

# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs V Williamson  
**Respondent:** Royal Society for the Prevention of Accidents  
**Heard at:** Nottingham remotely On: 6 July 2022  
**Before:** Employment Judge M Butler (sitting alone)

## Appearances

**Claimant:** In person  
**Respondent:** Mr H Asif, Consultant

# RESERVED JUDGMENT

The judgment of the Employment Judge is that at the material time the Claimant was disabled within the meaning of section 6 of the Equality Act 2010 by virtue of Chronic Kidney Disease Stage 3.

# REASONS

## Introduction

1. This open preliminary hearing was listed by Employment Judge Victoria Butler who made orders for, inter alia, the Claimant to provide an impact statement and to disclose her medical records. Those orders were complied with. On 16 May 2022, having reviewed the Claimant's impact statement and medical records, the Respondent conceded disability in respect of hypothyroidism but not chronic kidney disease. These are the two disabilities relied upon by the Claimant. In disputing chronic kidney disease stage 3 ("CKD"), the Respondent was not satisfied that this condition had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities.

## The issues

2. The issue before me is simply whether the evidence shows that the condition of CKD gives rise to disability within the legal definition.

## The Evidence

3. I received the Claimant's typed disability impact statement and she was questioned on oath. There was also an agreed bundle of documents running to 137 pages which included the Claimant's GP records. It also included a NHS summary of the symptoms of both hypothyroidism and CKD. References to page numbers in this Judgment are to pages in the bundle.

4. Both parties made brief closing submissions which I take full account of in reaching my decision.

### **The Law**

5. The law is found principally in section 6 and Schedule 1 of the Equality Act 2010 ("EqA") including the 2011 guidance made under section 6(5) EqA ("the guidance"). Section 6 EqA states, so far as relevant:

**(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.**

6. It remains good practice to state conclusions separately on the questions of impairment, adverse effect, substantiality and long-term nature (**Goodwin v Patent Office [1999] ICR 302**). However, in reaching those conclusions the Tribunal should not proceed by rigid consecutive stages. A purposive approach should be taken without losing sight of the overall condition.

7. What is in issue in this case is whether the Claimant's impairment has a substantial adverse effect on her ability to carry out normal day to day activities. By Section 212(1) EqA and paragraph B: 1 of the Guidance, "substantial" means more than minor or trivial.

8. This is a relatively low threshold for a claimant to establish. Substantial may be considered in respect of different times, different activities, the way an activity is done and having regard to modifications which are reasonable for the Claimant to make but based on what the deduced effect of the impairment is excluding the effect of medical treatment. There must be clear evidence on what the deduced effect would be (**Woodrup v London Borough of Southwark [2003] IRLR 111**). Although a low threshold, the Claimant carries the burden of showing it. "Substantial" is likely to be made out where the degree of limitation established in the adverse effect goes beyond the normal differences in ability which may exist among people without a disability in the general population.

9. The focus in an assessment of disability should be on what an employee cannot do or can only do with difficulty, and not what they can do. I am required to look at the whole picture and it is not simply a question of balancing what an employee can do against what they cannot. If the employee is substantially impaired in carrying out any normal day-to-day activity, then they are disabled notwithstanding their ability in a range of other activities.

10. In **Cruickshank v VAW Motorcast Ltd [2002] ICR 729 EAT**, it was held that a broad view is to be taken of the symptoms and consequences of the impairment

as they appeared during the material time.

11. In **Elliott v Dorset County Council [2021] IRLR EAT**, HHJ Tayler restated the principles for determining the question of disability as first set out in **Goodwin**. The questions to be considered are:

- (1) Does the Claimant have an impairment which is either mental or physical?
- (2) Does the impairment affect the Claimant's ability to carry out normal day-to-day activities and does it have an adverse effect?
- (3) Is the adverse effect upon the Claimant's ability substantial?
- (4) Is the adverse effect on the Claimant's ability long-term?

12. By Schedule 1 EqA, further provision is made for the determination of the question whether a person is disabled. Specifically, paragraph 2 provides:

## **2. Long-term effects**

**(1) 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 for the rest of the life of the person affected.**

**(2) ....**

**(3) ....**

**(4) ....**

13. I am assisted in this case by the Respondent's acceptance that the Claimant's CKD is a physical impairment and is long-term. Their issue is whether it has a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities.

## **The Facts**

14. The Claimant's evidence was structured and succinct and her oral and written evidence was reinforced by extracts from a NHS website setting out the symptoms of her conditions (pages 92 and 93). This is not a case of a witness at all over embellishing their case. I found her to be honest and credible in the accounts she gave. She was quite properly cross-examined by Mr Asif on which symptoms detailed in her impact statement were caused by which of her impairments. According to the NHS website, there is a deal of overlap in symptoms associated with each impairment. The Claimant honestly pointed out on numerous occasions that she was unable to be specific in the case of most of her symptoms and to attribute them to CKD alone would be to mislead the

Tribunal. Indeed, whilst she clearly considered her symptoms to be potentially caused by both impairments, she was of the view that the swelling of her ankles and feet and headaches were caused by CKD whereas muscle stiffness, brittle nails, carpal tunnel syndrome and irregular periods were more likely to be symptoms of hypothyroidism. She considered that lethargy, tiredness, brain fog and difficulty sleeping could be caused by either impairment.

15. The Claimant was born on 19 June 1968 and was employed by the Respondent as a Health and Safety Trainer/Consultant from 1 August 2020 until her resignation with effect from 30 April 2021. She was aged 52 when she resigned.

16. She was first tested for thyroid issues when she was 35 or 36 and in 2016 tests revealed that her thyroid function was borderline abnormal. She has been prescribed levothyroxine which she has been taking on a long-term basis and which helps to control her symptoms (page 116 and 95) with the dosage increased from 25mg to 75 over time.

17. She was first diagnosed with CKD on 4 September 2018 (page 118). This was discovered as a result of a blood test for her thyroid condition. She is at stage 3 of 5 stages. Her blood tests show a deterioration year on year in her glomerular filtration rate which identifies the speed at which her kidneys clean her blood. She currently takes no medication for this impairment and is not at the stage where dialysis or a transplant is necessary. The condition is monitored by annual blood tests and less frequent urine tests. According to the NHS website (pages 92-93), the symptoms of CKD include:

**swollen feet and ankles**

**tiredness**

**insomnia**

**muscle cramps and**

**headaches.**

18. Of these symptoms, the Claimant gave evidence that she suffers from all of them. The NHS website also confirms (page 92) that muscle issues and tiredness are symptoms of hypothyroidism. From the information before me, therefore, I conclude that swollen ankles, feet and headaches are alone symptoms of CKD. The Claimant's evidence was that her feet and ankles swell in hot weather and after standing for long periods and she has headaches which can last for 2 to 3 days and which do not respond to painkillers.

19. The Claimant's recorded symptoms include those only referred to as a product of hypothyroidism, namely, brittle nails, numbness and tingling in her hands, slow movements and thoughts and irregular periods. Tiredness and muscle issues are common to both impairments.

20. The Claimant suffers from tiredness and fatigue which restricts her level of activity socially and at work. It also affects her concentration and she often has to read something like a recipe several times before she can follow it. This tiredness

affected her driving as she was worried about driving long distances within a restricted time period due to safety concerns. Further, she now plans her activities in such a way as to reduce the tiredness. She also suffers with stiffness in her muscles if she remains sitting down for a long time such as on a train journey. The swelling of her feet and ankles often make walking difficult especially in terms of keeping up with others she is walking with.

21. During the first lockdown due to the covid-19 pandemic, the Claimant was notified that she should shield as she was clinically vulnerable as a result of having CKD. Her GP wrote to her in these terms (page 91):

**I would advise that during the pandemic you should work from home. With your past medical history you are clinically vulnerable and should not travel for work at this time.**

22. I find the Claimant to be a truthful witness and accept her account of the effects on her normal day-to-day activities of her impairments. Based on her evidence and the documents before me, I find on the balance of probabilities that some of her symptoms emanate from CKD. The evidence before me does not suggest that those symptoms are caused solely by hypothyroidism.

### **Discussion and conclusion**

23. There is no argument before me that the Claimant did not suffer from CKD throughout her employment with the Respondent. Indeed, her medical records confirm this. But the effect of CKD and whether it amounts to a disability is not a simple issue because the Claimant suffered from two physical impairments with some common symptoms between them.

24. I remind myself that the legal definition of disability is based on a social model and not a medical model. The focus of the Respondent's argument is that the Claimant's symptoms of hypothyroidism are almost entirely responsible for the substantial and long-term adverse effects on her ability to carry out normal day-to-day activities. The guidance makes clear that the effects of more than one impairment should be considered in their totality (paragraph B5).

25. The Claimant will always have both conditions and they are both, therefore, long-term impairments. That hypothyroidism is a disability is conceded by the Respondent, but not CKD. There is a further complication in that in her claim form she says in her schedule of loss (page 137):

**I also have chronic kidney disease, whilst in more normal times this would not be considered a disability at my current stage of disease progression. (sic) Under the Government advice for Covid management, chronic kidney disease places me in the Clinically Vulnerable category...**

Whilst Mr Asif rightly questioned the Claimant about this, I do not attach much weight to it in terms of supporting the Respondent's argument. The Claimant is a litigant in person and cannot say which of her symptoms are caused by one impairment or the other. Further, she cannot make the decision as to her disability status; that is a matter for the Tribunal.

26. What is clear is that her combined symptoms must have a substantial adverse effect on her ability to carry out normal day-to-day activities. This is conceded by the Respondent who attributes all of her symptoms to hypothyroidism. With respect to that view, it ignores the fact that the Claimant suffers from symptoms which emanate from hypothyroidism and some other symptoms which can be attributed to CKD.

27. The main issues affecting the Claimant are tiredness, lethargy, muscle stiffness, swollen feet and ankles and insomnia. These are all symptoms arising from both conditions. However, I note that the symptoms arising from hypothyroidism are largely controlled with medication. The CKD symptoms are not controlled by medication at this stage. The tiredness and lethargy have had a significant effect on the Claimant. Her evidence, which I accept, is that she now has to plan her days to avoid becoming over-tired and has to forego some activities altogether when she does become too tired to carry them out. This has affected her social life. Her evidence is that people with CKD have a much increased mortality rate if they succumb to the covid-19 virus and she therefore avoids some social activities she previously enjoyed. This is recognised by her being classed as clinically vulnerable.

28. The Claimant also finds difficulty in keeping up with others when walking in a group due to muscle stiffness and her feet and ankles swell painfully, particularly in hot weather and when standing for long periods.

29. Whilst both impairments generate several common symptoms, the issue is whether those symptoms caused by CKD have a substantial and long-term adverse effect on the Claimant's ability to carry out normal day-to-day activities. The Claimant gave honest evidence that several of the symptoms cannot be isolated as being caused by one of her conditions. However, she was able to identify some of the symptoms attributable to CKD alone. As mentioned above, these are swollen feet and ankles and headaches (lasting up to three days). In relation to her tiredness, I note from her medical records that this symptom was alleviated by medication. At page 115 the entry in her GP records states:

**Spoke to Vivienne, since starting medication has improved greatly, now able to go back to the gym and aches and pains seem resolved.**

This entry refers to the treatment of hypothyroidism with levothyroxine. On the balance of probabilities, therefore, the fact that these symptoms returned as the CKD progressed indicates that that condition at least has an impact on her current symptoms.

30. In determining whether the effects of CKD are substantial and adverse in relation to the Claimant's normal day-to-day activities, I refer back to the law stated in paragraph 8 above. It is for the Claimant to establish that the degree of limitation in normal daily activities goes beyond the normal differences in ability which may exist among people without a disability in the general population. Everyone experiences tiredness but, in my view, not everyone without a disability has to plan their daily activities in order to avoid becoming over-tired; and many people suffer from stiffness in their muscles and swollen feet and ankles but it is doubtful that such issues are long term and constantly affect the ability to stand for long periods and walk at a regular pace.

31. Having considered the Claimant's conditions both separately and together, I conclude that her condition of CKD is a physical impairment which is long-term and has a substantial adverse effect on her ability to carry out normal day-to-day activities.

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Employment Judge Butler

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Date 8 July 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

23 July 2022

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FOR THE TRIBUNAL OFFICE