



EMPLOYMENT TRIBUNALS

Claimant
Mrs S Wallis

v

Respondent
Buttle Plc

Heard at: By CVP

On: 15 September 2021

Before: Employment Judge M Warren

Members: Ms J Costley and Mr S Holford

Appearances:

For the Claimant: In person.

For the Respondent: Ms I Egan (Counsel).

JUDGMENT having been sent to the parties on 15 October 2021 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. At the outset of this case we have had to decide the preliminary issue of whether or not Mrs Wallis is a disabled person as defined in the Equality Act 2010. Her case is solely one of disability discrimination and therefore it was appropriate to decide this issue at the beginning of the case.
2. The case came before Employment Judge Daniels at a preliminary hearing on 8 February 2021. He made provision in his orders on that occasion for the claimant to disclose medical evidence and for the respondent to confirm whether or not it accepted that the claimant was disabled by a certain date and if disability was not conceded, then the parties were to obtain a joint medical report. Directions were set out as to the timing of obtaining that report.
3. The respondent confirmed their position in an email of 14 April 2021. Thereafter, in correspondence we have been provided with today, the parties discussed whether a medical report was to be obtained. The

position taken by Mrs Wallis in that correspondence was that; (a) she could not afford the potential costs of such a report and (b) she had provided her evidence and a report was not necessary.

4. The correspondence was referred to Employment Judge Quill, who directed a letter be sent to the parties reminding them that they must comply with the directions of Employment Judge Daniels. In fact, no medical report was obtained as Mrs Wallis did not agree to co-operate in its preparation and payment for one half of the cost.
5. So the matter came before us today at the beginning of a 3 day hearing on Mrs Wallis' claims of disability discrimination with our having before us an Impact Statement dated 1 April 2021 and copies of her GP records which she had provided, starting at page 222 in the bundle, running to 10 pages.
6. The respondent accepts that Mrs Wallis had at material times from 11 November 2019 to the appeal outcome on 14 February 2020, a mental impairment which had a substantial impact on her ability to carry out day to day activities. It does not accept however, that Mrs Wallis met the requirement for the impairment to have been long-term.

Law

7. For the purposes of the Equality Act a person is said to be disabled in accordance with s.6 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.”
8. The burden of proof lies with Mrs Wallis to prove that she is a disabled person in accordance with that definition.
9. Schedule 1 to the Equality Act explains at paragraph 2 what, “long-term” means. It means that the substantial impact has either lasted for at least 12 months, is likely to last 12 months, or is likely to last for the rest of that person's life. We have to assess whether the substantial impact was likely to last for at least 12 months as at the time of the alleged discrimination. We are not permitted to retrospectively look back and say, “well it has lasted for more than 12 months”. We have to ask if it could be said at that time of the events in question, that the disability was likely to last more than 12 months. See Richmond Adult Community College v McDougall [2008] ICR 431 CA and Answers Ltd v W [2021] EWCA Civ 606.
10. “Likely” means could well happen, see SCA Packaging Ltd v Boyle [2009] ICR 1056 HL.

The Facts

11. Mrs Wallis first consulted her doctor about the impairment she was

suffering at the time on 20 November 2019. This is recorded at page 226 in the medical notes, where the GP describes the problem of low mood as new. Mrs Wallis confirmed that this was the first time that she had experienced this mental impairment; anxiety and then later, depression.

12. The relevant period, the period covered by the allegations of discrimination, is from 11 November 2019, (the date of the first allegation) through to 14 February 2020, (the date of the last allegation, in relation to the appeal outcome issued that day). In the Impact Statement, Mrs Wallis speaks of suffering the impairment from the outset, which we take as being from 11 November 2019.
13. The cause of this anxiety is something that does not need to be recorded here. It related to recent, personal, matters, The cause of the anxiety does not matter, the point is that it manifested itself at about this time, in November 2019.
14. The GP's response to the problem was to prescribe Temazepam to help the claimant with her sleep. She was to try taking one tablet once every three nights. She was given ten tablets and she was advised to return if these did not help, with a view to the doctor then trying antidepressants.
15. We can see from the medical records that Mrs Wallis was issued with a fit note for 7 days on 20 November and that fit note was renewed it looks like without any return to the doctor being necessary, on 29 November and 2 December, that last fit note expiring on 9 December. So according to the medical records, there were no further visits or interactions by Mrs Wallis with her GP until 17 February 2020, which is 3 days after she would have received the outcome of her appeal against dismissal. On that occasion, the doctor prescribed the antidepressant medication Sertraline.
16. Mrs Wallis said in evidence that she did not go to the doctors in the intervening period because of her anxiety, which causes her to try and avoid interactions, which may well be true.

Conclusions

17. This was a new condition which began in November 2019. At first, the GP thought that he or she could treat it with something to help Mrs Wallis. The GP did not prescribe antidepressants until after the appeal outcome, in other words, after the prescribed period.
18. There is no evidence in respect of the duration of the prescribed period from which we could conclude that it could well have been said at that time, that the anxiety and depression would last more than 12 months. Actually, I suspect that, from my experience of hearing cases like this, if we had a medical report such as a letter from the GP or perhaps from a psychiatrist, it would not have said that at that early stage of this impairment, one could say that it could well last for 12 months. However, in any event, we have to make our decision on the evidence that is before us. We have no evidence before us from which we could make a finding that the substantial impairment was likely to last more than 12 months. Unfortunately for Mrs Wallis, this means that we have to make a finding

that this was an impairment that, assessed as at that time, was not likely to last more than 12 months.

19. This means that Mrs Wallis does not meet the definition of a disabled person as at the relevant time and her claims fail and are dismissed.

Employment Judge **M Warren**

Date: 27 October 2021

Judgment sent to the parties on

12 November 2021

S. Bhudia

For the Tribunal office