



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss E Carradine

**Respondent:** 1 Star Care (Bristol) Ltd  
2 Ms T Alway

**Heard by Cloud video**

**On: 3 August 2021**

**Before:** Employment Judge Reed

## **Representation**

**Claimant:** Ms C Mallin-Martin, counsel

**Respondent:** Mrs G Patch, solicitor

**JUDGMENT** having been sent to the parties on 12 August 2021 and written reasons having been requested, in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 the following reasons are provided:

## REASONS

1. In this case the claimant Miss Carradine made a number of claims against her former employer, the first respondent Star Care (Bristol) Ltd (“the Company”) and against Ms Always, the Company’s owner.
2. This was a preliminary hearing to address two distinct matters namely whether Miss Carradine was a disabled person (and if so from what date), and secondly, late presentation of her claims of disability discrimination.
3. I heard evidence from Miss Carradine herself. On behalf of the respondents I heard from Miss Fudge, an employee of the Company. I made the following findings of fact in the light of that evidence and the documents I was shown.
4. Miss Carradine was employed by the Company as a care assistant between June 2019 and March 2020. On 7 January 2020 she was diagnosed with psoriatic arthritis, spondylitis and sacroiliitis (“the musculoskeletal issues”)

and the respondents conceded she was disabled from that date. She contended that she became disabled several months before that.

5. Although she was taking analgesics before September 2019, the musculoskeletal issues were not causing her a particular problem until then. Her condition became significantly more serious at that time and it was from that date that she contended she was disabled.
6. Under s6 of the Equality Act 2010 a person has a disability if she has a physical or mental impairment which has a substantial and long term adverse effect on her ability to carry out normal day to day activities. Under sch1 of the 2010 Act, the effect of an impairment is long term if it has lasted for at least 12 months, it is likely to last for at least 12 months or it is likely to last for the rest of the life of the person affected.
7. I was satisfied that by September 2019 Miss Carradine had a physical impairment that had a substantial adverse effect on her ability to carry out day to day activities. I accepted the evidence in her impact statement to the effect that activities such as climbing stairs and getting dressed were causing her real difficulty by then. She was suffering from considerable back pain, joint pain and swollen hands and feet. She also had severe headaches and dizzy spells.
8. I was conscious that Ms Fudge, Miss Carradine's grandmother, did not witness this but she would not have been with Miss Carradine all the time and in any event Miss Carradine was taking painkillers that might have disguised her problems.
9. The real question for me was long term effect. Miss Carradine had been taking painkillers before September but did not contend that she was disabled before September. The impact on her ability to carry out normal day to day activities was significant from that date but clearly it had not lasted for 12 months by then. I had to ask if it was likely that it would – could it well have done so?
10. Until diagnosis it was not known what the actual problem was. It could not be said whether the condition was transitory or not.
11. The test has to be applied without the benefit of hindsight. I took the view that it would not have been said in September that the effect on day to day activities was likely to last for 12 months.
12. It was only upon diagnosis that that situation changed. Only then could it sensibly be said that the effect was indeed likely to last 12 months.
13. I therefore concluded that Miss Carradine could not satisfy the requirement that the impact was long term until 7 January 2020. It was from that date that she was disabled.
14. Turning then to issue of late presentation, s123 of the 2010 Act provides that a claim of this sort should be presented to the tribunal within 3 months (plus, where appropriate, any period of early conciliation) starting with the

date of the act complained of or such other period as the tribunal thinks just and equitable.

15. I was informed that the only claim of disability discrimination Miss Carradine wished to take forward was a failure to make reasonable adjustments, namely a refusal by the respondents to accede to her requests to reduce her duties. In the case management order of 23 March 2021 Miss Carradine seemed to say that the only such request was made in November 2019 but before me it was suggested a further request was made in February 2020.
16. Miss Carradine went through early conciliation with the Company from 3-20 April 2020 and with Ms Always on a single day, 24 April 2020. The claims (against both respondents) were presented to the tribunal on 16 July 2020. It followed that whether the claims arose in November 2019 or February 2020, they were out of time. I was urged to conclude that it was just and equitable that they should go forward.
17. There were various matters I had to take into account in determining that question but in the first instance I was bound to seek an explanation from Miss Carradine for the delay. She told me she had taken advice in April 2020 from various bodies – a law centre, Citizens Advice and a firm of solicitors. She said she explained to all those bodies that she wished to claim discrimination that had occurred in November 2019 and February 2020.
18. In her witness statement Miss Carradine seems to suggest that her mental state was such that she was not able to obtain advice. Before me, in her oral testimony, she seemed to resile from that position. She told me she had fully explained her case to the bodies referred to above and been assured by all of them that if she presented a claim on 16 July, it would be in time.
19. I found her evidence on that subject literally incredible. If as she said she had fully explained her potential claims, I simply did not believe that those 3 bodies would all have given her wholly incorrect advice. Since the only account she gave was one that I did not accept, it followed that the delay was literally unexplained and inexplicable.
20. It was the case that the balance of prejudice favoured Miss Carradine. She would be driven from the seat of justice if I found against her, whereas the respondents would simply be obliged to deal with the claims rather later than they might have expected. Similarly, the delay caused by late presentation was not a massive one.
21. This was, on the other hand, not a case in which realistically I could take a view as the likelihood of Miss Carradine succeeding in her claims.
22. In all the circumstances, but particularly given the lack of any explanation that I could accept for the delay in commencing proceedings together with the manner in which Miss Carradine had effectively departed from the account in her witness statement, I concluded that it was not just and equitable that Miss Carradine's claims of disability discrimination should go forward.

Employment Judge Reed  
Date: 11 September 2021

Reasons sent to parties: 11 October 2021

FOR THE TRIBUNAL OFFICE

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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