



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr A Chaggar

**Respondent:** University Hospitals Coventry and Warwickshire NHS Trust

**Heard at:** Birmingham by CVP

**On:** 7 January 2022

Reserved to 21 January 2022

**Before:** Employment Judge Hindmarch

**For Claimant:** in person

**For Respondent:** Mr Islam-Choudhury

## JUDGMENT

The Claimant was not a disabled person for the purposes of the Equality Act 2010 at the relevant time giving rise to the claims.

## REASONS

1. These claims came before me for an Open Preliminary Hearing on 7 January 2022 by Cloud Video Platform. The Claimant is a litigant in person and represented himself. The Respondent was represented by Mr Islam-Choudhury of Counsel.
2. I had a bundle of documents running to 170 pages and a separate supplementary impact statement from Dr Chaggar. I had written skeleton submissions from Mr Islam-Choudhury. During the hearing Mr Islam-Choudhury sent the case summaries for the various cases referred to in his submissions to Dr Chaggar to consider.
3. The first claim number 1300530/2021 was filed by Dr Chaggar on 12 February 2021. It made (amongst other claims) allegations of disability discrimination. That claim was the subject of a telephone Case Management Preliminary Hearing on 5 August 2021 before Employment Judge Woffenden and a copy of her Case Management Summary was at page 29 of the bundle. She recorded the disability relied on by Dr Chaggar as being “work related stress/anxiety” and she ordered Dr Chaggar to provide an impact statement and medical records. If on receipt the Respondent did not accept that Dr Chaggar was a disabled person, for the purposes of the Equality Act 2010, then

there was to be an Open Preliminary Hearing on that issue. By email to the Tribunal and copied to Dr Chaggar, on 25 October 2021 the Respondent's solicitor stated that disability was not conceded and the Open Preliminary Hearing was required.

4. The second claim number 1304671/2021 was filed on 31 October 2021. This also alleges disability discrimination.
5. The Open Preliminary Hearing on 7 January 2022 was therefore for me to determine the question of whether Dr Chaggar was a disabled person within the meaning of the Equality Act 2010.
6. On 17 December 2021, page 116 of the bundle, the Respondent's solicitor had emailed the Tribunal copied to Mr Chaggar, giving its reasons for disputing disability, namely:
  - a. Dr Chaggar was on sick leave from 3 April 2020 to 30 November 2020 due to a "stress related problem" and "stress at work". The Respondent contended this was not long term.
  - b. Further, the Respondent contended the impairment affecting Dr Chaggar during the period set out at point a above was not "substantial".
7. Dr Chaggar gave evidence at the hearing and was cross examined by Mr Islam-Choudhury. I then heard Mr Islam-Choudhury's submissions. I allowed Dr Chaggar time to consider his submissions and the case summaries set to him, before hearing his submissions. Due to time constraints I explained I would reserve my decision and deliberate on 21 January 2022 and then give a written decision with reasons.
8. In response to Employment Judge Woffenden's order, Dr Chaggar had prepared an impact statement, pages 61 to 64 of the bundle, and a supplementary impact statement which was separate from the bundle. He had also supplied redacted medical records which were at pages 71 to 82 of the bundle.
9. The GP records commenced at page 71 and were the records for the period July 2006 to July 2021. In his impact statement at page 61 Dr Chaggar says he began to suffer from work related stress in 2009, which he says came about due to issues he was experiencing at work, and the fact he was studying for a Masters degree. He says he struggled with focus and concentration, experienced difficulties with sleeping and lost interest in sporting hobbies and socialising. He says his wife enrolled them both on a mindfulness and meditation course, involving weekly group sessions, which allowed him to "rapidly" manage the issues he had been experiencing.
10. Dr Chaggar then cites further occasions he needed support. May 2013, when he went to his GP over "scalp problems" and "hair loss" and August 2013 when he was experiencing headaches and was signed as unfit to work by his GP for

a 2 week period. He says this period of sickness absence allowed him “to restore...without any issues until a few years ago”.

11. Dr Chaggar then says further work issues caused a rapid decline in health in late 2017 resulting in sleeping problems, poor appetite and an inability to assist with household and childcare tasks. He says he arranged an independent counselling session and made “a positive improvement shortly afterwards”. He did not seek assistance from any medical practitioner.
12. Dr Chaggar next cites a work issue in February 2018 which he says caused a decline in his ability to focus and he made a request (which was granted) to reduce his working hours and after this change, and a further independent counselling session in March 2019, he was able to resume normal activities. Again, he did not seek assistance from any medical practitioner.
13. Dr Chaggar then says in March 2020 he raised concerns in the workplace and his stress and anxiety levels increased dramatically. He says sleeping problems and difficulties with appetite and concentration resurfaced and he sought advice from his GP. Using his own strategies of mindfulness, meditation and physical activity he says he was able to cope but that he relied heavily on his wife for household and childcare tasks, and on his brother for the support he had previously provided to their mother who was vulnerable.
14. In September 2020, Dr Chaggar says that on being informed his salary would be reduced as a result of the previous reduction in his working hours, his symptoms worsened and new symptoms emerged including financial worries and a need to nap during the day. He says he was prescribed medication by his GP.
15. The impact statement is dated 25 September 2021. In it, Dr Chaggar says he is coping without further medication but still needs to employ his coping strategies and continues to have disturbed sleep.
16. The first page of the GP record gives a synopsis of condition and under the heading “minor past” there are three entries for “stress at work” and one for “stress-related problems”. The first entry for “stress at work” is 22 August 2013, the other three entries are all in 2020.
17. The 22 August 2013 entry (page 76) records “Problem stress at work (first) History mild headache due to stress... needs time off work, not depressed. Poor sleep and poss wt loss. No suicidal ideation. Staff UHCW and enjoys his job”. The notes record a sick note was issued for two weeks rest. Dr Chaggar, under cross-examination, accepted he did not report to a GP again with stress until 2020.
18. There is a 4 December 2017 entry which is heavily redacted but states “he is attending counselling tomorrow to discuss”. There was no other information about this matter.

19. The 2020 entries begin on 3 April 2020 where a fit note was issued (duration 3 April – 15 May 2020) for a “stress related problem”. The notes record “working in eye clinic, getting stressed with situation, has been told to work OOH without PPE... manager adv. to go off sick”. Under cross-examination, Dr Chaggar accepted that the GP had made no record of any impairments and said it was his manager who told him to go on sick leave. He said there were alternatives to him taking sick leave such as home working or the provision of PPE but he was told by management that these were not possible and he should see his GP and take sick leave.
20. The next consultation recorded is on 14 May 2020 and the notes record “request for sick note – works eye specialist – hospital UHCW has no proper PPE for work, has discussed with employer and requesting for sick note, stressed about going back to work”. Again, there was no record of any impairment or any adverse effect.
21. The next entry is 12 June 2020 and the notes record “PPE situation at work is no better – wants to continue on a sick note, just too frightened to go back into UHCW, agreed 6 weeks, keeping active and busy – no sign of serious MH problem”. Under cross-examination, Dr Chaggar accepted he, at this stage, was wanting to continue on sick leave and that he was frightened of going into a hospital environment. He said he was very worried about PPE and about dying. He said the reference to “MH” was to mental health and that he could not dispute what the GP had recorded.
22. The next entry is 31 July 2020 and the notes record “works in eye clinic at UHCW, feels situation with PPE is not adequate and not willing to return to work at the moment. Having meetings with occupational health/BMA, otherwise well, no MH. Feels stressed and pressured about returning to work with lack of PPE – requesting further sick note”. The sick note on this occasion was issued for “stress related problem”. Dr Chaggar accepted at this stage he was off work due to his fear about PPE. He said he had also told the GP about problems with sleeping and eating, but accepted this was not recorded in the notes.
23. The next entry is 20 September 2020 where the notes record “stress at work. Needs new note, agreed with HR until the end of October”.
24. On 30 October 2020 there is a further entry “work in eye clinic, no PPE available, pay reduced to half, not coping”. Medication is prescribed, namely 28 tablets of Amitriptyline. Dr Chaggar accepted that this as the first record of “not coping”. He said until this time he had been focussing on strategies to cope but once his salary was reduced he needed medication to cope. He was given a prescription of 28 tablets, which was not subsequently repeated. After this period of medication, Dr Chaggar returned to work in January 2021 and says he was coping and did not need to see his GP (about stress or anxiety) again.

25. Dr Chaggar accepted that there was no reference in his GP records to anxiety. He said from 2009 he had been attending a weekly group counselling session which was more beneficial than seeing a GP. These sessions were by means of a self-referral other than any GP or medical practitioner referral.
26. At page 82 is a “to whom it may concern letter” from Dr Chaggar’s GP dated 29 September 2021. It is a short letter which reads “Dr Chaggar was first diagnosed with work related stress in 2013. He first contacted his current GP surgery on 3<sup>rd</sup> April 2020 reporting stress caused by being asked to work with what he felt was inadequate PPE during the covid pandemic. This triggered stress and anxiety which prevented him from being able to work and led to issues with low mood and sleep for which he was prescribed medication. He was started on Amitriptyline on 30<sup>th</sup> October 2020 and he took this until 2<sup>nd</sup> December 2020”.
27. On 11 August 2020 an occupational health practitioner instructed by the Respondent assessed Dr Chaggar. Her report is at pages 96 – 98. She says “at present [Dr Chaggar] indicates that he is experiencing symptoms of stress while waiting for his queries [regarding PPE] to be answered to his satisfaction”. In relation to the question posed “Is there an underlying medical condition which is affecting performance or attendance at work. Mr Chaggar reports that he is stressed”, she answers “stress is not an illness – it is a state. However, if stress becomes excessive and prolonged, mental and physical illness may develop”. She concludes that Dr Chaggar can return to work “as soon as his queries are adequately answered”.
28. Schedule 1 of the Equality Act 2010 sets out at paragraph 2 that “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 the rest of the life of the person affected”.
29. In his skeleton submissions Mr Islam-Choudhury referred me to a number of cases that deal with this issue. He referred to the fact that the Tribunal must consider the medical evidence (Hospice of St Mary of Furness and Howard (2007) IRLR 944, EAT) but is not obliged to accept any assessment of a medical expert (Abadeh v British Telecommunications Plc (2001) IRLR 23, EAT).
30. For recurring conditions, Schedule 1 paragraph 2(2) states “if an impairment ceases to have a substantial effect on a persons 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”. The House of Lords in SCA Packaging Ltd v Boyle (2009) UKHL B7, held that “likely” means “could well happen” or “a significant risk that it could happen”.

31. I was also referred to the EHRC Employment Code which states “normal day to day activities are those carried out by most men and women on a fairly regular basis”, such as walking, driving, typing or forming social relationships. The Code also states the “term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or participation in a sport to a professional standard”.
32. The Code of Practice on Employment (2011) gives more guidance on the definition of disability. It provides, in answer to the question “what is a ‘substantial’ adverse effect”: “A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences of ability, which might exist among people”.
33. The guidance on the Definition of Disability (2011) at section B7 gives guidance on “effects of behaviour” and provides “account should be taken of how far a person can reasonably be expected to modify his behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment so that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities...Account should be taken of the degree to which a person can reasonably be expected to behave in such a way that the impairment ceases to have a substantial adverse effect on his ability to carry out normal day-to-day activities”.
34. In the Respondent’s submissions, Dr Chaggar was not disabled at the material time (03/04/2020 to January 2021) when looking at the independent evidence of the GP records and occupational health report. The Respondent’s position was that the GP did not advise Dr Chaggar to take sick leave and it was highly unusual for a GP not to record any impairment. It contended the most reliable evidence was the contemporaneous medical records, and these should be preferred over the Claimant’s impact statement. On the Respondent’s case, Dr Chaggar had not proved a substantial impairment on the balance of probabilities. Many people were frightened of covid, but that fear was not an impairment.
35. The Respondent contended the coping strategies deployed by Dr Chaggar – eating well, exercising and practicing mindfulness, could turn a substantial impairment into something which is not substantial.
36. The Respondent argued there was no evidence of any long-term or recurring condition. A one-off episode in 2013, and then a gap of 7 years before medical assistance was required was insufficient. It was the Respondent’s case that the condition was not long term.

37. In Dr Chaggar's submissions he argued he firstly had symptoms in 2009 caused by issues at work which particularly impacted his sleep. In 2013 he needed time off work but did not find his GP helpful and instead practised self-help measures, including in 2017 and 2019 having independent counselling. He saw his GP in 2020 as he was advised to by his manager but also because of his health and it was unfortunate the GP records did not record the full discussions or a diagnosis of anxiety. He had not seen his GP since October 2020. He had returned to work in early 2021 using PPE and actively screening patients for covid and using coping strategies, including diet and exercise.

## CONCLUSIONS

38. The Claimant says he has suffered from stress and anxiety since 2009. He had the burden of proof of establishing he meets the Equality Act 2010 definition of "disability" on the balance of probabilities. Dr Chaggar says this was a recurring condition and that the need to see his GP in April 2020 was a recurrence of a pre-existing mental impairment. Unfortunately, the medical evidence produced does not support this. There are no contemporaneous GP records recording "anxiety" at all. The only record of "stress" is in 2013 when the Claimant saw his GP, was signed off work for 2 weeks, following which on the his own account he was able to "restore". There was no basis on which one could conclude that "mild headache due to stress" was "likely" to recur. The 2020 episode of stress leading to sick leave, was a matter from which the Claimant had recovered by the end of 2020, after taking a short term period of medication. There has been no medical intervention since the last GP consultation on 30 October 2020.

39. I also take the view there was no substantial impairment, at least not before 30 October 2020 when medication was prescribed and, after that, Dr Chaggar recovered within a few months. From April 2020 to October 2020 the GP records do not refer to any impairment or adverse effect of the stress and specifically record no mental health issues. This is supported by the occupational health assessment. Dr Chaggar was understandably worried about protection from covid in the workplace. He was not alone in this regard. However, fear itself, and stress associated with fear, is not a disability. Dr Chaggar has employed self-help techniques to cope with the stress including diet, exercise and meditation. If I am wrong and if there were any substantial impairment, the effects have been altered by these coping strategies such that they are no longer substantial and therefore Dr Chaggar cannot be said to be disabled.

Employment Judge **Hindmarch**

Date: 15 February 2022