



EMPLOYMENT TRIBUNALS

Claimant: Mr N Chowdhury
Respondent: Ministry of Defence
Heard at: Bristol (in public, by video) **On:** 7 July 2021
Before: Employment Judge C H O'Rourke

Appearances

For the Claimant: in person
For the Respondent: Mr Allsop - counsel

PRELIMINARY HEARING JUDGMENT

The Claimant was not disabled at the relevant time, under the terms of s.6 of the Equality Act 2010 and accordingly his claims of disability discrimination are dismissed.

REASONS

Background and Issues

1. Following a telephone case management hearing of 11 February 2021, this matter was listed for an open preliminary hearing, the purpose of which was to decide whether or not the Claimant met the definition of disability contained in s.6 of the Equality Act 2010, at the relevant time, i.e. during his employment with the Respondent, between 19 August 2019 and 18 February 2020 ('the relevant time'). The Claimant stated that his disability was depression/anxiety/acute stress. The Order set out the legal test in this respect.
2. The Claimant was ordered to do the following:
 - 2.1 To provide an impact statement, limited to 1000 words, setting out various matters, as described in the Order, at paragraph 9 [52]. He provided such a statement [61].
 - 2.2 By 26 March 2021, copies of his GP's and other medical records relevant to whether he had the disability at the relevant time. The Claimant did not do so, however, apart from providing two letters from his GP (one of March 2018 and another of 17 February 2021 – [64&87] and various fit notes that he had provided to the Respondent while employed. Instead, without being ordered to do so, he provided what in effect purported to be an expert report from a private GP, a Dr Amin [89-93].
3. This matter was first listed for hearing on 2 June 2021, but had to be adjourned part-heard, to today, due to the interpreter at that Hearing being unable to sustain a reliable internet connection.

The Law

4. Mr Allsop referred to the statutory 'Guidance on Matters to be Taken into Account in determining questions relating to Disability (2011)' ('the Guidance').

Facts

5. I heard evidence from the Claimant and both parties made submissions.
6. The thrust of Mr Allsop's submissions were as follows:
 - 6.1 The burden of proof in this respect is on the Claimant and he has failed to discharge that burden.
 - 6.2 Despite clear direction from the Tribunal, the Claimant has failed, in his impact statement, to show that he suffered substantial adverse effects in relation to day-to-day activities, during the relevant time.
 - 6.3 That there was insufficient evidence to show that any such substantial adverse effects were long-term.
 - 6.4 That such periods of sick leave as he had were related to work-related stress and therefore situational, i.e. purely related to the alleged events that were happening at work and not evidence of disability.
7. The Claimant said the following:
 - 7.1 That he had not worked from 2016 until July 2019, due to his illness and had been taking medication over that period, apart from a few weeks.
 - 7.2 That it had not been clear to him that he should have provided his GP's notes and he sought to rely instead on Dr Amin's report. He also said that he could not do so, due to COVID-related restrictions.
 - 7.3 He had not put everything into his impact statement, due to the word count.
 - 7.4 The treatment he received at work exacerbated his illness.
8. The medical evidence is as follows:
 - 8.1 The GP's letter of 2018 states that he has suffered from work-related stress from 2013. It refers to him being on medication and apart from him stating that he sometimes gets tired and light-headed, finds it difficult to concentrate and is intolerant of questioning or arguments, provides no more detail as to substantial adverse effects on day-to-day activities.
 - 8.2 His first sickness absence record, which states that a period of absence between 4 and 15 November 2019 was due to anxiety, depression and stress '*arising out of the course of duty*' [67].
 - 8.3 Work-related stress, due to '*bullying and harassment*' and '*relationship issues within the team*' is recorded in an OH referral form of 15 November 2019 [70].
 - 8.4 A fit note for the period 25 November to 8 December 2019 refers to '*an acute stress reaction*' and '*low mood*' [73]. There are several of these, which I will not individually record.
 - 8.5 An OH report of 6 December 2019 [78] refers to the Claimant being absent from work due to issues at work. Return to work was stated to be dependent on resolution of those issues.
 - 8.6 A further OH report, of 3 January 2020, indicated that the Claimant had made a good recovery and that he both could and intended to return to work on 6 January. It recorded that the Claimant had said that the triggers for this current episode were work-related. The author considered that the Claimant's condition could meet the definition of disability, but noted that the decision was one ultimately for this Tribunal.
 - 8.7 Two further fit notes, for '*stress at work*' covered the period 27 January to 2 March 2020, during which time (on 18 February) the Claimant was dismissed.
 - 8.8 A letter from the Claimant's GP dated 17 February 2020 [87], which, in summary, states the following:

- 8.8.1 It refers to him having history of anxiety and depression, since 2016, for which he takes antidepressant medication.
- 8.8.2 It also refers to the effect this condition may have on his ability to conduct any hearing.
- 8.9 A 'medical report' dated 16 March 2021 [89] of a Dr Amin, instructed by the Claimant. In summary, it states the following:
- 8.9.1 It is based on 'medical reports' from his NHS surgery and an interview with the Claimant.
- 8.9.2 It refers to him '*seeking justice*' in respect of his Tribunal claim.
- 8.9.3 It records that the Claimant told Dr Amin that '*he had encountered religious and disability discrimination, unfair treatment, bullying, intimidation and harassment at work. These had significantly impacted his health and work. As a consequence his stress and depression became worse and he had intermittent bouts of sickness ...*'. The doctor went on to recount some of the Claimant's specific allegations against the Respondent, with that '*... situation (having had) a number of detrimental effects on Mr Chowdhury's mental health and physical health.*'
- 8.9.4 It records his GP's note of 4 November 2019 stating that he '*feels stressed and low due to work*', but had been feeling better since August and had stopped taking his medication the previous December.
- 8.9.5 In relation to the effect of the Claimant's condition on his ability to carry out day-to-day activities, it refers to '*demanding work and disciplinary procedure*' and to losing his appetite and avoiding personal hygiene, such as showering. It also states that he avoided social and family contact.
- 8.9.6 It concludes by recording the Claimant's allegation about being pressurised to keep his grievance informal and being dismissed because he refused to co-operate with that request. Dr Amin summarises by stating that he '*would support Mr Chowdhury's efforts to seek reinstatement and compensation on medical grounds.*'
- 8.10 During the lunch break in today's hearing and following the hearing of closing submissions in this issue, the Claimant emailed various additional documents to the Tribunal and the Respondent in relation to his medical condition. Mr Allsop objected to them being adduced in evidence, due to the extreme lateness of their disclosure and the potential prejudice to the Respondent, perhaps necessitating the taking of further instructions in respect of them. I refused, for those reasons, to permit them to be brought in evidence and in any event, having perused them, did not consider that they added greatly to the existing evidence, consisting of a medical questionnaire completed by the Claimant when he commenced working with the Respondent, in which he referred to having anxiety and depression and also three fit notes from 2016.
9. A summary of the Claimant's witness evidence is as follows:
- 9.1 He feels a pain in his chest when stressed and often feels dizzy, in relation to '*work load*'.
- 9.2 He finds it difficult to work in temperatures below 18 degrees centigrade.
- 9.3 Arguments and false accusations make him angry and ill '*e.g. at work*'.
- 9.4 When stressed, his personal hygiene, sleep and sight is affected and he sweats profusely. This, in turn, affects both his work and home life, including housework.

- 9.5 In '*harsh environments*' he can be either dumbstruck or over-confident.
 - 9.6 His desire to leave home or socialise is much reduced and he did not wish to attend a work meal sponsored by the Respondent due to his manager's '*attitude towards my need for halal food*'.
 - 9.7 He found it difficult to concentrate at work and in meetings and training.
 - 9.8 At work, he sometimes had bladder incontinence, due to feeling that he could not take toilet breaks, due to be under excessive observation.
 - 9.9 He has suffered hair loss.
 - 9.10 His conjugal life is impacted significantly.
 - 9.11 He said he had only stopped taking his medication for a few weeks. When asked further about taking this medication he said, in relation to his condition that '*it comes and goes – when I take the medication I get better*'.
 - 9.12 In respect of his evidence in cross-examination, given on 2 June 2021, he said, for the first time, today that he had not understood some of what was said at that Hearing, due to problems with the interpreter's internet link and wished to re-visit that evidence. I refused that request, stating that I had a good note of the relatively brief evidence given on that day and recorded no difficulty in understanding by him at the time. The problem with the interpreter was that her internet connection came and went, resulting in several pauses in cross-examination, during which, of course, no questions were put. However, when the connection was working, communication was clear. In the end, however, it was necessary to adjourn the hearing, as the interruptions were too frequent for the hearing to be dealt with within the time allocated.
10. Conclusions. I find that the Claimant was not disabled at the relevant time, for the following reasons:
- 10.1 Despite the Claimant (who is clearly a well-educated and intelligent man – he referred to various accountancy qualifications) being given clear instructions in the case management order as to what was required of him by way of evidence of his claimed disability, he failed, in significant ways, to provide that evidence, as follows:
 - 10.1.1 Despite being given examples of day-to-day activities and it being stressed that these should, if possible, relate to the relevant time and being told to state the start date of any impairment, his impact statement did not do so, with sufficient clarity, as follows:
 - 10.1.1.1 Apart from a reference to not attending a meal sponsored by the Respondent, it is not clear if the impacts stated relate to the relevant period, or some longer period of time. In any event, the reference to the meal seems to relate more to the Claimant's concerns about potential religious discrimination, more than his disability.
 - 10.1.1.2 He did not state the start date of such impairment, or whether it was continuing, or had stopped.
 - 10.1.1.3 Many of the references he makes are not to 'day-to-day' activities, but to entirely non-routine activities, such as being exposed to cold below 12 degrees; being involved in arguments and having 'false accusations' made against him; being in a 'harsh and stressful' environment; being deceived and being interviewed by a doctor or a barrister regarding this claim.
 - 10.1.1.4 He asserted (only, for the first time in submissions today) that he had been unemployed since 2016, but no

corroborative evidence was provided to support this assertion and I note, in this respect, his reference to doing office work and some degree of accountancy practice by him in the past, with references to working from home.

- 10.1.1.5 I don't accept his explanation that he was unable to include everything within the statement, due to the 1,000 word word-count, when, firstly, the Order is clear that a party can apply to the Tribunal to increase the word-count, but, in any event, the statement he has provided (two pages of spaced lines) is less than the word limit.
- 10.1.2 He was also ordered to provide copies of his GP's or any other medical records, but did not do so. While he said that he did not understand that to be the case, it is clearly expressed in the Order and while the Claimant asked for and was given the services of a Bengali interpreter, at both this and the last hearing, he clearly understands both oral and written English. I find this, because, on the first day of hearing, when difficulties arose with the previous interpreter's internet connection, he stated that he was content to proceed without her. Secondly, when the hearing re-commenced today, he frequently corrected the interpreter, in his translation from Bengali to English and thirdly, of course, he had been employed in an English-speaking environment by the Respondent, with no apparent linguistic difficulty. I refer also to his previously-stated educational level. Nor did he make any enquiry of the Tribunal, if he was uncertain in any way about the content of the Order. Nor do I accept his somewhat contradictory further explanation that he'd not been able to obtain the notes, due to Covid restrictions, when he had five months in which to do so, which he could have done by written request, while, at the same time, was able to instruct and attend with a private GP. I draw an adverse inference from his failure to comply with that Order, indicating, to me, a wish to present only potentially favourable evidence.
- 10.2 He, instead, merely provided two brief letters from his GP, one from 2018, which was therefore clearly of little relevance to this claim and the more recent one, which merely states that he has had a history of anxiety and depression since 2016, for which he has taken medication, but makes no reference to any substantial adverse effects in relation to day-to-day activities.
- 10.3 I give the 'medical report' provided by Dr Amin very little weight, for the following reasons:
- 10.3.1 It purports to be, in effect, an expert report, but no orders were made that such a report be provided. Had it been considered necessary to have such a report, the Tribunal would have made orders as to the parties mutually identifying an independent doctor, then jointly instructing that doctor, which instructions would have made it clear that the doctor was jointly instructed and that his first duty was to the Tribunal.
- 10.3.2 This report is clearly not independent, based entirely on the Claimant's sole instructions and what he told Dr Amin. The doctor does not specify what medical records, if any, he has read (apart from a reference to 'medical reports from his (the Claimant's) surgery', which could merely be the letters already referred to) and therefore seems largely to base his opinion on what he is told by the Claimant.

- 10.3.3 Dr Amin is clearly attempting to act as an advocate for the Claimant (by reference to his comments recorded above at paragraph 8.9) and not, as he should, by being an independent expert, with his primary duty to provide impartial evidence to the Tribunal.
- 10.3.4 In any event, the report is far from contemporaneous and is unclear as to what time frame is being referred to.
- 10.4 I don't consider, taking the above factors into account that the Claimant has established that either his impairment had substantial adverse effects on his ability to carry out normal day-to-day activities, or that it was long-term and I do so for the following reasons:
- 10.4.1 Apart from what he says in his impact statement, he has provided no satisfactory corroborative medical evidence to support such assertions.
- 10.4.2 Much of what he refers to is not related to 'normal day to day activities' but to exceptional events, even in the workplace.
- 10.4.3 He himself said that his condition 'comes and goes', indicating that it matches the example given at C6 in the Guidance, as to a person having discrete episodes of depression, stemming from particular events, or situations. Even from the Claimant's evidence, this is what appears to be the case here: the Claimant was sufficiently well enough to have stopped taking medication (either a 'few weeks' before, or as Dr Amin records many months before) and to gain employment with the Respondent, but then, specifically '*triggered*' by alleged acts of discrimination, he took periods of sick leave, due to work-related stress arising out of '*relationship issues within the team*'. Such a reaction to perceived or actual difficulties at work is entirely common, with very many non-disabled employees taking sick leave for such reasons and it is not, therefore, of itself, indicative of disability.
- 10.4.4 The corroborative evidence he provided as to the duration of such impairment was unsatisfactory, for the reasons set out above and I could not, therefore, conclude that it was either likely to recur or had, or would last a year or more.

Employment Judge O'Rourke
Date: 09 July 2021

Judgment and Reasons sent to the Parties: 14 July 2021

FOR THE TRIBUNAL OFFICE