



EMPLOYMENT TRIBUNALS

Claimant: Mr R Thomas

Respondent: AMC XL Ltd

Heard at: Bristol **On:** 23rd August 2022

Before: Employment Judge P Cadney

Representation:

Claimant: Mrs L Thomas

Respondent: Mr D Stewart (Counsel)

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant was at the material time a disabled person within the meaning of s6 Equality Act 2010 by reason of dyslexia.
- ii) The claimant was not at the material time a disabled person within the meaning of s6 Equality Act 2010 by reason of dyspraxia.

(If either party seeks written reasons for the decision it must apply within 14 days of the promulgation of this judgment)

Reasons

1. By a claim form issued on 1st November 2021 the claimant brought claims of unfair constructive dismissal, automatic unfair dismissal (s103A ERA 1996) and disability discrimination.
2. The case came before Employment Judge Roper on 7th April 2022. He listed the case for today's hearing to determine whether the claimant was at the relevant times a disabled person.
3. Disability – For the reasons given orally I concluded that at the relevant time the claimant was disabled by reason of dyslexia, but not dyspraxia. As set out above

if either party seeks written reasons for the decision it must apply within 14 days of the promulgation of this judgment.

4. The claims of disability discrimination are:
5. Discrimination arising from disability (S15 Equality Act 2010)- The unfavourable treatment is said to be the requirement to wear inappropriate PPE; and the something arising from disability is that “dyspraxia causes anxiety and that a requirement to wear inappropriate PPE increases that anxiety”. This claim as set out in the CMO rests entirely on the asserted condition of dyspraxia.
6. Reasonable Adjustments – The claimant relies on two PCP’s; the first is the requirement to wear inappropriate PPE. This is alleged to have put the claimant at a substantial disadvantage for the same reason given above and relies on dyspraxia as the relevant condition.
7. Secondly the PCP relied on requirement to read information immediately before a grievance hearing. This put the claimant at a substantial disadvantage because of dyslexia.
8. As a consequence of my conclusion that the claimant was not disabled by reason of dyspraxia I expressed the view orally that it followed automatically that:
 - i) The claim for discrimination arising from disability which is based on the proposition that the claimant was disabled by reason of dyspraxia has no reasonable prospect of success;
 - ii) The claim for the failure to make reasonable adjustments relating to the first PCP set out above had no reasonable prospect of success for the same reason.
9. Equally as I held that the claimant was disabled by reason of dyslexia the second claim of the failure to make reasonable adjustments based on the requirement to read information immediately before the grievance hearing will be determined at the final hearing.
10. It follows that I have reached the provisional view that the claims based on the condition of dyspraxia as set out at para 7 above should be struck out as having no reasonable prospect of success. As the claimant had had no notice of this I decided in fairness to give him 14 days to consider the point.

Directions –

11. The claimant is directed to notify the tribunal (marked FAO EJ Cadney) within 14 days of the promulgation of this judgment:
 - i) Whether he objects to the claims identified at para 7 above being struck out and if so the basis of the objection.
12. The parties are directed within 14 days thereafter (marked FAO EJ Cadney):

- i) To notify the tribunal of the number of witnesses each party intends to call and to provide an agreed time estimate for the final hearing;
- ii) To agree draft directions for the final hearing (these should include a draft bundle page limit and the witness statement word count) .

Employment Judge P Cadney
Date: 23 August 2022

Order sent to the Parties: 06 September 2022

FOR THE TRIBUNAL OFFICE