



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Hortence Yagmur

**Respondent:** Armstrong World Industries

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Watford by CVP                      **On:** 7 October 2021

**Before:** Employment Judge Bartlett sitting alone

### Appearances

For the claimant: in person

For the respondent: Mr Kerfoot

## JUDGEMENT

1. The claimant is disabled within the meaning of section 6 of the Equality Act 2010.

## DISABILITY ISSUE

### Background

2. A CMR took place on 18 February 2021 at which a direction was made that a preliminary hearing would be held on 16 September 2021 “*to consider the issue of disability, if contested and/or to give directions until trial*”. That preliminary hearing was rearranged from 16 September 2021 to 7 October 2021. No further directions were given in relation to the preliminary hearing.
3. At the start of the hearing I informed the parties that my understanding of the issue to be decided at this preliminary hearing was whether or not the claimant was disabled within the meaning of the Equality Act 2010 (EqA). I was not to consider whether or not the respondent had knowledge of the disability. Both parties confirmed that that was their understanding.

4. The parties had prepared a bundle for the hearing. This had 58 pages. Amongst other documents it included some of the claimant's medical notes, a letter dated 31 March 2021 from the claimant's GP and the claimant's impact statement dated 1 April 2021.
5. The claimant's claims of disability discrimination are direct discrimination in that she was dismissed on 6 December 2019 because she had disclosed she was disabled.
6. Both parties agreed that termination of employment took place on 6 December 2019 and therefore this was the material date which I had to consider when deciding whether or not the claimant was disabled. There is no disagreement that at the date of the hearing the claimant is disabled but that is almost 2 years later.

## Evidence

7. The claimant appeared as a witness and affirmed before being asked questions by Mr Kerfoot. I did not ask the claimant any questions about after the questions from Mr Kerfoot I gave the claimant the opportunity to say anything further that you wish to do so. The claimant took this opportunity.

## The law

8. S6 EqA sets out the relevant definition of disability which is 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."*

9. In *Aderemi v London and South Eastern Railway Ltd UKEAT/0316/12, [2013] ICR 591* Langstaff P set out useful guidance:

*"It is clear first from the definition in [section 6\(1\)\(b\)](#) of the Equality Act 2010, that what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in [section 212\(1\)](#) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial. There is therefore little*

room for any form of sliding scale between one and the other'. (paragraph 14, p 591)'

10. Guidance under the EqA 2010 on matters to be taken into account in determining questions relating to the definition of disability. Paragraph C3 states:

*"The meaning of "likely" is relevant when determining whether an impairment has a long-term effect (Sch 1, Para 2(1)), but also when determining whether an impairment has a recurring effect (Sch 1, Para 2(2)) or how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour (Sch 1, Para 5(1)). In this context, "likely", should be interpreted as meaning that it could well happen, rather than it is more probable than not that it will happen."*

## Findings of fact

11. In oral evidence the claimant:

11.1 agreed that she did not suffer from depression and anxiety at the start of her employment;

11.2 agreed that she had not previously suffered from depression and anxiety;

11.3 stated that her anxiety had definitely began on or by 1 November 2019. Events on that day were one of the first to start her anxiety. She had had no depression and anxiety before that;

11.4 there were incidents in her employment prior to 1 November 2019 particularly where she disclosed that she suffered from IBS which sparked some anxiety but she did not feel anxious about losing her job;

11.5 during the course of November 2019 several events at work occurred which had a negative effect on the claimant. These included:

11.5.1 around 4 to 8 November there was an issue with repayment of a £900 expense. An issue about this also arose on 11 November 2019;

11.5.2 on 4 November 2019 there had been an issue with the taxi driver who was booked to take her to the airport for a work trip and the claimant had feared for her safety;

11.5.3 the claimant had raised this with the respondent on 11 November 2019 but they insisted that she used the same taxi company;

11.5.4 further issues occurred in November 2019.

11.6 the claimant was so distressed by the events of 11 November 2019 that she spent two days crying in the office. She had to leave her desk a number of times to cry in the toilets;

- 11.7 the claimant was off sick around 22 and 23 November and a return to work interview was completed which stated that the claimant had suffered from a fever and migraine;
- 11.8 the claimant had two informal therapy sessions with a family friend who was training to be a therapist. Initially she stated that the first session had taken place in October but later confirmed that both sessions took place in November. She said they were informal and she did not receive any documentation about them;
- 11.9 she had two panic attacks in November 2019. These took the form of vomiting for a period of hours. She did not know until she spoke to her sister that these were panic attacks. She suffered other events which she later came to believe were panic attacks;
- 11.10 after her dismissal she could not even get the train to her family at Reading, she was not sleeping and she was not okay;
- 11.11 she stated that before she was dismissed she had trouble sleeping but she did not mention this in her impact statement because she mentioned other symptoms which she felt were more significant such as panic attacks. She woke up early in the morning such as 4am, she felt really exhausted, sometimes she would get home from work and just cry on her bed and be unable to get up to make dinner. She suffered from over thinking and an inability to start and finish tasks.

12. The claimant had a telephone consultation with her GP on 20 December 2019 which set out the following:

Problem	Anxiety states ( <i>First</i> )
History	Duty Dr Left job 2 weeks ago. "suffering from anxiety and depression", mostly to do with work. Sleep - labile. Lives with mother. socialises. RISK ASS no thoughts of self harm. not suicidal.
Examination	slow pace of speech on the phone.
Comment	we agreed on counselling, details sent, crisis line numbers sent. revirw here if above not helping.

13. The claimant stated that in order to obtain a telephone appointment with her Doctor on 20 December 2019 she had to complete an online questionnaire which asked questions about her sleeping, eating and other matters. During the appointment they discussed medication and counselling. She refused medication because she did not take other medication or painkillers. The GP notes accurately record that they agreed on counselling and did not record that they discussed medication because they did not agree it. She thought that the mention of socialising related to the fact that she lived with her mother and sister and spoke

to them about the situation. She did not disclose thoughts of self-harm at this point because this was a taboo in her family.

## Submissions

14. Mr Kerfoot's submissions can be very briefly summarised as follows:
  - 14.1 at the material time the claimant had reaction to events at work which caused upset and frustration but she did not suffer from an impairment at this time. At most she only suffered from symptoms of what the claimant called anxiety and depression for one month before her dismissal;
  - 14.2 the claimant's impact statement and evidence is lacking in relation to how she was affected before and at the material date. She gave significant oral about adverse effects she suffered before the material date which were not included in her impact statement and she is not credible;
  - 14.3 it is very difficult for the claimant to establish that her impairment is likely to last for a substantial period. The earliest the impairment could possibly have started was early November 2019. She has no medical evidence to help establish that any impairment was likely to last 12 months. The GP record is from 14 days after the dismissal and it is very brief without consideration of the likelihood of recurrence.
15. Ms Yagmur made submissions that can be very briefly summarised as follows:
  - 15.1 she was surprised when she was offered medication by her GP based on one questionnaire and one call but she was. This was after she had disclosed that she had been suffering from November onwards and answered the questionnaire prior to the call;
  - 15.2 she told the truth today;
  - 15.3 her GP was on leave during the period within which she needed to obtain the letter to comply with tribunal directions about service of medical evidence;
  - 15.4 people have different perceptions about anxiety and depression. She suffered from panic attacks which were more than upsetting and panic attacks are significant symptoms of anxiety and depression;
  - 15.5 she was surprised how quickly it all happened but people can experience depression as a result of only one event;
  - 15.6 the GP would not have offered her medication if she was not suffering from a substantial impairment.

## Decision

16. It is not disputed that the claimant's GP notes first record that she suffered from anxiety and depression from 19 October 2020. Her contacts with her GP relating

to anxiety and depression started on 20 December 2019 and on that date she was referred to Brent talking therapies.

17. I do not accept that because the claimant did not receive a formal diagnosis of depression and anxiety until October 2020 that she did not suffer from an impairment before then or that it could not be said that at the material time she would not suffer from long-term effects. Firstly there is a considerable gap between the claimant contacting her GP in December 2019 and October 2020. The claimant identified difficulties contacting her GP namely difficulties associated with Covid-19 and that she was living in Reading and her GP was in Wembley. I consider that these are cogent explanations for the gap in contacting her GP and that that gap means there is no medical record of the claimant's condition in between that period. I do not find that this damages the claimant's case. Secondly, it is frequently the case that anxiety and/or depression are formally diagnosed sometime after an individual has been suffering from that condition.
18. I do not consider that the claimant's evidence was that she experienced no symptoms of anxiety and depression before 1 November 2019 rather and as can be seen from her GP notes she records problems arising from the summer of 2019. The claimant's evidence was that from 1 November 2019 things reached a different level. She was aware in herself that how she felt was different to how she had felt before.
19. I found the claimant to be credible. At times she gave very detailed evidence including on matters that were not strictly relevant to the issues that I had to consider today. She was forthcoming and tried the best she could to give information about her situation. It is true that she gave more information than was contained in the documentation including her impact statement. The claimant is in her early 20s, she is a graduate and educated, however she has no experience of legal matters or employment tribunal proceedings. It is not uncommon for impact statements to not fully address the issues that have to be considered in relation to disability. I do not find the fact that she did not provide more detailed written evidence acts against her, particularly as it is not disputed that she currently suffers from anxiety and depression. This is medically recorded as moderate which is the medical definition however it is fair to say that the impact on her is significant and serious.
20. The claimant's impact statement does not clearly distinguish between events that occurred before the dismissal and events which occurred afterwards. However I have read her impact statement in conjunction with her oral evidence and I find that from 1 November 2019 and around the material time the claimant experienced the following:
  - 20.1 difficulties sleeping;
  - 20.2 panic attacks;
  - 20.3 frequent tearfulness at work and at home;
  - 20.4 fatigue which led to the neglect of cooking and tidying.
21. I also accept the claimant's evidence that her sister noticed behavioural changes in her around November 2019. I accept her evidence that she had enough self

awareness to know at the material time that she was experiencing and acting in a way which went beyond mere distress.

22. I consider that the symptoms that the claimant experienced did have a substantial and adverse effect on her ability to carry out day-to-day tasks. She has identified some neglect of self-care which are day-to-day tasks. The claimant identified suffering from at least two panic attacks in the month before the material date. I consider that two is a significant number in the short time frame of one month. Further, panic attacks create a fear of suffering further attacks and it is this and the panic attacks themselves which lead to changes in an individual's behaviour and which affects their ability to carry out day-to-day tasks. I also consider that frequent and inappropriate tearfulness had a substantial adverse effect on an individual's ability to carry out day-to-day tasks: they prevent tasks being started and/or completed.
23. I have given careful consideration to the respondent's submission that because the symptoms or impairments only started approximately one month before the material time the claimant cannot be said to suffer from an impairment with a long-term effect. I have decided that at the material time the claimant did suffer from an impairment which could well have had a long-term substantial and adverse effect on her ability to carry out day-to-day tasks. I recognise that the effects on her or even the impairment cannot be said to have started before 1 November 2019 which is a short time before the material time. However the adverse effects which the claimant suffered from at the material time are significant. I find that the serious nature of the effects which includes panic attacks indicates that the claimant suffered from more than mere emotional distress at a difficult life event and that it could well be that she would suffer these effects in the long term. Panic attacks in particular do not simply disappear quickly. I recognise that emotional distress at a difficult life event is part of the human condition but I also recognise that in some people a difficult life event triggers a profound and long term effect which I consider is what happened to the claimant.
24. I have given consideration as to whether because the claimant's employment, which was a stressor ended on 6 December 2019, this indicates that she would not suffer long term effects. I have decided that this is not the case because of the symptoms which the claimant suffered which included panic attacks and repeated episodes of tearfulness. I do not accept that panic attacks could simply disappear quickly following the removal of the main stressor.
25. In conclusion I find that the appellant satisfies the definition of disability set out in EqA.

## **CASE MANAGEMENT ORDERS**

### **Claims and Issues**

26. No list of issues has been agreed between the parties. The claimant did not feel able to have a discussion about that list at the end of the hearing which lasted

until 13:15. I directed that by **21 October 2021** the claimant will send a draft list of issues to the respondent and that the parties will agree this and send it to the tribunal by **28 October 2021**.

## Schedule of Loss

27. The claimant must by **5 November 2021** send to the respondent and the Tribunal a document setting out how much compensation for lost earnings or other losses s/he is claiming and how the amount has been calculated. This is called a Schedule of Loss.

## Disability

*The Equality Act 2010 says that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.*

*There is more information about this here:*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

## Documents

28. By **26 November 2021** the claimant and the respondent must send each other and index and copies of all documents relevant to the agreed list of issues.
29. Documents includes recordings, emails, text messages, social media and other electronic information. You must send all relevant documents you have in your possession or control even if they do not support your case. A document is in your control if you could reasonably be expected to obtain a copy by asking somebody else for it.

## File of documents

30. By **17 December 2021**, the claimant and the respondent must agree which documents are going to be used at the hearing.
31. The respondent must prepare a file of those documents with an index and page numbers. They must send a copy to the claimant by **20 December 2021**.
32. The file should contain:
  - 32.1 The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.
  - 32.2 Other documents or parts of documents that are going to be used at the hearing. Put these in date order.



- 33. The claimant and the respondent must both have available a copy of the file at the hearing for their own use.
- 34. The respondent must bring four copies of the file to the hearing for the Tribunal to use by 9.30 am on the first morning.

**Witness statements**

- 35. The claimant and the respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.
- 36. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.
- 37. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
- 38. At the hearing, the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
- 39. The claimant and the respondent must send each other copies of all their witness statements by **7 January 2022**.
- 40. The claimant and the respondent must both bring copies of all the witness statements to the hearing for their own use.
- 41. The respondent must bring four copies of the witness statements to the hearing for the Tribunal to use by 9.30 am on the first morning.

**Checklist**

Date	Order	✓
	Schedule of Loss	
	Respondent's documents	
	Claimant's documents	
	File	
	Witness statements	

**Hearing preparation**

42. By **14 January 2022**, the claimant and the respondent must both write to the Tribunal to confirm that they are ready for the hearing or, if not, to explain why.

### Variation of dates

43. The parties may agree to vary a date in any order by up to 14 days without the Tribunal's permission, but not if this would affect the hearing date.

### About these orders

44. These orders were made and explained to the parties at this preliminary hearing. They must be complied with even if this written record of the hearing arrives after the date given in an order for doing something.
45. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
46. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

### Writing to the Tribunal

47. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

### Useful information

48. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
49. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:  
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
50. The Employment Tribunals Rules of Procedure are here:  
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
51. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:  
<https://www.gov.uk/appeal-employment-appeal-tribunal>

Judge Bartlett  
12 October 2021

Sent to the parties on:

22 October 2021

For the Tribunal Office:

S. Bhudia