



EMPLOYMENT TRIBUNALS

Claimant

Mr Robert Watson

v

Respondent

Tesco Stores Limited

Heard at: Norwich

On: 24 June 2022

Before: Employment Judge Postle (sitting alone)

Appearances:

For the Claimant: In person

For the Respondent: Mr Mathur, Counsel

JUDGMENT on Preliminary Issue having been sent to the parties on 18 September 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Pursuant to Judgment on the Preliminary Issue which was that the Claimant was not a disabled person by reason of stress, anxiety and depression at the material times, namely 17 March 2019 to 7 October 2019, determined on 24 June 2022 for which verbal reasons were given, the Judgment being signed on 23 August 2022 by Employment Judge Postle and sent to the parties on 18 September 2022.
2. By email of 29 September 2022, the Claimant requested written reasons for the decision.
3. Employment Judge Postle then requested the file in September and October 2022, the file then being sent to Employment Judge Postle on 28 October 2022.
4. Upon receipt of the file, Employment Judge Postle noticed that the Bundle of documents used for the Preliminary Hearing was not with the file and after a reasonable search, the Bundle could not be found.
5. Employment Judge Postle directed the parties be written to on 31 October 2022 confirming that written reasons would be provided, however the

Bundle of documents used at the Preliminary Hearing had been misplaced and could the parties provide a further copy to enable the Judge to provide written reasons.

6. Employment Judge Postle was still waiting for the Bundle at the end of January when he was informed by the Administration that the Bundle had been sent to him on 29 December 2022. However, that Bundle could not be found. It then materialised the Bundle had been sent by way of email and by that stage the password had expired, to gain access to the Bundle.
7. A new access password / Bundle was submitted at the end of January and then unfortunately, Employment Judge Postle was absent for the first part of February due to sickness. Today, 28 February 2023, is the first clear date Employment Judge Postle has had to enable him to prepare the written reasons and he apologises for the delay, but thought it was appropriate to provide an explanation for the delay.
8. At the Preliminary Hearing, the Claimant gave evidence effectively through his Impact Statement dated 11 April 2021, in conjunction with the Claimant's medical evidence (found at pages 55 – 69 of the Bundle) which was largely the Claimant's statement of fitness for work and GP Records.
9. The Claimant's Impact Statement suggested that the Claimant's anxiety left him feeling tense, unable to relax, with racing thoughts, sleep problems, change in sex drive, sweating, low mood, fast thumping irregular heartbeat, palpitations, feeling like he could not stop worrying, going through the motions of enjoying leisure time and holding down a job and worrying about returning to work after a period of poor mental health and panic attacks.
10. In relation to depression, he advanced low mood, feeling isolated, poor concentration, loss of energy and motivation.
11. In relation of an alleged disability of dyslexia, reading slowly and making errors. The Claimant suggested this was diagnosed whilst he was at middle school.
12. The Claimant went on to describe stress, depression and anxiety as being a loss of energy and motivation which makes even the simplest task or decision difficult.
13. In relation to how his day to activities he said were affected, less energy, losing sleep and disturbed sleep, feeling less good about himself, feeling agitated, loss of interest in sex, not wanting to get washed and dressed, only eating two meals a day, difficulty waiting and queueing and driving, unable to use public transport and cannot control negative thoughts.
14. The Claimant had been employed as a Customer Delivery Driver at the Respondent's from 14 July 2001 to 7 October 2019.
15. It was on 15 March 2019, the Claimant was signed off with alleged stress, depression and anxiety.

16. The Claimant was requested to attend a Wellness Meeting on 8 July 2019, but indicated he was not well enough to attend the Respondent premises.
17. It was then proposed to have a telephone meeting on 11 August 2019. This had to be rescheduled. At the rescheduled meeting, the Claimant again failed to attend.
18. Ultimately, the matter led to a Disciplinary Hearing on 7 October 2019 and the Claimant, despite warnings, failed to attend and it was conducted in his absence. The outcome was the Claimant was dismissed for a failure to follow long term processes, a failure to keep to / attend Wellness Meetings and a failure to respond to several requests to keep in contact with the Respondent.
19. The Claimant's clinical GP notes (pages 61) on 15 March 2019, only mention a condition of stress. The entry on 28 March 2019, there is a reference to medication but the Claimant refused to take medication for stress, namely Sertraline. On 3 May 2019, the GP Records record,
"not keen on medication".
20. On 29 May 2019, the Claimant's GP Records confirm,
"considering therapy, but declined medication".
21. On 4 July 2019, the Claimant's GP Records note,
"again refuses medication, said the family is supportive and he does not want talking therapy".
22. On 30 July 2019, the Claimant's GP Records state,
"needs another statement fitness to work for one month, depression and anxiety".
23. On 31 July 2019, the Claimant's GP notes record,
"intention to return to work".
24. On 27 August 2019, the Claimant's GP notes record,
"again, declined Sertraline or taking any talking therapies".
25. On 31 August 2019, the Claimant's GP notes record,
"intention to return to work on".
26. On 30 September 2019, the Claimant's GP notes record,
"intention to return to work".

27. On 3 October 2019, the Claimant in a meeting with the Nurse at the GP Practice, records state,

“work messing around for the last three years, has been off sick for a while and needs more sick notes, the Nurse apologised to the patient as unable to give him med.3. Advised to see GP”.
28. On 4 October 2019, the Claimant attends his GP Practice, the GP records,

“plan discussed, not very acceptable to keep asking for sick notes because of work related problems, he is not receiving therapy for mental illness. He needs to consider his other options such as a phased return. Patient signed off again”.
29. On 31 October 2019, Claimant’s GP notes record,

“intention to return to work”.
30. There is then no attendances by the Claimant with his GP until seemingly the following year. With an effective 18 month gap of no record of meeting with the GP at the Practice or by telephone.
31. There is then a Case Management Hearing on 1 March 2021, it was in the course of that Hearing the disability period was discussed as being 17 March 2019 to 7 October 2019.
32. Oddly then the Claimant visits his GP on 8 April 2021 and that is the first instance the Claimant accepts medication, four days before the deadline of the Claimant to submit medical evidence to the Tribunal; effectively two weeks after the Preliminary Hearing.
33. At the material time, 7 October 2019, the Doctor records that it was not acceptable to keep asking for sick notes for work related problems and that he was not receiving any medication or therapy. It also shows, before the diagnosis of depression and anxiety, by 4 October 2019 that had changed to stress and anxiety.
34. It is also extremely telling, it was 18 months before he went back to the GP for an appointment. This was the first time the Claimant accepts medication and that was shortly after the Preliminary Hearing had been sent to the parties requiring the Claimant to provide medical evidence.
35. Clearly the relevant time was 7 October 2019, the date of dismissal and the evidence shows the position was on the 7 October 2019, to use the Doctor’s words “*work related problems*” on the fit note.
36. Clearly, the Claimant cannot say he is disabled simply because of a reaction to work rather than a mental impairment. Stress in itself is not a disability. The Claimant has to show something more and simply the evidence is not there.
37. The length of impairment had not lasted 12 months, nor was it likely to last more than 12 months.

38. The Claimant, it has to be said, was disingenuous and evasive in his answer to questions in cross examination and his Impact Statement clearly does not sit comfortably with the record of the GP notes. Clearly the Claimant has been gilding the lily to try and fit a case to show that in some way he has a mental impairment which is substantial and lasting for more than 12 months. There is simply no evidence the Claimant has discharged that burden.
39. Particularly, the Claimant has failed to discharge the burden upon him and show that the Claimant has the following:
- a. a mental impairment;
 - b. that any impairment affected the Claimant's ability to carry out his day to day activities, that clearly is not the case;
 - c. was the adverse condition substantial? Clearly on the evidence before me and the GP's notes, it is not substantial; and finally
 - d. the fourth sequential question that has to be addressed, was the adverse condition long term? Clearly it was not, if indeed it existed at all at the time of the Claimant's dismissal.
40. Certainly not from 17 March 2019, or at the time of his dismissal.

Employment Judge Postle

Date: 16 March 2023

Judgment sent to the parties on

23 March 2023

For the Tribunal office