



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G McCarthy  
**Respondent:** Thurrock Council  
**Heard at:** East London Hearing Centre (by CVP)  
**On:** 23 November 2022  
**Before:** Employment Judge Mr J S Burns

## Representation

**Claimant:** In person  
**Respondent:** Mr S Crawford (Counsel)

# JUDGMENT

1. The Claimant was not disabled during her employment with the Respondent.
2. The disability discrimination claims are struck out.

# REASONS

## Introduction

1. I had to decide as a preliminary issue whether at all material times, (which the Claimant confirmed was March 2021 to 13/8/2021) the Claimant had a disability within the meaning of section 6 of the Equality Act 2010, she relying on a claimed mental ill-health in the form of stress and anxiety. Although reference had been made previously to bronchitis as a possible relevant impairment, the Claimant confirmed that she was not suffering from this and did not claim it as a relevant impairment.
2. I was referred to a PH bundle of 115 pages. I heard evidence from the Claimant based on her impact statement dated 11/8/22. Unfortunately, although the Claimant had been given clear written guidance in a CMO dated 18/7/22, as to what was required in her impact statement, she did not really provide this. In both her impact statement and in her oral evidence and submissions today she

focussed mainly on her complaints about her treatment by the Respondent. What she did say about the effect on day-to-day activities did not support her case.

### **Relevant law**

3. Per section 6 Equality Act 2010, a person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities.
4. “Substantial’ means “more than minor or trivial” (per section 212) and a limitation going beyond the normal differences which may exist between people.
5. In assessing whether there is or would be a substantial effect, one disregards measures such as medical treatment which are being used to treat it. Sch 1 para 5(1) and (2). However, account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy to prevent or reduce the effects of an impairment on normal day to day activities.
6. Normal day to day activities are activities such as walking, driving, typing and forming social relationships.
7. The effect is long term if it has lasted or is likely to last 12 months or for the rest of the person’s life (Sch 1 para 2).
8. Under Section 6(5) EA 2010 the Secretary of State has issued guidance on matters to be taken into account in determining questions relating to the definition of Disability.

### **Findings of fact**

9. The Claimant suffered a bereavement when an uncle who she had been close to died in 2019, and she suffered low-mood as a result.
10. She felt stressed and run down in February 2020 and did not feel capable of coping with a new work pattern and was signed off work by her GP.
11. The COVID 19 pandemic lockdowns started in March 2020. The Claimant, who had a history of chest infections was worried about catching Covid19, told her GP she was emotionally fragile. She returned to work (from home) in May 2020.
12. In March 2021 the Claimant was resistant to the requirement that as part of her work she should carry out “sign-ups” of new tenants, because this would involve face-to-face encounters with the occupants of the Respondent’s housing.
13. Her relationship with her Line Manager deteriorated and she was signed off again with work-related stress and remained absent from work until her dismissal on 13/8/21.
14. She has not taken any anti-depressant medication and the medical notes do not show any referrals for psychological therapies, referrals to specialists, or any formal diagnosis of depression or other recognised clinical condition.

15. She limited her day-to-day activities during the Covid19 lockdowns in accordance with government regulations at the time - for example walking her dog for only one hour a day but these formal regulations affected everyone. At other times, because she wanted to be cautious and avoid catching Covid19, she limited her own activities by having shopping delivered rather than going shopping herself, and by not visiting her relatives. Apart from these restrictions, which were a normal and very common response to the pandemic, her day to day activities were not adversely affected.

## **Conclusion**

16. This is a case in which the Claimant has shown that she became stressed and anxious because of a combination of adverse life events namely bereavement, changes at work, worry caused by Covid19, and a poor relationship with a Line Manager, but I do not find she has shown she had a mental health impairment. Her responses were within the range of normal reactions to adverse life events and especially the Covid 19 pandemic which was an unprecedented situation which many people were naturally worried by.
17. The Claimant has not discharged the onus of proof to show she was disabled within the meaning of the Equality Act 2010 at the relevant time.

**Employment Judge J S Burns**  
**Date: 23 November 2022**