



EMPLOYMENT TRIBUNALS

Claimant: Ms Amanda Phillips

Respondent: Smith and Williamson Corporate Services Ltd (1)
Brian Livingston (2)

Heard at: Southampton

On: 29 March 2023

Before: Employment Judge Scott

Appearances

For the Claimant: Ms V Brown, counsel

For the Respondent: Ms L Banerjee, counsel.

JUDGMENT

1. The claimant was a disabled person within the meaning of the Equality Act 2010 during the period 21 January 2021 up to and including 30 November 2021.

REASONS

2. By a claim form presented on 16 March 2022 (case 1401039/2022) the claimant, Ms Phillips, made a series of complaints including disability discrimination. A preliminary hearing was listed to determine whether the claimant is a disabled person as claimed, and this is the judgment of the court in relation to that issue.
3. The claimant alleges her dismissal was direct disability discrimination, she further asserts that the Respondent failed to make reasonable adjustments in failing to allow her regular breaks and having to work in the evening. The claimant states that the disability she relies upon is the **Menopause**.

4. The respondent denies that the claimant was disabled at the material times, and further denies that it knew or could reasonably have been expected to know that the claimant was disabled at the material times.
5. The claimant has further claims in respect of unfair dismissal, automatic unfair dismissal and detriment on the grounds of public interest disclosure, sex discrimination, harassment and victimisation.
6. A one-day preliminary hearing in person was listed to determine whether or not the claimant was a disabled person at the material times within the meaning of the Equality Act 2010.
7. Prior to hearing the parties had produced a bundle of documents of 210 pages, which had been emailed to the tribunal.
8. Within that bundle, the claimant had produced two disability impact statements at pages 126 and 156 respectively. The claimant provided medical evidence in the form of medical records and a report from her GP. The claimant gave sworn evidence to the Employment Tribunal.
9. The Respondent was represented by Ms Banerjee and the claimant was represented by Ms Brown. I was grateful to both counsel for their clear and pragmatic submissions and helpful approach to the hearing.
10. The question for me to determine is set out in the order of Employment Judge Bax dated 7 December 2023, that is:
 - i. Whether at all material times the claimant, was a disabled person, by reason of menopause, within the meaning of s6 and Sch 1 of the Equality Act 2010.
11. The list of issues provided by the parties and annexed to that order, set out the following questions to be answered:
 - a. Whether the claimant had a physical or mental impairment. She asserts that she was disabled by reason of the menopause.
 - b. Did it have a substantial adverse effect on the claimant's ability to carry out day-to-day activities?
 - i. If not, did the claimant have medical treatment, including medication or take other measures to treat or correct the impairment?
 - ii. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - c. Were the effects of the impairment long-term?
 - i. Did they last at least 12 months, or were they likely to last at least 12 months?

ii. If not, were they likely to recur?

Background Facts and Matters

12. The claimant was employed by the respondent between 11 February 2003 until the termination of her contract on 30 November 2021 as a corporate finance director.
13. The relevant time for the purposes of this claim is the 21 January 2021, being the date or one of a series of dates where the claimant first requested adjustments, and the date of the decision to terminate employment which was the 30 November 2021.
14. The claimant set out in the narrative paragraphs attached to her claim to the Employment Tribunal, that she first started to suffer with symptoms in the summer of 2020, including extreme stress, problems sleeping, anxiety and memory issues. She also struggled to work at the pace she had previously worked at. She claims to have informed the 2nd respondent, Mr Brian Livingston of her symptoms at that time.
15. In her two disability impact statements she describes her symptoms. From her description, there is some overlap between her symptoms, which are detailed as follows:
16. **Stress:** She states she found managing her workflow extremely stressful. Having previously been able to stay calm in a stressful environment, and in large meetings she started to find dealing with colleagues and clients much harder, and felt extremely drained. She believes this may have made her communication style change.
17. **Worry:** In addition, the claimant claims to have experienced increased worry, resulting in her checking her own work multiple times and believing she may have forgotten important things.
18. **Difficulty sleeping:** She states that she had problems sleeping. She would regularly wake up during the night. The claimant in evidence confirmed that the lack of sleep she experienced and the associated fatigue had a significant effect on her, including during the working day.
19. In her questionnaire dated 20 August 2021 she reports waking 2 – 3 times per night and in cross examination she confirmed that this had build up over approximately a year, sometimes waking every night and sometimes less frequently.
20. The claimant recalls being tired all the time and this making her irritable and unable to concentrate. She would regularly try to catch up on sleep and needed regularly breaks in her work day due to tiredness. In oral evidence the claimant confirmed that she would have to take a 5-10 minute break when driving due to tiredness.

21. The claimant also clarified in response to questions that whilst she reported hot flushes in this questionnaire, this was likely to be the night sweats she experienced, but whilst this led to her waking up, it was the waking up, and difficulty in returning to sleep rather than the flushes themselves that caused her problems. She also confirmed she did not find the flushes or sweats affected her during the day, so she did not feel this affected her work.
22. **Fatigue:** The claimant says she felt permanently tired and worried. This feeling of fatigue was constant, even when she slept without problems. She found that her voice would slur and that it was difficult for her to follow conversations.
23. The claimant states that in 2021 she would wake regularly through the night and have difficulty returning to sleep. This tiredness caused an inability to concentrate or multi-task. It was difficult for the claimant to exercise because she felt too tired.
24. The claimant reports feeling irritated if additional meetings were put in her diary which would impact on her planned day, and her ability to take breaks.
25. The claimant found she had to work longer and this affected her ability to switch off in the evening and sleep. At the weekend, she would attempt to catch up on sleep during the day.
26. **Brain fog:** The claimant states that the menopause caused her to be unable to concentrate and to have difficulty remembering names, dates and numbers easily. She was also less able to prioritise emails, as she wouldn't see them when they came in and she found it difficult to recall their content. The claimant found she was much less able to grasp detail and technical issues and even with separate notes she would get details wrong, which she wouldn't have done previously.
27. The Claimant's concentration difficulties made multitasking harder. The claimant says she did not feel on top of things and this was stressful for her, and impacted her sleep, moods and general well-being.
28. **Visual spatial thinking:** The claimant has experienced memory lapses which has resulted in her feeling unable to map read and feeling panic at feeling disorientated. She reports that she now uses sat nav on bike rides and in the car, even on routes she knows well. She can no longer undertake Mountain Bike orienteering without her partner, or map memory events.
29. **Memory issues.** The claimant describes noticing a significant decline in her memory. She would forget names and engagements. She says she would forget medication recommended by the vet, including type, dosage and dosing intervals. She would forget whether she had paid a bill. At work she required spreadsheet

reminders and notes. She asked team members to remind her of necessary work and scheduled reminders.

30. The claimant details that on technical matters, she now had to take steps to recheck original documents on matters she knew well. She also needed to reread requirements and took additional time to answer queries and needed visual prompts and notes for basic information. She also reports that she could no longer undertake mental maths and required a pen to take notes or do calculations.
31. **Anxiety:** The claimant reports experiencing severe anxiety around her perceived cognitive decline. She experienced increased anxiety which caused the claimant to lose confidence in her own abilities, meaning she needed to check and recheck her work. She also records needing to check and recheck electrical items or that the doors were locked before leaving the house. The Claimant, who had always been active, found she had to walk down mountain bike trails she had previously ridden, and was afraid to ride independently. The claimant details becoming increasingly tearful with associated anxiety that this would occur in work situations and reported waking up in the night with worry.
32. The claimant says her symptoms became markedly worse in spring 2021. She delayed seeing her GP due to a number of factors, initially because she thought her symptoms were due to stress and the covid lockdown, and because it was difficult to get GP appointments due to backlogs caused by Covid. Later, she delayed further because she became worried that she had early onset dementia, and she didn't feel she could cope with that diagnosis at the time.
33. The Claimant's medical records [bundle p131] show on p143 an e-consult request dated 20 August 2021 where Ms Phillips seeks advice around HRT and the menopause and describes her symptoms as brain fog, lethargy, waking up at night and weight gain. That document records that at this time, Ms Phillips is waking up 2/3 times a week. Further, that she has difficulty grasping issues, forgetting things and reciting numbers.
34. The claimant saw her GP on 23 August 2021 and she started to receive Hormone Replacement Therapy (HRT) on 2 September 2021. On commencing medication, she reports her anxiety increasing and becoming more tearful [bundle p148]. However investigations did not reveal a cause and she was encouraged to continue taking HRT.
35. The claimant says that her symptoms have improved since taking HRT medication. However, she has not fully recovered. The claimant continues to take HRT and expects to do so for the foreseeable future.
36. The claimant provided a letter from her GP dated 25 January 2023. That letter confirms the claimant is experiencing menopausal symptoms, and that it impacts her concentration, memory, ability to multi-task, mood swings and poor sleep.

The Applicable Legal Principles

37. The Equality Act 2010 says that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
38. Para. 12 of Schedule 1 of the EA 2010 provides that when determining whether a person is disabled, the Tribunal “must take account of such guidance as it thinks is relevant.” **The “Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability”** (May 2011) (the “Guidance”) was issued by the Secretary of State pursuant to s. 6(5) of the EA 2010.
39. I have reminded myself of the principle legal tests and approaches to those tests as explained by the higher courts.
40. In *Goodwin-v-Patent Office* [1999] IRLR 4, the EAT gave detailed guidance as to the approach which ought to be taken in determining the issue of disability, four questions need to be determined by the Tribunal in order. The Court of Appeal in *Sullivan v Bury Street Capital Limited* [2021] EWCA Civ 1694 set these out as follows:
- a. Was there an impairment?
 - b. What were its adverse effects
 - c. Were they more than minor or trivial?
 - d. Was there a real possibility that they would continue for more than 12 months?
41. In that case, Singh LJ emphasized that those questions are for the Tribunal, and that although it may be assisted by medical evidence, it is not bound by any opinion expressed.
42. In deciding these questions, I must consider what the claimant cannot do or could only do with difficulty (Guidance B9) and the effect of medication ought to be ignored for the purposes of the assessment. (*Leonard-v-Southern Derbyshire Chamber of Commerce* [2000] All ER (D) 1327)
43. Section 212(2) of the EqA 2010 which sets out general interpretation provisions, defines 'substantial' as 'more than minor or trivial'.
44. Nevertheless, it is not always possible or necessary to label a condition, or collection of conditions. The statutory language always has to be borne in mind; if the condition caused an impairment which was more than minor or trivial, however it had been labelled, that would ordinarily suffice.
45. In *Paterson v Comr of Police of the Metropolis* [2007] IRLR 763, [2007] ICR 1522, EAT Elias J said:

"... when assessing the effect, the comparison is not with the population at large. As paragraphs A2 and A3 [of the then Guidance] make clear, what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired.' (at [27])'

46. In *Elliott v Dorset County Council* [2021] IRLR 880, EAT, Judge Tayler identified the differences in ability in the general population and that the general understanding of disability is a limitation going beyond those normal differences that exist among people. Any inconsistency must be resolved in favour of the statute.
47. The cumulative effects of an impairment are to be taken into account in assessing its seriousness (Guidance paragraph B4), and the time taken by a person should be assessed when considering whether the effect is substantial (Guidance B2) and the way in which the person carries out a normal day to day activity (Guidance B3). Further, paragraph B7 of the Guidance indicates that the ability of a person to modify her behaviour to cope with an impairment may be of relevance in deciding whether it is 'substantial'.
48. On the question of whether something is a day-to-day activity, paragraph D3 of the Guidance, provides examples of such activities, including general work-related activities. The tribunal should take account of how far an activity is carried out by people on a daily or frequent basis (paragraph D4) but does not include activities which are normal only for a particular person or small group of people. Highly specialised activities would not normally be regarded as day-to-day activities for most people (Guidance D8). Where activities involve highly specialised skills or levels of attainment, these should not be regarded as normal day-to-day activities (Guidance D9).
49. The time to assess whether a person has a disability is at the time of alleged acts of discrimination, and not at the point of the ET hearing (*Cruickshank v VAW Motorcast Ltd* [2002] IRLR 24, EAT).
50. In relation to the menopause, the government declined to make it a protected characteristic. However, in *Donnachie v Telent Technology Services Ltd ET Case No.1300005/20* the Tribunal found that 'typical' menopausal symptoms are capable, on a case by case basis of meeting the s6 of the Equality Act 2010. This is supported by the findings in *Daley v Optiva ET Case No.1308074/19*.
51. By way of contrast, in *Rose v Commissioner of Police for the Metropolis ET Case No.3203055/19* a tribunal found that there was no substantial adverse impact on the claimant's ability to carry out day-to-day activities, as opposed to an effect that was minor or trivial and that therefore she was not disabled.

Discussion and conclusions

52. At the outset of the hearing the Respondent confirmed that they did not dispute that the claimant had an impairment, nor that there was a real possibility that the impairment would last for more than 12 months.
53. For the avoidance of doubt, having reviewed the available medical evidence set out at paragraph 33 above, I find that the claimant has been experiencing the menopause, and that those menopausal symptoms are an impairment.
54. Furthermore, the claimant gave evidence regarding her delay in seeing the GP until August 2021, as set out in paragraphs 32 onwards above. The claimant gave clear evidence which came across as moderate and considered. I found her to be a credible witness and I accept that she began experiencing symptoms in summer 2020, and delayed seeing her GP due to her fear of being diagnosed with early onset dementia.
55. The Claimant's medical records show she commenced HRT in August 2021 and continues to take it now. I accept the claimant started to experience menopause symptoms in summer 2020. I therefore accept that the condition had continued for 12 months during the relevant time.
56. Furthermore, as I accept the claimant started to experience symptoms in summer 2020, and that her impairment is ongoing, I accept she had the impairment during the relevant time.

Substantial adverse impact

57. I am satisfied from the evidence I have heard that the Claimant's was waking on average 2-3 times a week as at August 2021 and was unable to return to sleep. As indicated above, I found the claimant to be credible, she answered thoughtfully and carefully and did not seek to exaggerate her symptoms.
58. The claimant references in both disability impact statements, that she experienced problems sleeping since summer 2020 when her symptoms began. In her second disability impact statement [p158] Ms Phillips states she was unable to get a good night sleep in 2021. Having found the claimant credible, I therefore accept she experienced these problems sleeping throughout the relevant period.
59. The Respondent in submissions highlighted that the medical evidence of waking 2-3 times a week represented less than half the week, and was confirmed as intermittent.
60. Taking into account the definition of *substantial* as meaning more than minor or trivial, I am satisfied that waking 2-3 times a week, notwithstanding this being less than half the week, is more than minor or trivial. This is particularly so as the waking and the accompanying fatigue, increased over a period of more than a year. I have taken into account that her fatigue is something which arises from her particular impairment and that whilst the HRT she is taking has eased her symptoms on a day to day basis, she continues and will continue to have difficulties because of her impairment.

61. Linked to her sleep problems and fatigue, the claimant experienced cognitive decline, described as memory issues and brain fog. She details that her memory suffered and she was slower at completing tasks, and that she would have to read and re-read her work. Her ability to concentrate was reduced. She did not know the cause of this decline which made her anxious.
62. In her disability impact statements she records struggling with her memory and processing speed from the outset of her symptoms in Summer 2020. In her first disability impact statement [p128] she references her cognitive abilities significantly declining in Spring 2021. I accept that she experienced these symptoms during the relevant time, but also find on the claimant's own evidence that this problem became more severe during the early part of the relevant period.
63. The claimant explained that she would try to avoid complex situations due to her tiredness and cognitive decline. She recalls her voice slurring on the telephone. She would be unable to remember work items without prompts. At p160, she refers to experiencing memory fade and brain fog causing her to be unable to map read, and rendering her unable to get back to her vehicle.
64. The claimant references forgetting the names of people, including those close to her, causing her embarrassment in social situations. She also refers to forgetting appointments, even those she arranged herself. In relation to visual spatial awareness, she states she is unable to memorise routes, and needs to use a sat nav on journeys that are very familiar to her. Further, she provides the example of forgetting the detail of medication for her horse. In oral evidence, the claimant detailed how her increased forgetfulness made her believe that she was suffering from dementia. However, the claimant has not confirmed how often these incidents would occur.
65. In relation to her fatigue, the claimant refers to her need to take breaks during the day and to her irritability when her diary was amended to remove breaks. Within the bundle the Respondent provided extracts of the Claimant's diary from 2016 – 2021. Those extracts showed a lunch break and other breaks during the day. The claimant gave oral evidence to the effect that the calendar software would add 15 minute breaks in where possible, which explains why these breaks may occur directly before lunch or at the start of the day. The diaries are not an accurate reflection of the breaks she was able to take. I found this explanation plausible given the odd scheduling of some of the breaks.
66. The respondent also highlighted that the calendars showed that the claimant had always required reminders to be added to her calendar, including details of transport options and addresses for meetings, which suggested her work practice had not changed as a result of the claimed memory problems. The claimant explained that the diary provided did not include the reminders and notes that she

kept on her own computer or the reminders that she asked colleagues to send her about work. Those would be on her work laptop that had been returned.

67. Having reviewed the evidence in the diary, and taking account of the Claimant's explanation of the way she used her diary, I am not persuaded that the diaries show the claimant was not affected at work. I do accept that the claimant required detailed information to be included in her diary consistently from 2016 – 2021, and that she had sought to have a regular lunch break inserted in or around 2020/2021. In terms of establishing whether the claimant is a disabled person, in light of the medical evidence and the Claimant's evidence at the hearing and in her disability impact statement, I do not find the diaries undermine that evidence, to demonstrate that the claimant does not suffer from a cognitive impairment. To the extent that this would impact either the knowledge of the Respondent, or the adjustments that should be made, these are not questions for me to determine here and I make no findings of fact on those issues.
68. The Respondent referred to the appendix of The Guidance, which contains an illustrative list of matters that may, or may not indicate substantial adverse effect on normal day-to-day activities and submitted that the memory problems experienced by the claimant did not go beyond the normal forgetfulness everyone experiences. The Guidance states that '*occasionally forgetting the name of a familiar person, such as a colleague*' would not reasonably be considered a substantial adverse effect, whilst '*persistent difficulty in recognising, or remembering the names of, familiar people such as family or friends*' would reasonably be considered to have substantial adverse effect.
69. I find that the Claimant's cognitive decline did have a substantial adverse effect on her. Having considered the evidence before me, her memory problems were sufficiently acute for the claimant to have feared she was experiencing early onset dementia, and expressly included forgetting the names of those close to her. That is a level of memory problems of a different level and quality beyond the occasional forgetting of a familiar person. I am satisfied that being unable to recall how to return to her vehicle, or how to drive a route familiar to her, is similarly a substantial adverse effect.
70. At the hearing there was discussion about the volume of work undertaken by the Claimant. The Respondent relied on the live mandates at p169 of the bundle as showing both that the claimant generally had a lower caseload than colleagues, and that her caseload had not significantly changed since she started to experience the menopause. In support of their argument that the Claimant's ways of working were not affected by her impairment, the Respondent had also provided a summary of revenue, at p170 of the bundle, showing that in her final year the claimant brought in more money than in previous years.

71. However, as highlighted at the hearing, the live mandates [p169] do not tally with the number of projects detailed in each year of revenue, even allowing for the differences in calculation year. The live mandate is drawn from a sample of the first week of June, rather than accurate data from the full year, and I do not find it reliable and so attach little weight to it.
72. The claimant highlighted in oral evidence that she had not been provided with the underlying documents including her complete diaries which she had requested, so she was unable to verify the accuracy of the documents. She confirmed that the figures, however, did not seem implausible.
73. In relation to the revenue summary, the claimant explained in oral evidence that projects would be billed at certain stages, so the amount of money recovered at the end of a project, would represent work done over several years. The revenue summary therefore did not reflect an accurate picture of her busy-ness over the preceding years. In her evidence, whilst she found the stress she experienced from Summer 2020 had increased, this was not because she was significantly busier at work, or that the work was more complex.
74. The revenue summary does show that the claimant brought in more revenue in the period from 30/04/21 until 31/12/21. However, I am not persuaded that this document shows that the claimant was busier, than previously. Nor am I persuaded that this shows the claimant's impairment did not affect her work. In so far as this goes towards the Respondent's knowledge of the claimant's impairment, this is not an issue before me, and I make no findings about it here.
75. The claimant additionally says that she experienced increased stress and that she was unable to remain calm. The letter from her GP refers to her experiencing mood swings. The claimant refers to her difficulty in coping with her workflow and her colleagues. It is not clear whether this is a separate symptom or the result of the symptoms described above. The claimant refers to her memory problems making her feel stressed. The respondent argues that the claimant worked in a stressful job and, as set out above, had a particularly high value project reaching conclusion. The respondent submitted that there is no evidence that the stress she experienced can be differentiated from living through a global pandemic and the general stress due to the nature of her job. I do not accept this submission. The claimant has provided evidence that her ability to cope with the stress of her job has decreased, in the form of her disability impact statements and oral evidence. Her letter from her GP refers to her mood swings as a symptom of the menopause. Whilst the evidence before me is insufficient to confirm that this caused a substantial adverse effect on its own, the cumulative effect of this together with the other symptoms described above, is more than minor or trivial.
76. The claimant relies upon her anxiety symptoms within her second disability impact statement. However, in her response to the questionnaire dated 20/08/21 [p144] the claimant responded 'no' when asked whether she felt anxious or on edge.

77. In her subsequent questionnaire dated 07/10/21 after she started to take HRT, the claimant refers to increased anxiety, to experiencing anxiety nearly every day and to her not being able to stop or control worrying for several days. That questionnaire indicates [p147] that this corresponds to 'mild anxiety'.
78. The claimant's evidence from her GP dated 25 January 2023 does not list anxiety as one of the symptoms experienced by the claimant as a result of the menopause.
79. The respondent submitted that the evidence before the Tribunal does not confirm that the anxiety experienced by the claimant is a menopausal symptom and furthermore, that it is not sufficiently severe to have a substantial adverse effect.
80. Having reviewed the medical evidence and the Claimant's disability impact statement, it is not clear that the claimant experienced 'floods of anxiety' as a symptom of the menopause, rather than as a side effect of the HRT medication. Furthermore, the available evidence suggests that the claimant started to experience mild anxiety around October 2021.
81. However, in evidence the claimant distinguished between 'floods of anxiety' she would experience where she had, for example, a telephone call that was unexpected, with the generalised constant worry she felt because of her cognitive decline. I find that, taking into account both disability impact statements and the medical evidence before me, the claimant was experiencing worry or anxiety as a result of her memory and concentration problems from summer 2020. On or around October 2021, that anxiety increased resulting in waves of anxiety, which could be either a progression of the menopause or as a side effect of the HRT medication. Even if the increased anxiety is a result of the medication, given that the HRT is prescribed to ease the other symptoms the claimant experiences, I find that this increase in anxiety is nevertheless, as a result of her impairment. It follows then that the claimant was experiencing anxiety during the relevant period, albeit with the severity increasing from October 2021.
82. In relation to her memory problems and her anxiety, the claimant refers to needing to check and recheck matters before leaving the house, which would add, on average, 20 minutes to her leaving the house.
83. In this regard, The Guidance at paragraph B3 provides an indicative example, that needing to constantly check and recheck would have a substantial adverse effect in a person with obsessive compulsive disorder. I find that both the time taken to carry out the checks for the Claimant, 20 minutes before leaving the house, and the associated anxiety, has a substantial adverse effect.

84. I am satisfied therefore, that the impairment, namely the menopause, did have a substantial and adverse impact upon the claimant during the relevant period as claimed.

Day to Day activities.

85. The Respondent argues that the impact of the symptoms above affected only specialised activities undertaken by the claimant and not on day to day activities, and that the Claimant's work practices were not seen to change with the onset of symptoms.

86. As an example of the Claimant's cognitive decline she refers to leading bike rides, competing in Mountain Bike orienteering and to participating in Map Memory events. In my view these are specialised activities, I have seen no evidence to suggest that these are undertaken on a frequent basis generally, or by anything other than a small group of people with a specialised interest.

87. However, the claimant also refers to her brain fog and memory problems rendering her unable to map read, or find her orientation. She therefore has to use a sat nav all the time. I accept that map reading or navigation is a day to day activity undertaken on a frequent basis and is a different activity to using a sat nav to find your way. I therefore accept that her impairment has a significant adverse effect on that day to day activity.

88. The Claimant's anxiety surrounding her inability to rely on her map reading or orientation, and more generally means she no longer feels confident to ride on her own. Furthermore, her anxiety means she will often walk down benign tracks she would have previously ridden down.

89. The guidance indicates that travelling by different modes of transport is a day to day activity. I accept that riding a bike is a day to day activity and that being unable to go on a bike ride alone indicates a substantial adverse impact on that day to day activity.

90. The claimant refers to her difficulty sleeping and leaving the house, as well as the difficulty she has in taking exercise now, linked to her sleeping problems and general fatigue. Sleep, exercise and leaving the house are plainly day to day activities and from the evidence before me I am satisfied that the symptoms which the claimant has described, had and have continued to have an impact upon her ability to do those day to day activities, and that the impact upon her is that whilst she is able to carry out normal activities she is not able to do so without becoming increasingly fatigued and without having to adjust the way that she does them, in order to compensate for her particular impairment.

91.As set out above, the Respondent does not dispute that the claimant is experiencing the menopause, and accepts it is long term. I also find the same.

Employment Judge Scott
Southampton
Dated 8 May 2023

Sent to the parties on 23 May 2023

For the Tribunal Office

Notes

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.