



EMPLOYMENT TRIBUNALS

Claimant: Mr D Madlani

Respondent: Rentokil Initial plc

Heard at: Reading (by CVP) **On:** 28 September 2022

Before: Employment Judge Hawksworth

Appearances

For the claimant: In person

For the respondent: Mr A Burgess (lead litigation executive)

JUDGMENT ON DISABILITY

At the time of the events the claim is about, the claimant was disabled within the meaning of section 6 of the Equality Act 2010 by reason of specific learning difficulties, namely dyslexia and ADHD.

REASONS

The issue of disability

1. The issue for me today is whether the claimant was disabled within the meaning of section 6 of the Equality Act 2010. The claimant says that he is disabled by dyslexia and ADHD. The respondent does not accept that the claimant was disabled.

Evidence and submissions at the hearing

2. The parties had prepared a bundle of 223 pages for the main hearing. This included copies of three medical reports and the claimant's impact statement.
3. I heard evidence from the claimant and closing comments from both sides.

Findings of fact

4. I made the following findings of fact from the evidence I heard and read.

5. The claimant was diagnosed with specific learning difficulties in 2004 following an assessment by an educational psychologist, Mr Harper. The assessment was made at the suggestion of the claimant's lecturer who had noticed that he was struggling with certain aspects of the course.
6. Mr Harper did not make a specific diagnosis of dyslexia and ADHD, but he said that the claimant had specific learning difficulties with respect to attention control. He said the claimant's variable control of attention is a typical pattern of a certain kind of specific learning difficulty. He described the claimant's issues, based on detailed testing and assessment, as including the following:
 - 6.1. his reading speed is slower than average. He often has to read a piece of writing at least three times to get a full understanding;
 - 6.2. his writing speed was slower than average for degree students;
 - 6.3. he had significantly lower scores on tests of working memory. He does not organise information well in his head and the way he commits it to memory will not help him to recall it in any systematic way.
7. Mr Harper recommended special arrangements for written examinations. These were that the claimant should sit written examinations apart from other students, that he should be supervised, and that he should be allowed a short 2 minutes break every 40 minutes.
8. Over the years, the claimant has adopted strategies to help him manage these learning difficulties, including using coloured overlays for reading.
9. I find that the claimant's dyslexia and ADHD have the following effects on his day to day activities:
 - 9.1. reading: it takes him a lot longer to read documents and interpret them. If he was not using overlays his reading would be much much slower;
 - 9.2. he writes more slowly;
 - 9.3. he has to have regular breaks to refocus when watching television or undertaking other activities at home which require concentration. At home he can do this quite easily. In the cinema he has to leave for a short break in the middle of the film;
 - 9.4. he can often repeat himself or lose concentration during conversations;
 - 9.5. his poor working memory and difficulties organising information in his head can lead to forgetting things, for example when shopping. He uses a coping strategy of organising his lists by section;
 - 9.6. driving – on longer drives he needs to take short breaks every hour to refocus. I accept that the claimant needs to take regular breaks more frequently than people without his impairment.

The law

10. The burden of proof is on the claimant to establish that he has a disability within the meaning of the Equality Act 2010.

11. The definition of disability is contained in section 6 of the Equality Act:

“(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.”*

12. Substantial is defined in the Act as more than minor or trivial.

13. Schedule 1 to the Equality Act sets out additional detail concerning the determination of disability. In relation to long-term effects, paragraph 2 of schedule 1 provides:

“(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.*

14. Paragraph 5 of schedule 1 deals with the effect of medical treatment. It says:

“(1) An impairment is to be treated as having a substantial effect on the ability of the person concerned to carry out normal day-to-day activities if –

- a) measures are being taken to correct it, and,*
- b) but for that, it would be likely to have that effect.*

(2) ‘Measures’ includes, in particular, medical treatment and the use of a prosthesis or other aid.”

15. This requires the tribunal to consider what the effect on the claimant’s abilities would have been but for the medical treatment.

16. Guidance on matters to be taken into account in determining questions relating to the definition of disability was issued in 2011 (the ‘Guidance’). That was guidance made under section 6(5) of the Equality Act. Paragraph 12 of schedule 1 of the Equality Act requires employment tribunals to take account of any aspect of the Guidance which it thinks is relevant. The application of the statutory definition must be the starting point however.

17. Section B deals with the meaning of substantial. It says in B2 that the time taken to carry out an activity should be considered when assessing whether the effect is substantial. Time taken should be compared with the time it might take a person who did not have the impairment.

18. Paragraph B4 says that the cumulative effects of an impairment should also be considered. It is important to consider whether the effects of an impairment on more than one activity taken together could result in an overall substantial effect

Conclusions

19. I have applied these legal principles to the facts as I have found them and reached the following conclusions.

Impairment

20. The claimant has specific learning difficulties. Although these terms are not used in the psychologist's report, I accept based on the report as a whole and the claimant's evidence that these are dyslexia and ADHD.
21. These learning difficulties fall within the definition of a mental impairment for the purpose of s6.

Adverse effect on normal day-to-day activities

22. I next need to consider whether the claimant's impairment has an adverse effect on the claimant's ability to carry out normal day to day activities. I have found that the claimant's learning difficulties affect the following day to day activities:
 - 22.1. reading;
 - 22.2. writing;
 - 22.3. watching television and films at the cinema;
 - 22.4. driving.
23. These are normal day to day activities. They are the sort of thing people do on a regular or daily basis. The claimant's ability to undertake these normal day to day activities is affected by his learning difficulties. The effects on the claimant are adverse. He takes longer to do these activities than people without his impairment take, or he has to pause more frequently than people without his impairment would have to.
24. The impairment also affects the following activities:
 - 24.1. having a conversation;
 - 24.2. shopping.
25. These are also normal day to day activities. The claimant's ability to undertake them is affected by his learning difficulties, and the effect is adverse. The claimant is not able to have conversations or do shopping as easily as people without his impairment can, because of his short term memory issues.

Substantial

26. Next, I need to consider whether the adverse effects on the claimant's ability to carry out normal day-to-day activities were substantial.
27. I remind myself that a substantial effect is one that is more than a minor or trivial effect.
28. The effect that the claimant's dyslexia and ADHD have on his ability to carry out the day to day activities of reading and writing is more than minor or trivial. The effect is therefore substantial. As Mr Harper explained, the claimant's reading and writing speed is slower than average. In relation to reading, it is even slower when the use of coloured overlays is disregarded.
29. The effect that the claimant's dyslexia and ADHD has on watching television and films, driving, having a conversation and shopping is, when each of these activities is viewed in isolation, minor. However, when considered together, the cumulative effect on these activities is substantial.
30. I have found therefore that there is a substantial adverse effect on the claimant's ability to carry out day to day activities.

Long-term

31. The remaining part of the section 6 definition is that the substantial adverse effect must also be 'long-term'. It is the effect which must be long-term, not the impairment or its symptoms.
32. There was little dispute about this point, particularly in relation to ADHD. The claimant was diagnosed in 2004, and these are life long issues. The claimant is better able to cope with the impact now because of learned coping strategies, but these are disregarded for the purposes of assessing disability. At the time of the events in the claim, indeed from the time the claimant started his employment with the respondent, the effects had lasted for over 12 months.
33. I have therefore concluded that the claimant is disabled for the purposes of section 6 of the Equality Act by specific learning difficulties namely dyslexia and ADHD.

Employment Judge Hawksworth

Date: 28 September 2022

17/10/2022

Sent to the parties on:

J Moossavi

.....
For the Tribunals Office

Public access to employment tribunal decisions:

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.