



EMPLOYMENT TRIBUNALS

Claimant: Ms G Daly

Respondent: We Buy Any Car Limited

Employment Judge Sharkett (on the papers)

JUDGMENT ON RECONSIDERATION

The Claimant's application for reconsideration of 25th October 2022 is allowed and the Judgment is remade.

At the relevant time the claimant was not disabled for the purposes of s6 Equality Act 2010.

Reasons

1. The claimant seeks a reconsideration of my decision that at the relevant time she was not a disabled person for the purposes of s6 Equality Act 2010 ("the Act"). There was some delay in this request being brought to my attention which is the reason why it is only now considered.
2. The application is made under Rule 70 of the Employment Rules of Procedure and was submitted within the relevant time period. It is requested in the interests of justice and to avoid the parties having to undergo a full appeal to the EAT.
3. The basis of the application is that on the claimant's understanding of the Judgment, there has been an error of law in my approach because I have applied the wrong test and failed to consider whether the claimant has a recurring condition that would satisfy the test.
4. It was agreed between the parties that the relevant time for determination of whether or not the claimant was disabled for the purposes of s6 of the Act was 2nd to 19th March 2021.
5. In reaching my decision to allow the claimant's application for a reconsideration I have carefully considered my findings and the evidence that

was presented at the hearing. I find that paragraph 45 of the Judgment of 10th October 2022 is inconsistent with my overall reasoning in the Judgment and does not address all aspects of the test for disability. For this reason I have considered the matter again. I consider that the wording of paragraph 45 was an attempt to empathise with the claimant about the personal difficulties she had experienced and a desire to avoid detail of the same becoming a matter of public record.

6. Whilst I have considered the matter again, the substance of my findings and reasons as set out in the Judgment of 10th October 2022, remain unchanged save for paragraph 45 which is revoked. There was scant medical evidence presented to the Tribunal with reference to the claimant's anxiety and the "anxiety state" for which she was, for the first time, issued with fit notes to allow her to be absent from work between 18th March and 14th May 2020, is recorded in her medical notes under the classification of 'minor'. In the Judgment of October 2022, I did not accept, and do not accept, the reason given by the claimant about why she had not told her GP of the full extent of her symptoms and I found that both the claimant and her mother had significantly exaggerated the claimant's symptoms as described to the Tribunal. The claimant accepted that she had not been prescribed any medication for her symptoms and nor had she wanted to take any. Similarly she did not wish to avail herself of counselling or other groups such as Healthy Minds because she did not believe they would work. She had instead taken steps to modify her behaviour and relied on self-help and herbal remedies to relieve her symptoms. The medical evidence relating to that time makes reference to the difficulties the claimant was experiencing at work, which is the reason why she does not want to go, but does not refer to any adverse effects on the rest of her life, and records how she has improved to the extent that now she reports that as she has now been paid she is able to attend the gym; In addition is also recorded that she is socialising with friends, all of which is inconsistent with the account of the claimant and her mother of her symptoms at that time. I also note that during the period in which she was issued with fit notes, which was at a time when the country was in 'lock down' during the pandemic, the claimant's only contact with the GP was on one occasion when she was asked to contact them. There were no consultations, nor any recorded deterioration in her symptoms, and she was discharged from Healthy Minds without her ever having consulted with them. In those circumstances I find that the claimant's modification of her behaviour reduced the effects of her anxiety to the extent they were no longer substantial and in oral evidence she explained how the routine of caring for her grandmother was good for her. For the avoidance of doubt, in reaching a conclusion that the steps taken by the claimant reduced the effects of her anxiety, I do not consider that the use of herbal remedies such as Kalms falls into the category of medication for the purposes of assessing the effect of the impairment on the claimant's ability to carry out normal day to day activities.
7. The claimant's next episode of anxiety was March 2021 and was originally mistaken by the claimant as being symptoms of Covid 19. Whilst this was subsequently recorded as a second episode of anxiety within a period extending beyond 12 months, anxiety is not a deemed disability for the purposes of the Equality Act 2010 and whilst it is an impairment, there is still

need for the claimant to be able to satisfy the full definition, i.e. of it having a substantial and long term adverse effect on her ability to carry out her day to day activities, which for the reasons given above, she has not.

Employment Judge Sharkett

Date: 5th May 2023

JUDGMENT SENT TO THE PARTIES ON
12 May 2023

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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