



EMPLOYMENT TRIBUNALS

Claimant

Ms L Greenwood

v

Respondents

Coeliac UK
Ms Hilary Croft
Mr Robin Steele

Heard at: Watford via CVP

On: 27 October 2021

Before: Employment Judge Bartlett (sitting alone)

Appearances

For the Claimant: Ms Moses
For the Respondent: Ms Denton

JUDGMENT

1. The claimant suffers from an impairment in the form of difficulties with short-term memory and concentration. This amounts to a disability within the meaning of the Equality Act 2010. The claimant suffered from this disability at the material time.

REASONS

Background

1. The claimant commenced work for the first respondent on 26 November 2018 as Director of Communications and Volunteering. The claimant's employment terminated on 24 January 2020.
2. The claimant contends that at all material times she was disabled within the meaning of the Equality Act 2010.
3. At a Case Management hearing on 19 March 2021 this one day OPH was ordered to determine whether or not the claimant suffered from a disability within the meaning of the Equality Act 2010. Various case management orders relating to disclosure of documents and a personal impact statement by the claimant were ordered at the CMH.

4. There has been correspondence between the parties about matters relating to the disability issue since that CMH.
5. On 20 October 2021 the respondents conceded that the claimant suffered from hyperthyroidism, depression and acute stress and anxiety which all amounted to disabilities within the meaning of Equality Act 2010. Therefore the only issue before me at this hearing was whether or not the claimant's aneurysm is a disability within the Equality Act 2010.

The hearing

6. The hearing took place via CVP. There were no difficulties with communication or connection during the hearing.
7. At the start of the hearing Ms Moses asked for three reasonable adjustments to be made. The respondents made no objection to these requests and all the adjustments were made. These included providing the claimant with a five minute break after 20 minutes of witness evidence, permitting the claimant to make notes during her evidence and throughout the hearing and permitting a legal adviser to remain in the room with the claimant and offer any practical assistance such as finding pages etc.
8. I stated that I would reserve my decision and Ms Moses stated that whatever my decision the claimant would like to make an application for costs however she was not making the application today. She invited me to make directions about a costs application. I set these out below.

Evidence

9. Ms Moses submitted that the respondents witness evidence (the evidence of Ms Woolman and Ms Malthouse) was not relevant to the issue to be determined. I decided to allow the respondents witness evidence. Whilst it is arguable that some parts of the evidence went to the issue of the respondents' knowledge of disability which I was not to consider today it is arguable that it was relevant to the disability issue. Ms Moses and Ms indicated that they had no questions with the witnesses and therefore admitting this evidence would not cause a delay to the proceedings. I find that admitting this evidence would not cause a disadvantage to the claimant. The respondents' witnesses adopted their witness statements but no further questions were asked of them.
10. The claimant appeared as a witness. After affirming she was asked number of questions by Ms Denton. The full record of her questions and answers are set out in the record of proceedings.

The law

11. 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."

12. 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)'

13. 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."

Decision

14. The claimant's case in relation to disability is that she suffered from an aneurysm which was treated surgically in 2008 however the aneurysm and its surgical treatment led to permanent problems which were short-term memory difficulties, difficulties with concentration and loss of consciousness if vomiting.
15. The respondents dispute that the difficulties with short-term memory and concentration arise from the aneurysm and they dispute that the effect of the impairment at the material time falls within the definition of disability within the Equality Act 2010.

16. It is not disputed that the claimant suffered from an aneurysm which was diagnosed in 2008. She underwent surgery in 2008 and recently underwent a scan which showed that the aneurysm has been reabsorbed into her artery. The claimant identified that she had cervical ribs and she was left with a cervical stump which caused her some problems largely the loss of consciousness when vomiting.
17. The bundle ran to almost 500 pages and included a very substantial amount of medical documentation most of which related to over 10 years ago and/or after the date of termination of employment.
18. Ms Moses stated that because the issues to be decided today had been narrowed most of the bundle was not relevant.
19. I asked Ms Moses to identify the pages of the bundle that were relevant and she identified the following:
 - 19.1 page 199 is the high point of the claimant's evidence;
 - 19.2 page 371 is a medical record from 2008 which talks about poor concentration and no motivation;
 - 19.3 page 383 is a medical record from 2013 which talks about difficulties with concentration;
 - 19.4 page 455 is a record from November 2019 in which the claimant asked for adjustments to be made as a result of her memory loss;
 - 19.5 page 477 is a WhatsApp message from the claimant to a colleague stating that her memory failed as per usual;
 - 19.6 the claimant's witness statement started on page 120. Paragraph 12 refers to short-term memory loss and paragraphs 20 to 29 contain evidence on this issue and references to medical records.
20. As is set out above the respondents accept that the claimant suffers from several impairments which amount to disabilities under the Equality Act 2010. Ms Denton made it clear that the respondents did not accept that the claimant's impairments to her memory or concentration amounted to a disability within the Equality Act 2010.
21. The claimant's evidence was that she considered that the problems with her short-term memory and concentration arose shortly after the 2008 operation for the aneurysm and that they were caused by these events. She repeatedly mentioned that trauma can impair short-term memory and that the events around the aneurysm were traumatic. In particular she was given three months to live, she was only 35 at the time, she suffered from significant pain for months after the operation, she had to undergo physical therapy after the operation, she lost her job due to ill health and less than one year after the surgery for the aneurysm she underwent thyroid surgery. It is undeniable that the claimant went through a lot. However the claimant's situation is even more

complicated than this. The medical records set out that she had a very traumatic childhood, she has been prescribed antidepressants for decades and has suffered from depression for decades. From 2018 the claimant continued to undergo a number of difficult or traumatic events including poor living accommodation, threats of violence and the terminal illness and death of a close friend.

22. Both parties argued that the claimant's difficulties with short-term memory and concentration arose from the aneurysm. I do not find that the term aneurysm can describe a condition that the claimant has not suffered from since 2008. The aneurysm was removed in 2008 and medical tests have shown that it has disappeared. What the claimant has identified is after-effects of the aneurysm and its treatment. The claimant also referred to cervical ribs and that the construct of her veins and arteries had some effect on her. If
23. In submissions Ms Moses stated that though the claimant's case was not put that the impairment was difficulties with short-term memory and concentration, it was open to the tribunal to decide on this issue.
24. In relation to the vasovagal episodes which is loss of consciousness when vomiting I find that this is not a disability. The loss of consciousness only occurs when the claimant vomits. The claimant has no increased risk of vomiting than any other individual in the population. Many adults, particularly those that do not have regular contact with small children, can go numerous decades without contracting food poisoning or a vomiting illness. Therefore I find that the loss of consciousness is likely to occur very infrequently. As a result it cannot have a substantial adverse impact on the claimant's ability to carry out normal day-to-day activities.
25. I make the following findings:
 - 25.1 despite a substantial amount of medical documents having been disclosed by the claimant, I was only referred to 2 documents predating the termination of employment which made any mention of problems with short-term memory problems or concentration. There is one in September 2008 and one in 2013. This is very limited evidence;
 - 25.2 the claimant proffered a number of explanations for the lack of reference in the medical documentation to memory loss and lack of concentration. These included that after the aneurysm operation she experienced high levels of pain so that her focus and that of her doctors was elsewhere and that she did not return to full-time employment after the aneurysm operation until 2019 when she joined the first respondent. It was not until she was working full-time with the first respondent that she was more affected by the issues in that her sense of self was affected. She had been affected at home but there was only her at home and so this did not really matter;
 - 25.3 the claimant gave oral evidence about how she was affected by problems with her short-term memory and poor concentration. This included the following:

25.3.1 if she went out she left an upstairs window open because three times in the past two years she had locked herself out;

25.3.2 she left wet dog food in the same shelf on the fringe and left the scoop on the top of dried dog food so she would be reminded about feeding her dogs;

25.3.3 she sets timers when cooking on the hob;

25.3.4 she sets alarms on her phone when visiting her neighbours for coffee;

25.4 the claimant's witness statement was more limited about how her activities were impaired and was focused on work activities only. The witness statement identified that:

"These symptoms affect my ability to prepare written documents, follow verbal instructions, keep to a timetable or carry out work related activities, as I often have to reread information... I can be forgetful when having a conversation and interacting with others... and I often find it very difficult to concentrate.. I use list, emails and repetitions to aid my short-term memory symptoms. Whilst working for the first respondent, I would use notebooks and diaries to make lists and request records of my day-to-day jobs and conversations with people, to act as an aide memoir."

25.5 The respondents' witnesses did not consider that the claimant's behaviour at work was anything out of the ordinary;

25.6 I was asked to make adverse findings against the claimant because of the differences between her oral and written evidence. In all the circumstances of the case I am not prepared to do that, the claimant provided more information in her oral evidence than was set out in her witness statement but this is common in relation to disability impact statements. I do not consider that the appellant was trying to bolster her case artificially. Instead I find that she was trying to provide the tribunal with as much information as she could about her situation

26. When all the circumstances of the claimant's complex situation are considered I do not think that it is helpful to try to isolate the aneurysm or ongoing effects of the aneurysm and treatment from all her other conditions. In particular whilst the claimant identifies that the aneurysm operation and circumstances were traumatic and this trauma has caused the difficulty with short-term memory and concentration I do not accept that that event can be isolated from the other traumatic events in her life.

27. Therefore I do not accept that the aneurysm is the impairment. Instead I consider that the short-term memory and concentration problems are the impairment. Therefore I must consider what are the effects of the short-term memory problems and difficulties with concentration.

28. There is limited evidence from 2008 and 2013 that the claimant had some problems with short-term memory and concentration. I do not accept that these were significant issues at that time. I recognise that in the immediate aftermath of the operation the claimant had other issues such as her pain that took priority and needed dealing with however, if her short-term memory and concentration were as badly affected as she appears to claim, I do not accept that she would not have raised it with her doctor in France. In evidence the claimant repeatedly stated how thorough the French medical treatment was and how fulsome their investigations. She saw a number of specialists about the aneurysm, the cervical ribs and her thyroid. She received treatment for all of these and the depression. In this country there are specialist memory clinics and I do not accept that she would not have raised with her GP in France that she had problems of her short-term memory and concentration which was significantly affecting her.
29. The claimant's evidence was that numerous factors affected her memory and concentration such as sleep, stress and depression. By 2019 claimant had a number of different stressors in her life largely arising from her personal life but also because of full-time work and its pressures. I find that Whats App message from the claimant on 13 June 2019 which states "*as per usual my memory failed*" and the email from the claimant dated 13 November 2019 which refers to the claimant's difficulties with memory are evidence that she had been suffering from problems with her short-term memory and concentration from at least early June 2019. I find that the claimant's evidence was that problems with her short-term memory and concentration increased after she started full-time work with the first respondent and I accept that. I find that it is only from that point onwards that the problems became so significant that they had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities.
30. I find that the claimant's short-term memory problems and difficulties with concentration had an adverse effect on normal activities. She identified problems with, for example, cooking, feeding her dogs, following verbal instructions and memory problems and having a conversation. These are day-to-day activities. Further, the effects on them were adverse.
31. In relation to whether or not there was a substantial impairment I remind myself that substantial means more than minor or trivial and that it is a low standard. The claimant has identified interference with her ability to carry out normal day-to-day tasks and I find that that interference was substantial. Forgetting what is said in conversations, forgetting about cooking food, forgetting to feed one's animals all have a more than minor or trivial effects on an individual's life.
32. I find that at the material time the effect of the impairment was long-term because it would be expected to last for many years because such problems are largely only treatable with coping strategies rather than any sort of cure or suppression of symptoms.

33. I find at the material time the claimant had a disability in that her short-term memory and concentration were impairments and that this is a disability within the meaning of the Equality Act 2010.

CASE MANAGEMENT ORDERS

Claims and Issues

1. A list of issues had been agreed between the parties. I have not had sight of this list of issues I raised the concern that if it followed the ET1 it was not necessarily suitable. In particular I was concerned that numerous claims had been raised under different categories of discrimination and that this may not be appropriate. The parties will agree an amended list of issues by **17 January 2022**.

Schedule of Loss

2. The claimant must by **9 May 2022** send to the respondents and the Tribunal a document setting out an updated Schedule of Loss.

Documents

3. By **14 March 2022** the claimant and the respondents must send each other an index of all documents relevant to the agreed list of issues.
4. By **21 March 2022** the claimant and the respondents must send each other a copy of all documents from the index of documents which have been requested by the other parties.
5. 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

6. By **25 April 2022**, the claimant and the respondents must agree which documents are going to be used at the hearing.
7. The first respondent must prepare a file of those documents with an index and page numbers. They must send a copy to the claimant within seven days of **25 April 2022**.
8. The file should contain:
 - 8.1 The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.

- 8.2 Other documents or parts of documents that are going to be used at the hearing. Put these in date order.
9. The claimant and the respondents must both have available a copy of the file at the hearing for their own use.
10. The first 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

11. The claimant and the respondents 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.
12. 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.
13. 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.
14. 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.
15. The claimant and the respondents must send each other copies of all their witness statements by **9 May 2022**.
16. The claimant and the respondents must both bring copies of all the witness statements to the hearing for their own use.
17. The first 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	
	Respondents' documents	
	Claimant's documents	
	File	

	Witness statements	
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Hearing preparation

18. By **9 May 2022**, the claimant and the respondents must both write to the Tribunal to confirm that they are ready for the hearing or, if not, to explain why.

Variation of dates

19. 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

20. 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.
21. 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.
22. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

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

Useful information

24. 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.
25. 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/>
26. The Employment Tribunals Rules of Procedure are here: <https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>

27. 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>

Costs application

28. The claimant may make a costs application if she wishes to do so. If the claimant makes that application the respondents will have 14 days from receipt of the application to make written submissions to the claimant and the tribunal. All parties have seven days from receipt of the respondents' submissions in relation to the costs application to make any further submissions. Any decision on a costs application made prior to the substantive hearing will be heard on the papers and without a hearing unless any party provides written reasons for its objections.

Judicial mediation

29. The claimant is interested in judicial mediation. Ms Denton had no instructions on this issue. If the respondents are interested in judicial mediation they are to notify the tribunal as soon as possible.

Employment Judge Bartlett

Date: 28 October 2021

Sent to the parties on: 9/12/2021

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For the Tribunal Office