



EMPLOYMENT TRIBUNALS

Claimant: Mr M Mubin

Respondent: Manchester Rusk Company Limited t/a The Flava People

HELD AT: Manchester (by CVP)

ON: 6 February 2023

BEFORE: Employment Judge Martin

REPRESENTATION:

Claimant: In person

Respondent: Mr J Middleton (Solicitor)

REASONS

Introduction

1. The claimant gave evidence on his own behalf. The Tribunal was provided with an agreed bundle of documents marked Appendix 1. After the Tribunal had adjourned to consider its decision, the claimant suggested to the clerk that he would like to call his wife to give evidence today. Employment Judge Martin noted that no witness statement had been submitted for his wife and it was not clear what her evidence might add to these proceedings. In any event, Employment Judge Martin concluded that it was now too late for her to give evidence as both parties had made oral submissions and EJ Martin was about to give judgement to the parties.

The Law

2. The law which the Tribunal considered was as follows.

3. Section 6(1) Equality Act 2010 states that:

“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.”

4. Schedule 1 of Part 1 of the Equality Act 2010 sets out the provisions with regard to the determination of disability stating that, in terms of long-term effects, the effect is long-term if it has lasted for at least 12 months or is likely to last for at least 12 months. Substantial adverse effects is the on the ability of a person to carry out normal day-to-day activities. It then details the effect of medical treatment. It goes on to reference certain medical conditions, deemed disabilities, progressive conditions and past disabilities.
5. The Guidance on Matters to be taken into account on Disability 2011 provides as follow:-
6. At paragraph D2 it states that there is no definition of normal day-to-day activities.
7. Paragraph D3 provides a non-exhaustive list of suggested day-to-day activities, which include being able to use a telephone.
8. Paragraph D17 states that some impairments may have an adverse impact on the ability of a person to carry out normal day-to-day activities, for example whether a person is able to speak clearly at a normal pace. One of the examples used referred to a stammer.
9. The Tribunal was referred by the respondent to a number of cases including:
 - **Goodwin v The Patent Office [1999] IRLR 4** which identified that there were four questions the Tribunal had to answer:
 - (1) Does the person have a physical or mental impairment?
 - (2) Does that impairment have an adverse affect on their ability to carry out normal day-to-day activities?
 - (3) Is that effect substantial?
 - (4) Is the effect long-term?
 - **Cruickshank v AW Motorcast Limited [2002] ICR 7291** where it was held that a tribunal had to consider whether the impairment had a substantial adverse effect on day-to-day activities at the point of the alleged acts.
 - **Walker v Sita Information Networking Computing Limited UKEAT/0097/12** which held that a medical diagnosis is not required. It held that the focus should be on the effects of the impairment.
 - **Anwar v Tower Hamlets College UKEAT/0091/10** where it was held that “substantial” means “more than minor or trivial”.
 - **Leonard v South Derbyshire Chambers of Commerce [2001] IRLR 19** where the EAT held that “trivial” is a low standard. The EAT held that the focus should be on what an employee cannot do or can only do with difficulty and that the Tribunal had to look at the whole picture.

It also said that the statutory guidance examples were merely illustrative.

- **Seccombe v Reed in Partnership Ltd EA-2019-00478/00** which held that the impairment must have a substantial adverse effect on day-to-day activities which is long-term.

10. The Tribunal also took account of the case of **Waterford v HM Land Registry [2008]** where the EAT held in that case that a stammer could amount to a disability as it had a substantial and long-term adverse effect on the employee's ability to do normal day-to-day activities.

11. The claimant referred to an Employment Tribunal case - **Mr A Coulibally v Menzies Aviation (UK) Limited** which was held in South London in October 2021 where the Employment Judge found in that case that the employee's stammer did amount to a disability.

12. The Tribunal is also aware of other cases in the Employment Tribunal which both held that a stammer amounts to a disability and have also found that it did not.

The Issues

13. The issue which the Tribunal had to consider was whether the claimant's stammer amounted to a disability under Section 6 of the Equality Act 2010. In particular, the Tribunal had to consider whether the claimant's stammer had a substantial and long-term adverse effect on his ability to undertake normal day-to-day activities.

Findings of Fact

14. The claimant is pursuing complaints of disability discrimination and race discrimination in these proceedings. In relation to his complaint of disability discrimination he is relying on his stammer.

15. The Tribunal (as indicated) was provided with a bundle of documents. The documents upon which the claimant relies in support of his contention that his stammer amounts to a disability are at pages 62-99 of the bundle. No medical records were provided other than a document which purports to be the claimant's medical records. That document referred to the claimant saying that he has a moderate stammer and referred to problems with trying to express himself when he was trying to get employment (page 72 of the bundle).

16. The documents consist of a psychological report which was produced in 2004 (pages 62-72 of the bundle), which almost entirely relates to the claimant's problems with dyslexia. There are very few references to his stammer. The only reference appears to be at page 67, where it says that the claimant was having problems with speaking and is still hesitant with words.

17. The claimant has also produced a report from DWP made by Access to Work in 2013. That report says that the claimant was provided with a voice amp. The claimant in his evidence said that he would not have got that equipment if they did into consider him to be disabled.

18. Other documents included within the bundle include confirmation of an attendance by the claimant on a Speech Therapy Course in November 2018 (page 92). The speech therapist said that the claimant had a mild to moderate stammer and referred to him saying he had problems communicating on the telephone.

19. The claimant has also provided details of the Warrington stammer support group which he said in evidence he attended.

20. The claimant's witness statement is at pages 100-113.

21. In his evidence, the claimant confirmed that pages 109-113 deal with the substantial effect of his stammer on his ability to undertake normal day-to-day activities.

22. In that witness statement, the claimant referred to having difficulty conversing on the telephone. In relation to that, he focuses substantially on problems getting a job or contacting recruitment agencies. In his statement there are a number of paragraphs dealing with those issues, which appeared to be the principal matter upon which he relies.

23. The claimant also referred to problems on the telephone in ordering takeaway food, but he says that now he uses the Uber app which makes it easier.

24. In his witness statement, the claimant also referred to problems communicating in the office environment.

25. The claimant also in his witness statement and during the course of his evidence referred to problems speaking to his children and said that they were unaware of his stammer. The claimant said that he had difficulty sometimes speaking to them when he was trying to reprimand them and he had problems communicating with them. The claimant also referred to having problems talking to his parents on the telephone, particularly in Punjabi. He said that he principally now tried to speak to them in English which is his first language. The claimant also referred to problems at the outset of his relationship with his wife in speaking to his in-laws over the telephone.

26. The claimant then went back to refer to difficulties he had in interviews which he said he found stressful.

27. In his witness statement, the claimant also referred to difficulties in shopping. He referred to shopping in Asda and another store, but he provided no specific details of incidents in which he outlined any difficulties he had encountered or when they had occurred.

28. The main issues that came out of the claimant's witness statement were the difficulties that he had in an interview situation.

29. When the claimant was cross examined by the respondent's solicitor he was asked whether the principal problems related to difficulties on the telephone. He said that he equally had difficulties with face-to-face communication and on video. The claimant said that the difficulties were often when he was placed in a stressful situation and again referred to the situation with regard to interviews.

30. The Tribunal had the benefit of hearing oral evidence from the claimant and from hearing his oral submissions.

31. This hearing was conducted by video hearing. The Tribunal noted that the claimant appeared relaxed and was able to conduct the hearing in his own home.

32. From the Tribunal's observations, which are noted in the Judge's notes, the claimant rarely stammered. Indeed from the Tribunal's observations, the claimant was in fact an extremely articulate and fluent witness and advocated articulately on his own behalf during his submissions. He rarely hesitated over words and indeed at times he was as articulate as the respondent's representative who was a solicitor. The Tribunal only noted that the claimant hesitated at most once or twice over the course of his evidence. In the Tribunal's experience it is not usual for a witness to hesitate at times. The claimant did not hesitate anymore and probably less than most claimants when giving his evidence.

33. When it came to submissions the respondent's representative did ask the Tribunal to take account of the claimant's demeanour during the course of the hearing. The Tribunal noted that the claimant stammered a little more during the course of his submissions, however again he very rarely stammered during submissions which lasted for over ten minutes.

34. This Tribunal takes judicial note of the fact that giving evidence is not a normal day-to-day activity but it is, for most people, a very stressful situation.

Conclusions

35. The Tribunal reminded itself that the burden of proof is on the claimant.

36. The Tribunal finds that the claimant has failed to discharge that burden of proof. The claimant failed to provide sufficient evidence in support of his contention that his stammer amounted to a disability.

37. He provided nothing in the way of medical evidence of note, other than a very limited comment about what he had told the doctor, with no indication of when that was said or any follow-up which may have ensued.

38. Further, the claimant's disability impact statement provided insufficient evidence to show that his stammer had a substantial and long-term adverse effect on his ability to undertake normal day-to-day activities. The main thrust of the evidence contained in his witness statement (and indeed orally) was about the impact around interviews and the recruitment process, which is not a normal day-to-day activity.

39. The claimant's reference to problems on the telephone, in particular to ordering takeaway food, was limited, as was his evidence relating to any difficulties within his family and in shopping, because he failed to provide any details or examples, particularly around the time of events for which he is claiming.

40. Furthermore, this Tribunal had the benefit of hearing the claimant give oral evidence and provide oral submissions in this case and has taken account of its own impressions in considering whether the claimant's stammer amounts to a disability as defined by the Act.

41. In his evidence, the claimant said he was more likely to stammer when in a stressful situation. However, the Tribunal cannot think of a more stressful situation than having to give evidence before a Tribunal, yet in this case the claimant gave little, if no indication, of any stammer during the course of his evidence, indeed, even when he was being cross examined. It is the Tribunal's observation that the claimant was not impacted (or any impact was minimal) by his stammer, during either his giving evidence or his submissions.

42. The Tribunal has noted from its own observation that, in what would normally be a very stressful situation in which the claimant in his own evidence suggested he was more likely to stammer, the claimant did not in fact stammer at all or so little that it was hardly observed by the Tribunal.

43. The Tribunal accepts that in many cases a stammer may well amount to a disability, but in this case the Tribunal does not find that the claimant's stammer did amount to a disability. In order to amount to a disability under the Equality Act 2010 the stammer had to have a substantial and long-term adverse effect on the claimant's ability to undertake normal day-to-day activities.

44. The Tribunal's observation is that is not the case here. Furthermore the evidence produced by the claimant was not sufficient to establish that his stammer (which the Tribunal hardly noticed) had any substantial or adverse effect on his ability to undertake normal day-to-day activities.

45. The claimant has failed to discharge the burden of proof by failing to adduce evidence, either in the form of oral evidence or documentary evidence, to show that his stammer did have a substantial and long-term adverse effect on his ability to undertake normal day-to-day activities.

46. For those reasons this Tribunal does not find that the claimant had a stammer which amounts to a disability under section 6 of the Equality Act 2010.

47. Accordingly, the claimant's claim for disability discrimination is hereby dismissed.

Employment Judge Martin
Date: 27 March 2023

REASONS SENT TO THE PARTIES ON
3 April 2023

FOR THE TRIBUNAL OFFICE

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