



EMPLOYMENT TRIBUNALS

Claimant

Miss Tracy-Jane Stanton

v

Respondent

CPSL MIND

Heard at: Cambridge

On: 9 May 2023

Before: Employment Judge M Ord

Appearances

For the Claimants: In person

For the Respondent: Mr C Crow, Counsel

JUDGMENT on PRELIMINARY ISSUE

At the material time (between November 2019 and December 2021) the Claimant was a disabled person within the meaning of s.6 of the Equality Act 2010, by virtue of her impaired mental health.

REASONS

1. This matter came before me today to deal with the preliminary issue of whether at the material time, between November 2019 and December 2021, the Claimant was disabled within the meaning of s.6 of the Equality Act 2010 ("EqA").
2. The Claimant was employed by the Respondent from 4 April 2016 to 12 December 2021 and the relevant period for consideration was the period from November 2019 until the Claimant's employment ended which it did by way of resignation on notice.
3. I have heard evidence today from the Claimant who was cross examined by Mr Crow and both he, on behalf of the Respondent, and the Claimant herself, made closing submissions.
4. There was a substantial Bundle of documents before me and Mr Crow presented a written Skeleton Argument.

5. Section 6 of the Equality Act 2010 states that a person has a disability if they have a physical or mental impairment and that impairment has a substantial long term adverse effect on their ability to carry out normal day to day activities. The Claimant relies on a condition of anxiety and depression.
6. The entries in the General Practitioner's notes and records which have been put before me, relating to any mental health issues are sparse. The Claimant explains this as follows.
7. Firstly, she says that she is reluctant to follow what she calls the pharmaceutical route for any condition. Secondly, she says that her mental health issues are best controlled by ensuring she has proper sleep. Thirdly, she says that she is aware when that leads to potential issues at which point she takes appropriate pre-prescribed medication to enable her to sleep. This evidence was not challenged, but the lack of GP intervention was rightly highlighted by Mr Crow.
8. According to the information provided by the GP for this Hearing, the Claimant was first diagnosed with reactive depression on 10 March 2003 and with mixed anxiety and depressive disorder on 2 September 2014.
9. These conditions, as at the date of the information supplied in answer to the questionnaire provided to the Claimant by the Tribunal, i.e. on 8 March 2023, impact on the Claimant's memory or ability to concentrate, learn or understand.
10. It was stated that the Claimant is able to manage her impairment using self help measures learned from mental health therapy and according to the GP,

"Therefore she is able to carry out day to day functions. The impairment, however, is still likely to recur."
11. The Claimant was stated to be able to function in her current employment and is likely to remain capable as long as she is able to self-manage her impairment.
12. The medical notes and records which are before me include: first, a proposed course of cognitive behavioural therapy in 2017 due to what was described as mild depression and anxiety; second, a prescription of Amitriptyline in 2008 and onwards due to insomnia which was stated at the time to be unrelated to poor mental health; third, bereavement reaction following the death of the Claimant's brother on Boxing Day 2019, with the Claimant then absent from work until February 2020; and fourth, reference to the General Practitioner in October 2021. On 8 October 2021 the Claimant had told her GP that she was suffering from stress due to her work. She referred to not feeling safe to be at work. The General Practitioner advised that *"work related stress is not a medical ailment"*, but

issued a form Med3 fit note for two weeks stating, “*stress related problems*” and that “*work needs to look into circumstances as the work life is the actual ailment*”.

13. For the purposes of the definition in s.6 EqA 2010, the cause of any physical or mental impairment is not relevant.
14. I accept and find, and this does not appear to be in dispute, that the Claimant had at the relevant time a mental impairment. She suffers from reactive depression first diagnosed in March 2003 and mixed anxiety and depressive disorder diagnosed in September 2014, which conditions are mainly controlled by a combination of self help and use of medication to aid sleep. I am told that disrupted sleep, or the lack of sleep, is the identified trigger to the Claimant’s condition worsening.
15. Those conditions are long term. They have lasted for a number of years and are, according to the General Practitioner who provided information in March of this year, still likely to recur.
16. The remaining issue for determination is therefore whether the impairment has, or had at the material time, a substantial adverse impact on the Claimant’s ability to carry out normal day to day activities. The burden of establishing this rests on the Claimant.
17. The Respondent points to the fact that the Claimant’s stress and anxiety, according to the GP notes and records, related to being at work. They rightly point to the fact that the Claimant was able to commence new employment immediately on the termination of her employment with the Respondent. The Respondent says the Claimant resigned on one month’s notice which expired on 12 December 2021 and her new employment began the following day, although I am not told for how long the Claimant had been absent from work prior to making enquiries regarding the opportunity of alternative employment.
18. The questions for me, therefore, are effectively as follows:
 - 18.1 Has the Claimant established that her condition had a substantial adverse impact on her ability to carry out normal day to day activities?
 - 18.2 Considering that question, what account should be taken of the Claimant’s coping strategies?
 - 18.3 What medical, or other, evidence is there of the likely effect of the condition absent those self-help actions?

19. I am reminded by the Respondent of the following:
- 19.1 Woodrup v London Borough of Southward [2003] IRLR111, Court of Appeal Lord Justice Simon Brown giving his reasoned Judgment of the Court said this,
- “In any deduced effects case of this sort, the Claimant should be required to prove his or her alleged disability with some particularity and that ordinarily at least, in the present case, one would expect clear medical evidence to be necessary.”
- 19.2 That the material time is the alleged act of discrimination not the current position? In McDougall v Richmond Adult Community College it states that an adverse effect must be substantial, i.e. more than trivial;
- 19.3 In Paterson v Commissioner of Police of the Metropolis, the Employment Appeal Tribunal said that,
- “The correct approach for deciding on the severity of a disabling condition involved enquiry as to how the person carries out the activity compared with how they would do it but for the impairment. The effects are substantial if that difference is more than the kind of difference one might expect taking a cross section of the population.”
20. The Guidance to the Equality Act 2010, in particular paragraph B7, confirms the requirement to take into account what someone would be expected to do to modify their behaviour to prevent or reduce the effects of the impairment on day to day activities. In some instances that may reduce the effects of the impairment so that the person no longer meets the definition of disability.
21. There is, as I have said, a lack of medical evidence here. The Claimant did not, in her words, contact the GP every week to discuss her condition. She was able in the main to self-control her anxiety and depression.
22. The Claimant, however, gave a clear description of the impact her condition had, triggered by what she believed and believes to be inappropriate or unfair treatment she was receiving at work from the time in March 2020 when the Team she led in Peterborough was required to work with another Team in Cambridge, which she described in terms which I paraphrase as badly managed and dysfunctional.
23. The impact of work place stressors is described by the Claimant in her Impact Statement and she puts it this way,
- “Throughout 2020 / 21 I segregated myself from work colleagues, friends, family and my own children. When I go through traumatic experiences, periods of high anxiety, depression and difficult times, I become very distant. I do this as a protective factor. I cannot deal with the extra*

stimuli, pressure and need to remain focused on my priorities. My priority was getting through a highly strung shift at work. I then utilise any spare time on the times before my shift, on days off and annual leave just balancing myself out ready to go out into another highly strung shift."

24. She also says this,

"I locked myself away and my adult daughter who lives with me was taking care of all household chores and tasks, the cooking / cleaning / laundry, I spoke with very few people during this period of time because I couldn't face anyone or anything. I spent all my time alone looking after myself, such as meditating, going in my hot tub, face masks, self-love, self-care, yoga, walking and I thought this was healthy for me. I thought this is what I needed in order to keep going to work."

25. By 2 August 2021, matters were such that the Claimant wrote to her Manager stating that she would be required to take sick leave at some point and asked for help before she would "lose my mind".

26. There had been previously emails beginning in May 2020 when the Claimant referred to the "dramatic effect" work place issues were having on her.

27. Prior to this the Claimant had suffered bereavement in December 2019 when her brother who had terminal cancer was told in November that year that nothing more could be done for him. The Claimant was unfit for work due to her reaction to her loss, including loss of sleep despite the use of Amitriptyline, until February 2020.

28. I accept that the Claimant's condition was exacerbated by the identified stressors. Rather than the question, therefore, being one of whether the Claimant's coping mechanisms should be discounted when considering the impact her condition had on her normal day to day activities because those changes would be reasonable, I consider that in the relevant period the Claimant's normal coping mechanisms - effectively to ensure that her sleep pattern was maintained - had failed. The extreme measures the Claimant took, effectively isolating herself from everyone and devoting her entire time to self-care, including carrying out no domestic chores but rather relying on her daughter to carry them out, all so that she was able to function at work demonstrates the level of the impact on normal day to day activities which the Claimant's condition had.

29. I accept the Claimant's evidence and conclude that during this period she was disabled by virtue of her mental health condition.

30. The Claimant self-isolated throughout the period, she had to ensure that she could continue to attend work and carry out her duties, albeit she says to a lesser degree. She locked herself away from other people and in her words spent all her time simply looking after herself.

31. There is an absence of medical evidence here, but that was explained by the Claimant's determination to deal with her problems without medical intervention, particularly without medication if at all possible. That should not be held against her in this case.
32. Her own evidence of the steps she had to take to try to maintain her ability to carry out her work, including being able to carry out some basic day to day activities such as household chores and isolating herself from friends and family, clearly constitutes a substantial adverse impact on her ability to carry out normal day to day activities.
33. Accordingly, I find that at the material time from November 2019 until December 2021, the Claimant was a disabled person by virtue of her conditions of reactive depression and mixed anxiety / depression.

12 June 2023

Employment Judge M Ord

Sent to the parties on: 22/6/2023

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For the Tribunal Office.