



THE EMPLOYMENT TRIBUNALS

Claimant: Miss K Adams

Respondent: Elizabeth Abbots
T/A Ladybirds Travel

On: 2 September 2022

Heard at: Norwich (by CVP)

Before: Employment Judge M Warren

Representation
Claimant: In person
Respondent: Mr Henry, Litigation Consultant

OPEN PRELIMINARY HEARING

JUDGMENT

1. The Claimant is not a disabled person as defined in the Equality Act 2010 and her complaint of disability discrimination is therefore dismissed.
2. The Claimant's claim of unfair dismissal continues and is listed for Hearing in person with a time estimate of one day, before an Employment Judge sitting alone at the **Cambridge Employment Tribunals, Cambridge County Court, 197 East Road, Cambridge, CB1 1BA**, on **8 March 2023**.

REASONS

Background

3. Miss Adams was employed by the Respondent as a Passenger Assistant looking after children with special needs whilst being transported in a mini-bus operated by the Respondent. Her employment began on 5 November 2017 and ended with her dismissal on 5 May 2021. After Early

Conciliation on 25 May 2021, she issued these proceedings on 5 August 2021. Her complaints are of disability discrimination and unfair dismissal.

4. Upon receipt of the ET3, the case was listed for this Open Preliminary Hearing in order to determine whether Miss Adams was a disabled person in accordance with the Equality Act 2010. She was directed to file an Impact Statement and supporting medical evidence and she has done so.

Evidence Today

5. The Respondent prepared a PDF Bundle for today, for which I am grateful. Miss Adams had that Bundle before her.
6. Miss Adams gave evidence under oath, attested to the accuracy of her Impact Statement at page 34 of the Bundle and answered a few questions from Mr Henry and from me.

The Law

7. The definition of a disabled person for the purposes of the Equality Act 2010 is contained in Section 6, which refers to an impairment which has a substantial and long term adverse effect on a persons ability to carry out normal day to day activities.
8. Paragraph 2 to Schedule 1 of the Act explains that the effect of an impairment is long term if it has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of that person's life, or if it has ceased, it is likely to recur.
9. The burden of proof lies with a claimant to prove that she is disabled.
10. A person must meet the definition of disability as at the date of the alleged discrimination, (not as at the date of the hearing). If the impairment has not lasted 12 months as at the date of the alleged discrimination, it must be expected to last 12 months as at that time. The same applies in assessing the likelihood of reoccurrence.

Findings

11. Miss Adams confirmed to me that the impairment upon which she relies is sciatica.
12. Miss Adams also confirmed to me that the act of discrimination about which she complains is her dismissal, which was on 5 May 2021.
13. Miss Adams confirmed, as she stated in her Impact Statement, that everything started in February 2021, when she began to feel a lot of pain in her hip.
14. Miss Adams first consulted a Doctor on 1 March 2021. It was thought to

be a trapped nerve and she was prescribed pain killers. She saw her Doctor again on 20 August 2021. The entry in her medical records record that the symptoms had started months ago. Miss Adams confirmed that was in February or March 2021.

15. A letter of 11 October 2021 from Ravenscroft Healthcare Limited to her GP referred to the onset of symptoms in March 2021.

Conclusions

16. It is clear that the impairment Miss Adams relies upon manifested itself in February or March 2021 and by the date of her dismissal, had not lasted for more than 12 months.
17. There is no evidence before me on which I could make a finding that as at 5 May 2021 the symptoms of the impairment could be said to be likely to last more than 12 months, or to reoccur.
18. For these reasons I must conclude that as at the relevant time on 5 May 2021, Miss Adams was not a disabled person as defined in the Equality Act 2010.
19. Her claim of unfair dismissal is unaffected and I will case manage that separately.

Dated: 25 October 2022

Employment Judge M Warren

ORDERS SENT TO THE PARTIES ON

10/11/2022

4 November 2022

FOR THE TRIBUNAL OFFICE