



EMPLOYMENT TRIBUNALS

Claimant: Samir Bunjo

Respondents: Progress Vehicle Management Limited

Heard at: London South (by CVP) **On:** 22 November 2022

Before: Employment Judge Cheetham KC

Representation

Claimant: in person

Respondents: Mr P Byrne (solicitor)

JUDGMENT

1. The Claimant was not disabled within the meaning of the Equality Act 2010 s.6 at the material time.
2. The complaints of discrimination arising from disability, a failure to make reasonable adjustments and harassment related to disability are therefore dismissed.

REASONS

1. This hearing was listed to consider whether the Claimant was disabled at the time of the events that are the subject of his claim.
2. Under s.6 of the Equality Act 2010
 - (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.*
 - (2) *A reference to a disabled person is a reference to a person who has a disability.*
3. Relevant to this hearing, the time at which to assess the disability (i.e. whether there is an impairment which has a substantial adverse effect on normal day-to-day activities) is the date of the alleged discriminatory act (Cruikshank v

VAW Motorcast Ltd [2002] ICR 729, EAT). “Substantial” is defined in s.212(1) of the Act as meaning ‘more than minor or trivial’.

4. The Claimant’s case is that he was disabled at the material time because of (a) his heart condition and (b) anxiety and depression. It is not in dispute that, in February 2019, he suffered a heart attack, but the issue was – in terms – how that had affected him subsequently.

Submissions

5. The Claimant had, as directed, provided the medical evidence upon which he relied, together with a witness statement, in a file of documents running to 235 pages. However, the statement, which was meant to be an “impact statement”, did not deal in any great detail with the impact of his impairments on his day-to-day life, but was focused more on the Claimant’s work history.
6. At this hearing, the Claimant’s treatment at work was also the focus of his submissions, rather than the evidence showing that he was disabled. He was not able to direct the tribunal to any medical evidence in particular, saying – rightly – that there was a lot of it to read. However, he did say that he had not recovered from the heart attack he suffered in February 2019 and that he currently struggled to eat and communicate and could not take care of himself. He said his heart only functioned at 30% of its normal capacity.
7. For the Respondent, Mr Byrne pointed to the lack of any supporting evidence in the medical notes to suggest that the Claimant’s heart condition had caused a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. He noted that, for example, there was no medical evidence that the Claimant’s heart only functioned at 30% of its normal capacity. He also said that the Claimant had failed to set out – as directed – the impact of his condition on his daily life, so that it was difficult to gauge that impact.
8. Mr Byrne suggested that, if this was the case with the heart condition, it was even more so with the Claimant’s anxiety and depression. It was recorded in the GP notes on 2 occasions, but there was no clear diagnosis and no medical opinion explaining the condition.

Discussion

9. The tribunal noted, as set out above, that the statement did not focus on the impact of the conditions, but found that more assistance could be gained from the medical notes. Although the Claimant was unable to assist the tribunal with any particular entries, the tribunal read through the (approximately) 150 pages of medical documents, which included GP notes, letters from the Cardiology Department at East Surrey Hospital, fitness for work notes and also some documents that were not in English.
10. Dealing first with the Claimant’s heart condition, the GP notes record the heart attack and symptoms suffered in the short term afterwards, together with medication prescribed. As is often the case with GP notes, it is not always easy to decide what is simply recording what the GP has been told. Some of the hand-written notes were also difficult to decipher.

11. However, there are letters from the Department of Cardiology, which are highly relevant and which span the relevant time between the Claimant's heart attack in February 2019 and his resignation on 1 September 2020. First, on 16 July 2019, after setting out the diagnosis and listing the medication, the consultant stated: "*I reviewed Mr Bunjo along with his wife in my clinic today. He mentioned to me that he feels fine and he has not had any further chest pain since he went home*". It then referred to symptoms caused by medication, which the Claimant had now stopped taking.
12. Next, on 19 November 2019, the consultant wrote: "*Symptom wise he is feeling well in himself, he denied any chest pain neither at rest nor on exertion, he also denies any shortness of breath, dizzy spells or any loss of consciousness*".
13. Finally, on 14 July 2020, following a telephone consultation, the consultant wrote: "*He mentioned to me that he is doing reasonably well at the moment. No history of any breathlessness or chest pain. Recently, he was feeling sick and had upset stomach and there was some stress at work and hence he thought it could be related to his beta-blocker and Eplererenone and he stopped both. After stopping those, he started to feel better.*"
14. However the Claimant may feel today, it does not appear that at the material time he was complaining about his heart condition, in the sense that it was affecting in any significant way how he felt or what he could do. These letters from the cardiologist are the clearest evidence from what has been provided by the Claimant (and the tribunal can only rely on the evidence before it), but they do not assist him in showing that his heart condition amounted to a disability.
15. There is even less evidence to show he suffered from a mental impairment at the material time, with no clear diagnosis or prognosis in the medical documents. The tribunal does not doubt that the circumstances of his heart attack were very stressful and that they caused anxiety, as would any serious medical incident. However, there is insufficient evidence to allow the tribunal to conclude that the Claimant's anxiety and depression amounted to a disability within the definition in the Equality Act.
16. It therefore follows that the Claimant was not disabled at the material time and, as a consequence, his complaints of disability discrimination are dismissed.

Employment Judge Cheetham KC

Date 22 November 2022