the evidence at that time pointed to a long-term, if not permanent, problem that was likely only to deteriorate. Furthermore even though it has been established that the Claimant does not have Parkinson’s disease, that medical opinion was right to the extent of identifying the existence of a long-term condition.

21. Accordingly, I am satisfied that the Claimant became a disabled person by reason of the tremor in his right hand with effect from 7 February 2019.
22. As regards whether in February 2019 (or at some point before 29 November 2019) the Claimant also became a disabled person by reason of depression and anxiety, it is clear that following the diagnosis of Parkinson's disease in early February 2019, the Claimant suffered a crisis in his mental health in mid-February. Furthermore, there is evidence of him suffering from an on-going mental impairment after February 2019 in the reference to the letters from the consultant neurologist of 5 June 2019 (referring to low mood) and 17 February 2020 (referring to underlying mood disorder). The letter from the Claimant's GP dated 29 January 2021 also refers to the Claimant having been diagnosed with anxiety and depression in July 2019, to the Claimant's depression having been resolved by medication (although the Claimant states he has not taken medication) and to the Claimant suffering from anxiety due to his complex medical conditions.
23. Nevertheless, I am not satisfied there is evidence to show that the Claimant's mental impairment had a substantial adverse effect on his ability to carry out normal day-day activities other than during the crisis period itself (over a weekend in mid-February). The discharge report reports the Claimant as stating that he did not need any further input or psychological support and stresses the risk of the Claimant *developing* depression (rather than suffering from depression). Apart from the period between 18-19 November 2019, I was not shown any evidence that the Claimant could not work because of anxiety and depression, of his depression or anxiety (rather than his diabetes or his tremor) having a significant adverse effect on his ability to carry out day-to-day activities, or that the Claimant attended his GP for treatment for depression or anxiety. Further, the Claimant says he has never taken any medication for depression or anxiety.
24. In these circumstances I am not satisfied that the Claimant was a disabled person by reason of depression and/or anxiety during his employment with the Respondent.

Employment Judge S Moore

Date: ...28 May 2021.....

Sent to the parties on: .22 June 2021

.....GDJ.....

For the Tribunal Office