



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss Dawn Vernon

v

Milton Keynes Council

Heard at: Cambridge
Before: Employment Judge Ord

On: 19 April 2022

Appearances

For the Claimant: Mr Kerry Brown

For the Respondent: Mr Shane Crawford, Counsel

JUDGMENT on PRELIMINARY HEARING

The Claimant was at the material time disabled due to a mental impairment which has a substantial and long term adverse effect on her ability to carry out normal day to day activities.

REASONS

1. The Claimant was employed by the Respondent from 16 November 2009 until her dismissal on 2 February 2021. In the claim form presented to the Employment Tribunals she brought complaints of unfair dismissal and disability discrimination.
2. The Respondent has admitted that the Claimant is a disabled person by virtue of her physical condition relating to her back and wrist but disputes that she is disabled because of any mental health impairment.
3. The only question before me today, therefore, is whether or not the Claimant was, at the material time, disabled because of a mental health impairment.
4. The Claimant has submitted a Witness Statement and she has given evidence and been cross examined today. The Respondent has prepared a Bundle which includes two Occupational Health Reports from July 2017 and November 2020, as well as an extract from the General Practitioner's notes and records. The Claimant has provided a letter from her General Practitioner, Dr George, dated 3 February 2022.

5. I have been referred by the Respondent to the case of Sussex Partnership v Norris EAT2012/31, that in turn refers to the cases of Smith v The Chief Constable of Wiltshire [2004] IRLR540 and SCA Packaging v Boyle [2009] IRLR747. That latter case in particular confirming that the phrase 'likely' in relation to the likelihood of a recurring condition means "could well happen". I have also had regard to the 2011 Guidance on the definition of disability.
6. The Claimant has, on the basis of the letter from her GP, suffered mental ill health since at least 2000. Dr George states that she suffers from depression and anxiety and says,

"Although she has been on medication since about 2000, her symptoms worsened around 2015 after a difficult year. Following this, she needed regular review with GP, was referred to Counsellor and anti-depressants increased. She also needed time off work as was unable to cope with stresses at work on top. She continues to be on Sertraline but at a lower dose now and her mental health is stable currently."
7. The Claimant, in evidence, said that there may have been periods when she was not taking anti-depressants, but as to the length of time this occurred she did not give evidence and the reasons for having to revert to medication were also not explained.
8. I have considered, whether in order to make a decision today, that I should seek additional medical information, but I have decided on the basis of what is before me I am able to come to a conclusion. Notwithstanding what the Claimant says, the GP letter indicates medication since about 2000.
9. In July 2017, the Claimant was referred to Occupational Health. The Report includes these words,

"While she had symptoms her day to day activities were substantially adversely affected, but now things are improving, although with medication".
10. That paragraph relates to the Claimant's mental health condition.
11. The Report of 25 November 2020, prepared when the Claimant had already been absent from work since 29 July that year, refers to the claimant's condition going back to 2017 and that whilst the Claimant was feeling better and calmer she was receiving telephone support and that Report does not refer to the Claimant's medication.
12. I am satisfied on the basis of the information before me that the Claimant has a long standing condition of depression and anxiety which has been treated by medication since 2000. She remains on medication for this

condition taking the anti-depressant drug Sertraline. The Claimant on her evidence may have had periods when that medication was reduced or stopped, but I take notice from the Guidance on the definition of disability, in particular sections C5 – C9 and the fact that the Claimant has on the basis of the GP letter, been medicated for the condition since 2000. On the Claimant's own evidence she has been taking medication since 2015, although the dosage may have altered.

13. The Claimant says that the impact that her condition has on her is in her words that she has a "*foggy brain*". She finds reading difficult, she cannot retain the thread of a plot in a story, she cannot concentrate for long periods and finds it difficult to keep up to date with things at work and at home. It is not clear what the impact of her condition would be absent the taking of medication, but I have to assume that the medication prescribed to her ameliorates these problems and that the conditions that she describes to me are those that persist notwithstanding the medication. They are still, in my findings, substantial however and have a substantial adverse effect on her ability to carry out normal day to day activities. Indeed, that was also the finding of the Occupational Health Report from 2017.
14. Even if the Claimant was not, as I have found she was, disabled throughout the relevant period which is at least between September 2020 and February 2021, the Claimant had a condition which had recurred in the past and was present at the relevant time. I am satisfied that even if the impact of the condition had not at that stage lasted 12 months, although I have found that it had, it was likely to recur; i.e. recurrence could well happen. Even taking into account the impact of the continued medication, I take notice of the fact that even if the condition had fluctuated from time to time, it had already recurred.
15. Accordingly, the Claimant was disabled because of her mental health condition of depression and anxiety and I am satisfied that that has been the case since 2015 and has a substantial adverse effect on her ability to carry out normal day to day activities, including her concentration and her suffering from what she describes as "*foggy brain*". She finds it difficult to keep up to date with matters, she refers in her statement to isolation and feelings of guilt because of her condition.
16. If the condition fluctuated, the history the Claimant has given supports my finding that it was likely to recur. The Claimant is currently still taking medication and it is to her credit that she has been able to secure new work notwithstanding the ongoing difficulties which she clearly has and the medication which she is taking.

Case Number: 3312970/2021

Sent to the parties on:7 May 2022....

.....GDJ.....
For the Tribunal Office