



EMPLOYMENT TRIBUNALS

Claimants: A
B

Respondents: C
D
E

Heard at: Nottingham **On:** Monday 28 October 2019

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimants: In person

Respondents: Mr J Gilbert, Consultant, Peninsula

RESERVED JUDGMENT

1. Both Claimants are disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010.

REASONS

1. The Claimants represented themselves and gave evidence. Mr Gilbert represented the Respondents and made submissions.

Issue

2. The purpose of the hearing held on 24 October is to determine whether either or both of the Claimants, A and B are disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010.

The Relevant Law

3. Section 6, subsection 1 of the Equality Act 2010 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."

4. Paragraphs 2 and 5 of Part 1 of the First Schedule to the Equality Act 2010 are as follows:-

"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.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

(4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

Paragraph 5(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" includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply:-

- (a) in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;

- (b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed."

5. "Substantial" is defined as "means more than minor or trivial".

6. As to the case law, neither party cited any relevant authorities but the Claimants submitted, in my view correctly, that the focus of the Act is on the things that the Claimant either cannot do or can only do with difficulty,

rather than on the things that the person can do.

Context

7. The cases of the respective Claimants have been ordered to be heard together and it is plain that their respective cases are closely interwoven and both have a common interest in the success of each other's claims. There was a lengthy and thorough attended Preliminary Hearing held before Judge Clark on 27 June 2019 which led to a number of orders in particular requiring the Claimants to further particularise their claims. This has been done and the Respondents have also in accordance with Judge Clark's orders filed a comprehensive amended response.

8. The issue before me is therefore limited to determining whether either or both Claimants are disabled within the meaning of the 2010 Act and this decision is entirely limited to that issue. In particular nothing in this decision should be taken to determine whether the Respondents knew or could have reasonably been expected to know that either Claimant was disabled. That issue is a matter for the full hearing.

9. Notwithstanding Judge Clark's clear order the Respondents' advisers did not provide an agreed bundle of documents. Fortunately the Claimants did and after a delay, the hearing was able to proceed on the basis of a bundle provided by the Claimants.

Is A disabled?

10. A asserts that he suffers from a mental impairment which he describes as a stress and anxiety disorder together with depression. There are various descriptions in the medical records eg:-

- 13 September 2018 "anxiety state unspecified – work stress"
- 25 October 2018 "depressed mood"
- 22 November 2018 "mixed anxiety and depressive disorder (new episode)"
- 25 January 2019 "depression".

A as a consequence of these and other attendance on his GP has been prescribed various antidepressant drugs.

11. A's evidence in summary was that he began to notice symptoms in April 2018 and that those symptoms included a failure to concentrate, self-destructive thoughts, lack of motivation, tiredness and inability to sleep, and a general inability to cope with life.

12. In terms of the symptoms' effects on day to day activities A's evidence was that he no longer socialised with friends save for his contact with his co-Claimant B and that contact arose because of his wish to support her in relation to the difficulties she was encountering at work. He gave up bike riding and he no longer cooked for himself and found it difficult to motivate himself to attend to matters such as his own self-care and appearance and to duties on the domestic

front.

13. Mr Gilbert for the Respondents cross examined on a number of points. Firstly, that there was no medical evidence in support of A's assertions until he saw his GP on 13 September 2018, two days after his suspension from work. Mr Gilbert drew particular attention to the fact that A had visited his GP as early as 4 May 2018 ie after the symptoms described above had begun to appear and did not raise those symptoms with the GP. A's answer was that he found it difficult to discuss his mental problems with anyone, indeed he still had not told his parents. He further said that the reason for the attendance on that date was vomiting and weight loss and he now believes that those symptoms are a consequence of his mental health problems, though there is no medical evidence to support that contention.

14. Mr Gilbert's cross examination also focussed on the fact that for a period of months A attended kickboxing classes and that he continued to socialise with B. In that regard A's response was that that was so as to support B.

Conclusions

15. I am satisfied that A has established that he suffers from a mental impairment and it is unnecessary for me to put a precise label on that condition. I am further satisfied that on the basis of A's evidence and the medical records that impairment is long term.

16. Has the impairment had a substantial, ie more than minor or trivial adverse effect on A's ability to carry out day to day activities? I accept A's evidence that it has, particularly in the sense that he has lost motivation and confidence, he has for many months been unfit for work, he ceases to have an active social and physical life in the sense of exercise. There is also supporting contemporaneous evidence in the record of "chats" in the bundle. On balance therefore I am satisfied that A has since April 2018 been disabled within the meaning of the 2010 Act and remains so.

Is B disabled?

17. Again, the context remains the same and again there is no medical evidence in support of B's case until in the immediate aftermath of the suspension in November 2018 because she too was suspended from work on 11 September 2018. B states that she is suffering with severe depression, anxiety and PTSD. The PTSD arises from sexual abuse which she suffered as a child. She describes the symptoms as follows:-

"Insomnia, flashbacks, cold sweats, suicidal thoughts, hair loss, panic attacks, severe palpitations, dizziness, tight chest and limbs, blacking out, nightmares, upset stomach, nausea and diarrhoea, crying, fatigue, weakness, mood swings, disrupted menstrual cycle, hypervigilance, inconsistent behaviour, somatic disassociation and irritability".

18. As to the medical evidence, as Mr Gilbert was quick to point out there is no relevant record until the day of B's suspension ie 11 September 2018. B is then

diagnosed as having a depressive disorder. The medical records disclose repeated visits to the GP. The symptoms recorded accord with B's evidence. Various antidepressant drugs are prescribed and it appears that B remains unfit for work.

19. As to the effect on day to day activities B's evidence was that she had ceased to take care of her personal appearance, sometimes not washing her hair for over a week. She had ceased to socialise with all but A and that in the context of their joint claim. She had postponed her wedding but continued to be supported by her fiancé and her mother. She had given up dancing which she both enjoyed and had reached a high standard. She no longer goes out on her own, always being accompanied either by her fiancé or her mother.

20. In addition to cross examining B on the lack of medical evidence prior to September 2018 Mr Gilbert also pressed B on what he perceived to be inconsistencies between paragraphs 48 and 54 of her impact statement in relation to visiting the city centre and shopping. I see no inconsistency between the two and I accept that B avoids the city centre and limits her shopping to visits in the company of either her fiancé or her mother and to online shopping.

21. In conclusion I am satisfied both on her own evidence and that contained in the "chats" that B suffers from a mental impairment and again it is unnecessary to put a label on that impairment. It is clearly long term and in my view has a substantial, ie more than minor or trivial, adverse effect on her day to day activities, in particular that she has lost confidence, she has effectively ceased to socialise outside the inner circle of her fiancé, her mother and A. She has given up dancing and has ceased to take care of herself. On balance therefore I am satisfied that B is disabled within the meaning of the 2010 Act and that she has been so from April 2018 and remains so.

Employment Judge Blackwell

Date: 5/11/2019

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