



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Mr D Charlick

**Respondent**

AND Devonport Royal Dockyard Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD BY CVP**

**ON**

7 July 2022

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** In person, assisted by his partner Ms Buckingham

**For the Respondent:** Mr A MacPhail of Counsel

### JUDGMENT

**The judgment of the tribunal is that the claimant was a disabled person by reason of anxiety/depression at the times material to this claim, namely from 2 March 2020 until 3 February 2021.**

### RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine whether the claimant was a disabled person at the material times.
2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held because it was not practicable and no one requested the same, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 158 pages, the contents of which I have recorded. The order made is described at the end of these reasons.

3. I have heard from the claimant, and from his partner Ms Sharon Buckingham on his behalf. The respondent did not call any evidence in person.
4. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The claimant Mr Darryl Charlick was born in 1983. He asserts that he suffers from anxiety and depression, and that this is a disability. The relevant medical history can be subdivided into three periods of time as follows: (i) the claimant's earlier years; (ii) the period during which the claimant accepts that he suffered from addiction to drugs and alcohol; and (iii) the period after which he no longer took drugs and was no longer addicted to drugs or alcohol. This third period covers the time during which he was a permanent employee of the respondent, which is the period material to the claimant's claims (from 2 March 2020 to 3 February 2021). I deal with each of these three periods in turn.
6. With regard to the first period, with the exception of the occasional passing comment, there is little to be gleaned from the medical evidence before me to the effect that the claimant has suffered from a mental impairment from his early years. However, the claimant's oral evidence, and that from Ms Buckingham (who knew the claimant and his family), is that the claimant suffered from anxiety and depression since his childhood. There appear to have been a number of traumatic events, including three school friends dying in a car accident, which have caused or aggravated this impairment. I accept this evidence that the claimant has suffered from some form of anxiety and depression since his childhood.
7. The second period covers the time when the claimant admits that he was addicted to both drugs and alcohol. There is some dispute as to whether this started in 2007, 2008, or 2010, but in any event it covered the period until about March 2019 when the claimant was able to defeat his downward spiral of substance abuse. From about March 2019 he was no longer addicted to drugs or alcohol.
8. It was clear that this period of addiction caused a deterioration in the claimant's mental health. He continued to suffer from the mental impairment of anxiety and depression throughout this time, and this impairment had a substantial adverse effect on the claimant's normal day-to-day activities. This included anxiety attacks; feeling exhausted; restlessness and irritability; feelings of hopelessness and pessimism; and inability to carry out normal day-to-day activities such as showering, feeding himself, and holding down a regular job.
9. The third period commenced in about March 2019, and this includes the period from about February 2020 when the claimant commenced his relationship with Ms Buckingham.
10. The first relevant entry in the claimant's GP notes is on 19 December 2019. This records that the claimant had suffered two bereavements and two industrial injuries during 2019 which had built up anxiety and concerns, and he requested constructive counselling, but did not wish to have any medication. The note records that the claimant "Always had problems with anxiety and depression. Had nervous breakdown age 27." He recorded that he had stopped his habit of alcohol and cocaine some eight months previously and was trying to "put his life back on track".
11. The next relevant entry from the GP notes is on 22 October 2020 which was triggered by the claimant's work issue with his manager. The note records: "work related stress. Problems with managers. Irritable and snappy. Not sleeping well. It is not suicidal. Does not feel fit for work ..." This was followed by a telephone consultation on 30 October 2020 in which the claimant reported that the HR Department had told him to get a sick note for stress "to cover his back" and that he was suffering from anxiety but hoped the situation would be resolved within a week.
12. During this period the claimant's GP issued Statements of Fitness for Work and the claimant was signed off from 21 October 2020 to 1 November 2020 for work-related stress; from 30 October 2020 to 7 November 2020 for stress; for 7 November 2020 to 6 December 2020 for work-related stress; for six weeks on 30 November 2020 for work-related stress and right shoulder pain; and from 4 January 2021 to 31 January 2021 again for work related stress and right shoulder pain. The claimant did not return to work and resigned his employment on 3 February 2021.

13. Meanwhile the respondent had obtained an occupational health report dated 8 January 2021. This recorded that the claimant had “experienced symptoms of anxiety/depression for many years and that in the past he has been prescribed antidepressants as well as receiving counselling support ... He has recently experienced an increase in anxiety depression symptoms which he considered to be triggered by work-related issues ... In my opinion Mr Charlick’s underlying anxiety depression continue and would be covered under the Equality Act 2010 as it is long-term and recurrent in nature and when symptomatic substantially impacts on normal day-to-day activities ...” The report made a number of recommendations including a stress risk assessment, a phased return to work and supportive contact.
14. The claimant also adduced a letter from his GP in support of his claim. Dr Fullalove wrote on 10 March 2022 and included the following comments: “Mr Darryl Charlick first consulted me with work-related stress and anxiety on 22/10/2020 and was certified sick off work and advised to self-refer to our counselling service in Cornwall. He was reviewed on 30/10/2020, 9/11/2020, 30/11/2020, and 04/01/2021. He was certified sick off work with work-related stress from 21/10/2020 to 31/01/2021. He has suffered with intermittent mixed anxiety and depression symptoms for about 14 years. He has a history of previous suicide attempts in 2010 and 2015. He has been referred to the Community Mental Health Team in 2011 and in 2016. He has had episodic treatment with a variety of antidepressant medications since 2008 and has been referred for counselling therapy.”
15. The oral evidence of the claimant, which is supported by the oral evidence of Ms Buckingham, and which I accept, is to the following effect. The claimant lives with anxiety daily and the effect of this mental impairment varies from day-to-day. On most days he succeeds in overcoming symptoms of anxiety and depression, but on other days he is liable to become affected and suffer a downward spiral. He is then unable to think or focus for himself and unable to attend work. He takes beta-blockers and antidepressants from time to time although he tries to avoid medication. The various symptoms can arise daily and can involve a mixture of feeling nervous irritable or on edge; feelings of danger panic or doom; hyperventilation; fatigue; difficulty concentrating and making decisions; feeling anxious and sad; and restlessness and irritability. He often has difficulty taking a shower, brushing his teeth and feeding himself.
16. Having established the above facts, I now apply the law.
17. The claimant alleges discrimination because of his disability under the provisions of the Equality Act 2010 (“the EqA”). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges discrimination arising from a disability, failure by the respondent to comply with its duty to make adjustments, and harassment.
18. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P’s ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or it is likely to last the rest of the life of the person.
19. With regard to Addictions, Regulation 3 of the Equality Act 2010 (Disability) Regulations 2010 provides: Reg 3(1) Subject to paragraph (2) below, addiction to alcohol, nicotine or any other substance is to be treated as not amounting to an impairment for the purposes of the Act. Reg 3(2) Paragraph (1) above does not apply to addiction which was originally the result of administration of medically prescribed drugs or other medical treatment.
20. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
21. I have been referred to and I have considered the case of Richmond Adult Community College v McDougall [2008] IRLR 227.

22. This matter was the subject of a previous case management preliminary hearing and resulting order dated 23 March 2022. In that Order I summarised the position as follows: “The claimant commenced his period of continuous permanent employment as a welder and fabricator in Devonport Dockyard on 2 March 2020. His employment terminated and he resigned his employment with effect from 3 February 2021. The claimant was in dispute with his line management, in particular including Mr Martin Hancock, and he wished to be moved away from the 9 Dock Project to which he was assigned, back to work on HMS Iron Duke. He asserts that the respondent would not accommodate this request, which caused depression and anxiety.”
23. The claimant had insufficient service to pursue a claim for unfair dismissal before this Tribunal, and with regard to his claim for disability discrimination he confirmed that he relies on the disability of anxiety/depression and pursues claims for discrimination arising from disability under section 15 EqA; failure to make adjustments under sections 20 and 21 EqA; and for harassment under section 26 EqA. The respondent denies the claimant was a disabled person for the purposes of the EqA and this preliminary hearing today has been listed to determine that issue.
24. The respondent’s challenge to the claimant’s assertion that he is a disabled person is largely based upon Regulation 3 of the Equality Act 2010 (Disability) Regulations 2010. If the claimant’s claims and allegations had arisen during the time when the claimant was addicted to both cocaine and alcohol, I would have had no hesitation in applying this Regulation and dismissing the claimant’s claims on the basis that the evidence to which I have been referred suggests that the impairment and the symptoms arise from the claimant’s addiction, and they are therefore excluded from the provisions of the EqA.
25. However, it is clear that the claimant has been able to “get his life back on track”, more latterly with the support of Ms Buckingham. The period which is relevant to the claimant’s claims is that of his permanent employment with the respondent between 2 March 2020 and 3 February 2021. This period comes after the date of March 2019 when the claimant no longer suffers from his addiction. The respondent asserts that the burden of proof falls on the claimant to prove that any impairment and/or substantial adverse effect on day-to-day activities after his addiction ceases either exists or arises from some event or cause other than that addiction. Put another way, the respondent asserts that any disability caused by the addiction is excluded, and that the claimant must prove any impairment or adverse effects are no longer caused by the addiction and are therefore no longer excluded.
26. I accept the respondent’s contention that the claimant has not adduced a medical report to the effect that any impairment or adverse effects during the third relevant period were not caused by the addiction or, in the vernacular, were not “a hangover” from the period over many years when the claimant was addicted. However, it is also clear, from the oral evidence of the claimant and Ms Buckingham, and the occasional comments in the medical evidence, that the claimant suffered from the mental impairment of anxiety and depression even before the time when he became addicted.
27. Against this background I apply the statutory test as to whether the claimant suffered from a disability (which is in section 6 and schedule 1 of the EqA), during the times relevant to this claim between 2 March 2020 and 3 February 2021.
28. In the first place I find that the claimant suffered from anxiety and depression which is a mental impairment. In addition, I find that this was a long-term condition which had lasted for more than 12 months because the claimant had suffered from it since childhood, and even before the excluded period during which he suffered from addiction. Even if there were occasions when the claimant felt well and was not affected by the impairment, it is well known that the impairment of anxiety and depression is a recurring illness. The impairment was likely to recur in the sense that “it could well happen”, and indeed did recur during the claimant’s employment.
29. The next question is the extent to which there was a substantial adverse effect on the claimant’s ability to carry out his normal daily to day activities during this relevant period. Substantial in this sense means “more than minor or trivial”. I accept the oral evidence of the claimant and Ms Buckingham that this was the case. There were occasions when the

- claimant was unable to get out of bed and attend work and felt severely fatigued and unable to concentrate. On occasions he was unable to shower, dress and feed himself. The claimant's impairment was clearly in my judgment something which had an effect on his normal day-to-day activities which was more than minor or trivial.
30. For these reasons in my judgment the claimant was a disabled person by reason of anxiety/depression at the times relevant to this claim.
  31. The claimant's claims have now been listed for their full main hearing as confirmed in a further Case Management Order of today's date.

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Employment Judge N J Roper  
Date: 7 July 2022

Judgment sent to Parties on  
21 July 2022 by Miss J Hopes

FOR THE EMPLOYMENT TRIBUNAL