



EMPLOYMENT TRIBUNALS

Claimant: Mr C Baugh

Respondent: Work it Group Ltd (1)
Charles Enstone-Watts (2)

Heard at: via CVP **On:** Tuesday 10th January 2023

Before: Employment Judge A Frazer

Appearances

For the Claimant: Mr Day of Counsel
For the Respondents: Mr Anderson of Counsel

JUDGMENT AND REASONS

The Claimant was not a disabled person for the purposes of s.6 Equality Act 2010 at the relevant time.

REASONS

1. The Claimant was born on 29th April 1988 and is 34 years old. He has documented his difficulties as a child firstly at age 4, then at age 11 and then at age 17. I shall deal first with the evidence relating to his childhood and then go on to deal with that related to his adulthood.
2. He produced notes of a meeting on 22nd September 1992. This documented that he had displayed some challenging behaviours including violent behaviours, which included violence towards other children, and disruptive classroom behaviours as a consequence of which he was excluded. The Claimant was referred to an educational psychologist and the report is at page

104 of the bundle. There was some comment in the report about the Claimant's behaviours being down to his parents' separation and divorce.

3. When the Claimant was 11 he had a violent outburst which involved him using a hockey stick to destroy school property. Following this he saw the school counsellor to manage his anger on 5 occasions. The school did not keep records so he has not produced those today.
4. When the Claimant was around 17 and from early 2005 to the summer of 2006, he attended weekly therapy sessions during term time with psychotherapist Janet de Heger. She talked about the purpose of these sessions being to explore his responses and reactions to people and situations. She commented that after leaving school the Claimant continued to attend to see her privately during his year out and the three years at university. She commented *'he recognised that as he begun his adult life with all its challenges and demands the potential for his emotional reactions to get the better of him was high.'* She went on to say *'Chris has contacted me on a few occasions since leaving university when matters have presented him with difficult and stressful situations and he has recognised his need for support and space to think before he becomes negatively overwhelmed by his feelings.'* (p.110). The Claimant himself said that he did feel low upon first referral and in fact queried whether he could take pills but that his mood lifted upon speaking to the therapist. The Claimant said that when he was at university he saw her consistently as he would otherwise struggle to cope. By aged 21 or 22 he had better coping strategies and did not continue to see her. From then onwards it is fair to say that the Claimant seemed to cope by himself. There was then a 10 year gap approximately when the Claimant did not have any therapy.
5. The Claimant managed to sustain ostensibly congenial employment working for a charity and then as a professional boxing coach. He described the circumstances in 2019 as having taken on a lot more work and responsibility. He described struggling more which involved not sleeping and the other effects that he has described.
6. From January to August 2019 the Claimant had weekly psychotherapy from Bob Lynton. That letter refers to them exploring a number of issues including work-related anxiety which he reports featured frequently (p.109). This chimes with what the Claimant says in his statement which is that he sought treatment because of the onset of symptoms in Spring 2019.

7. At page 111 there is a letter from Alison Easton, Cognitive Hypnotherapist to say that the Claimant came to see her '*in order to manage a particular situation he was feeling anxious about*' and to navigate a way forwards. He had 6 sessions with her from 11th March to 12th April 2020 which transitioned to online sessions owing to the pandemic. Thereafter those sessions stopped as the Claimant said that he did not like doing the sessions online as they made him anxious. The Claimant said that he had felt that there was something wrong in his working relationship with Mr Enstone Watts and he did not know how to handle it. He did not go back to see this therapist or to see anyone else during the period leading up to the end of his employment.

8. The Claimant states in his impact statement that he has ongoing effects which are not intermittent and he sets these out at paragraph 2 including nightmares, insomnia, waking in the night with a racing pulse, dry mouth and sweats, trouble concentrating including in business meetings and on reading and writing and hyper vigilance in public spaces which he says affects his ability to go about his normal day to day business. He also gave evidence of waking in the night thinking there was someone in the house or he was under threat and that he would have to pull over when driving as he was over-sensitised to traffic. He stated that he would hear overtalking in meetings because his mind would replay the previous conversation he had heard when he was listening to someone talk.

9. The Claimant's evidence was that he takes CBD, uses cold water therapy and deploys meditation and breathwork techniques. He has never taken prescription medication nor has seen a GP or other doctor for any of his symptoms. He says that he prefers not to take prescribed medication. He says that if things are going well in his life he can rely on self-care practices to support himself and does not need to see therapists but that if going through difficulties in work or personal life he is prone to 'flare-ups'.

The Law

10.s. 6 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.

11. I have referenced the Guidance in this case, that is 'Guidance on matters to be taken into account in determining questions of disability'. At A3 this states that the definition requires that the effects which a person may experience may arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established nor does the impairment have to be the result of an illness.
12. In **J v DLA Piper [2010] ICR 1052** Underhill J as he then was at paragraph 42 onwards distinguished between the symptoms of low mood and anxiety as arising from two different states of affairs; one from a mental condition and the second as a reaction to adverse life events. He commented that there may indeed be an overlap and that the distinction may be hard to apply in practice particularly given the loose application of terminology such as depression, anxiety or stress. He went on to say at paragraph 42; *'Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para 40(2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering clinical depression rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long-lived.'*

Conclusions

13. I have heard about effects on the Claimant such as insomnia, the effect on his concentration in meetings and on reading and the effect on him driving. I find these are substantial adverse effects on his normal day to day activities as they are more than minor or trivial. The question is whether these arise from an impairment and whether they are long term.
14. Dealing with the question of impairment and the Claimant's behaviours aged 4 and 11, I cannot infer from those reports singularly or in conjunction with the other reports that those behaviours arise from any impairment as opposed to being the normal consequences of growing up or the adverse psychological effects on the Claimant of life events notably the transition into secondary school and his parents' separation. As for the counselling he received when he was aged 17 and beyond, this was a way of helping him explore his feelings and reactions to people and situations which may also have been simply a consequence of another transition: namely the transition into adulthood and the thoughts and feelings that this may have given rise to. I make that conclusion on the reports themselves and in conjunction with the later evidence that I have from Janet de Heger, Bob Lynton and Alison Easton.

15. I accept that the labels of mood disorders in this case are loose terms and have not been ascribed by a doctor in accordance with clinical classification models. While I appreciate that the repeal of schedule 1 now means that there does not have to be a clinically diagnosed illness, I also cannot find that the periods of time when the Claimant says he is overwhelmed or experiencing insomnia or other symptoms are due to any mental impairment as opposed to stressful triggers in his life which promote responses. The evidence seems to suggest that there is mostly a situational cause and the Claimant has not adduced sufficient evidence on which I could properly infer an impairment.
16. There was some inconsistency in the evidence with the pattern of effects. The Claimant said in his statement they were not intermittent but then he did say there were occasions in his life when he could cope and he was not affected by them. The periods of time where he does not seek therapy tend to bear this out and as I said I noted a period of ten years where he did not seek therapy. There was difficulty in pinpointing how long any adverse effects had continued for in relation to the period of time in question and therefore it was difficult to conclude that it was such a long period that there would be an inference that this arose from a mental impairment particularly given that there was no medical or expert evidence to assist with this.

Employment Judge A Frazer
Dated: 11th January 2023

JUDGMENT SENT TO THE PARTIES ON

10 February 2023

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FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS