



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107496/2020**

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**Preliminary Hearing held by Cloud Video Platform on 24 June 2021**

**Employment Judge A Kemp**

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**Mr S Clinton**

**Claimant  
Represented by  
Mrs P Clinton -  
Wife**

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**Dr J Webb and Dr J Sim T/A Quarryside Medical Practice**

**Respondent  
Represented by:  
Mr M Howson –  
Consultant**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The claimant is a disabled person under section 6 of the Equality Act 2010.**

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**REASONS**

**Introduction**

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1. The Preliminary Hearing followed a Preliminary Hearing on 10 May 2021 for case management, which decided that there be an evidential Preliminary Hearing to determine whether or not the claimant was a disabled person as defined by section 6 of the Equality Act 2010. There had been an earlier Preliminary Hearing on 1 February 2021.

**Evidence**

2. The Tribunal heard evidence from the claimant. The parties had prepared a Bundle of Documents, which was spoken to in part. The claimant also referred to a letter dated 7 June 2021 related to changes of address and of GP Practice. The respondent did not lead evidence, but cross-examined the claimant.

**Facts**

3. The Tribunal found the following facts to have been established:

4. The claimant is Mr Stewart Clinton.

5. The respondent is a partnership trading as Quarryside Medical Practice.

6. The claimant was employed by the respondent from 24 June 2019.

7. The claimant was diagnosed with stress on 24 May 2007, and as having had a depressive episode on 20 August 2007. He experienced fluctuating levels of stress, anxiety and depression thereafter. The levels of the same became noticeable for him in September 2019. At that stage he did not seek medical advice.

8. On 12 June 2019 the claimant was diagnosed by his General Practitioner as suffering from restless legs syndrome. That manifested itself in involuntary movement of his legs several times per hour. It continued at night when he was both awake, and asleep. It affected his ability to sleep, reducing the extent of the time asleep and the quality of his sleep such that he frequently woke feeling not properly rested. When he was awake he required to move if he was sedentary or stationary for a period. That in turn affected his ability to concentrate. The condition had been increasing in severity for a number of years before the diagnosis.

9. On 9 September 2019 the claimant was diagnosed by Dr Anne Grew as having obsessional and anankastic personality traits. No medication for that

was provided to him at that stage. She provided a report with that diagnosis on that date.

- 5 10. The claimant sought medical advice from his General Practitioner for feelings of stress and anxiety on 19 October 2020, having earlier that month suffered from sweating and a feeling that he was about to collapse at work on 6 October 2020. He had been feeling increased levels of stress and anxiety since September 2019. The claimant was diagnosed by his General Practitioner as suffering from stress, anxiety, low mood and high blood pressure on 19 October 2020. He was admitted to hospital that month and in 10 November 2020 but on each occasion was not detained overnight. He was prescribed Felodipine on the second occasion of attending hospital. It is a drug to treat high levels of tension or anxiety, and alleviates symptoms of the same.
- 15 11. For the period from about 2011 the claimant has been prescribed Ramipril, which is a drug to treat high blood pressure. If he did not take that medication he is at risk of heart attack, stroke or death. His levels of high blood pressure are adversely affected by stress and anxiety.
- 20 12. The claimant underwent a course of counselling with the Community Mental Health team, on four or five occasions in about late 2020, and was provided with assistance in dealing with feelings of stress and anxiety.
- 25 30 13. The claimant's conditions cause him to find difficulty in concentrating, such that his ability to follow instructions, such as to obtain items on a shopping list or to read or write lengthier documents, is adversely affected. He may forget to purchase shopping he intended to or change items from the list for others. He makes mistakes with issues such as spelling when writing documents. He has difficulty in acting on instructions given to him in light of the personality traits referred to. He does not follow instructions given either considering that his own views are more appropriate, or questioning whether the instructions given to him are the ones that should be followed. He has obsessional aspects to his personality which manifest themselves in a lack of focus on important matters, and a belief in the importance of points of small detail. He has little

eye contact with others on occasion. His restless legs syndrome affect his ability to attend lengthier meals or drive lengthier distances as he requires to move periodically, and he generally avoids such situations.

14. On 27 November 2020 the respondent instructed an occupational health report on the claimant. It was provided by Dr Haldane a consultant occupational health physician. One of the issues he was asked was, in effect, whether the claimant was a disabled person under the Equality Act 2010 and he expressed his opinion that it was likely that the claimant was a disabled person.
15. The claimant resigned from his employment with the respondent on 21 January 2021. The levels of his stress, anxiety and depression reduced significantly after that.

#### **Claimant's submission**

16. The claimant's wife who represented him did not wish to make a submission and rested on the evidence given

#### **Respondents' submission**

17. The following is a basic summary of the submission that was made. The claimant's conditions could be addressed in three respects, being restless leg syndrome, stress anxiety and depression, and obsessive/compulsive personality disorder (OCPD) or anankastic traits. Each one was considered in turn. In each respect it was argued that the impact on day to day activities was insubstantial. Reference was made to Section D in the 2011 Guidance. The paucity of medical evidence was noted. The letter from Dr Grew was instructive in relation to the OCPD issue. It was not the diagnosis of a condition, but of traits consistent with one. The evidence was that the impact of the same was again insubstantial. The claimant was able to follow and comprehend instructions, and did not have an inability to do so. The stress, anxiety and depression was not long term. It had been noted in 2007, then not again until late in 2020, and had subsided enormously after the ending of employment with the respondent. There was no substantial adverse effect.

He argued that the issue of high blood pressure was not relevant and was a separate issue to mental impairment, and that the occupational health report was not determinative, and not of assistance in this case.

## **Law**

5 18. Section 6 of the Equality Act 2010 (“the Act”) provides as follows:

“(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.

10 (2) A reference to a disabled person is a reference to a person who has a disability.”

19. “Substantial” means more than minor or trivial under Section 212(1) of the Act.

20. What is “long-term” is defined at Schedule 1 paragraph 2 of the Act as follows:

### **“2 Long-term effects**

15 (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 at least 12 months, or
- (c) it is likely to last for the rest of the life of the person affected.

20 (2) If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.”

21. Where measures are taken to treat a condition the effect of them is in effect discounted under paragraph 5, which states as follows:

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(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

5 (a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply—

10 (a) in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;

15 (b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.”

22. The ***Guidance on Matters to be taken into Account in Determining Questions Relating to the Definition of Disability (2011) SI 2011/1159*** (“the Guidance”) provides general guidance on the matters to be taken into account.

20 23. Further assistance may be derived from the Equality and Human Rights Commission Code of Practice: Employment.

24. As for what is relevant to the determination of this question, a broad view is to be taken of the symptoms and consequences of the disability as they appeared during the material period, see ***Cruickshank v VAW Motorcast Ltd [2002] 729, EAT***.

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25. In ***J v DLA Piper [2010] IRLR 936*** the EAT commented on matters of distinction at paragraph 42 as follows:

5 “The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at paragraph 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as 'clinical depression' and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but 10 simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – 'adverse life events'.”

26. The claimant has the onus of proof.

### **Discussion**

15 27. I was satisfied that the claimant was a credible and reliable witness. It was noticeable that for much of his evidence he had his eyes closed, and that on occasion he moved in his chair or stood up. It was also noticeable that he did not always answer the question, or did so after a lengthy and not relevant preamble. I concluded that that was a part of one of his conditions, and was not in any sense an indication of someone not trying to tell the truth, or give 20 accurate evidence.

25 28. The first question is whether or not the claimant has an impairment, either physical or mental, or more than one. I was satisfied that he did, and that he did so in a number of respects. Firstly he has Restless Legs Syndrome. That causes his legs to move involuntarily very regularly, and both when he is awake and asleep. Secondly he has suffered periodically from stress, anxiety and depression. That is I consider also related to high blood pressure, for which he takes medication. The GP report in the Bundle, which was referred to in evidence, did I consider relate the stress and related issues with high 30 blood pressure. I did not accept the respondent's submission that the two were unrelated and that the high blood pressure was not relevant for the purpose of this assessment. The third condition has had a diagnosis, by Dr

Grew, but not of a disorder, rather of personality traits that are said to be compulsive and anankastic. The claimant was not able to explain clearly what that latter term meant, but there is an indication in the report from Dr Grew that it is in relation to an obsessive personality.

5 29. The second question is whether these impairments caused a substantial  
adverse effect on day to day activities. In many ways this was the key  
question. The argument for the respondent was that so far as there was an  
adverse effect, that was not substantial. I am satisfied however that the effect  
was both adverse and substantial (in the sense of being more than minor or  
10 trivial). Mr Howson broke the impairments down individually, and argued that  
each individually was not substantial, but I do not consider that doing so is  
appropriate, and it is not what the 2011 Guidance suggests that consideration  
should be given to the cumulative effects of an impairment, and that a person  
may have more than one impairment, any one of which alone would not be  
15 substantial in effect. "In such a case account should be taken of whether the  
impairments together have a substantial effect overall on the person's ability  
to carry out normal day to day activities." I consider that I require to examine  
the overall evidence of the effect of the impairments, and to do so as if the  
claimant were not taking the medication that he received during the period of  
20 his employment with the respondent. It is that period of time that requires  
consideration.

30. It is certainly true that the reports tendered are limited in this regard. There is  
no single and comprehensive report addressing the issue of the effects of the  
impairments on normal day to day activities. There are however some  
25 indications in the report from the GP, from Dr Grew, and the fact of the opinion  
of the Occupational Health Physician instructed by the respondent, that  
support the claimant. His own evidence of the effect of the impairment I  
accepted. The evidence was not as clear as it might have been, and some of  
the detail given was not essentially relevant, but I concluded that there were  
30 adverse effects on day to day activities from the impairments referred to, such  
as shopping, which he could do but had difficulties in doing so effectively to  
an extent, following instructions which he had particular difficulties with, often



changing the instructions given because of his personality traits which led him to believe that his way of doing so was better than the instructions or that they were incomplete for example, and the ability to concentrate to read or write, such that he tended to make mistakes such as for spelling, or was distracted for example by the restless legs syndrome, that collectively are more than minor or trivial, and therefore fall to be considered as substantial in this context. These are within the examples set out in section D of the Guidance. I further took into account that the claimant avoids some activities such as long meals whether in restaurants or with friends because of the difficulties caused by the restless legs syndrome, or driving for the same reason, and the EHRC Code of Practice notes that "Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue, or substantial social embarrassment; or because of a loss of energy and motivation." That conclusion was fortified by the manner in which the claimant gave his evidence as referred to above, and also by the medications he has been prescribed with. In respect of his high blood pressure his uncontested evidence was that he had taken that for several years and that in the absence of it he was at risk of heart attack, stroke or death. Taking all of the evidence heard into account I consider that the claimant has proved this issue.

31. The third question is whether the effects have been long term. Whilst some of them are fluctuating to an extent, particularly in relation to stress, anxiety and depression, I concluded that the claimant's evidence that they had been present throughout the period of his employment, even if he did not seek medical treatment or advice for them, was to be accepted. He spoke to having increased levels of stress and anxiety from September 2019 to the end of his employment over a year later. His condition of restless leg syndrome has persisted for over a year, and was such at time of termination of employment with the respondent and the diagnosis of a personality trait that is compulsive or anankastic was also present for over a year before termination. I was satisfied that this aspect of the definition had also been met.

**Conclusion**

32. I consider that the claimant has discharged the onus on him to prove that he falls within the terms of section 6 of the Act, having regard to the Guidance, and case law. I therefore concluded that the claimant is a disabled person.

**5 Further procedure**

33. Having so determined, the case can continue to the Preliminary Hearing on 8 July 2021 for case management, as already fixed.

10 Employment Judge: Sandy Kemp  
Date of Judgment: 25 June 2021  
Entered in register: 08 July 2021  
and copied to parties