



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Brown

**Respondent 1:** Archway Building Services (UK) Limited

**Respondent 2:** Karen Hughes

**Heard at:** Manchester Employment Tribunal

**On:** 15<sup>th</sup> June 2022

**Before:** Employment Judge Cronshaw (sitting alone)

## Representation

**Claimant:** Mr C Davey (Counsel)

**Respondent:** Mr L Bronze (Counsel)

# JUDGMENT

The Judgment of the Tribunal is that:

The claimant was, at the relevant time, a disabled person within the meaning of s6 of the Equality Act 2010.

## REASONS

1. This was a preliminary hearing to determine whether the claimant was, at the relevant time, disabled within the meaning of the Equality Act 2010.
2. The hearing was a remote hearing which was consented to by the parties. The hearing took place by video conference using the tribunal's cloud video platform.

3. A full oral judgment was given on the day but a later request for written reasons was received by the tribunal. These reasons have been compiled as a result of that request.

#### Case summary

4. This is the claimant's claim for disability discrimination arising out of his dismissal from the respondent's employment on 24<sup>th</sup> September 2022.
5. The claimant was employed by the first respondent as a Subcontract Buyer and commenced his employment on 20<sup>th</sup> September 2021. The second respondent is employed by the first respondent as an Accounts Manager.
6. During the morning of the 22<sup>nd</sup> September 2021, just two days into the claimant's employment, he began experiencing suicidal thoughts on his way to work. He contacted the Samaritans as he felt unsure whether he could control himself.
7. The claimant informed the second respondent and thereafter had a meeting with the owner and managing director of the first respondent – Mr Simpson. It was agreed that the claimant would return home to seek medical assistance.
8. The claimant was absent from work the following day on the 23<sup>rd</sup> September 2021 and informed the second respondent by telephone.
9. On 24<sup>th</sup> September 2021 the claimant was assessed as suffering from depression by a mental health specialist and signed off work for four weeks. He informed the second respondent of this via telephone. The claimant's case is that the second respondent advised him during this telephone call that the first respondent needed someone who could do the job and that his employment was terminated with immediate effect. There was no follow up meeting or written confirmation of this and no P45 was issued.

10. The respondents' case is that the claimant was not informed that his employment was terminated and, in fact, continued to be employed and in receipt of statutory sick pay.
11. The respondents' noted via the claimant's LinkedIn profile that he had secured new employment on 17<sup>th</sup> November 2021. This was confirmed by the claimant's solicitor. Only at that point did the first respondent stop paying the claimant and consider his employment terminated.

The applicable law and issues to be determined

12. The claimant says that he suffers from depression and that this is a disability within the meaning of the Equality Act 2010.
13. The respondents' dispute that the claimant suffers from a disability and contends that despite the subsequent diagnosis of depression this did not, at the relevant time, have a substantial adverse impact on him nor could it be considered long term.
14. Section 4 of the Equality Act 2010 identifies certain characteristics as protected characteristics. These include disability.
15. Section 6 provides, so far as material, that:
- (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.
16. I therefore had to determine the following issues during the preliminary hearing:
- a. Did the claimant have a physical or mental impairment?
  - b. Did it have a substantial adverse effect on the claimant's ability to carry out day-to-day activities?
  - c. Were the effects of the impairment long-term?
    - i. did they last at least 12 months, or were they likely to last at least 12 months?

ii. if not, were they likely to recur?

17. My considerations are limited to the relevant time of this claim which is the 20<sup>th</sup> to 24<sup>th</sup> September 2021.

18. There is no suggestion that the claimant was receiving any treatment or medication at this time therefore these are not considerations for the tribunal today.

19. Following the *Equality Act (Guidance on the Definition of Disability) Appointed Day Order 2011 SI 2011/1159* guidance has been issued by the Secretary of State which the tribunal is obliged to take into account when determining questions relating to the definition of disability.

20. I was helpfully referred to the guidance and the relevant considerations within the respondents' skeleton argument. I have had particular regard to the Appendix to this guidance, at p53, which sets out a non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.

#### Procedure and evidence heard

21. I was assisted by a bundle containing 11 documents including the claimant's GP records and an impact statement from the claimant – from whom I also heard oral evidence.

22. I have had both oral and written submissions from Mr Davey for the claimant and Mr Bronze for the respondents'.

#### Findings

23. For ease I have separated out the considerations but each of the findings have only been made having taken account of the whole of the evidence.

*Physical or mental impairment*

24. I have carefully considered the claimant's impact statement, his GP records and his oral evidence today – and I have balanced those against the respondents' position helpfully encapsulated within the submissions provided.

25. The claimant's oral evidence was substantially clearer on the issue of his disability than the impact statement provided to the tribunal. I found the claimant to be measured, clear and candid when giving his evidence – his account remained consistent despite cross examination.

26. The claimant described feeling despair, sleep disturbance, experiencing fluctuating mood and suicidal thoughts. He states that these feelings had increased in severity in the preceding months leading up to his employment with the first respondent.

27. It is also clear that from as early as 22<sup>nd</sup> September 2021 the claimant had contacted the GP to discuss his suicidal thoughts and, from this date there is a diagnosis recorded on his medical records of mixed anxiety and depressive disorder.

28. This is certainly during the relevant time period and coupled with the claimant's own evidence of his symptoms at the time provides persuasive evidence that I accept.

29. I therefore conclude, that during the relevant time period, the claimant had a mental impairment – specifically depression.

*Substantial adverse impact*

30. Turning to look at if this resulted in a substantive adverse impact on the claimant's day-to-day activities. Section 212 (1) of the Equality Act 2010 defines substantial as more than minor or trivial.

31. As I referred to earlier the Appendix to the guidance issued by the Secretary of State provides some examples in a non-exhaustive list. The more relevant ones for my considerations are:

- a. Persistent general low motivation or loss of interest in everyday activities.
- b. Frequent confused behaviour, intrusive thoughts, feelings of being controlled, or delusions.
- c. Persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder.
- d. Persistent distractibility or difficulty concentrating.

32. The claimant gave evidence of suffering from depression from early 2021, the symptoms of which increased over time. He described disturbed sleep (only 3-4 hours a night in some cases), lack of motivation to do every day activities such as household jobs, cooking or walking the dogs, social isolation and being physically and mentally exhausted despite minimal activity. Most prominently the claimant described intrusive thoughts – in his case voices in his head which grew in prominence peaking on 22<sup>nd</sup> September when he felt he was no longer able to control them and sought help.

33. The claimant explained that the voices began in early 2021, although he could not be specific on the date. They were intermittent and would become clearer when he wasn't concentrating on a task. They would be scary at times and give him thoughts, for example, to jump out in front of a lorry.

34. The claimant gave specific examples of choosing easy meals to make rather than cooking – an activity he previously enjoyed – driving the dogs to the park as opposed to walking them, avoiding meeting friends and struggling to sleep for more than 3 to 4 hours a night and then struggling to get out of bed in the morning. He no longer exercised – having previously played badminton and cycled and gained weight as a result.

35. Throughout this time the claimant described hearing voices, sometimes resulting in him having conversations with himself and making it difficult to concentrate. All of these, in my view, represent more than a minor impact on his day-to-day life.

36. I understand the respondents' contention that the claimant was able to continue to carry out activities such as dog walking and cooking – albeit in a different way than he had before - and therefore there was not a substantial impact. However, carrying out activities is not reflective of an ability to do so unhindered. I do not accept the respondents' submission that what the claimant describes is 'feeling a bit low but that's it', his evidence goes far beyond that.

37. The claimant's evidence, which I accept, is of a substantial adverse impact and he gave several examples of impacts which are included within the guidance as I have outlined above. On this basis I have concluded that, at the relevant time, the claimant's mental impairment did have a substantial adverse impact on his ability to carry out day-to-day activities.

*Long term*

38. This is the more difficult element of the case as the claimant accepts that, despite suffering from worrying symptoms, he did not contact his GP or seek any medical treatment.

39. The respondent relies on this to submit that the claimant could not have been suffering in the way he described for any length of time, if at all – and therefore if the impairment wasn't present or only minor then it could not be considered long term.

40. The claimant explained that he hadn't sought medical assistance due to, wrongly, feeling ashamed or embarrassed. This is an unfortunate and common sentiment and I accept the claimant's evidence on this point.

41. The claimant explained it well when cross examined about speaking to the doctor about his sleep being disturbed due to a shoulder injury – which appears as an entry on the claimant's GP notes at p13 in 2018. The respondent made the point that he was easily able to talk about sleep disturbance then yet failed to do so when suffering as a result of depression. The claimant replied that it was much easier to talk about physical pain and its consequences than mental pain.

42. Having considered the evidence I also accept the claimant's evidence that he had been suffering from depression for a period of time – since early 2021 – and that during that time his condition did have a substantial adverse impact on his day-to-day life. This means that in September 2021, and the relevant period, he had been suffering from depression for at least a 6-month period (bearing in mind the claimant couldn't be specific about timings).

43. I understand the respondents' submissions that the claimant himself suggested he thought a change in job may result in an improvement and therefore he believed it was a short time condition easily fixed. He expressed a similar sentiment to the doctors he subsequently saw, but the reality is very different to his wish to feel better. This is a complex diagnosis with potentially a lengthy recovery and that was clear even at the time of the alleged discrimination.

44. Whilst I have information as to what occurred subsequently it is not for me to consider today. My consideration is whether, at the time of the alleged discrimination, the claimant's depression was likely to last – or had already lasted – 12 months.

45. Given my determination of the facts the claimant had already suffered from depression for some 6 months, and the severity had increased to significant levels by the time of the alleged discrimination, I have concluded that the substantial adverse effect of the depression lasting for 12 months could well happen – which is the test within the meaning of the act. I am satisfied that, on the evidence I have heard, that at the relevant time the effects of the claimant's mental impairment were long term.

### Conclusion

46. Based on the findings and reasons I have outlined above I have concluded that the claimant did have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about, in this case 20<sup>th</sup> – 24<sup>th</sup> September 2021.



Employment Judge Cronshaw

Date: 30.07.22

SENT TO THE PARTIES ON

4 August 2022

FOR EMPLOYMENT TRIBUNALS

**Note**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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