



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/41 03870/201 8**

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**Held in Glasgow on 30 July 2018**

**Employment Judge: Lucy Wiseman**

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**Mr Ross Swinburne**

**Claimant  
In Person**

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**Lerwick Engineering and Fabrication Ltd**

**Respondent  
Represented by:  
**Mr E Stafford  
Solicitor****

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The tribunal decided the claimant is a disabled person in terms of section 6 Equality Act, and that he was so disabled throughout the period of his employment with the respondent.

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**REASONS**

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1. The hearing was a preliminary hearing to determine whether the claimant is/was a disabled person in terms of section 6 of the Equality Act.
2. I heard evidence from the claimant and I was also referred to a jointly produced folder of documents. I, on the basis of the evidence before me, made the following material findings of fact.

**E.T. Z4 (WR)**

**Findings of fact**

3. The claimant has an enduring mental health illness called Schizo Affective Disorder (Bipolar type). This was diagnosed in 2013/2014.
- 5 4. The claimant has had anxiety issues most of his life. He suffered a breakdown when he lost his business in 2012/2013. The claimant was referred to psychiatric services and his mental health condition was diagnosed. He was prescribed anti-psychotic medication (Quetiapine XL 300mg and Procyclidine 10mg). He was also allocated a Community  
10 Psychiatric Nurse.
5. The medication is very strong and whilst the claimant found it effective, the side effects meant it was not possible to lead a "normal" life. The claimant, for example, put on lots of weight and was not able to work.
- 15 6. The claimant lives with his partner Ms Gillian Hughes, who is a psychiatric nurse and their two children.
7. The claimant, together with his partner and the Community Psychiatric Nurse  
20 worked on putting in place methods to allow the claimant to reduce his medication and cope with the daily paranoia he experiences.
8. The claimant was discharged from psychiatric services in 2015 and stopped taking his medication on a regular basis.
- 25 9. The current position is that the claimant will take his prescribed medication if and when he feels there is a need to do so. The medication acts to stop the claimant feeling, or being, manic, stops the negative thoughts and stops the spiralling decline which can occur very quickly.
- 30 10. The coping strategies used by the claimant include reading, walking, spending time with the children, relaxation techniques and talking to people who provide a close support network. He tries to maintain a steady, non-excitable life and uses his partner to rationalise thoughts.

11. The claimant, on a day to day basis, gets very little sleep due to intrusive thoughts and hypervigilance. This lack of sleep may then impact on him the following day. The hypervigilance/paranoia manifests itself in being over-  
5 concerned about the safety of himself and his family. The claimant, for example, has to contact his partner every day to check they have left the house safely.
12. The claimant will become anxious if a van drives down the road approaching  
10 the house. He will have to double back from his journey to check it has not stopped at the house. He gets similarly anxious if a van happens to follow him along the same road.
13. The claimant is hypervigilant about people getting into the house. He has the  
15 loft taped up so people cannot get in, and always has something across the doorway to stop entrance.
14. The claimant is anxious all of the time and has to plan everything in detail. For  
20 example, a trip to the cinema has to be planned and seats have to be booked online so the claimant can decide where to sit, which is usually at the end of a row, so he/they can escape. The claimant does not go shopping because he finds it difficult to cope with people he does not know.
15. The claimant rarely socialises and tries to avoid social situations. The claimant  
25 finds travelling on public transport difficult. The claimant cannot concentrate to cook a meal.
16. The claimant's personal hygiene can suffer when he becomes preoccupied:  
30 he needs to be prompted to wash and dress in nice clothes. The claimant cannot attend the dentist and has extracted a tooth himself rather than visit the dentist.
17. The anxiety and paranoia the claimant experiences are constant every day  
35 and at a far higher level than others may experience. The coping strategies help him to cope with this.

18. The claimant was assessed and awarded Personal Independence Payment (PIP) due to his long lasting (life long) disability (document 3).
- 5 19. The claimant's Community Psychiatric Nurse wrote a letter dated 5 January 2015 (document 2) to support the claimant being awarded PIP. In her letter she described the claimant's mental health as being "very unstable at times due to period of erratic behaviour and limited cognitive functioning due to the severity of his illness". Also that the claimant may experience fluctuations of mood causing him to present as very demanding and excitable, and that he finds it difficult to acknowledge the difference between reality and irrational thoughts and ideas. He is very paranoid and also hyper vigilant and tends to over analyse different aspects in his life, and also family members and especially strangers.
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- 15 20. The claimant, during the course of his employment with the respondent, completed an Occupational Health Service questionnaire (document 5). He noted, in response to some general questions, that he had a mental illness and that he was able to undertake all his normal day to day activities outside work, for example, sports, hobbies and DIY.
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#### **Credibility and notes on the evidence**

21. There were no issues of credibility in this case. I found the claimant to be a credible and reliable witness and, notwithstanding the anxiety he must have felt at being in the tribunal environment and having to meet and talk to strangers, he gave a clear account of the impact of his condition on his ability to carry out normal day to day activities.
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22. Ms Hughes was also a credible and reliable witness and her evidence was a straightforward, informative account of the impact of the condition on the claimant.
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**Claimant's submissions**

23. Mr Swinburne submitted the mental illness affected his day to day functions. His paranoia and delusional functioning were above normal but his coping strategies helped minimise this.

5 **Respondent's submissions**

24. Mr Stafford conceded the claimant had a mental impairment that was long term. Mr Stafford referred the tribunal to the fact the claimant had, when responding to the occupational health questionnaire, stated that he was able to undertake all his normal day to day activities outside work. In addition to this the claimant could converse with others and use public transport, albeit with difficulty. In those circumstances, it was submitted, it could not be said the adverse effect was substantial.
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**Decision and Discussion**

25. I had regard, firstly, to section 6 Equality Act which sets out the definition of "disabled person". It provides that a person has a disability if he has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day to day activities. The burden is on the claimant to show he satisfies this definition.
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26. The claimant has (and the respondent accepted) a mental impairment. He has Schizo-Affective Disorder Bipolar type, which is Bipolar 2 with some elements of Schizophrenia.
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27. The mental impairment is long term because it is a condition the claimant has had since at least 2013/2014 and will last for the rest of his life.
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28. The issue for this tribunal to determine is whether the impact of that impairment on the claimant's ability to carry out normal day to day activities was substantial. "Substantial" in this context means more than minor or trivial.
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29. Mr Stafford referred to the questionnaire completed by the claimant, and the fact the claimant could carry out normal day to day activities, such as travelling

on public transport (albeit with difficulty) as supporting his position that the impact of the mental impairment on day to day activities was not substantial. I could not accept that submission in light of the claimant's evidence and the evidence of Ms Hughes.

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30. The claimant, as a consequence of his mental impairment, lives with a significantly heightened degree of anxiety and paranoia every day. This impacts on every aspect of his life from the amount of sleep he gets, to his personal hygiene. There are day to day activities the claimant cannot do because he finds it difficult to cope with people he does not know: for example, he avoids going shopping, avoids social interaction and rarely socialises. He cannot visit the dentist. The claimant finds it difficult to travel by public transport (even taxi). He travelled by train to the hearing today, but was unsure whether he could have done this without his partner being present.

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31. The claimant is also hypervigilant as a consequence of his mental impairment: he has taped up the loft, places obstacles across doorways and plans a trip to the cinema so he can safely escape if need be. The claimant explained that when driving, he may notice a van following behind him: most people would either not notice, or simply think the van was going the same route, but the claimant thinks the van is following him and his thought processes then question why the van is following him.

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32. I acknowledged the claimant had ticked the occupational health form to indicate he could undertake all normal day to day activities outside work, for example, sports, hobbies and DIY, but there was no context to this question and no understanding of what the claimant (or indeed anyone else) was thinking when he completed this form.

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33. I considered the overwhelming weight of evidence in this case supported the fact the claimant's mental impairment has a substantial adverse effect on his ability to carry out normal day to day activities. In addition to this I had regard to the fact the cumulative effect of the impairment was relevant to consider. The claimant told the tribunal sleep was very important to him, and he tended

to get less sleep at times of higher anxiety. Ms Hughes' evidence was to the effect the claimant did not sleep well and this could impact on his wellbeing the following day when he could be tired, irritable and with increased anxiety and paranoia. In those circumstances the impact of the mental impairment would make day to day activities even more difficult.

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34. The claimant does use a range of coping and avoidance strategies to prevent or reduce the effects of the impairment on day to day activities. I could not accept Mr Stafford's submission to the effect this meant the impact of the impairment on day to day activities was not substantial. The coping strategies are helpful but not absolute, and may break down. In those circumstances the claimant will resort to medication to stop the downward spiral and allow him to return to being able to rationalise his thoughts and start using the coping strategies again.

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35. The effects of medication should also be disregarded. I understood the claimant takes medication as and when required. I also understood medication is taken when the claimant (or Ms Hughes) knows it is required. I concluded that if the medical treatment which reduced the effects of the impairment were ignored, the claimant would ultimately deteriorate to the point of needing psychiatric care.

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36. I, in conclusion and for all of the reasons set out above, decided the claimant is a disabled person for the purposes of section 6 Equality Act, and that he was so disabled throughout the period of his employment with the respondent.

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**Employment Judge: L Wiseman**  
**Date of Judgment: 06 August 2018**  
**Entered in register: 10 August 2018**  
**and copied to parties**

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