



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms Elisabeth Idowu**

**v**

**Gettinge UK Ltd – 1<sup>st</sup>**

**Getinge AB – 2<sup>nd</sup>**

### PRELIMINARY HEARING by cloud video platform

**Heard at: Watford**

**On: 16 August 2021**

**Before: Employment Judge Bedeau**

**Appearances:**

**For the Claimant: Mr S Meachem, Solicitor-Advocate**

**For the Respondents: Ms G Burns, Solicitor**

## JUDGMENT

At all material times the claimant was a disabled person suffering from stress and anxiety from 25 November 2019.

## REASONS

1. In a claim form presented to the tribunal on 9 May 2020, the claimant made claims of: public interest disclosure detriments and dismissal; disability discrimination; failure to provide an initial statement of written employment particulars; unauthorised deductions from wages; and equal pay based on like work.
2. The respondent raised the issue of whether the claimant's mental conditions of stress and anxiety, are disabilities in accordance with the provisions of section 6, schedule 1 Equality Act 2010?

### The issue

3. This hearing had been listed for me to hear and determine whether the claimant suffered, at all material times, from a disability or disabilities, and to give appropriate case management orders.
4. On 12 August 2021, the respondents' representatives wrote to the tribunal, copying the claimant, stating that the respondents concede that the claimant "appears to have and continues to suffer from a mental impairment, but it is denied that the claimant has provided sufficient evidence to demonstrate that this impairment has (or had) a substantial and long-term adverse effects on her ability to carry out normal day-to-day activities."

### The evidence

5. I heard evidence from the claimant. On behalf of the respondent evidence was given by Mr Mark Graves, Service Director.
6. In addition, the parties adduced in evidence a joint bundle of documents comprising of 189 pages. Where it is necessary, the page numbers will be given in brackets.

### Findings of fact

7. The respondents are multinational medical technology companies employing 10,000 people in 38 countries.
8. At all material times the claimant was employed as a Service Engineer having commenced employment on 1 October 2018. From around 11 March 2019, she was primarily based at the Royal Free Decontamination Centre, Enfield, Middlesex, supplying decontamination services on behalf of the first respondent. The first respondent's customer was Construction, FM, and Engineering Services Ltd.
9. The claimant's aunt passed away in July 2019 and her grandfather on 26 October 2019. She stated that their deaths had a profound effect on her causing her to experience stress and anxiety at work from July 2019 for which she submitted sick notes to the first respondent on 25 November 2019 and 9 December 2019. Two further sick notes were issued by her doctor on 18 December 2019 and 2 March 2020 which were sent to the first respondent. The diagnosis was stress and that she was unfit for work from 25 November to 18 December 2019. Attached to the sick note of 2 March was a letter from Dr H James confirming that the claimant was suffering from work-related stress leading to generalised anxiety disorder and low mood. (75-77)
10. According to the respondents, there were concerns about the claimant's work performance and was placed on a Performance Improvement Plan on 9 October 2019. She did not improve and was eventually dismissed on 19 December 2019 at a capability meeting.
11. The claimant's case is that while she was working for the respondents in an all-male environment, she had been the witness to and subjected to sexist comments and behaviours. She complained about the high workload and its effect on her mentally. Consequently, she feared going into work, and

experienced an unsettled feeling in her stomach which developed into episodes of vomiting. She stated it was a struggle to get up in the mornings and that when it was bad, she would not turn up for work. The sexist remarks and comments she endured, she stated, were unbearable and eroded her confidence and assertiveness over time, making her feel that she could not do her job as a Service Engineer. She began to lose faith in her abilities, skills, and training.

12. When she challenged her treatment at work, she struggled to get her words out and would, at times, be left stuttering and fumbling over her words. At some points would be speechless. She regularly experienced nausea and, on Sundays, felt unable to stand up, carrying her own body weight, or engage in any hobbies or social activities, such as dancing, cycling, and socialising.
13. After her dismissal she received psychological support to help with her low mood, insomnia, and anxiety. She would lock yourself away for several weeks when depressed. She found it hard to engage with people. For a very long time she avoided being in the social environment for fear of being identified as the female engineer who got dismissed. She finds it difficult to concentrate on tasks and to understand things as quickly as she used to.
14. She said that when she suffers from anxiety, she experienced what she described as, shaking in her stomach, fluid accumulates in her mouth, and unable to talk. When the shaking becomes intense, it is usually followed by vomiting and she gets a funny sensation in the depth of her stomach when it is going to happen.
15. Her GP referred her to Talk Changes, Improving Access to Psychological Therapies, Nuttall Street, London, N1. Talk Changes arranged for bereavement counselling for the claimant prior to her undergoing Cognitive Behavioural Therapy. Her first bereavement counselling session was on 12 August 2020 and continued for a period of 12 weeks to about November 2020. At her last session it was agreed that she would work on weaning herself off sleeping tablets, not blaming herself for her loss and finding coping mechanisms for her low moods and de-motivation. She is on a waiting list for CBT and is likely to have a long wait due to the Covid-19 pandemic. (74)
16. She has paid privately for 10 sessions of counselling.
17. In relation to the medical evidence, the claimant said that in July 2019, she experienced stress and anxiety, but the medical records show that on 11 July 2019, she attended her GP surgery due to pelvic pain. She asserted that pelvic pain is a symptom of stress and anxiety but there is no medical evidence to support that assertion. (59)
18. The records do show that on 25 November 2019, she was diagnosed as suffering from a stress related problem. It was noted that she was going through disciplinary proceedings at work and was becoming increasingly stressed, was having panic attacks at work and chest pains. Her grandfather's death had worsened her stress and she was experiencing spotting, namely bleeding while not on her period. (59)
19. At a capability hearing on 19 December 2019, she was told that her employment would be terminated on grounds of poor performance. Mr Mark Graves, Service

Director, conducted the meeting and said, in evidence, that she did not show signs of significant distress or anxiety atypical to that type of meeting. He stated that she was able to express herself clearly at the hearing. However, he readily acknowledged that he is not a medical expert.

20. On 2 March 2020, the claimant again was diagnosed with a stress related problem. It seemed that she has a history of suffering from a stress related problem, as this is recorded on 16 August 2005, 11 June 2008, 3 July 2013, 23 July 2013, and on 25 November 2019. She had also been diagnosed as suffering from low mood on 12 August 2013. (55-66)
21. On 5 September 2016, she was assessed for depression.
22. She told me, and I do accept her evidence, that for several years she had difficulty sleeping and was prescribed sleeping tablets, though now she is self-medicating on them. Without the medication she would have difficulty sleeping at nights and this would result in lethargy and poor concentration.

### **Submissions**

23. I have considered the submissions made by Mr Meacham, Solicitor-Advocate on behalf of the claimant, and by Ms Burns, Solicitor on behalf of the respondent. In addition, I have taken account the authorities they have referred me to.
24. I do not propose to repeat verbatim their submissions herein having regard to rule 62(5), schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended.
25. In summary, Ms Burns submitted that the claimant's mental conditions of as she understood, were stress and anxiety. For the first time and during re-examination, she now includes depression. Her depression was in 2013 and does not appear to have affected her normal day-to-day activities such as shopping, reading, and washing. She did not write in the pre-employment questionnaire, that she is a disabled person. She made no reference to stress and anxiety during the meetings to discuss her performance. If she was suffering from stress and anxiety before 25 November 2019, it would be in her medical records. Her stress diagnosed in November 2019, was unremarkable. She did not mention stress and anxiety at the capability meeting on 19 December 2019. Depression is not referred to in her disability impact statement. The subsequent counselling sessions and treatment following the assessment by Talk Changes, have not been supported by documentary evidence.
26. Ms Burns further submitted that the claimant's stress and anxiety and possibly depression, have had minimal effects on her day-to-day activities, and invited me to find that she was not disabled at all material times.
27. Mr Meachem submitted that having regard to the claimant's disability impact statement, her oral and written evidence, and the medical records, there is clear support for a finding that she was, at all material times, a disabled person. Substantial, he submitted, is more than minor or trivial. In 2013 was the first diagnosis of stress. On 12 August 2013, it is recorded that she was suffering from low mood and was anxious. She had a poor sleep pattern and was given "good sleep/relaxation guide". On 11 July 2019, she was diagnosed with pelvic pain which she said was a symptom of stress and anxiety. Talk Changes wrote that

her symptoms were severe. She suffered and do suffer from panic attacks. She has trouble sleeping and takes sleeping tablets which affects daily functions like getting up in the mornings, which makes her lethargic and slower in her responses both physical and verbal; gets confused about details; and her social activities, such as dancing, cycling and so socialising, are adversely affected. She found it difficult to read and to communicate properly. At work her performance was in issue. She was accused of refusing to take instructions but at the time she was vomiting into her hands. The respondents failed to acknowledge that her performance was affected by her mental impairment of stress, anxiety, and depression. The effects were more than minor. She has established, from the evidence, that she, at all material times, was a disabled person suffering from stress, anxiety, and depression.

### The law

28. Section 6 and Schedule 1 of the Equality Act 2010 defines disability. Section 6 provides:

“(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.”

29. Section 212(1) defines substantial as “more than minor or trivial.” The effects of any medical treatment are discounted, schedule 1, sub-paragraph 5(1).

30. Under section 6(5), the Secretary of State has issued Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011), which an Employment Tribunal must take into account as “it thinks is relevant.”

31. The material time at which to assess the disability is at the time of the alleged discriminatory act, Cruickshank v VAW Motorcast Ltd [2002] IRLR 24

32. In Appendix 1 to the Equality and Human Rights Commission, Employment: Statutory Code of Practice, paragraph 8, with reference to “substantial adverse effect” states,

“A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.”

33. The time taken to perform an activity must be considered when deciding whether there is a substantial effect, Banaszczyk v Booker Ltd [2016] IRLR 273.

### Conclusion

34. In relation to the issue of whether the claimant was, at all material times, a disabled person suffering from stress, anxiety, and depression, I am satisfied, on the balance of probabilities, that she was disabled suffering from the mental impairments of stress and anxiety, but not depression. There was only a limited

reference to depression and its effects on normal day to day activities. It was only referred to by Mr Meachem in his re-examination of the claimant. It is not referred to in the disability impact statement. There has been a consistent diagnosis of stress which will recur depending on external stressors.

35. The effects on normal day-to-day activities are more than minor or trivial. The claimant when suffering from stress and anxiety finds it difficult to get out of bed. She becomes lethargic. Her words and movement become slow. She would suffer from panic attacks and would be unable to do the things she normally would do, such as, cycling, dancing, and socialising with others. Without the sleeping tablets she would be unable to have a good night's sleep. Her conditions became more pronounced following the deaths of her aunt and grandfather.
36. I am satisfied, from the evidence, that the claimant became a disabled person from 25 November 2019, and was suffering from stress and anxiety.
37. I have concluded that from 25 November 2019, while employed by the respondents, the claimant was disabled under section 6, schedule 1, Equality Act 2010.
38. The case is listed for a final hearing on **26 September to 11 October 2022**, before a full tribunal.

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**Employment Judge Bedeau**

27 August 2021

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Sent to the parties on:

3/9/2021

For the Tribunal:

N Gotecha