



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr. J. Goldie

v

**Galliford Try Employment
Limited**

Heard at: Birmingham via CVP On: 1 November 2021

Before: Employment Judge Wedderspoon

Representation

Claimant: Mr. Frank Goldie (brother of the claimant)

Respondents: Miss. C. Goodman, Counsel

JUDGMENT ON PRELIMINARY ISSUE OF DISABILITY STATUS

1. The claimant was not disabled within the meaning of section 6 of the Equality Act 2010 at the relevant time.
2. The claimant's claims of disability discrimination are dismissed.

REASONS

1. The purpose of the preliminary hearing is to determine whether the claimant had at the relevant time a disability within the meaning of section 6 of the Equality Act 2010.
2. By claim form dated 26 February 2021 the claimant brought complaints of disability discrimination against his former employer, Galliford Try Employment Limited. The claimant was employed by the respondent as a project director from 1 May 2019 until his resignation on 6 October 2010.
3. The hearing was held as a remote CVP video hearing. The Tribunal was provided with an agreed bundle of documents 98 pages. The claimant gave evidence and provided medical material (page 69-71); further information about his disability (pages 73- 75) and disability impact statement (p.76-80).

Facts

4. The claimant first attended his G.P. on 12 March 2020. At that time, he complained about having three young children, working away from home, feeling stressed, suffering insomnia for 4 to 5 months and irritability. His mood was described as depressed. He was given the contact details of a psychiatric service and it was noted "review if symptoms persist." From this evidence the claimant was suffering from symptoms from November 2019 which were affecting his everyday activities of sleeping.
5. There was no review sought by the claimant until 10 June 2020. At that time a diagnosis was made of acute stress reaction. The claimant was signed off work for 2 weeks. The claimant accepted in his evidence that the trigger for attending his GP at that stage is that he faced a performance meeting which was adding to his stress. He described long hours, excessive workloads, lack of resources. He was not sleeping. He was not looking for support at this stage. On 23 June 2020 the claimant attended his G.P. A further diagnosis of acute stress reaction was made. He described pressure at work, lack of sleep. He was not ready to return to work and he was signed off sick for a further two weeks.

6. The claimant was not prescribed any medication for his mental health at any time but he was prescribed an antihistamine to assist his sleep.
7. The claimant returned to work on 7 July 2020 but he resigned his employment on 6 October 2020.
8. The claimant's evidence is that he was still having problems sleeping and he was suffering from flashbacks until and after his resignation. He described a loss of focus while trying to continue to work, loss of life balance affecting his homelife, loss of appetite and weight loss. This oral evidence is unsupported by the medical evidence from his G.P. presented to the Tribunal.
9. The medical report provided by the claimant's GP at page 72 dated 20 July 2021 states that the claimant was off work with an acute stress reaction last year. There is no indication of there having been a previous problem. The doctor had examined the claimant's medical notes. There are no other episodes of time off work. No indications of diagnosis related to stress or low mood no prescriptions that might relate to them. This does appear to be an isolated episode.

The Law

Disability defined

1. For the purposes of section 6 of the Equality Act 2010 (EqA) a person is said to have a disability if they meet the following definition:
"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."*
2. The burden of proof lies with the claimant to prove that he is a disabled person in accordance with that definition.
3. The term "substantial" is defined at section 212 as "*more than minor or trivial*". Normal day to day activities are things people do on regular basis including shopping, reading and writing, having a conversation, getting washed and dressed preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, socializing (see D2 to D9 of the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011)).
4. Further clarity is provided at Schedule 1 which explains at paragraph 2:
"(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.*

(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."*
5. Likely should be interpreted as meaning "it could well happen" rather than it is more probable than not it will happen; see **SCA Packaging Limited v Boyle (2009) ICR 1056**. In the case of **Patel v Metropolitan Borough Council (2010) IRLR 280** the EAT stated that the issue of whether the effect of an impairment is long term may be determined retrospectively or prospectively.
6. A claimant must meet the definition of disability as at the date of the alleged discrimination.
7. As to the effect of medical treatment, paragraph 5 provides: -
 - (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- (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 include in particular medical treatment...*
8. Paragraph 12 of Schedule 1 provides that a Tribunal must take into account such guidance as it thinks is relevant in determining whether a person is disabled. Such guidance which is relevant is that which is produced by the government's office for disability issues entitled "Guidance on matters to be taken into Account in Determining Questions Relating to the Definition of

Disability” The guidance should not be taken too literally and used as a check list (see **Leonard v Southern Derbyshire Chamber of Commerce (2001) IRLR 19**).

9. Some guidance is given in paragraph B1 as to the meaning of “Substantial adverse effects” namely,
“The requirement that an adverse effect on normal day to day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences and ability which may exist amongst people. A substantial effect is one that is more than a minor or trivial effect.”

Submissions

10. The respondent invited the Tribunal to find that the claimant was not disabled within the meaning of the Act. The respondent accepted that the claimant suffered a short lived acute stress reaction which had a substantial affect on day to day activities but which did not last nor was likely to last 12 months. There was no evidence of anxiety or depression.
11. The claimant’s lay representative submitted that the claimant was subject to ill treatment at work which made him unwell. He continued to suffer symptoms of insomnia to date.

Conclusions

12. The claimant has the burden of proving that he meets the definition under section 6 of the Equality Act at the relevant time.

Relevant period

13. The Tribunal determines from the evidence that the relevant time where it is contended that the claimant was subject to discriminatory treatment (taking the claimant’s case at its highest is) is from November 2019 when the claimant contends he was subject to discriminatory treatment from his manager until his resignation when he contends he had to leave the respondent’s employment in October 2020 because of the said treatment. The claimant stated there were a number of issues that made him unwell including the excessive workload and lack of resources and balancing his work and home life.

Mental Impairment

14. There is no evidence before the Tribunal that the claimant suffered from a mental impairment of anxiety or depression. The medical records dating from 12 March 2020 to 23 June 2020 mention feeling stressed and “depressed mood”. The diagnosis made in June 2020 is an acute stress reaction. There is mention of anxiety at all. There is no further mention of depression in the medical material. The G.P.’s medical report dated 20 July 2021 only refers to the claimant suffering from an acute stress reaction last year. The Tribunal therefore rejects that the claimant suffered from anxiety or depression.
15. The Tribunal does find that the claimant suffered from an acute stress reaction. This is supported by the G.P. letter that states *“He was off work with an acute stress reaction last year.. There is no indication of this having been a previous problem. I have been through all of his notes and I can happily say there are no other episodes of time off work. No indications of diagnosis related to stress or low mood, no prescriptions that might relate t them. Therefore, this does appear to be an isolated episode.”* The Tribunal concludes that the claimant did suffer from a mental impairment of an acute stress reaction.

Substantial adverse effects

16. The Tribunal should not only focus on a diagnosis but consider the effects on normal day to day activities. The Tribunal is satisfied that the claimant began to suffer with a mental impairment which had a substantial adverse effect on his day to day activities from November 2019. This is supported by the claimant’s oral evidence and the medical record of 12 March 2020 where it is stated that the claimant who has three young children, works away from home, feeling stressed, duration 4 to 5 months, good appetite, no excess alcohol, irritable when took job on expected to work locally”. His depressed mood was noted and he was given the details of a psychiatric service to contact in the first instance and review if symptoms persist. He did not seek a review until three months later.

17. At the claimant's further appointment in June 2020 he complained of stress and insomnia. The claimant accepts that the trigger for this appointment was an impending performance meeting and he was signed off for effectively 4 weeks. The diagnosis at this stage was acute stress reaction.
18. From the evidence, the mental impairment had a more than minor or trivial effect from November 2019 to July 2020 because the condition was affecting the claimant's sleep pattern and he sought medical advice in March 2020 and June 2020.
19. By July 2020 the claimant was in a position to return to work following 4 weeks absence. There is no medical evidence to support the claimant's contention that the impairment lasted longer than July 2020. As the medical evidence states that this was an isolated episode.

Long Term

20. The Tribunal considers whether as at July 2020 that the impairment was likely to last 12 months or longer, the Tribunal takes into account whether it was likely namely it could well happen; the Tribunal is not satisfied this is the case. The claimant did not have any further time off work. He sustained a short lived episode of chronic stress. There were no further medical consultations from July to his resignation in October 2020. In so far as the claimant maintains that the impairment lasted until his resignation and he continues to suffer some symptoms; the Tribunal rejects this contention. It is wholly unsupported by medical evidence and is in fact contrary to the medical report relied upon by the claimant.
21. In the circumstances the Tribunal concludes that the claimant did not meet the definition of disability within the meaning of section 6 of the Equality Act 2010 at the relevant time. The claimant has not shown he was disabled and therefore his claims of disability discrimination can not be pursued. His claims are dismissed.

03/11/2021

Employment Judge Wedderspoon

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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