EMPLOYMENT TRIBUNALS

Claimant:	**Dr N A Dick**
Respondent:	**Amazon UK Services Limited**
Heard at:	Tribunals Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG
On:	12 June 2023
Before:	Employment Judge Adkinson sitting alone
Appearances	
For the claimant:	In person
For the respondent:	Ms N Twine, Counsel

JUDGMENT

After hearing from the parties, the Tribunal concludes that

1. The claimant was not disabled between February 2021 and 16 September 2022 because of
   - 1.1. thigh and knee injury,
   - 1.2. spinal cord injury/lower lumbar vertebrae/disc injury which may feed into thigh pain by referral,
   - 1.3. depression,
   - 1.4. post-traumatic stress disorder ("PTSD"),
   - 1.5. panic attacks, or
   - 1.6. anxiety.
2. Therefore the Tribunal dismisses
   - 2.1. all and any claims for disability discrimination, as defined by the **Equality Act 2010 section 25(2)**,
   - 2.2. all and any claims for harassment related to disability.

REASONS

3. I must decide if Dr Dick was disabled.

Hearing

4. The hearing took place in person before me. Dr Dick represented himself. The respondent was represented by Ms N Twine, Counsel.

5. While it is clear there are claims for disability discrimination and possibly harassment related to disability, the Tribunal notes that the claims need some final clarification. The Tribunal notes also that there is no allegation that relies on a perceived disability or on association.

6. There was a bundle of about 612 pages (much of which deals with matters other than the issue of disability) and a short supplementary bundle. I have considered those pages that relate to the issue of disability.

7. As well as his disability impact statements in the bundle, Dr Dick prepared a witness statement. Some of it deals with his finances because there is an issue about whether or not the Tribunal should order the respondent to a pay deposit to pursue some or all of his allegations. That is not relevant at this stage. I have therefore had no regard to those parts, but have to that part that deals with disability and to all of his disability impact statements.

8. At the preliminary hearing before Employment Judge Rachel Broughton on 22 March 2023, Dr Dick confirmed that he alleged his disability was spinal cord injury/lower lumbar vertebrae/disc injury and thigh and knee injury. The Learned Judge ordered the parties to write in within 14 days of the order being sent to them if they believed it was wrong in any material way. Dr Dick did not do so. He has not applied to amend his claim to add other alleged disabilities. However at the hearing before me he sought to allege that he was also disabled because of depression, post-traumatic stress disorder, panic attacks and anxiety. He explained these were the result of the alleged discrimination. I explained that, if correct, these might be personal injuries recoverable as part of any injury to feelings calculation if he were to succeed but he insisted they were disabilities in their own right and on which his claim depended. After discussion, the respondent agreed that I should decide whether these are disabilities too.

9. Dr Dick gave oral evidence adopting his disability impact statements and his witness statement as his evidence. The respondent cross-examined him about it. I have reflected on the evidence when making my decision.

10. Each party made closing submissions. Ms Twine had also prepared written submissions. I have considered these submissions in making my decision.

11. No party requested reasonable adjustments, except that Dr Dick required use of his walking cane to move to the witness table. No party has complained the hearing was unfair. I am satisfied it was a fair hearing.

Issues

12. I must decide if Dr Dick was disabled within the meaning of the **Equality Act 2010** between February 2021 (the earliest apparent date of disability discrimination) and the date he was dismissed, which in his claim Dr Dick puts at 16 September 2022 (I refer to this as the relevant period, where required) because of the following impairments:

    12.1. The alleged physical impairments:

12.1.1. thigh and knee injury ("the leg injury"), and

12.1.2. spinal cord injury/lower lumbar vertebrae/disc injury which may feed into thigh pain by referral ("the back injury")

12.2. The alleged mental impairments:

12.2.1. depression,

12.2.2. post-traumatic stress disorder ("PTSD"),

12.2.3. panic attacks, and

12.2.4. anxiety.

Law

13. I have applied the law as set out below when making my findings of fact and reaching conclusions.

14. The **Equality Act 2010 section 6(1)** provides:

"(1) 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."

15. "Long term" means the effect of the impairment has lasted 12 months, or where the total period for which it lasts, from the time of the first onset, is likely to be at least 12 months, or which is likely to last for the rest of the life of the person affected (**Schedule 1 paragraph 2**).

16. It is for the claimant to prove he is disabled.

17. The Secretary of State has issued guidance called **Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)** ('the guidance').

18. In **Goodwin v Patent Office [1999] ICR 302 EAT**, Morison J said

18.1. Tribunal should look carefully at what the parties have said in their pleadings and clarify the issues;

18.2. The Tribunal may take a quasi-inquisitorial approach to help a claimant to give relevant evidence about their disability

18.3. It should construct the legislative protections purposively;

18.4. It should refer expressly to any relevant provisions the Guidance it has considered;

18.5. It should bear in mind that the fact that a person can carry out activities with difficulty does not mean that his ability to carry them out has not been impaired – the focus is not on what the claimant can do, but what they cannot do or can do only with difficulty (see also **Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19 EAT**);

18.6. Where a claimant is or has been on medication, the Tribunal should examine how the claimant's abilities were affected while

on medication and how those activities would have been affected without the medication;

18.7. Each element should be considered in turn, and

18.8. It should be careful not to lose sight of the overall picture when considering each element of the statutory definition in turn.

19. While one cannot determine an allegation a person is disabled by reference to what they can do, a Tribunal is entitled to consider all the evidence to decide if it finds the claimant's case credible: **Ahmed v Metroline Travel Ltd [2011] EqLR 464 EAT**

20. The appropriate time to consider disability is at the time of the alleged discriminatory acts: **Cruickshank v VAW Motorcast Ltd [2002] ICR 729 EAT**.

21. Normal day-to-day activities means those activities relevant to professional or work life where it applies across a range of employment situations. It requires a broad definition but can include irregular but predictable events: **Paterson v Commissioner of Police for the Metropolis [2007] ICR 1522 EAT; Chief Constable of Dumfries and Galloway v Adams [2009] ICR 1034 EAT**. "Normal" has an ordinary everyday meaning: **Guidance D4**.

22. In **section 212**, substantial is defined "more than minor or trivial". As for practical guidance on deciding if an impairment is substantial, in **Paterson** the Appeal Tribunal said at [68]

"In our judgment the only proper basis, as the Guidance makes clear, is to compare the effect on the individual of the disability, and this involves considering how he in fact carries out the activity compared with how he would do if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross section of the population, then the effects are substantial."

23. Though I have had regard to the whole guidance, we found the following paragraphs of the guidance particularly helpful in this case: C2 (one should take into account cumulative effects of related impairments), C3-C4 (likely means "could well happen"), and section D (normal day to day activities).

24. There is a distinction between a mental condition such as anxiety and depression and a reaction to adverse circumstances. The former is a disability whereas the latter is not. This does not mean the claimant needs to prove "a clinically well-recognised mental illness". To help the Tribunal might start with the adverse effect issues and that may inform if there is a relevant physical or mental impairment: **J v DLA Piper LLP [2010] ICR 1052 EAT**.

Facts

25. I begin by making an observation that, while I have been given no reason to doubt Dr Dick's honesty, I cannot accept his evidence about his condition. In short, what he asserts is at odds with the contemporaneous records. When confronted with the records, he simply did not explain why they conveyed a different impression. Instead he ignored them and

questions about them, and simply reasserted his claim that he was at all material times disabled.

26. There is the additional difficulty that much of his evidence deals with the situation as it is now. He did not provide much evidence about how the situation was then.

27. I was left with the impression that he has convinced himself he is disabled within the meaning of the **Equality Act 2010**. I have no reason to believe the conviction is sincerely held. However the case discloses a trend that Dr Dick develops his claim as time goes on. The clear example of this is his addition of the alleged mental impairments to his claim which were not part of his original claim – in particular the significant lack of medical evidence about them. It is also demonstrated by his refusal to even acknowledge the documents do not support what he says, but simply to reassert without regard to the potential conflict that he is disabled.

28. As a result I find he is an unreliable witness. Except where I say otherwise, I prefer the impression the contemporaneous records coveys than what he told me at the hearing or set out in his statements.

29. I turn then to the facts of the case. I make the following findings of fact on the balance of probabilities.

Background

30. From 17 October 2020 to 16 September 2022 the respondent employed the claimant at its site in Derby known as “EMA1 Fulfilment Centre” as what they call “an associate”. He worked in the warehouse. He was full-time to 2 January 2022, then part-time thereafter. The respondent dismissed him for what they aver was gross misconduct. The details do not matter for this hearing, so I put them to one side and say no more about them.

31. Amongst other matters, Dr Dick alleges the respondent and its employees subjected him to disability discrimination. The respondent denies this.

The medical notes

32. Dr Dick has provided me with his medical records. They are notes that are typed up by the doctor. The notes are obviously important to record the history disclosed by the patient, the results of any exams and the advice given, because they may point to a diagnosis or treatment programme. I have no reason to believe the doctor or physiotherapist making the note was unaware of their importance or that they made the notes otherwise than during or shortly after the relevant consultation. In addition the doctors can only have recorded what Dr Dick told them. There is no reason to add detail not disclosed. In addition, Dr Dick has given me no reason to doubt their accuracy. Therefore I am satisfied they are an accurate record.

33. The relevant medical notes appear to be as follows. Where they refer to a “MED3”, that is what I have called a sick note. They are reproduced as written lest I accidentally alter the meaning of the text used.

    33.1. From 13 January 2021 to 23 February 2021 the claimant was absent from work. The sick note recorded the reason as “mechanical knee pain” but said he could work with adjustments.

His doctor sent to him simple knee exercises to undertake. The consultation was recorded as follows:

"Seen f2f re pains anterior thighs and R knee- since incr activity wit additional work at Amazon shifts several months. generally active, walks a lot. Supply teacher day job. thighs cramp/ache esp in evenings,kneeling up. knee-no obvious swelling, feels may give way but not done so, no locking, FROM. Bloods NAD exc low ferritin. concerned needs xray as new issue for him Comment Examination fully mobile. FROM both knees, minimal anterior effusion, no direct tenderness, no ligament instability, McMurrays neg.

33.2. On 26 February 2021, Dr Dick attended his doctor. The note records:

"Read Code eMED3 (2010) new statement issued, may be fit for work

"Comment History Telephone consult due to covid, ID checked Would like a knee injury review, Med3 expired, would like extension, pain worse on kneeling and bending, seeb F2f by own GP in Jan, no hx of trauma buit started after repetitive bending at work, works for amazon and lots of packing, having knee cramps as well no swelling in knee, can sometimes affect gait, pain is improving buy started again when did bending last week i asked him several times if done the exercises sent by GP- says he didnt get the text, i will resentd Comment Plan would like ammended duties fit note- will send, encourage home exercises, if tried and no better can access physio , sos if worse in meanwhike".

His sick note was dated from 23 February 2021 and said he was fit for work but with adjustments was extended to 5 April 2021.

33.3. On 5 March the claimant attended his doctor by phone (because of Covid-19 restrictions). He was complaining again of bilateral knee pain under in knee cap. So far as relevant the note of the meeting recorded (so far as relevant):

"pain inside his knee cap - worse when going up stairs - ongoing now since october - started when he was undertaking new activities- knee bending with work note previosu consults regarding this is following exercise on his knee no injury, no trauma no locking/no giving pain inside no pins/needless or numbness 2. has cramps in his legs - finds worse when sleeping."

33.4. On 19 March 2021 Dr Dick attended an occupational health assessment. The reported recommended temporary adjustments to 1 May 2021 because of bilateral knee pain. It recorded that:

"I understand Dr Dick is currently in work and reporting experiencing bilateral knee pain. His perception is that his

symptoms are caused by work activities on Stow and Pick processes which involve prolonged bending and kneeling activities. Dr Dick reports struggling to climb stairs and mobilising with a limb due to pain. He tells me that he has consulted with his general practitioner (GP) who has provided him with an exercise regime and referred him for an X-Ray. The GP has also recommended amended duties/work. He is still awaiting an appointment. for the X-Ray. Dr Dick tells me that he is currently managing the symptoms with regular pain relief."

33.5. On 24 May 2021, Dr Dick consulted his doctor about his knees. The doctor concluded it was likely a soft-tissue injury.

33.6. On 16 July 2021, Dr Dick saw his doctor. His sick note which had expired on 5 April 2021 was extended on the same terms for a period of 3 months. The doctor recorded:

"Telephone consultation Pt ID confirmed See hx of knee pain, mild OA chnages on Xray, works at Amazon, needs amended duties note, backdated and ongoing. Employers are supportive, have had an occupational health opinion. Not been to physio

"Comment Plan Medcert backdated to expiry of last one 5/4/21 and for next 3/12"

33.7. From 26 September 2021 to 9 October 2021 Dr Dick was away from work sick. His doctor certified the reason as "work related stress" on 27 September 2021 when the sick note was issued. The certificate was issued after a consultation. The doctor noted at the time:

"History T/c with pt. Triage Stressed and low mood. Issues at work, feel bullied by line manager Losing sleep, anxious. Called in sick last week. Working in amazon. Has tried talking to HR and spoken to employer's assistance programme- waiting for a call back Has support from wife, and friends. Requesting MED3. no thoughts of self harm/suicide.

"Comment Plan MED 3 issued. Pt has requested to move to a different branch and awaiting call back from"

friends. Requesting MED3. no thoughts of self harm/suicide."

33.8. On 13 October 2021, his doctor issued another sick note for "work related stress" for the period 10 October to 16 October 2021.

33.9. On 2 February 2022, his doctor referred Dr Dick to the Community MSK [musculoskeletal] service. In the referral, his doctor noted:

"I would be grateful for a physiotherapy review for this 44-year-old gentleman, who reports pain originating around his right hip joint and referred down to his knee and lower leg.

"He feels he has developed this due to working throughout the pandemic as an Amazon employee. He has previously been

under your service due to this issue (bilateral knee pain) in September 2021 but was lost to follow up."

33.10. From 17 February 2022 to 16 March 2022 Dr Dick was unfit for work. The sick note says the reason is "musculoskeletal leg pain".

33.11. From 10 June 2022 to 1 September 2022 Dr Dick was absent from work.

33.12. On his sick note dated 16 June 2022, his doctor recorded the reason as "Occupational Stress". The sick note was issued after a consultation with a doctor. The doctor noted [sic.]:

"Read Code eMED3 (2010) new statement issued, not fit for work

"Comment History telephone appointment currently working for amazon 2 days a week feels needs to go off sick due to conflict at work with colleagues they have threatened him for raising health and safety concerns, has reported this to manager and HR but now panics after he thinks about having to go back to amazon doesn't want to work there anymore as not the work he invisaged himself doing, but doesn't have stable income 2nd job is through agency as a teacher but work is not regular not able to claim UC if resigns as a result of his visa limitations therefore needs Sick pay may well return to work after period of time off if cannot find alternative employment.

"Comment Plan 1. med3 occupational stress"

33.13. On 19 July 2022, Dr Dick attended his doctor. The doctor noted at the time:

"Comment History f2f pain in the lower back - paraspinal ongoing for 1yr, settles and returns at times acute flare up for the last 2w, intense pain - worse when getting up nil pain when sleeping just taking paracetamol able to weight bear, able to walk nil bladder or bowel issues nil saddle numbness nil pins or needles or shooting pains down the legs Ice- pt seeking Xray of spine - exaplained this is a muscular problem and that Xray will not help with this - needs physio input"

The note shows that while there were intermitted back issues, the episode that was the subject of this visit started at roughly the start of July 2022. Later consultations put into context that it was after a sprint race and that Dr Dick usually jogs.

33.14. On 15 August 2022, Dr Dick again attended his doctor. The doctor noted at the time:

"Comment History T/c with pt- Lower back pain for 1 month, after doing a sprint race. Usually jogs and its active. Suddenly had lower back and right thigh whilst running. Given NSAID and PPI last month- but caused gastritis after taking it once. Seen in ED. Not taken since. Has been taking paracetamol but last week was

struggling with the pain, seen in ED again and given lorazepam and DHC. Is going to Nigeria next week. Taking DHC TDS, lorazepam."

The details show that the injury was sudden, and that Dr Dick told his doctor he was active and jogged. It also shows that despite his leg injury, he had felt able to enter a sprint race and to run. Finally it shows the symptoms started in relation to his back July 2022. The note discloses nothing to suggest it will be long-term.

33.15. On 16 August 2022, Dr Dick attended a physiotherapist. The physiotherapist recorded the meeting as follows:

"Therapeutic exercise

"Exercise leaflet given

"…

"…O/E - musculoskeletal Lx FFROM- PEOR in to ext. Able to squat+ lunge with minimal pain. Right hip- good ROM pain free. SLR passive- 60 degs reports pain in to Lx + quad. SLR active struggles with leg lft- reduced strength 3/5 p+ no issed with reflex, myo/ dermo ***** over Lx paras R>Land in to right TFL+ Glute

"Musculoskeletal system Right lower back + thigh pain for 1 month after sprinting- felt a strong pain in to his thigh. Sat down to rest his pain. Then one week started struggling with pain in his back. Was given analgesia- but reported getting chest pain as a result- called amabulance- heart+ blood pressure no issues. Went to QMC for further testing- no issues. Aggs) walking/ standing Eases) sitting 24hrs) no pattern DH) Given dihydrocodiene Neural) thigh/ groin+ quad- nagging pain"

This also confirms the start of the problem in July 2022 and the event (sprinting) that appears to be the trigger. It did not suggest that the condition might be expected to last beyond 12 months.

33.16. Dr Dick had an MRI scan undertaken on 31 August 2022. It noted:

"There is loss of normal lumbar lordosis noted due to reflex muscle spasm. Degenerative changes noted with formation of marginal anterior and lateral osteophytes on the L3-L5 lumbar vertebra. No loss of bony height seen. The posterior elements and the sacroiliac joints are within normal limits"

The note contains nothing to suggest any impact from the condition would be expected to last longer than 12 months from onset.

33.17. From 2 September 2022 to 7 October 2022, (i.e. from 2 September 2022 to the end of his employment on 16 September 2022) Dr Dick was unfit for work because of sickness. The doctor recorded that the reason was "pain in the back".

33.18. Meanwhile, on 20 September 2022 he attended a physiotherapist. He recorded the attendance contemporaneously as follows:

"O/E - musculoskeletal Lx flexion 80%, ext 70% p++, SF+ rot 90%. -ve myo strength loss in LL. Hypersientiivity to lateral aspect of thigh+ groin- L3-4 distribution Reflexes NAD

"Musculoskeletal system 2 month onset of LBP+ Thigh pain- Crippling pain struggling with walking. LBP only for 1-2 weeks- leg pain worse than back pain. Had treatment for massage in Nigeria+ Accupuncture- helped slightly but still unable to work ?would like to be referred to Ramsey hospital for MRI. Very demanding of this- advised due to no red flag type Sx and pain not persisting for 3 months MRI referral unlikely to be accepted. Advised I would discuss with the GP regrading this due to the high pain levels lack on imporvement and inability to work. Reports really struggling financially due to lack to work.

"…

"Symptom started months ago"

33.19. Meanwhile, on 5 October 2022 he visited his doctor. The contemporaneous note of the consultation noted:

"eMED3 (2010) new statement issued, not fit for work

"Comment History Tel cons Since mid july been having low back pain with radiation down one leg Seen physio and recently been referred for an MRI Angry as does not know the date of scan Wants to be referred to Ramsay healthcare- ie woodthorpe on the NHS Explained we can do referrals for MRI only one way- the hospital might then send him to a different provider Gave him tel number for xray at qmc so he can chase it up if he wants

"Comment Plan re pain relief- can try amitrip to see if better for radicular pain"

33.20. On 24 November 2022 he attended his doctor and was certified unfit for work. The note shows:

"Telephone consultation struggling with anxiety and stress related to his role as a supply teacher… has decided no longer able ot fulfil this role called in sick due to severe stress and anxiety from being off this week has felt instantly better - able to sleep again and eating decided not to return to this role as having such detrimental impact on health so has handed in notice asking for fit note to cover this week absence as agency requesting this"

33.21. On 17 February 2023 a radiologist's report on Dr Dick's MRI scan on his back and lumbar spine noted:

"Clinical Information: over 7 months acute onset of lower back pain + right lower limb radiculopathy L3,4 distribution. ;No improvement with analgesia, physiotherapy or home exercises."

The report confirmed a series of prolapsed discs. 7 months prior to this MRI was mid-July 2021.

Findings of fact about the alleged psychological conditions

34. The medical notes disclose no history of any psychological condition other than

    34.1. "Work-related stress" from 26 September 2021 to 16 October 2021;

    34.2. "Occupational stress" (which I take to be the same as work-related stress) from 16 June 2022 to 1 September 2022 (from that date to the end of employment the sick note recorded "pain in the back" as the reason for absence); and

    34.3. 24 November 2022, anxiety and stress related to his employment as supply teacher.

    There is no mention of depression, PTSD or panic attacks. There is no satisfactory explanation why they are not mentioned in the medical notes. In particular PTSD is a specific well-recognised psychiatric condition. There is no good explanation why there is no evidence of a referral for diagnosis of PTSD, yet alone a diagnosis itself. If he had these conditions, I would expect to see evidence in the medical notes themselves. I conclude that these are matters that Dr Dick has convinced himself he has or had after the event. The contemporaneous records do not support the suggestion he had them at the time. Therefore I find as a fact at no relevant time did Dr Dick have depression, PTSD or panic attacks.

35. Anxiety is mentioned in the contemporaneous evidence. However it is only mentioned in the context of problems at work. There is no suggestion in the contemporaneous medical notes of its existence independent of work. This shows it is not itself a condition but part of his unhappiness at work and is a specific response to a situation. This is supported by the fact that the same complaints manifest in relation to his role as a supply teacher and that when he stopped that role "he felt instantly better, felt instantly better - able to sleep again and eating". I find as a fact that any anxiety related only to work-related stress.

36. The work-related stress was only for about 3 weeks in 2021 and for 2½ months in 2022. There is no evidence to show that any sort of anxiety started in August 2021, though I accept that, logically, it must have begun before he visited his doctor.

37. In the meantime he worked, and any absences were for other reasons. Continued absence was not, according to his doctor, because of work-related stress. There is no suggestion in the medical notes of a continuation between those distinct periods of work-related stress.

38. I find as a fact that the 2 instances are distinct, and not continuations of the same underlying condition.

39. There is no evidence to suggest that there was any expectation or belief that it would last longer than 12 months. I find as a fact that, at the time, there was no basis to believe that it could well last longer than 12 months

because of the fact there were 2 discrete periods, and the evidence shows his anxiety is related to his situation (i.e. work). The contemporaneous evidence also shows that it has not lasted 12 months, and I find as a fact that that is correct.

40. Dr Dick avers that because of the alleged mental impairments, he suffered the following effects on his normal day to day activities since August 2021:

"i) inability to sleep properly and feel rested and revived due to nightmares which makes feel dizzy, sleepy, tired, and uncoordinated while awake;

"ii) feeling anxious and lacking motivation to engage socially and professionally;

"iii) occasional mood swing and emotional instability which affects my ability and capacity to easily take up risk-free or moderately-risked challenges;

"iv) loss of appetite for food, making me go hungry and unable to eat properly;

"v) loss of sexual appetite and urge, which is affecting my marriage and peace at home; etc."

41. I do not accept this. The medical notes do not hint at anything like the effect that he seeks to attribute to the anxiety. If it were affecting him as alleged then I expect he would have told his doctors and they would have noted it. That none of this was highlighted at the time to the doctors leads me to conclude it is not correct.

42. In addition I believe his allegation is undermined by the fact that the anxiety is dependent on workplace issues and was for 2 discrete periods of time.

43. Further, as he said on 16 June, the main problem was he

"[didn't] want to work there anymore as not the work he invisaged himself doing."

44. Moreover though he said there were financial concerns (he needed the sick pay because he was not eligible for universal credit) he said that he

"may well return to work after period of time off if cannot find alternative employment."

45. I accept that if people need finance they may stay in jobs they do not like or want to do. However the fact he was prepared to return, and the fact that the issue was the job was not what he envisaged, lead me to conclude that the alleged effect of any anxiety in those discrete periods is nowhere near like he told me in his evidence.

46. I find as a fact therefore that it any anxiety did not have a more than minor or trivial impact on his normal day to day activities since August 2021. While I accept it would have had some impact when he had work-related stress, the evidence does not persuade me on balance that it was such as to impact more than minor or trivially on normal day-to-day activities. This is because what he said is so contradicted and inconsistent with the contemporaneous medical records. The contemporaneous evidence does not support a conclusion there was any impact on his day-to-day activities

that was more than minor or trivial. I cannot accept his evidence. I find as a fact that in these periods therefore, there was no such impact as alleged.

47. For the avoidance of doubt, even if Dr Dick had persuaded me he had the other mental impairments on which he relies, the findings of fact above would lead me to find as a fact these did not have a more than minor or trivial effect on his normal day to day activities. I rely on the same reasoning.

The leg injury - duration

48. The respondent conceded (rightly in my view) that his leg injury is a physical impairment. I find as a fact that the leg injury has lasted for more than 12 months based on the chronology of the medical notes. Alternatively, I would have been prepared to infer that the number of consultations and period over which the occurred shows that it was expected also to last more than 12 months.

The back injury - duration

49. Dr Dick averred the back injury had started and continued since December 2022. I do not accept that because the contemporaneous medical records do not support it.

    49.1. The first mention of a back problem in the medical notes is that dated 19 July 2022. It records no pain when sleeping and that it settles and returns and had flared up in the last 2 weeks. This contradicts the suggestion it had been continuous since December 2022. Also the lack of consultations with his doctors before July 2022 suggests more of a grumbling – maybe uncomfortable – injury rather than something so serious that it might be a disability within the meaning of the **Equality Act 2010**.

    49.2. The first sick note citing back pain as the reason was dated 15 September 2022, shortly before dismissal.

    49.3. The medical notes of 19 July 2022, 15 August 2022, 16 August 2022, 20 September 2022 and 5 October 2022 all point to a commencement of the back problems at the start to middle of July after a sprint race.

    49.4. The first diagnosis of an actual back problem is 31 August 2022.

    49.5. The MRI scan in the report of 17 February 2023 says the acute onset was 7 months before, which would point to 17 July 2023.

    49.6. Most of the evidence therefore points to an onset after an injury from sprinting in the start or middle of July 2022. I do not accept the medical note 19 July 2022 is enough to show (a) there were prior problems because it depends on the accuracy of Dr Dick's report to the doctor and there is no other medical evidence to support what he says, or (b) that any prior problems are part of the same event or incident. They may well be – it is perfectly plausible. However it is equally plausible they could be separate incidents. I am not medically qualified and do not consider it appropriate to use "judicial notice" to fill the gap.

49.7. There is nothing in the medical evidence that dates before the end of the claimant's employment to show that the back injury was expected to last 12 months, or expected to last the rest of his life.

50. I therefore find as a fact the back condition did not properly start until 1 July 2022 and, at the time of Dr Dick's employment, there was no expectation it would last longer than 12 months or for the rest of his life. It had not lasted 12 months by the date of his dismissal. I have used 1 July 2022 as an approximation. It reflects time for the injury to manifest and for him to consult his doctor. It is also consistent with the report that the "flare up" started in "last 2 weeks".

Leg and back injury – substantial adverse impact

51. I have to consider whether the leg injury had a substantial adverse impact on normal day to day activities. I will also reflect on the impact of the back injury on the assumption that, contrary to my findings of fact, it was a physical, long-term impairment. Dr Dick has treated them both together and so I think it convenient to do so as well.

52. Dr Dick said the impact was (taken from his disability impact statement which he adopted in evidence and which tallies with his other evidence-in-chief):

"I. Difficulty and/or inability to walk for a distance due to knee give-away experience and excruciating pains on my lower back, waist region, thigh and knees. For example it took me more than 45 minutes of very excruciating pains, tears and siting on the floor at different intervals to climb up and walk through a 5-meter long pedestrian bridge in Lagos in August 2022, which ordinarily took 5 – 10 minutes for others without such impairment to do (evidence of my walking video is available for your verification);

"II. Difficulty and/or inability to run and do most exercises due to kneel give-way experience and excruciating pains on my lower back, waist region, thigh and knees. I have been unable to do most exercises since July 2022 when the adverse effects of my physical impairment became worse;

"III. Difficulty and/or inability to lift slightly heavy and moderately heavy objects due to excruciating pains on my lower back, waist region, thigh and knees;

"IV. Difficulty and/or inability stand erect for a long time due to excruciating pains on my lower back, waist region, thigh and knees;

"V. Difficulty and/or inability to climb staircases due to excruciating pains on my lower back, waist region, thigh and knees;

"VI. Difficulty and/or inability to sit down for a long time (up to 2 hours at a stretch) due to excruciating pains on my frontal and backwards thoracic vertebrae, lower back & waist regions, thigh & knees;

"VII. Difficulty and/or inability to bend down, squat or kneel down due to excruciating pains on my lower back, waist region, thigh and knees;

"VIII. Difficulty and/or inability to shower myself without support and care;

"IX. Difficulty and/or inability to stretch my hip and legs while lying down;

"X. Difficulty and/or inability to use most of the pleasurable postures during sexual intercourse;

"XI. Difficulty and/or inability to care for and be romantic to my wife such as massaging and carrying her into the bedroom, etc.;

"XII. Difficulty and/or inability to play with, curdle, carry, and provide child care for my children by showering & dressing them up, lifting them out of danger, lifting them up when they fall down, etc;

"XIII. Inability to feel sensation on my legs (numbness feeling on my legs especially the right leg) between July and September 2022 and recently this month (April, 2023);

"XIV. Hotness feeling on my fingers and palms between July and September 2022 and recently this month (April, 2023);

"XV. Generally affects my effectiveness and efficiency in business, project & service deliveries and/or task execution;

"XVI. Makes me to be anxious and worried about my future health status and general well-being and the impact a worsening health status will have on me and my family;

"XVII. Negatively affects my general well-being: my physical, psychological, emotional and mental health;

"XVIII. Pain-killers taken to reduce the excruciating pains affect my consciousness/alertness and make me drowsy and unproductive for about 6 – 8 hours…"

53. I have watched the video to which Dr Dick referred. It shows him descending steps on a bridge. He walks down the steps with a little hesitation but not markedly so. His right hand rests on his right knee and his body bends to his right side at the waist. He gets to the bottom of the steps and then walks similarly for a few steps. The speed at which he descends the stairs and walks is unremarkable. Just before the video ends, he takes his hand off and starts to walk in an unremarkable way. At all times his back is to the camera. The camera appears to be a mobile phone. There is no suggestion the video is anything but a genuine example of Dr Dick descending stairs and walking. In addition, by reference to how it plays and how others around him appear to move, there is no suggestion the video plays at anything other than real time.

54. However I am not satisfied the video shows anything other a minor or trivial interference. He is able to descend stairs with some hesitation but not overly so. He is able to descend and walk at what appears to be a normal speed even with his hand on his knee. He able to walk unremarkably once off the steps. I infer he is able to ascend the stairs just as well since there is no suggestion otherwise. The video shows discomfort. At the bottom he can walk normally. It certainly does not support the 5-to-10-minute duration of the crossing the bridge as averred by Dr Dick in his evidence. The video suggests that Dr Dick's evidence to me is a significant exaggeration of the reality. This suggests me again evidence of unreliability.

55. The medical evidence also does not support what Dr Dick tells me. There is no evidence during the relevant period the back or leg injury had a more than minor or trivial impact.

55.1. His knee injuries did not appear to justify a complete absence. For part of it he was able to work with adjustments. The last sicknote in respect of his leg injury expired on 16 March 2022. The injury never again warranted an absence from work and was never again cited on the sick notes. It also appears to disappear from the consultations with his doctor. Instead from 19 July 2022 the problem is with the back, which starts after sprinting.

55.2. The medical notes lead me to conclude that his back injury resulted from a sprint race, that he was in a sprint race in July 2022 and that he was able to jog before then. This is in my opinion highly inconsistent with the impacts he avers happened to his mobility.

55.3. The other impacts that he avers are significant. It is therefore striking that there is no real evidence of these impacts in the medical notes at the relevant time (or since) when he was seeing his doctor about the back and leg injuries.

56. Therefore despite his long list of alleged impacts, I find the lack of support in the contemporaneous medical evidence, the notes of what is reported in them, the evidence of what he was able to do and the fact the video does not support what he avers lead me to conclude that Dr Dick did not suffer any adverse impact from the back injury or leg injury (whether treated individually or as one) that was substantial.

Conclusion

57. I therefore conclude that Dr Dick is not disabled because of the alleged mental impairments or the alleged physical impairments during the relevant period. The evidence provides me with nothing to show that on balance of probabilities he could not do what he alleges, or could only do it with difficulty. In short I cannot accept his evidence. That which I can accept does not support his allegations. It follows that all claims of discrimination because of disability or harassment related to disability must be dismissed.

Employment Judge Adkinson

Date: 22 June 2023

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.