



EMPLOYMENT TRIBUNALS

Claimant: Mr P Sarjeant

Respondent: JCT 600 Limited

Heard by Cloud Video Platform (CVP) in Leeds

On: 16 May 2023

17 May 2023

Reserved Decision 31 May 2023

Before: Employment Judge Shulman

Representation

Claimant: In person, supported by his partner Hayley Chapman

Respondent: Mr A Willoughby, Counsel

RESERVED JUDGMENT

1. The disability of the claimant, being serrated polyposis, is a disability within the meaning of section 6 Equality Act 2010 (EA).
2. The claim made by the claimant under section 10 EA that he had been discriminated against on the grounds of his philosophical belief is dismissed on withdrawal by the claimant.
3. The Case Management Orders made before this hearing, for the avoidance of doubt, apply to the claimant's serrated polyposis disability.

REASONS

1. Matters occurring at the beginning of or during the hearing

- 1.1. At the outset I informed the parties that I was a customer of the Pannel Harrogate branch of the respondent, which was not where the claimant worked, but that I felt confident that such an arm's length relationship would not interfere with my conduct or judgment in the case. The claimant asked for time to consider this and after a 10 minute break came back and

informed the Tribunal that he, the claimant, did not have any objection to my hearing the case.

- 1.2. This case is registered under the above case number 1802202/2022. The claimant has made another claim, under case number 1801292/2023, the parties informed me, for unfair dismissal and disability discrimination. The claim under case number 1801292/2023 did not form part of this hearing, which dealt only with all or any claims under 1802202/2022.
- 1.3. This hearing was about whether the claimant had a disability or disabilities within the meaning of section 6 EA. The alleged disabilities are dyslexia, autism spectrum disorder, ADHD and serrated polyposis. The respondent informed the Tribunal that, subject to the question of knowledge, which will be dealt with at the full hearing, on or about 16 January 2023 the respondent had conceded that each of the claimant's dyslexia, autism spectrum disorder and ADHD were disabilities within the meaning of section 6 EA and that the sole disability be decided at this hearing (subject to any case management) was whether or not the claimant's serrated polyposis was such a disability.
- 1.4. The claimant made a claim under section 10 EA that he had been discriminated against on the grounds of his philosophical belief, which related to data protection. This claim was not in the claimant's original claim form and so he had to make an application to amend his claim. The Tribunal asked the claimant to consider if such an application was appropriate and time was given to the claimant to consider this, following which the claimant withdrew the claim on the grounds of philosophical belief. Nevertheless for the sake of clarity I have dismissed this claim.
- 1.5. Because of his disabilities the claimant asked the Tribunal for questions, principally from the respondent, to be put in writing. The respondent objected and the Tribunal upheld the objection, subject to seeing how matters proceeded. This question was not raised again by the claimant during the hearing.
- 1.6. On the other hand the claimant asked for and was granted regular breaks, which he took at 11.00 to 11.20 (with the claimant being late at 11.25), obviously 13:00 to 14:00, 15:04 to 15:20 and 16:38 to close on day one, with 11.00 to 11:30 and 12:13 to close on day two. Other time was given to the parties to allow consultation on the proceedings as necessary.
- 1.7. There was an issue of time limits and in particular whether conduct extended over a period, which should be treated as having been done at the end of the period – see section 123(3)(a) EA. After listening to argument on the question of time limits it was likely that the nature of the argument might be better dealt with at the full hearing. After a break of 20 minutes both parties agreed that the question of time limits would be better dealt with at the full hearing.

2. The issue in this hearing

As a result of the matters dealt with in paragraph 1. above the sole issue now to be dealt with in this preliminary hearing is whether the claimant had the disability of serrated polyposis within the meaning of section 6 EA.

3. The law

The Tribunal has to have regard to the following provisions of the law:

3.1. Section 6 EA

This provides whether the claimant has a disability which is a physical impairment which has a substantial and long term adverse effect on the claimant's ability to carry out normal day to day activities.

3.2. There is Guidance on matters taken into account for determining questions relating to the definition of disability (SI 2011/1159). In particular at section B1 it provides, amongst other things, that a substantial effect is one that is more than a minor or trivial effect. Further section D3 assists with what are normal day to day activities, as being things people would do on a regular or daily basis. Examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. Normal day to day activities can include work related activities and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents and keeping to a timetable or a shift pattern. Further in the Appendix to the Guidance examples are given of effect of the impairment as if it were the only effect of the impairment. In particular there is given as an example, difficulty carrying out activities associated with toileting.

3.3. It is well settled law that tribunals must consider the statutory definition of disability itself (in section 6 EA), identify sufficiently the day to day activities and analyse the medicals (see *Elliott v Dorset County Council* UK EAT/0197/20/LA(V)).

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

4.1. The claimant was employed by the respondent as a technician from 15 February 2016 and at the time of the issue of this claim he was still employed.

4.2. The claimant's impact statement describes the background to his alleged disability and whilst the background is clear and it is clear that the claimant has suffered for some time, the statement does not deal in detail with the alleged disability itself nor its diagnosis. He started with haemorrhoids in 2004.

4.3. There are limited medical records. There are those of the claimant's GP, Dr P Markey. On 8 July 2019 they refer to the claimant's abdominal colic pain, on and off for months, bad passed three to four days – triggered by stress at work with flare when the claimant gets stressed, stool two to three times a day, no blood, no weight loss, afebrile, reference to previous polyps removal, was under surveillance – but stopped attending, the claimant says after doctors perforated him causing him to lose trust in the claimant. The claimant was diagnosed with irritable bowel syndrome

(IBS), with a plan to look for IBD. The medical evidence did not reveal other treatments. The claimant was off work from 8 July 2019 to 12 July 2019 but according to the respondent from 8 July 2019 to 17 July 2019.

- 4.4. Dr Markey saw the claimant again on 15 July 2019. The claimant called to discuss bloods. The claimant was borderline calprotection. Dr Markey notes that the claimant had been off work and he issued a sick note for two days 15 July 2019 and 16 July 2019. The claimant was unable to say if this was the first sick note for a bowel issue that he had received. Dr Markey said the claimant needed more surveillance.
- 4.5. On 19 July 2019 the claimant called Dr Markey by phone for more information on calprotection – the claimant was now expressed to be low borderline, probably normal, but a mark of a possible IBS. Given the claimant’s adenomas the claimant agreed a non-urgent referral.
- 4.6. There is no other medical evidence which is dated from the claimant’s start of employment to July 2019 and there is nothing from 20 July 2019 to the date of presentation of the claimant’s claim on 9 May 2022 but there are post medicals referring to relevant history.
- 4.7. The Tribunal was shown a colonoscopy report from Dr P Mundre on 3 February 2023 – the diagnosis was colonic polyps – showing that the claimant “fulfils the criteria for serrated polyposis syndrome”. The claimant told the Tribunal that a number of polyps were removed then.
- 4.8. Dr M Smye, another GP, wrote to the respondent on 27 May 2022 that the claimant has a diagnosis of likely serrated adenoma syndrome and has been under the care of specialists since approximately 2010 and was then currently under Dr Southern, consultant gastroenterologist, at the Yorkshire Clinic. This condition means that the claimant can experience rectal bleeding which Dr Smye suspects may also impact on the claimant at work from time to time and therefore recommending occupational health investigation.
- 4.9. Dr Smye had previously written an open letter on 15 February 2023 that the claimant only had one flare up of bowel symptoms but that the claimant had a history of bowel symptoms back to at least 2008 and that he had a history of serrated polyposis syndrome. Ms Chapman, who gave evidence, said the claimant had another flare up and took one day off work on 24 June 2021.
- 4.10. The claimant says his condition causes him to be late in the mornings because he is on the toilet. Indeed the claimant says he is kept on the toilet for long periods. He says that his condition affects his decision making, the way he talks to people and the claimant says he cannot go to rock festivals anymore. There is reference to his day to day activities in his impact statement but no evidence was given how those matters interact with this alleged disability.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. It is clear that the claimant has a physical impairment of serrated polyposis. Although the medical evidence could be more detailed as to the

impairment itself, it is nevertheless there and Dr Smye confirms that the claimant has the diagnosis of likely serrated adenoma and a history of serrated polyposis syndrome, having been under the care of specialists since approximately 2010.

- 5.2. It is also clear the claimant's disability is substantial being one that is more than minor or of trivial effect. The claimant suffered abdominal colic pain leading to diagnosis of likely serrated adenoma syndrome, meaning that the claimant can experience rectal bleeding, with a history of bowel symptoms going back to at least 2008 with a history of polyposis syndrome.
- 5.3. The claimant's disability is clearly long term, therefore, going back some years, although from the evidence it is difficult to put an exact date on it. The claimant's impact statement history started with haemorrhoids in 2004 and appeared to escalate in due course to the disability.
- 5.4. So far as the claimant's ability to carry out normal day to day activities are concerned and its substantial and adverse effect, the claimant says he is on the toilet for long periods, that his condition affects decision making and the way he talks to people. He says he is unable to go to rock festivals. The Guidance gives as an example the only effect of impairment as being difficulty carrying out activities associated with toileting. The Tribunal finds that those activities are decision making, talking to people and going to rock festivals. The Tribunal finds that the claimant's impairment has a substantial adverse effect on the claimant's ability to carry out normal day to day activities.
- 5.5. In so far as may be necessary the medicals have been analysed at paragraphs 5.2 and 5.3 and set out in paragraphs 4.3.to 4.9. The view of the Tribunal is that they are sufficient to assist Tribunal coming to the conclusion, together with all other circumstances, that section 6 EA is satisfied relating to the claimant's disability and that the claimant's impairment of serrated polyposis is indeed a disability within the meaning of section 6 EA.
- 5.6. Having said that the issue of the respondent's knowledge has not been dealt with at this hearing and is ordered to be dealt with at the final hearing.
- 5.7. After this hearing, but before this reserved decision, the parties held a case management hearing. For the avoidance of doubt, where applicable, the Orders made at the case management hearing shall apply to the claimant's disability of serrated polyposis as if set out in this decision.

J Shulman

Employment Judge

Date 5 June 2023

RESERVED JUDGMENT & REASONS SENT TO
THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS

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