



EMPLOYMENT TRIBUNALS

Claimant: Mr. A Carr

Respondent: Self Invested Portfolios Limited & Others

Heard at: Cardiff Employment Tribunal **On:** 21/01/2022

Before: Judge of the First-Tier Tribunal Lloyd-Lawrie, acting as an Employment Judge

Representation

Claimant: Mr. A MacPhail, Counsel

Respondent: Ms. K Nowell, Counsel

RESERVED JUDGMENT ON PRELIMINARY ISSUE

The Claimant is disabled within the meaning of section 6 of the Equality Act 2010 by reason of his gastrointestinal issues, namely dyspepsia and irritable bowel syndrome.

REASONS

1. The parties agree that the Appellant had the relevant impairments, namely dyspepsia and irritable bowel syndrome during the relevant period. The parties further agree that the issue in front of me was therefore limited to whether or not those impairments had a substantial adverse effect on the Claimant's ability to carry out normal day to day activities, during the relevant period.
2. The relevant period in this case is the date on which the alleged discriminatory acts occurred. For these purposes that was starting in 2019 until his dismissal on 29 September 2020.

3. The legal test for disability is set out in section 6 of the Equality Act 2010. It states that:
 - (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 Ps ability to carry out normal day-to-day activities”.
4. The word “substantial” is also defined in the Act at section 212 (1) as meaning “more than minor or trivial”.
5. The parties agree that the Appellant’s condition is long-term. Having seen the Claimant’s medical notes that demonstrate that he has had stomach issues since being a young child, I concur with that view.
6. The issue is whether the Appellant’s stomach conditions were such that they had a substantial impact on his day to day life during the relevant period.
7. The Claimant provided a witness statement and gave oral evidence in line with it. He claims that his conditions caused him to have to stay near a toilet and caused and continues to cause him associated anxiety that he will not be able to get to a toilet in time. He claims that this makes him avoid certain activities. He claims issues with nausea, loose bowels, vomiting and pain, ranging from mild to severe, which cause a substantial issue with sleep.
8. The Claimant has had various medications and investigations over the years with a combination of Amitriptyline and Omeprazole being trialed in 2014, Gabapentin being trialed also in 2014. Omeprazole appears to have been the most consistent medication, still being in place in October 2020. The Claimant gave evidence that he was taking that with Gaviscon to reduce acid build up. I accept the submission of Mr. MacPhail that the Claimant’s acid levels and, as a byproduct of that his dyspepsia with associated pain and his irritable bowel syndrome with associated pain and loose bowels, are likely to be worse without that medication.
9. Overall, I find that the Claimant was a credible witness. He freely admitted that he suffered with health anxiety and that he had concentrated on matters he considered most serious when he went to see his GP. I accepted as credible his assertion that he did not consult with his GP over his common issues with his dyspepsia or irritable bowel syndrome as they were normal to him and he had tried and failed to seek adequate help for them and accepted that they were conditions that could not be cured. I therefore find the fact that he was not regularly consulting about those two conditions during the relevant period did not mean that his condition was not affecting him significantly, but that he had seen a specialist previously, had any sinister reason for his symptoms ruled out and was on prescribed medication for his conditions.
10. In considering whether the Claimant’s conditions could be considered a disability, I took into account the Equality Act Guidance on matters to be taken into account in determining questions relating to the definition of

disability. I also considered the cases referred to by Miss Nowell and which appeared in her written submissions.

11. The appendix to the Guidance gives examples of factors which would be reasonable to regard as having a substantial impact. The relevant ones in my findings as related to the Claimant are:-

- i) Difficulty carrying out activities associated with toileting, or caused by frequent minor incontinence;
- ii) Difficulty using transport; for example, because of physical restrictions, pain or fatigue, a frequent need for a lavatory or as a result of a mental impairment or learning disability;

12. The appendix also gives a list of things which it would not be reasonable to regard as having a substantial adverse effect on normal day-to day activities. The relevant ones in my findings as related to the Claimant potentially are:-

- i) Experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometers or one mile;
- ii) Infrequent minor incontinence.

13. I find that the Claimant does, as claimed, have to use the toilet numerous times a day to pass loose motions. I find that this was the case also during the relevant period. I find that he goes to the toilet substantially more than people who do not share his medical condition and that he takes longer in the toilet than someone who does not have irritable bowel syndrome. I accept that his condition causes him to have anxiety about accidents and that he therefore plans his life around ensuring he goes to the toilet before he goes anywhere and that he ensures that he is close proximity to the toilets at all times, if possible. I find that this alone means that his condition affects him daily and the effect is substantial. This is far more serious than, for example, irritable bowel syndrome that causes only occasional flare ups that can lead to incontinence if not near a toilet. I do not find that the fact that he attended work socials or occasionally attended pub quizzes meant that his condition was not as claimed, as people who are disabled can also socialise. The Appellant's evidence was that there were always adequate toilets available and that he was very anxious going on the work speed boat ride but wanted to at least try to enjoy and go.

14. I also accept the Claimant's evidence in relation to his dyspepsia. I find that this is a condition that he has had since childhood and causes him pain. I find that that pain is reduced by his taking of medication and that it would be more severe without it. I take that into account when making my decision. I accept the Claimant's evidence that this causes him issues with sleep. This is, as noted by Ms. Nowell, documented in his GP notes. I find that sleep is a normal day to day activity and I find that the Claimant in being limited in sleep on a regular basis suffers a substantial effect on his normal day to day activities due to this.

15. I find that the Claimant is disabled in line with the Equality Act, by virtue of his irritable bowel syndrome and dyspepsia as both conditions have a

substantial adverse effect on his ability to carry out normal day to day activities and did so at the relevant time.

Judge of the First-Tier Lloyd-Lawrie, acting as an
Employment Judge

Date 24 January 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
26 January 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche