



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Jones

**Respondent:** 1. Revolution Zero CIC  
2. Ms S R Sanger  
3. Ms R Taylor

**Heard by Video CVP**

**On: 8 July 2021**

**Before:** Employment Judge Skehan (sitting alone)

## Appearances

For the claimant: In person

For the respondent: Mr J Ratledge, counsel

## JUDGMENT

1. The claimant is not a disabled person as defined within the Equality Act 2010 by reason of post-traumatic stress disorder (PTSD). The claimant's claims for disability discrimination contrary to section 13 (direct discrimination), section 15 (discrimination arising from disability), section 19 (indirect discrimination), and sections 20 and 21 of the Equality Act 2010 (failure to make reasonable adjustments) are unsuccessful and dismissed.
2. The claimant's claim for victimisation contrary to section 27 of the Equality Act 2010, together with the other claims identified within the separate case management summary will proceed to a final hearing currently listed for 25 April to 28 April 2022.

## REASONS

3. This hearing was listed as a video hearing. At the commencement of the hearing, the claimant had IT problems. While we were unable to resolve these IT problems, the claimant was able to fully participate within the hearing by telephone and informed the tribunal that she was happy to proceed on that basis. It was agreed with both parties that the 'relevant

time' in this matter is between 1 November 2018 and 2 October 2020. I was provided with a bundle of documentation stretching to 380 pages.

4. The claimant gave evidence by reference to her impact statement and she was cross-examined. I was also provided with the claimant's GP notes and a report from Prof. Long dated May 2021. The evidence can be summarised as set out below.
5. The claimant is relying upon the condition of post-traumatic stress disorder. Her condition was first formally diagnosed by Prof Long in May 2021 but I was referred to previous mentions within her medical records of suspected PTSD and the symptoms of PTSD.
6. She has suffered from anxiety since childhood as well as sleep disorders, phobias, panic attacks and tachycardia. She had a major episode in March 2016, triggered by the award ceremony incident, which made her seek intervention of the mental health services through Northampton changing minds.
7. She has relied upon medication (Propranolol, diazepam for anxiety and zopiclone for insomnia for decades.) During the course of cross-examination the claimant said:
  - 7.1. during the relevant period she was prescribed diazepam for anxiety on six separate occasions in November and December 2018, April 2019 and March July and September 2020. Each prescription was for 2 to 5 days' worth of tablets. The claimant did not necessarily take the entire course when prescribed. She might feel that they were needed one day but not the next.
  - 7.2. the claimant had taken Sertraline for a two-week period only [noted at a GP appointment to November 2018].
  - 7.3. the claimant had, but did not take propranolol.
  - 7.4. The claimant agreed that over the two-year period she was not taking very much medication. She said she wished to manage her anxiety without medication, and while her doctor encouraged her to take antidepressants, she preferred to manage her low mood/depression in other ways. The claimant referred to calming methods.
  - 7.5. The claimant agreed that she attended her GP on two occasions in November 2018, on one occasion in June 2019 and not at all in 2020.
  - 7.6. The claimant said that she was meeting with a therapist on a regular basis during the relevant time. The claimant has attended CBT sessions in person and over the phone. There was medical evidence in the bundle referring to CBT, but no actual notes of the therapy. The claimant said that the aim of the sessions were to help the claimant work through trauma that she has suffered historically. [It is noted that serious childhood trauma was recorded within Prof Long's report.] However, as the claimant experienced problems at work, her CBT sessions focused on helping her cope at work as the treatment from the respondent had

exacerbated her symptoms. This meant that the claimant has not fully dealt with the cause of her initial trauma.

8. The claimant says that her condition affects how she travels, communication and sleep. She says that she suffers:
  - 8.1. Tachycardia - being tiredness, chest pain and a pounding heartbeat; the GP records note that the claimant has been sent for cardiology assessment, and claimant says that no cardiology cause has been found.
  - 8.2. Trouble sleeping, insomnia, nightmares causing tiredness and stress; being unable to fall asleep because of anxiety and agitation; difficulty sleeping and poor quality sleep because of frequent nightmares; sleep behaviour disorder in the form of sleepwalking. waking up at a slight noise and not getting back to sleep because of having to make checks inside and outside of the home. Checking everything before leaving the house.
  - 8.3. avoidance behaviour - described as not being able to drive outside of her comfort zone for fear of flashbacks being triggered and certain roads are avoided completely. The claimant explained that:
    - 8.3.1. she had been driving for 20 years and was able to drive. She drove to the shops, to doctors, for shopping, for work, to see friends and to drop her daughter to friends. The claimant said she had never driven on motorways. She can drive on dual carriageways and does drive on the A45. She accepted that she could get anywhere in the country without using a motorway.
    - 8.3.2. The claimant says that these days her comfort zone is a 6 mile radius. She tends to make the same journeys. For longer journeys she would choose to take public transport.
    - 8.3.3. The claimant was asked what she cannot do and said:
      - 8.3.3.1. there was one occasion when she was asked to make a journey for work. She wanted to drive. She set up the maps. She was frozen by anxiety and could not do so.
      - 8.3.3.2. The claimant says that there are some's trigger points in certain places that cause her anxiety. When the landscape changes it can trigger her anxiety. The roads she avoids completely are motorways, and some roads that have no landmark and are isolated. The claimant said that she avoids busy roads at certain points of the day.
    - 8.3.4. The claimant said that she does not have any issue with public transport, unless incredibly busy. She gave the example that she would not use a crowded London tube.
  - 8.4. The claimant said that she does not like speaking in front of an audience. She gave an example of an incident in 2016 where she had been nominated for an award that sparked severe anxiety. The claimant said she does not want to speak in front of a large group and does not put herself in those situations. The claimant recalled a further incident when she was asked to speak to people on health and safety without a chance to prepare. The claimant agreed that public speaking and unplanned interviews were not day-to-day activities.

- 8.5. An avoidance of busy shopping centres packed public spaces depending on levels of anxiety:
- 8.5.1. the claimant describes avoiding crowded shopping centres. She said that if she went to a car park and saw that it was full, she would choose not to go in and go somewhere else. If she could see walking into a supermarket that it was packed or too busy again, she would go somewhere else. She would shop in places that were not crowded.
- 8.5.2. The claimant said that she d avoided packed public places. When asked for an example she said that she would suffer with high anxiety should she go to an indoor concert in the standing area. She has been to concerts in the seated area. When leaving she would choose to leave area or wait until the end to avoid an anxiety inducing situation.
- 8.5.3. The claimant said that when going to see school productions, she would 'hang back' if parents were grouping around. She agreed that she would be able to have a look at whatever was on show.
- 8.6. A need to know who was attending meetings and be informed of changes in advance to avoid anxiety:
- 8.6.1. the claimant explained that she struggles to concentrate when there are changes that she was not anticipating. She referred to the last case management hearing when information was provided 15 minutes before the hearing.
- 8.6.2. The claimant referred to a situation during the redundancy consultation where a volunteer was required to attend. The claimant felt that the volunteer should not be involved and this caused her anxiety. The meeting was thereafter cancelled.
- 8.7. Trouble with concentration to the extent that she needs a quiet place to work and receive phone calls and have meetings and needs to have clear written instructions. She had difficulty retaining information when it is not provided in writing.
- 8.7.1. The claimant explained that she was unable to work in a chaotic environment. She was referring to the respondent's work environment and stressed that this was not slight background noise but chaotic. The claimant explained that she had a quiet space at the back of the respondent's services are needed to use it to look at paperwork/take calls and do jobs that require concentration.
- 8.8. Trouble with concentration to the extent that she needs a quiet place to work and receive phone calls and have meetings and needs to have clear written instructions. She had difficulty retaining information when it is not provided in writing.
- 8.8.1. The claimant explained that this related to her complaint that when working for the respondent she had a job description. The respondent moved the goalposts. They were adding tasks to her role that were not her responsibility. The claimant agreed that she did not need written instructions in daily life. The claimant agreed that there was no medical evidence linking any requirement for written instructions to her PTSD.
- 8.9. Hypervigilance and panic attacks - triggered by being around random, hostile and chaotic behaviour of other people. The claimant did

not provide any details in relation to the effect of these matters on her day-to-day life. Prof Long indicated that the claimant was able to manage symptoms of panic attacks at an earlier stage.

- 8.10. Acne rosacea and recurring proctitis. The claimant agreed that neither of these conditions are said to have a detrimental impact on her normal day-to-day activities.

### Deliberations

9. The definition of disability can be found in section 6(1), Equality Act 2010:  
"A person (P) has a disability if P has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities". "Substantial" means "more than minor or trivial".
10. The claimant has a formal diagnosis from Prof. Long of PTSD from May 2021. Prof. Long's report attributes the claimant's PTSD to substantial and serious trauma suffered by the claimant as a child and references incidents within her adult life. The claimant suspected that she had PTSD prior to her diagnosis and there are references to potential PTSD, without formal diagnosis prior to May 2021. In the circumstances I conclude the balance of probability that the claimant has been diagnosed with PTSD from May 2021 and further, this condition was more likely to exist than not during the relevant period being 1 November 2018 and 2 October 2020. I therefore conclude that the claimant had a mental impairment during the relevant period.
11. I have considered the effect of any medication or treatment on the claimant's condition. The claimant had taken some medication during the relevant period. She agreed during the course of cross-examination that she had not taking very much medication and it could be seen from the prescriptions that she was likely to have taken medication on less than 30 days over a 23 month period. I conclude that the effect of the medication on the claimant's ability to undertake day-to-day activities during the relevant period was minimal.
12. I also considered the effect of the claimant's ongoing therapy. I was not provided with any therapy notes. The claimant says that the aim of the sessions was to help the claimant work through trauma that she has suffered historically and conflict with the respondent. There was no evidence to suggest that the claimant's therapy had any identifiable effect on the claimant's ability to undertake day-to-day activities or that the claimant's ability to undertake day-to-day activities had changed. I therefore conclude that this is not a case where the tribunal must identify and ignore the effect of medical or other treatment.
13. The next question is whether or not this impairment had a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities. The claimant has shown that any adverse effect would be 'long-term'. The guidance to the Equality Act provides some help in assessing what day-to-day activities are. It says that, day-to-day activities are things people

do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern. In assessing the claimant's ability to carry out her normal day-to-day activities I have sought to focus on what the claimant cannot do.

14. Driving: The claimant does not drive on motorways. The claimant avoids dual carriageways at certain times of the day out they are likely to be busy. The claimant avoids certain roads that she considers isolated. The claimant referred to a single incident where anxiety prevented her from making a journey. The claimant agreed during the course of cross-examination that she was able to drive on roads other than motorways. It is difficult to assess the claimant's as the claimant's evidence was that she does not tend to or need to drive outside of her familiar trips. The claimant chooses to take public transport for longer trips and conceded during the course of cross-examination that there was nowhere that she could not get to even while avoiding motorways. In assessing the entirety of information available, I conclude that:

14.1. the driving that the claimant cannot do does not form part of day-to-day activities.

14.2. If I am wrong, the claimant's avoidance strategy, such as taking a less busy route, are steps that can be reasonably taken by the claimant to modify her behaviour to reduce the effects of the impairment of normal day-to-day activities. A dislike or tendency for people to avoid motorways or particular busy roads is not unusual and steps to avoid these situations are reasonably taken by people without PTSD. This results in a situation whereby the effect on her ability to carry out day-to-day activities is no longer 'substantial'.

15. Busy/crowded places. The claimant referred to using a very busy/crowded London tube. The situation was hypothetical one as the claimant lives in Northampton. The claimant states that she could not attend a busy concert in the standing area. She clarified that she could and had attended concerts in the seating area. The claimant avoided busy shopping centers, saying that she would shop at quieter places or at quieter times. I conclude that:

15.1. Accessing crowded areas to the extent of a standing area of a concert/ very busy shops /shopping centers/does form part of 'normal day-to-day activities'.

15.2. If I am wrong, the claimant's avoidance strategy, such as choosing to attend a seated rather than standing concert, to shop in a quieter shop or at a less busy time, are steps that can be reasonably taken by the

claimant to modify her behaviour to reduce the effects of the impairment on normal day-to-day activities. I have considered the extent to which it is reasonable to expect the claimant to place such restrictions on her working and personal life. The claimant explained in the course of cross-examination that she had easy access to shops that were not too large or crowded. A dislike of very crowded places is common and these are common avoidance techniques of people who do not like or have difficulty with crowded spaces. This results in a situation whereby the effect on her ability to carry out day-to-day activities cannot be considered 'substantial'.

16. Public speaking/unplanned interviews. The claimant's main example in relation to this relates to the incident in 2016 where the claimant was nominated for an award. The second example provided was an unplanned interview where the claimant did not have a chance to properly prepare. The claimant conceded during the course of cross-examination that these were not normal day-to-day activities and I conclude that these types of activities do not fall into the category of 'normal day-to-day activities'.
17. Need to know who is attending meetings /dealing with changes/ struggling to concentrate. The claimant refers to an example within the redundancy process where an unexpected person was present. The claimant refers to difficulty with a late change before the last tribunal hearing. Within submissions the claimant said that she had difficulty in remembering the respondent's counsel's submissions during this hearing. I was not referred to any medical evidence that links this stated inability to the claimant's PTSD and conclude that the claimant has not shown that this difficulty is linked to her PTSD. If I am wrong, consider that occasions such as 'redundancy consultation exercises and litigation hearings do not fall within 'normal day-to-day activities'.
18. Inability to work in a chaotic environment. This appeared to be a report of alleged unreasonable/unjustifiable/discriminatory behaviour on the part of the respondent in requesting the claimant to undertake work that requires concentration in a highly unsuitable workplace. There was no medical evidence linking the claimant's PTSD to this inability. In assessing whether or not the claimant is a disabled person, I conclude on the balance of probability that an 'inability to work in a chaotic environment' does not arise from the claimant's PTSD, nor is it a normal day-to-day activity, in that it is something that most people would be unable to do;
19. Requirement for clear written instructions. This also appeared to be a report of alleged unreasonable/unjustifiable/discriminatory behaviour on the part of the respondent in unreasonably adding tasks to the claimant's role. The claimant conceded that she did not need to clear written instructions in any other areas of her activities. There was no medical evidence suggesting that there was a link to PTSD. I conclude on the balance of probability that an 'the claimant's requirement for written instructions to the extent that it exists

does not arise from the claimant's PTSD. Further, nor do I consider that dealing with an employer who is perceived to 'move the goalposts' a normal day-to-day activity.

20. Other symptoms. While the claimant told the tribunal that she suffered from tachycardia and various sleep related conditions, hypervigilance and panic attacks, no detail is provided. There are references to panic attacks in the claimant's earlier medical notes but no evidence was provided by the claimant detailing panic attacks during the relevant time or/and any effect on her ability to carry out normal day to day activities. The claimant suffered from acne rosacea and recurring proctitis however she agreed that neither of these conditions are said to have a detrimental impact on her day-to-day activities.
21. In light of the above I conclude that the claimant is not a disabled person as defined within the Equality Act 2010.
22. While this hearing did not deal with the respondent's knowledge. For the sake of completeness, I note that in the event I had concluded that the claimant was a disabled person by reference to PTSD as she has alleged, there would be an obvious question to be answered in relation to the respondent's possible knowledge of such a condition in circumstances where the claimant only received a diagnosis of that condition following the termination of her employment.
23. The claimant requested written reasons for the decision at the conclusion of the hearing.

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Employment Judge Skehan

Date: 15 July 2021

Sent to the parties on: 29 July 2021

S. Bhudia

For the Tribunal Office