



EMPLOYMENT TRIBUNALS

Claimant: Ms S Simpson
Respondent: Croner Group Limited

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
On: 12 May 2022
Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: In person
For the respondent: Ms A Stroud, Counsel

JUDGMENT

After hearing from the parties, and for the reasons set out below, the Tribunal declares that the claimant was disabled (as defined by the **Equality Act 2010**) between 3 August 2020 and 23 April 2021 because of hearing impairment. The effects of it are as set out in my reasons.

REASONS

1. Ms Simpson brings claims for various acts for disability discrimination or harassment because of disability. There are also claims of victimisation and for unauthorised deductions from wages. The details do not matter except to say the respondent (“Croner”) denies them.
2. The disability discrimination and harassment claims cover the period of her employment with Croner as a human resources advisor from 3 August 2020 to 23 April 2021 (“the relevant period”).
3. Ms Simpson alleges she was disabled throughout the relevant period because of “deafness”. She told me she freely describes herself as “deaf” or “hearing impaired”, and I will use those terms accordingly.
4. Croner accepts during the relevant period there was a physical impairment to her hearing and that it was long-term. Croner deny however that the impairment had a substantial adverse impact on her normal day-to-day activities.

Issue

5. Therefore the issue for me is whether the long-term physical impairment, which I will refer to as Ms Simpson's deafness, had a substantial adverse impact on her normal day-to-day activities.

Hearing

6. Both parties attended the hearing. Ms Simpson represented herself. Ms Stroud, Counsel, represented Croner. I am grateful to both for their help and in particular the efficiency with which they conducted the proceedings.
7. In reaching my decision I have taken into account:
 - 7.1. the agreed bundle of about 83 pages,
 - 7.2. the oral evidence of Ms Simpson,
 - 7.3. the oral evidence of Ms Manktelow, who was originally a colleague of Ms Simpson but who went on to become her team leader.
 - 7.4. Oral argument from both parties and including the previously decided cases to which the parties have referred me.
8. Because of Ms Simpson's deafness, we adjusted the proceeding to ensure everyone spoke clearly and, so far as possible within the confines of the room, faced her when speaking so she could lipread.
9. In addition, I asked a few questions of Ms Simpson to ensure I understood her alleged disability and assisted her to ask questions in cross-examination of Ms Manktelow by turning points she wanted to put into questions. No party objected to this or the way that I did it.
10. Finally we took breaks throughout the morning as needed.
11. Neither party suggested the hearing was unfair. I am satisfied it was a fair hearing.
12. Ms Simpson indicated that she would require written reasons in any case because of her deafness. Therefore I reserved my decision. This is that decision.

Facts

13. I firstly deal with the credibility of the witnesses. I am quite satisfied that both Ms Simpson and Ms Manktelow have done their best to tell me what they believe to be the truth and done their best to assist the Tribunal.
14. Croner submitted that Ms Simpson had exaggerated slightly her deafness and so demonstrated unreliability. I reject that. The reasons are as follows:
 - 14.1. Croner pointed out that she had described her condition as "progressive."
 - 14.2. Ms Simpson explained she meant that it was a condition that was not going to get better, rather than one that was getting worse. This is supported by the letter of Dr Hart dated 16 April 2020 (which I set out below).

- 14.3. She said that in her view she believed it had deteriorated and it would deteriorate anyway with age.
- 14.4. In her statement she told me that in fact doctors had told her that her condition would not improve but deteriorate. She accepted there was no medical evidence to this effect.
- 14.5. Such a belief is not implausible, and it is not implausible that doctors would make those comments. However as Ms Simpson concedes there is no medical evidence to support it. Overall though, given the plausibility of the belief, I do not believe that this undermines her credibility.
- 14.6. I add here as an aside that in the absence of medical evidence showing further deterioration, and lest I apply presumptions (or “common sense”) incorrectly to an area in which I have no real knowledge, I have presumed that her hearing impairment has not deteriorated beyond that set out in the medical evidence I have seen.
15. Taking all of that into account (and the manner in which she gave evidence – in particular her ready concession the wording in her statement was not right), I do not believe that this is evidence of exaggeration or undermines her credibility.
16. With that in mind, I make the following findings of fact on the balance of probabilities.
17. In 2016 Ms Simpson noticed a deterioration in her hearing after finding it difficult to follow what was said in meetings.
18. She admitted she prevaricated about getting her hearing assessed for fear of what the result would be.
19. However in 2017 she attended an audiologist associated with a local optician and had an examination.
20. The form that the audiologist had to complete provides many prompts to the audiologist for things to look out for and report, using a tick-box form. There are sections that deal with different manifestations of tinnitus and vertigo. These are unticked. Croner suggests this shows a lack of substantial impact. I reject that. They show no more than the audiologist felt none of the pre-defined options applied to Ms Simpson at the time. It also ignores the free-text box at the end where the audiologist could record other observations.
21. The audiologist’s report to her general practitioner (“GP”) notes:

“She gets tinnitus in both ears which can be longer than 5 minutes at a time...

“Ear examination [normal]

“Pure tone audiometry showed symmetrical moderate high frequency sensorineural hearing loss bilaterally.”
22. Ms Simpson accepted that the reference to tinnitus is self-reported because she has never had a test for it. However given the fact that there is a hearing

impairment and that she felt the need to seek an assessment, and taking into account the manner in which she gave evidence, I am satisfied this self-reporting is an accurate summary of tinnitus. I am reassured that there is evidence of hearing loss and that none of the documents I have seen suggest any of the professionals, who would be familiar with tinnitus, had concern that her report of tinnitus was not credible in any way.

23. On 8 January 2018 she saw Dr T Sood, a speciality doctor in ear, nose and throat medicine at the Northampton General Hospital. He noted
- “...Interviewed [Ms Simpson] who is complaining of tinnitus in both ears which is high pitched, occasional but bothersome. She also gives a history of hearing loss which is bilateral and bothersome more in noisy surroundings. Her hearing loss is also affecting her professional life.
- “...[Physical examination was normal]. Audiology done today has revealed bilateral sensorineural hearing loss mild to moderate in severity. ...
- “She is willing to try a hearing aid. I am sure [tinnitus counselling] will also prescribe her a hearing aid for which I have made the necessary arrangements. ...”
24. An audiogram from the time shows her hearing ability measured against frequency. There are labels on the audiogram to explain how impaired hearing is at that point in words. In summary, Ms Simpson’s hearing was impaired in both ears, mildly for low frequencies but it deteriorates from 1500Hz to moderate impairment except for the right ear which is mild from 8000Hz. Her hearing at 2000Hz is on the cusp of being moderately-severely impaired.
25. The hospital provided Ms Simpson with hearing aids and, after a number of appointments and adjustments, it seems she had them by April 2018, or thereabouts.
26. She wore them for short periods to begin with but then permanently from then onwards when she was listening or might need to listen to someone. During the relevant time she wore them permanently outside of work.
27. On 16 April 2020, her GP, Dr Hart, wrote a letter to her setting out details of her condition. Half of the letter relates to conditions that are not relevant to this case and I consider no further. In the other half, Dr Hart wrote:
- “I am also able to confirm that on the 8th of January 2018 you saw the ENT specialist in Northampton General Hospital where you received the diagnosis of bilateral sensorineural hearing loss. There was a question about how this was caused but it was thought it might have been noise induced. They provided you with bilateral hearing aids together with some counselling and help with rehabilitation. You did experience quite a lot of tinnitus in both ears as well.
- “Unfortunately with sensorineural hearing loss it is unlikely this will ever recover that deficit is likely to remain permanently.”
28. This letter, coupled with the earlier medical reports, confirms in my view that Ms Simpson’s hearing was from 2016 moderately adversely impacted, in

parts the impact was nearly moderately-severe, it had not improved since 2016 and that she required hearing aids to hear effectively.

29. Ms Simpson has not been back for a hearing check-up. Ms Simpson says that she ought to have gone yearly but the impact of the Covid-19 pandemic (that severely impacted the United Kingdom from March 2020 to March 2022) meant she was unable to go to hospital or her doctors because they restricted access to non-essential patients. Croner says that this is evidence that the impact of her loss of hearing is not severe because she would have gone back if it were as bad as she claimed. I accept that there is no explanation why Ms Simpson did not attend for a review in 2019. However overall, I reject Croner's proposition. To anyone living in the United Kingdom, or who did not but has kept abreast of current affairs in the United Kingdom in that time, this sounds inherently plausible. There have been regular reports in readily accessible, credible media sources of staff absences, impacts on hospitals and difficulty accessing care, across the United Kingdom. While I do not know the specific detail of the impact on hospitals to which Ms Simpson would have to go, the general tenor outweighs Croner's suggestion that in my view is unrealistic and ignores recent history. The question about 2019 pales into insignificance against the difficulties in 2020-2022.
30. Even if I am wrong to come to that conclusion, Croner does not seek to dispute that Ms Simpson used the hearing aids prescribed to her throughout that period generally (if not in the office). Ms Simpson says she did use them throughout and I accept that evidence. That shows in my opinion that her hearing at least remained as adversely affected as recorded by the audiogram in 2018.
31. She described their effect to me. Her statement is written in the present tense and, as Croner pointed out, appears to be the effect now, not in the relevant period. However I accept that it was an accurate explanation of how her hearing loss affected her in the relevant period. My reasons are based on Ms Simpson's evidence at the hearing about the then-impact, the medical evidence of the hearing impairment and in particular the letter of Dr Hart, the inherent plausibility of her evidence when set against that background and that she was throughout the relevant period prescribed hearing aids and using them.
32. The effect on her during the relevant period was as follows, without using her hearing aids:
 - 32.1. she could not hear the television.
 - 32.2. when babysitting her nephew, she could hear him cry either with or without the baby monitor.
 - 32.3. she could not hear a normal conversation even on a one-to-one basis. She coped by lipreading or by picking up words and working out the context.
 - 32.4. When people were wearing face masks (as was common during the pandemic) she has difficulty hearing speakers and following them because the mask hid their lips.

- 32.5. In an open plan office (like the respondent's), background noise made it difficult to hear a specific conversation.
33. Ms Simpson's job involved speaking to clients on the telephone to give them human resources advice. All types of clients would call. She agreed that some would have strong accents, and some would call from environments with noisy backgrounds. She would be on the telephone for 5 hours per day at least. Other users would be about doing similar activities about her. There was a dispute about the layout of the desks at various times. However the evidence from both sides is unclear. I cannot make findings of fact about it, but do not believe I have to do so at this stage. What is clear is that, even with "social distancing" (where people sat further apart to prevent the spread of Covid-19 by air, as recommended by the government at the time), the office remained open plan. I am satisfied that during the relevant period there would still be a background noise of people using the phones to speak to clients.
34. Ms Simpson's work was monitored. There is a dispute about whether Croner listened to randomly chosen calls or picked out specific ones to listen to. I do not need to resolve that. What is common ground is that Croner listened to 24 calls or thereabouts during Ms Simpson's employment and raised issues in relation to 2 of them. None of the issues raised related to matters that might be attributed to Ms Simpson's hearing or listening (such as talking over people or missing what was said).
35. Croner provided all staff with headphones to use on calls. These had a built-in microphone on a separate boom that was positioned in front of the mouth and connected to the telephone. Ms Manktelow said, contrary to Ms Simpson's evidence, they were not specialist noise-cancelling devices and in fact suggested they were not the best quality. The headphones had their own volume control. The volume could in addition be boosted on the telephone itself i.e. a user could turn up the volume on the phone and then again on the headphones. Ms Manktelow suggested that if turned too high the sound would cut out. However no-one suggested this happened to Ms Simpson. I therefore consider it no further. I do accept the evidence that these were not specialist noise-cancelling headphones. Ms Manktelow is more likely to know what was purchased, and there seems to be no reason for the purchase of noise cancelling headphones. It also seems credible a company would choose the cheaper option if that was deemed sufficient generally.
36. It is common ground that during her work Ms Simpson removed her hearing aids when using the headphones. Croner suggests that this is evidence that shows the impact of the hearing loss was not substantial. I reject that. I accept Ms Simpson's evidence that she turned up the volume on both the telephone and headphones to be able to use them. Therefore, a loudspeaker whose volume had been turned up would be pressed against both ears. I infer in the circumstances it acted in effect as the hearing aid. If Ms Simpson had not worn hearing aids outside of work I would have come to a different conclusion. However that is not the case.
37. Croner draws attention to the other factors to show that the deafness did not have a substantial impact:

- 37.1. She did not indicate to her employer that she required further support or that hearing loss impacted her day to day activities. This is disputed by Ms Simpson. That may be relevant to knowledge that Croner had or should have had. I am not tasked to decide that issue and cannot on the evidence before me. However even assuming she never raised it, it does not mean there was no impact. The medical evidence and prescription of hearing aids shows there was such an impact and in my view that outweighs any inference to be drawn from her (alleged) silence on the issue.
- 37.2. There is a reference to a conversation before 23 February 2021 when Ms Manktelow suggested she asked Ms Simpson to pop over to her desk to discuss a good evaluation but that she was ignored. When however she said that it was good news, she alleges Ms Simpson responded. Croner suggests this is evidence that her hearing was not so bad as alleged. I do not accept this example demonstrates there was no substantial impact. It is an anecdotal example with little detail. Its potential relevancy is undermined in my opinion by the medical evidence that preceded this event to which I have referred already. It is not inconsistent with no relevant hearing impairment.
- 37.3. Croner referred to the fact that there was a workplace assessment (called a DSE assessment in the papers) and that Ms Simpson did not open the box of supporting items when they arrived as a result of that assessment. However Ms Manktelow conceded that if the DSE assessment had highlighted hearing issues, there would have been a separate referral. Therefore this simply shows no issues about hearing were raised. I do not accept that the only proper inference that can be drawn is that Ms Simpson did not suffer a substantial adverse impact because of her hearing. There is too little information to draw that conclusion. In my view it does not support Croner's assertion.
38. However there are 2 matters in Ms Manktelow's evidence that in my opinion do show there was an impact on Ms Simpson in the workplace because of her hearing impairment:
- 38.1. Ms Manktelow told me that there were instances in team meetings (called stand-ups) where Ms Simpson asked for comments to be repeated. Ms Manktelow said,
- "I believed this was due to general chatter amongst team members preventing the manager from being heard."
- Ms Simpson says she stopped attending these (they were not compulsory) but it is common ground she attended some. Ms Manktelow's belief must be based on her observations of how Ms Simpson interacted with the meetings and her request for things to be repeated.
- The fact Ms Simpson asked for comments made by the manager to be repeated when made against a background of others

chattering in my view bears a striking similarity to her own evidence that she cannot hear properly against noisy backgrounds, and what Dr Sood recorded Ms Simpson saying in 2018, namely: “[hearing loss is] bothersome more in noisy surroundings. Her hearing loss is also affecting her professional life.” It is not known if she wore her hearing aids at this time. Neither possibility helps Croner’s case. If she were wearing them, then the situation was not going to be better for her without them. If she were not wearing them, then it shows how her hearing is adversely impacted when there is background noise.

- 38.2. Finally Ms Manktelow reported that, after a grievance, Croner implemented a policy where those speaking to Ms Simpson would remove their masks and lower themselves to be on eye-level and close to her. It is common ground that when they did this, Ms Simpson followed the conversation and did not put her headphones back in. This may or may not be a reasonable adjustment – it is not for me to decide and I express no view on it. However the adjustment clearly has the advantage of bringing the sound source (others voices) close to Ms Simpson and enabling lip reading. It is clearly a departure from how people conduct a conversation normally. It does not in my view undermine Ms Simpson’s evidence or the medical evidence about the quality of her hearing in the relevant period. Instead it tends to support the view she had a hearing impairment.

Law

39. The Equality Act 2010 section 6(1) provides
“(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.”
40. The **Equality Act 2010 section 212** defines “substantial” as “more than minor or trivial”. **Schedule 1** of the Act provides details of how to determine disabilities, which I have taken into account.
41. The Secretary of State has issued guidance called **Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)** (‘the guidance’).
42. In **Goodwin v Patent Office [1999] ICR 302 EAT**, Morison J said
- 42.1. Tribunal should look carefully at what the parties have said in their pleadings and clarify the issues;
- 42.2. The Tribunal may take a quasi-inquisitorial approach to help a claimant to give relevant evidence about their disability
- 42.3. It should construct the legislative protections purposively;
- 42.4. It should refer expressly to any relevant provisions the Guidance it has considered;

- 42.5. It should bear in mind that the fact that a person can carry out activities with difficulty does not mean that his ability to carry them out has not been impaired – the focus is not on what the claimant can do, but what they cannot do or can do only with difficulty (see also **Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19 EAT**)
- 42.6. Where a claimant is or has been on medication, the Tribunal should examine how the claimant’s abilities were affected while on medication and how those activities would have been affected without the medication;
- 42.7. Each element should be considered in turn.
- 42.8. It should be careful not to lose sight of the overall picture when considering each element of the statutory definition in turn.
43. While one cannot determine an allegation a person is disabled by reference to what they can do, a Tribunal is entitled to take into account all the evidence to decide if it finds the claimant’s case credible: **Ahmed v Metroline Travel Ltd [2011] EqLR 464 EAT**
44. The appropriate time to consider disability is at the time of the alleged discriminatory acts: **Cruickshank v VAW Motorcast Ltd [2002] ICR 729 EAT**.
45. Normal day-to-day activities means those activities relevant to professional or work life where it applies across a range of employment situations. It requires a broad definition but can include irregular but predictable events: **Paterson v Commissioner of Police for the Metropolis [2007] ICR 1522 EAT; Chief Constable of Dumfries and Galloway v Adams [2009] ICR 1034 EAT**. “Normal” has an ordinary everyday meaning **Guidance D4**.
46. As for deciding if an impairment is substantial, in **Paterson** the Appeal Tribunal said at **[67]-[68]**:
- “67. We must read **section 1** in a way which gives effect to EU law. We think it can be readily done, simply by giving a meaning to day-to-day activities which encompasses the activities which are relevant to participation in professional life. Appropriate measures must be taken to enable a worker to advance in his or her employment. Since the effect of the disability may adversely affect promotion prospects, then it must be said to hinder participation in professional life.
- “68. ... In our judgment the only proper basis, as the Guidance makes clear, is to compare the effect on the individual of the disability, and this involves considering how he in fact carries out the activity compared with how he would do if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross section of the population, then the effects are substantial.”
47. In **Igweike v TSB Bank plc [2020] IRLR 267 EAT** HHJ Auerbach, after reviewing all the relevant authorities said, at **[60]**:
- “There was no dispute as to the law, in light of the authorities to which I have referred. In short, the requisite effect on normal day-to-day activities

may be established if there is a requisite effect on normal day-to-day professional or work activities, even if there is none on activities outside of work, or the particular job. However, in focussing on this important strand in the jurisprudence, and in recognising the sound policy-driven reasons for it, one should not lose sight of the fact that in many, perhaps, I would venture, most successful cases, disabled status is established because the requisite effects are found on normal day-to-day activities outside of work, or both outside of and inside of work.”

48. Though I have had regard to the whole guidance, I found the following paragraphs of the guidance particularly helpful in this case:
- 48.1. **[B12]-[B14]** (effect of treatment), in particular **[B14]** which says:
“For example, if a person with a hearing impairment wears a hearing aid the question as to whether his or her impairment was a substantial adverse effect is to be decided by reference to what the hearing level would be without the hearing aid.”
- 48.2. **[D17]** (communication as normal day-to-day activity) and, **[D20]** (environmental effects and the example given there of the impact of tinnitus)
- 48.3. The example given at **[D20]** in particular I found helpful. It says:
“A woman has tinnitus which makes it difficult for her to hear or understand normal conversations. She cannot hear and respond to what a supermarket checkout assistant is saying if the two people behind her in the queue are holding a conversation at the same time. This has a substantial adverse effect on her ability to carry out the normal day-to-day activity of taking part in a conversation.”
- 48.4. The appendix on what would or would not be reasonable to regard as having a substantial adverse impact on normal day to day activities.
49. Finally it is for the claimant to prove she is disabled at the relevant time on the balance of probabilities: **Royal Bank of Scotland plc v Morris [2012] EqLR 406 EAT.**
50. Ms Simpson referred me to 2 other cases:
- 50.1. **Mr A Askander v Boots Management Services Ltd: 2206094/2018.** This is a first-instance decision. After considering it, it does not add anything to the law as I have set out above.
- 50.2. **Coffey v Chief Constable of Norfolk Constabulary [2020] ICR 145 CA.** The case concerned a perception that a police officer with hearing impairment could not take on a specialist role. I do not believe it adds anything to the law set out above that is relevant to this case. However Underhill LJ did make the following observations that assist in this case for the approach to normal day-to-day activities and determining substantial impact:

“42. I return, therefore, to Judge Richardson’s approach. The proposition that he was concerned to establish – see para 53 of his judgment – was simply that “[the phrase ‘normal day-to-day activities’] should be given an interpretation which encompasses the activities which are relevant to participation in professional life.” That seems to me wholly unexceptionable, save that “working life” might be more appropriate than “professional life” (which I think he used only because it appeared in Paterson). ...

“43. As to that, the impairment with which we are here concerned relates to hearing. There was no evidence before the employment tribunal, and it seems unlikely, that front-line officers need to have peculiarly acute hearing: they are not piano-tuners or audio engineers. I accept, of course, that there will be occasions in the course of their duties when it is important that they be able to listen carefully or hear particular sounds (even if not a fly’s foot-fall), but that is characteristic of many situations both at work and outside it. Although I fully accept that the work of a front-line police officer is in many respects unique and that it is often challenging and sometimes dangerous, the multifarious activities that it involves or at least those for which good hearing is relevant are nevertheless for the purpose of the Act “normal day-to-day activities”.

Conclusions

Is there a physical or mental impairment that is long term?

51. Croner concedes, rightly if I may say so, that Ms Simpson’s hearing impairment is a physical and/or mental impairment that is long-term.

Does it impact on normal day-to-day activities?

52. Yes for the following reasons:
- 52.1. I am satisfied on the facts that the impact that her hearing impairment had on her was that without her hearing aids:
 - 52.1.1. she cannot hear the television.
 - 52.1.2. when babysitting her nephew, she cannot hear him cry either with or without the baby monitor.
 - 52.1.3. she cannot hear a normal conversation even on a one-to-one basis.
 - 52.1.4. when people are wearing face masks (as was common during the pandemic) she has difficulty hearing speakers and following them because the mask hides their lips.
 - 52.1.5. noisy backgrounds make it difficult for her to hear. Therefore in an open plan office background noise makes it difficult to hear a specific conversation.
53. Applying **Paterson** and **Coffey** I am satisfied that these represent the types of hearing one would carry out as normal work-place activities. They all

relate to the ability to hear relevant sounds that require attention and to follow conversations at normal volume. Since March 2020 when the wearing of masks in many places became a requirement, often backed up by law, I conclude that conversing with people wearing facemasks has become a normal day to day activity – or at the least it was during the relevant period.

54. These conclusions are in my view supported by the totality of her evidence, the medical documents, the need for hearing aids and Croner's own evidence both that she asked for things to be repeated at meetings where there was background chatter and they had to adjust themselves to remove masks and lower themselves down close to her to speak to her.
55. I do not think the fact she wore headphones at work without hearing aids points to a different conclusion because the headphones had volume control on them, which she turned up. They were in effect substitutes for her hearing aids. I do not believe the fact she could hear sometimes undermines these conclusions. Her case is not she cannot hear anything but that it is impaired. Such anecdotal sparse examples cited by Croner do not in my view go anywhere near undermining the obvious contrary conclusions to be derived from her medical notes, prescription of hearing aids and her own evidence.

Is the impact substantial?

56. Yes.
57. Applying **Paterson** at [68] to the facts of this case, Ms Simpson used hearing aids, or headphones with the volume turned up as effective hearing aids, and required an adjustment to enable her to lip read when the wearing of masks was ubiquitous. She had to ask for things to be repeated when they were said against a background of chatter. If she did not have the impairment then she would need hearing aids, to turn up the volume on headphones, for things to be repeated, the adjustment or to lip read. That difference is more than the kind of difference one might expect taking a cross section of the population. The effects therefore are substantial.
58. Croner suggested that the appendix to the guidance suggested that it would not be reasonable for me to conclude that Ms Simpson's hearing impairment had a substantial adverse impact on her normal day-to-day activities. They cited the following example in particular:
- “Inability to hold a conversation in a very noisy place, such as a factory floor, a pop concert, sporting event or alongside a busy main road;”
59. I disagree. The facts show that the situations in which Ms Simpson experiences hearing-related difficulties are far removed from that example.
60. I think that the following parts of the guidance however support my conclusion:
- 60.1. Firstly the appendix suggests the following is a reasonable situation to conclude there was a substantial impact on normal day-to-day activities:

“Difficulty hearing and understanding another person speaking clearly over the voice telephone (where the telephone is not affected by bad reception);”

I acknowledge it is far from a perfect example, and note she adjusted of course by turning up the volume.

- 60.2. The proper application of **[B14]** of the Guidance;
- 60.3. The example given at **[D20]** of the Guidance applied to Ms Simpson’s situation.

Conclusions

- 61. During the relevant period Ms Simpson was disabled because of hearing impairment. The effects of it on her are as set out in my reasons above.
- 62. The claim is already set down for a final hearing. Those directions remain. No further directions are required. The parties may apply for directions however if they believe it necessary to do so.

Employment Judge Adkinson

Date: 18 May 2022

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