



EMPLOYMENT TRIBUNALS

Claimant: Mr Ciepluch

Respondent: DHL Services Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (by telephone)

On: 20 October 2022

Before: Employment Judge Daniels (sitting alone)

Appearances:

For the claimant: In person and with the support of his representative Ms Justyna Rapiejko (and also assisted by a duly sworn in interpreter).

For the respondent: Ms Baylis (Counsel).

JUDGMENT

1. The claimant was a disabled person from 1 April 2021 until 18 November 2021 by reason of the physical impairment of asthma/lung impairment/rosacea (a skin condition) and also a disabled person by reason of the mental impairment of depression/anxiety.

REASONS

2. The Respondent prepared a helpful but lengthy bundle of documents (the 'Bundle'), which had been sent in electronically to the Tribunal in advance of the CVP preliminary hearing. The Respondent had also provided a skeleton argument, and legal authorities. The Claimant had provided an impact Statement and a very detailed follow up letter of 21 October 2022 and his medical records.

Summary facts

3. The Claimant has a history of asthma, rosacea (skin condition) and depression. He was employed by the Respondent as a Warehouse Operative from 1 November 2016. The Respondent mandated mask wearing within their

workplace from around 24 September 2020. The Claimant told the respondent that he was exempt from mask wearing because of his asthma, and says that following this he was subjected to alleged less favourable treatment, a failure to make reasonable adjustments and harassment and victimisation by his manager/the employer. In April 2021, the Respondent asked the Claimant for medical evidence of his mask exemption. The claimant raised a formal grievance. The matter was not resolved to his satisfaction. The Claimant's claim for disability discrimination was made via a claim form presented on 19 October 2021. The respondent defends the claim and denies the claimant having a disability for the purposes of the Equality Act 2010. This was a preliminary hearing on whether the claimant was disabled.

Key Medical evidence

4. I think it will be of assistance to summarise the key medical evidence that was drawn to my attention.
5. The claimant previously lived in Poland. He has taken anti-asthma medication in the UK since 2007: including Salbutamol, Formoterol 12 µg, a Seretide 125 Evohaler, Fluticasone 125mg and Fostair.
6. The Claimant's UK Medical Records state: the Claimant has been regularly tested for the lung function - Peak flow test since 2008.

"Peak flow is a simple measurement of how quickly you can blow air out of your lungs. It's often used to help diagnose and monitor asthma".
7. The medical reports indicate that the Claimant's lung function has decreased with each examination, from 89% in June 2008 (460L/min), 77% in December 2012 (400L/min), 69% in July 2017 (360L/min) to only 54% in February 2022 (280L/min).
8. In 2012 Claimant was diagnosed with depression. The Claimant started the first treatment for depression in England on 23 July 2012 which lasted until 26th November 2013. He was prescribed medication of Sertraline 50mg.
9. The second treatment for depression started on 2 November 2015. This was a longer period of depression lasting until August 2019, during which time the Claimant was taking Citalopram 10, 20 or 40 mg, the dose selected based on his health condition at the time. The treatment lasted almost 4 years.
10. Further treatment began for depression on 8 March 2021 and continues today. The claimant has also undergone several therapy sessions since August 2021 (group and individual).
11. The key medical records state as follows (typos are not corrected):
12. 21 December 2020 GP consultation

“tc. needs inhaler, allergic to ? many things and food . has skin allergies as well. Hay fever on and off. Chest tightness/ wheezey. SOB + cough nil. takes flu jab annually from superdrug, works as whole sale operator @BHL. Dusty environ makes it worse...

Plan: s/w asthma nurse if needed 2x/week ...Saibutamol 100micrograms/dose inhaler CFC free - 200 dose - inhale 2 doses as needed”

13. 8 March 2021: GP

“Thinks he has depression again, having problems with work has had treatment before for depression before, not having self harm thoughts, but doesn't feel he is coping very well especially with being on furlough.”

14. 1 April 2021; GP

“Discussion about treatment..still feeling low.

Mainly due to disagreement with employer over whether he should wear a mask at work or not. Says it makes him feel bad.

is in telephone meetings with HR.

Advised that needs to sort out problem, but will increase citalopram to 40mgs in case it helps. Has not helped over last month...(Citalopram 40mg tablets)”

15. 26 Apr 2021: Telephone consultation GP

“Overview Notes (Y0028) - Pt requesting Fexofenadine for hayfever- issued. Was prescribed Rozex last month for Rosacea but pt states it has not made any difference.

...Fexofenadine 180mg tablets - 30 tablet - Take one daily to suppress allergic symptoms”

16. 27 April 2021; GP

“Telephone consultation: please see pictures of face, pt has been using Rozex for 1 month, says no change. Do we need to prescribe an alternative?

Spoken to pt -Currently being treated for rosacea. Reports rash is still ongoing to face and tends to concentrate to the nose region-describing redness & pustules that comes and goes. Rozex not helping much. Pt reports he has oily type of skin usually anyway but have had this rash for some time now and can sometimes cause itchiness & burning type of sensation. Pt would like something else to try.

Apyrexix, reports some pustules can discharge at times.”

17. Risk assessment May 2021 (7 April consultation)

“Aleksander has asthma which he manages with an asthma pump. He also experiences increased levels of anxiety when wearing a mask for long periods. Due to not being able to breathe properly. He also has a long term skin condition which causes redness, itchiness and sores when wearing a surgical face mask. Occupational health have advised against the use of a surgical face mask.

OCH have also advised Aleksander will be able to wear a visor even given its reduced protection.

Aleks has advised he is not able to wear a mask or a visor due to the visor causing sores around his head from the band.

Not able to wear any covering. Will not be returning to work until a time of which DHLs site policy changes or he is able to wear a covering”

18. 27 May 2021 Dr Adeela Qureshi; GP

“Patient refused wearing a mask at work - ferllow. now asking to come back to work feeling anxious / low mood / not sleeping well on medication / stressed out
New MED3 statement issued: Not fit for work - Valid from 27 May 2021 to 16 Jun 2021
Diagnosis: Depression”

19. 15 Jun 2021 (General Medical Practitioner) Telephone consultation

“Reports he has been feeling exhausted because he can not sleep and this leads to overeating. 3 months of insomnia, sleeps around 2-3 hours I night, not napping in the day. I also would like med 3 as he is still not ready to go back, works in warehouse.
...not fit for work...med 3 done for two more weeks and trial of phenergan, review rf not improving. Promethazine hydrochloride 25mg tablets - 56 tablet – take or two at night to help with sleep.”

20. 16 Jun 2021 17:47 Surgery: Claire Mooney (Paramedic)

“Salbutamol 100micrograms/dose inhaler CFC free - 200 dose - inhale 2 doses as needed.
Fexofenadine 180mg tablets - 30 tablet - Take one daily to suppress allergic symptoms”

21. 28 July 2021 10:58

“Surgery: Dr Warda Salim (GP Registrar) Discussion about treatment rash on his face and nose - has had it previously - wanting antibiotics
looked back in history - rosacea?
previously gel has worked well - only needed atbs once - advised this time may not need atbs, gel may be sufficient,
need to assess with pictures and review”

22. 4 Aug 2021 18:11 I; Sent online: Request for 'Citalopram 40mg tablets' by patient

“23/8/2021
Letter from Total Wellbeing

I am writing to confirm that you have been allocated a place on our CBT For Depression Course. This is an 12 week course which teaches you skills and techniques based on Cognitive Behavioural Therapy (CBT) principles to help you manage your current symptoms.”

23. 5/2/2022; letter from the government dept the DWP approving him for a Personal Independence Payment.

“I have looked at your claim and decided I can award you the enhanced rate... to help with your daily living needs from 26 August 2021 to 26 July 2024 and I can award you the enhanced rate of a week to help with your mobility needs from 26 August 2021 to 26 July 2024”

The DWP report included the following extracts:

“Washing and bathing (scored out of 8)

You need assistance from another person to be able to get in or out of a bath or shower.

Managing your toilet needs (scored out of 8)

You need an aid or appliance to manage your toilet needs 2.

Dressing and undressing (scored out of 8)

You need assistance from another person to dress or 2 undress your lower body.

Mixing with other people (scored out of 8)

You need to be prompted by another person to engage 2 with other people.

Your total score for the **daily living** part of **PIP** is **12** points. This means you have been awarded the **enhanced** rate.”

24. 22 January 2022 Letter from mental health team:

This letter appears to relate mainly to a mental health screening on 9 August 2021:

“I am writing to confirm that the above named client is receiving support from our service. Aleksander referred themselves to our service on 6th of August and received a screening assessment on 09/08/2021. Aleksander informed me that he has been suffering from depression, anxiety and his physical health. He has been isolating at home for past year as his physical and mental health is very poor. At their screening assessment we completed some mood scores, which showed the following:

PHQ 9 - 24 - This scores indicates severe symptoms of depression and low Mood

GAD-7 - 20 - This scores indicates severe symptoms of anxiety
Following screening it was agreed that we would offer 8 sessions of cognitive behavioural therapy. I have now seen Aleksander for 3 sessions of cognitive behavioural therapy. Treatment is reviewed at regular intervals but our plan is to complete minimum 8 sessions.

At our last session together their scores were as follows:

PHQ 9 - 23 - This scores indicates severe symptoms of depression and low Mood

GAD-7 -15 - This scores indicates severe symptoms of anxiety”

The Law

25. The Equality Act 201 (“EqA”) provides that a person has a disability if he or she has a ‘physical or mental impairment’ which has a ‘substantial and long term adverse effect’ on his or her ‘ability to carry out normal day to day activities’.
26. Supplementary provisions for determining whether a person has a disability is contained in Part 1 Sch 1 EqA which essentially raises four questions:

- a. Does the person have a physical or mental impairment?
- b. Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
- c. Is that effect substantial?
- d. Is that effect long term?"

27. Although these questions overlap to a certain degree, when considering the question of disability, a Tribunal should ensure that each step is considered separately and sequentially (**Goodwin v Patent Office [1999] IRLR (EAT)**).
28. The EqA 2010 Guidance states:
- “In general, day to day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household takes, walking and travelling by various forms of transport, and taking part in social activities”
29. The EqA 2010 Guidance (D3) indicates that normal day-to-day activities can include ‘general work’.
30. The EAT in **Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763** concluded that ‘normal day-to-day activities’ must be interpreted as including activities relevant to professional life. It emphasised that the phrase is to be given a broad definition that can include irregular but predictable activities that occur in professional life.
31. Furthermore, a non-exhaustive list of how the effects of an impairment might manifest themselves in relation to these capacities, is contained in the Appendix to the Guidance on matters to be taken into account in determining questions relating to the definition of disability. Whilst the Guidance does not impose any legal obligations in itself, tribunals must take account of it where they consider it to be relevant.
32. The requirement that the adverse effect on normal day to day activities should be considered a substantial one is a relatively low threshold. A substantial effect is one that is more than minor or trivial (s.212 EqA and B2 Guidance).
33. Para 5 Sch. 1 Part 1 EqA provides that an impairment is treated as having a substantial adverse effect on the ability of the person to carry out normal day to day activities if measures, including medical treatment, are being taken to treat or correct it and, but for that, it would likely to be the effect. In this context, likely is interpreted as meaning ‘could well happen’. The practical effect is that the impairment should be treated as having the effect that it would have **without the treatment in question** (B12 Guidance).
34. In determining the effects of an impairment without medication, the EAT has stated that:

“The tribunal will wish to examine how the claimant’s abilities had actually

been affected at the material time, whilst on medication, and then to address their minds to the difficult question as to the effects which they think there would have been but for the medication: the deduced effects. The question is then whether the actual and deduced effects on the claimant's abilities to carry out normal day-to-day activities [are] clearly more than trivial" — Goodwin

35. The question of whether the effect is long term is defined in Sch. 1 Part 2 as:
- "a. Lasting 12 months;
 - b. likely to last 12 months;
 - c. likely to last the rest of the person's life."
36. Again, the Guidance at C3 confirms that in this context 'likely' should be interpreted as meaning it could well happen.
37. The Guidance (C4) also clarifies that in assessing likelihood of the effect lasting 12 months, account should be taken of the circumstances at the time of the alleged discrimination. Anything which took place after will not be relevant in assessing likelihood.
38. Finally, the burden of proof is on the claimant to show he satisfied this definition. 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 (**Cruickshank v VAW Motorcast Ltd 2002 ICR 729, EAT**). This is also the material time when determining whether the impairment has a long-term effect.
39. The impairment will only amount to a disability if it has a substantial adverse effect on the individual's ability to carry out "normal day-to-day activities". The test is an objective one of causation: the impairment must be found by the tribunal to have the adverse effect, it is not enough that the claimant subjectively believes this to be the case **Royal Bank of Scotland plc v Morris UKEAT/0436/10**
40. The EAT in **Herry UK EAT 0100/16** expanded on this distinction drawn in **J v DLA Piper** and made the following observations:
- "a. There is a class of case where the individual will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities.
 - b. The usual requirement to show an adverse effect on normal day-to-day activities remains in stress cases, and even where an employee becomes so entrenched in their position that they will not return to work, this does not necessarily mean that they are suffering a mental impairment.
 - c. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise, are not of themselves mental impairments: they may simply reflect a person's character or personality."
41. In response to the Covid 19 pandemic, new laws came into effect on 24 July 2020 mandating the wearing of face coverings in 'relevant places', as set out within **The Health Protection (Coronavirus, Wearing of Face Coverings in a**

Relevant Place) (England) Regulations 2020. The Regulations set out a number of reasonable excuses, which would potentially exempt individuals from the requirement, such as where the individual was unable to wear a face covering because of a disability, within the meaning of section 6 of the Equality Act 2010.

Submissions

42. The Respondent submitted that neither the Claimant's asthma or mental health condition, had a substantial adverse effect on day-to-day activities. The Respondent helpfully provided a schedule of its position on each of the 15 impairments/disabilities, which was written after the original disability impact statement but before the addition of new information on 21 September 2022. Counsel also used this schedule as a base for submissions.
43. The respondent's core case was that there appear to be several overarching problems with the claimant's position. First, the Claimant not clearly setting out the substantial day to day impact in relation to each condition or at all (the Respondent counsel noted that further information had been provided with an updated statement but this did not cover all conditions and was said to be rather inconsistent with other documents or exaggerated. Secondly, where the Claimant does set out the day to day impact of the condition, it contradicted the medical evidence from the time and the reflections of the Respondent witnesses who worked with him. Thirdly, some of the conditions appear to be limited to particular times well before the events and so he may have problems establishing them as disabilities at the relevant time or relate to the position after the claim was submitted.
44. The respondent appeared to concede that at some stage his depression became a disability but suggested that this was, in any event, not substantial and long term until a lot later than suggested by the claimant.
45. The claimant's case is that his conditions were described and sent to the Respondent in the Impact Statement on the 11th April 2022. He says that on the Respondent's initiative the Claimant was referred twice to the Occupational Health Assessment (the first time on 27 January 2021 and the second time on 6 April 2021). Both OH Reports stated to the Respondent that the claimant could not wear any cover face at work due to difficulties with breathing (Asthma). One report stated that it cannot be ruled out that wearing a mask may lead to increased anxiety and breathing difficulties with exacerbation of his skin condition.
46. The claimant submitted that his asthma had a significant impact on his daily functioning and life. The Claimant says he has times when he is breathless and he has problems managing daily tasks including getting dressed, having a shower, shopping and cooking. The Claimant says he feels at his worst first thing in the morning. His muscles are stiff and sore. He stated that he had always had his inhaler beside him. When he has a bad day he has to sit down to wash or shave. He gave evidence that he had to care when bending as this made breathing more difficult and he has to rest in between putting on items of clothing.

Activities that the Claimant performs can take him more time due to quick fatigue and breathlessness.

47. He says it is difficult for him to climb stairs. Wearing a mask, clothes or scarves adjacent to the neck is difficult he says and causes shortness of breath and panic. The claimant also gave evidence that for over 35 years the Claimant had used an inhaler (every day) and the Claimant had to carry his "easy breath" inhaler with him at all times because of his asthma. Strong emotions such as stress can cause the Claimant's asthma to worsen. Such a situation took place when the Claimant was forced by the Respondent to put a cover on his face. This situation caused, he says, the Claimant to have breathing problems and a feeling of shortness of breath and the fear of suffocation. The claimant had previously had a severe anaphylactic shock and a related panic attack.
48. He says the asthma is a progressive, long-term and substantial disease and will affect the Claimant for the rest of his life.
49. In 2014 the Claimant says he was also diagnosed with skin diseases (regular skin infections) - Rosacea is a progressive vascular disorder that affects the face and the eyes. Symptoms can include redness, flushing, burning, visible blood vessels, swelling, bumps, and pimples. His case was that this made protecting his face more important and made wearing a mask more risky and more difficult as he was liable to suffer unpleasant rashes as a result etc.
50. As regards his mental health, the claimant's case was that each time depression came back it got deeper, and longer to heal. In addition, he averred that it caused disruption in daily functioning, ranging from everyday activities such as getting out of bed, washing himself, etc, to interpersonal relationships, leaving home or working. The Claimant's said that he had problems with focusing and concentrating including activities such as cooking, cleaning and watching TV when symptomatic. There are days he says when he spends all his time in bed because he doesn't see a sense why he should get out of his bed. The Claimant said he also had nightmares and night sweats.

Conclusions

Asthma and related lung condition

Was the condition long term?

51. The asthma/lung impairment is clearly a physical impairment with long term effects as the Claimant has had the condition for over 35 years.
52. It is also a recurring condition as it is very likely to recur and has done repeatedly over the last 15 years. The medical notes show this very clearly.

Was the condition substantial?

53. The next key issue is whether the impairment was substantial at the material times (from 1 April 2021 to 18 October 2021-when discrimination allegedly took place).
54. I note the extent of his lung impairment being evidenced by a lung capacity at between 69% in 2017 and 54 % in Feb 2022. This was very strong evidence of a condition that was more than minor. It appears reasonable to infer that at around April to November 2021 his lung capacity was just over half of a normal person. That is a substantial deficiency on any view. This evidence supports the account of a real difficulty performing certain day to day activities when symptomatic and is consistent with his account.
55. I also note his treatment for many years with daily medication and steroid based asthma medication (salbutamol etc) not just a non-steroid asthma inhaler, typically used for more minor asthma. The long list of asthma medications diagnosed over time are listed further above and support his case that his asthma was not minor.
56. I note there is consistent and repeated reference to chest problems, breathing issues and wheeziness in his medical records.
57. I then looked closely at the effect of the condition when symptomatic not when he was well or managing fine. Although the claimant perhaps focussed his evidence on when he was feeling worst, it was not unreasonable for him to do so.
58. I accept the claimant's evidence that when symptomatic (even when having access to medication) he had times between 1 April and 18 October 2021 when he was breathless and had problems managing daily tasks including getting dressed, having a shower, shopping and cooking. I also accept the claimant's evidence that when he had a bad day he has to sit down to wash or shave. He also gave evidence that he sometimes had to care when bending as this made breathing more difficult and he had to rest in between putting on items of clothing. I accept it was difficult for him to climb stairs during the relevant period and when having an asthma episode. This evidence was credibly backed up by the lung capacity test.
59. There is also the DWP report where he was granted enhanced allowance for PIP. Albeit the DWP report post dates November 2021 there is no evidence of any material change in his asthma condition in the period and it is consistent with his evidence about the position in 2021.

Deduced effect

60. I then turned to the issue of deduced effects and the impact of both the reliever and preventer medication taking into account para 5 Sch.1 Part 1 EqA 2010, which provides that an impairment is treated as having a substantial adverse effect on the ability of the person to carry out normal day to day activities if measures, including medical treatment, were being taken to treat or correct it and, but for that, it would be likely to be the effect. In that context, I considered that likely is interpreted as meaning 'could well happen' and concluded that they

could well happen. Indeed, it was very likely that this would happen in this case. The claimant gave clear evidence that for over 35 years the Claimant had used an inhaler (every day) and the Claimant had to carry his “easy breath” inhaler with him at all times because of his asthma. This account is not consistent with him being able to cope without medication. Indeed, it reliably suggests the reverse.

61. In simple terms, the evidence is clear that without such medication the effect would have been materially worse and the claimant would need to often stop what he was doing or go and lie down (at least without using his inhaler). I do not accept that the inhaler cured or controlled his asthma completely: it only alleviated some of the symptoms.
62. I also accept the claimant’s evidence that wearing a mask, clothes or scarves adjacent to the neck was difficult for him at the relevant times and caused shortness of breath and panic. This is supported by the Occupational Health reports and the above medical records.
63. I also consider that wearing a mask was a day to day activity during the time under assessment. During the pandemic a mask was an item of clothing (such items are mentioned in the statutory list of day to day activities) which could be mandatory in certain places but which he could not wear without difficulty. Not only would this be likely to affect his already weak breathing and lung performance and place him under stress which itself could exacerbate his asthma but it also risked a flare up of his skin impairment. When the Claimant was forced by the Respondent to put a cover on his face this situation caused, he says, the Claimant to have breathing problems and a feeling of shortness of breath and the fear of suffocation. The claimant had previously had a severe anaphylactic shock and a very bad related panic attack where he feared he was going to die and could not breathe and he was very anxious and worried about having another. This was not an irrational fear for someone with this history.
64. Wearing a mask was in any event mandated in his workplace (save for reasonable exceptions, which were not afforded to him). So it was a day to day activity for him (following Paterson), which he had real difficulty in doing.
65. Conditions which have a related effect need to be cumulated, not considered in isolation. I cumulated the effect of his asthma and his rosacea impairment with regard to his ability to perform his day to say activities including the activity of wearing a mask. There was evidence before me to indicate that his rosacea was a related and long term skin impairment that exacerbated his ability to do so. This made the overall effect of his physical impairments more significant.
66. For all of these reasons there was clear evidence before me of the positive effect of the asthma on the Claimant’s ability to carry out normal day-to-day activities.
67. Without such medication, it is clear that the impact of his physical impairments was adverse and substantial, taking account the extent of his condition described above and the relatively low threshold of what is ‘substantial’.

68. I therefore concluded that at all material times between 1 April 2021 and 18 October 2021 the Claimant had the physical impairment of asthma; that such an impairment had an adverse impact on his day-to-day activities when symptomatic and without taking medication, and when considering the deduced effects, the Claimant's asthma was a physical impairment that adversely affected his ability to carry out day-to-day activities in a way what was more than merely trivial or minor.
69. The Claimant was therefore a disabled person at all material times by reason of his physical impairments of chronic asthma and rosacea.
70. For the avoidance of doubt, the asthma and lung condition was also progressive (see the deteriorating lung functions test referenced above). Had the condition not been a substantial long-term condition at the time assessed (which I have, in fact, found it was), it would be in the future as it was having some effect at the relevant times and this would plainly be substantial in the future. In fact, the effect was substantial already. Hence, the asthma and lung impairment condition qualified as a disability in any event. This is just for the avoidance of doubt as the claimant also relied on a progressive condition.

Depression/anxiety

71. I accept the Claimant's descriptions of the effect of his mental health conditions at the relevant time, and that some of those impacts related to day-to-day activities.
72. The depression condition had lasted on and off since 2016. It was plainly long term.
73. It was in any event a recurring condition and I find that a recurrence could well have happened to the claimant from April 2021 onwards. Indeed, it did and became a severe episode from 2021. This was his third bout of long-term depression in a relatively short period.
74. I concluded that there was clear evidence of substantial effects on normal day-to-day activities due to stress, anxiety, or depression. I accept the claimant's evidence on the substantial effect of his depression and anxiety as described above and covered in detail in the medical records.
75. I then again turned to the issue of deduced effects and the impact of medication taking into account para 5 Sch.1 Part 1 EqA 2010, which provides that an impairment is treated as having a substantial adverse effect on the ability of the person to carry out normal day to day activities if measures, including medical treatment, were being taken to treat or correct it and, but for that, it would be likely to be the effect. In that context, I considered that likely is interpreted as meaning 'could well happen' and concluded that they could well happen. Indeed, it was very likely that this would happen in this case.
76. The claimant's account is consistent with him not being able to cope without medication for depression and anxiety.

77. I do not agree with the Respondent's submissions, that the Claimant's circumstances fall squarely within the **DLA Piper** and **Herry** cases, in that what the Claimant experienced was solely due to a reaction to difficulties at work rather than a mental impairment. The medical notes are not consistent with such a narrative and the condition was more deep-seated and serious than suggested by the respondent.
78. I was therefore satisfied that there was clear evidence before me of the effect of the mental health condition (anxiety/depression) on the Claimant's ability to carry out normal day-to-day activities without medication.
79. Further, the claimant embarked on group and individual counselling treatment from August 2021. Without such treatment his condition would have been likely to be even worse.
80. Based on all the evidence before me, I find that the depression was again substantial from 1 April 2021. The condition with medication still had a substantial effect on normal day to day activities.
81. Without medication repeatedly prescribed by his doctors it is reasonable to infer it would have been materially worse. The impairment was a disability from 1 April 2018 to 18 October 2018 (the date of the ET1).
82. In view of the condition also being in my conclusion a serious recurring condition, based on the medical history and the duration and depth of the condition, I find the depression/anxiety mental health condition was also a disability at all material times on this basis (including from 1 April 2021 to 18 October 2021 on this basis).
83. The claimant was therefore also disabled at the material time between 1 April 2021 and 18 October 2021 due to a mental health impairment.

Employment Judge Daniels

14 November 2022

Sent to the parties on:

15/12/2022

For the Tribunal:

N Gotecha