EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Stuart Cornish	**v**	**The Football Association**

Heard at: Watford **On**: 25 May 2023
Before: Employment Judge Alliott sitting alone

Appearances
For the Claimant: In person
For the Respondent: Mr Joel Wallace (counsel)

JUDGMENT

The judgment of the tribunal is that:

1. At all material times between 26 January and 31 May 2022 the claimant was disabled within the meaning of the Equality Act 2010 by reason of PTSD.

REASONS

Introduction

1. This preliminary hearing was ordered by Employment Judge McNeill KC to determine:-

> "1.1 Did the claimant have a disability as defined in s6 of the EqA at the time of the events the claim is about namely 26 January to 31 May 2022? The Tribunal will decide:
>
> 1.1.1 Did he have PTSD (a mental impairment)?
> 1.1.2 Did that impairment have a substantial adverse effect on his ability to carry out day-to-day activities?
> 1.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
> 1.1.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
> 1.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
> 1.1.5.1. did they last at least 12 months, or were they likely to last at least 12 months?
> 1.1.5.2. if not, were they likely to recur?"

The evidence

2. I had a hearing bundle of 152 pages which included 2 impact statements from the claimant. I heard oral evidence from the claimant. I had a skeleton argument and authorities bundle from the respondent.

The law

3. Mr Wallace has made extensive submissions in his skeleton argument on the relevant legal principles to be applied. For this I am grateful and they are fairly put. I do not repeat them here but record I have read them, do not disagree with them and have taken them into account.

4. Section 6 of the Equality Act 2010 defines disability as follows:-

> "6 Disability
>
> (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."

5. Schedule 1 to the Equality Act provides, in relation to long-term effects, as follows:-

> "Long-term effects
>
> 2 (1) The effect of an impairment is long-term if—
>
> (a) it has lasted for at least 12 months,
>
> (b) it is likely to last for at least 12 months, or
>
> (c) it is likely to last for the rest of the life of the person affected."

6. In his skeleton argument Mr Wallace has referred me to paragraphs B2, B3, B9 and B11 on the Guidance on the definition of disability (2011). The only one I set out here is B9 as follows:-

> "B9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would **not** be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability **it is important to consider the things that a person cannot do, or can only do with difficulty**."

7. In addition, I would add C9 and C10 as follows:-

> "Likelihood of recurrence
>
> C9. Likelihood of recurrence should be considered taking all the

> circumstances of the case into account. This should include what the person could reasonably be expected to do to prevent the recurrence. For example, the person might reasonably be expected to take action which prevents the impairment from having such effects (e.g. avoiding substances to which he or she is allergic). This may be unreasonably difficult with some substances.
>
> C10. In addition, it is possible that the way in which a person can control or cope with the effects of an impairment may not always be successful. For example, this may be because an avoidance routine is difficult to adhere to, or itself adversely affects the ability to carry out day-to-day activities, or because the person is in an unfamiliar environment. If there is an increased likelihood that the control will break down, it will be more likely that there will be a recurrence. That possibility should be taken into account when assessing the likelihood of a recurrence."

The facts

8. I have within the bundle psychological reports from a Consultant Clinical Psychologist indicating that the claimant was receiving psychological treatment in 2016/2017.

9. In September 2018 the claimant was referred to Dr David Middleton, Consultant Psychiatrist, by his GP. The claimant's symptoms on referral included nightmares, sleep problems and flash backs. A presumed diagnosis of PTSD was mentioned. The report from Dr Middleton indicates that the claimant had been taking Fluoxetine 30mg once daily for five years or so. Dr Middleton made a diagnosis of Post Traumatic Stress Disorder and recommended upping the dosage of Fluoxetine to 40mg once daily and recommended counselling.

10. I have some psychological screening reports from 2019 when the claimant was still a serving Police Officer. The report from 8 February 2019 reveals as follows:-

> "Changes to mental health? Yes, noticed around 7-8 months ago was starting to experience trauma symptoms again. "

11. Under the current symptoms section the following is recorded:-

> "Avoidance: working on child murder cases. No longer watches police TV shows and will avoid children if he can help it. Including watching children on TV shows.
>
> Intrusions: Sleep disturbances, nightmares regularly about indecent images, or themes of dreams featuring investigations some that are real others are not.
>
> Noise – Stuart identifies one of his biggest triggers is the sound of children crying. This leaves him feeling like he has road rage – he describes as "red mist". Reports distressing images whilst awake too and reports flashbacks happening at home and work.
>
> Hyperarousal: Stuart reports much higher increase of anger and irritability, low tolerance. He reports he notices that he scratches at his hands and feet without realising and at times has drawn blood."

12. There is a reference to the claimant drinking to excess within that report.

13. The claimant was referred for EMDR therapy which he told me is eye movement therapy. The discharge report dated 4 June 2019 states as follows:-

> "As Stuart reports significant improvement in psychological wellbeing and improvement in symptoms and reports no significant impact on their daily functioning within the workplace, there are no adjustments to their duties that I would recommend."

14. I note in passing that the claimant remained on Fluoxetine at that time and, as he told me in oral evidence, his counselling had taught him coping mechanisms.

15. In addition, the claimant told me that he had group therapy.

16. On 26 January 2022, the claimant went off work due to sickness. I have a fit note dated 1 February 2022 from the claimant's GP signing him off for seven days because of "stress and anxiety" A second fit note dated 9 February 2022 signed the claimant of for four weeks because of "depression/PTSD".

17. Unfortunately, disclosure of the claimant's GP records covering 9 February 2022 has not been made and so I do not know what the presenting complaints were. However, the fact remains that the claimant was signed off work with one of the reasons being given as PTSD. In my judgment, that indicates that his symptoms arising from PTSD were manifesting themselves at that time and were sufficient to cause him to be signed off work by his GP.

18. The claimant returned to work on 10 March 2022. On 25 March 2022 Occupational Health undertook a telephone assessment of the claimant. The report sets out as follows:-

> "He is very much of the opinion that the deterioration in his psychological health was caused by work related issues and those include:
>
> 1. Workload.
>
> 2. Pressure of work.
>
> 3. The nature of his caseload which could be emotionally taxing.
>
> He states that it was the child sex abuse cases that he found particularly difficult to deal with and particularly taxing.
>
> Cumulatively, this led to a deterioration in his psychological health to the point that he was signed off work in January 2022.
>
> He states that he did make his line manager aware that he was finding some aspects of the job stressful but does not recall specifically asking for modifications at work.
>
> Mr Cornish states that his General Practitioner offered a diagnosis of work related stress but does, however, state that Post Traumatic Stress Disorder

> was diagnosed in around 2016 while he was serving police officer and that diagnosis was based on his experience of a number of events encountered during his time in Child Protection. He states that he had talking therapies in the form of EMDR and cognitive behaviour therapy.
>
> He also did some group sessions PTSD work.
>
> He feels that the treatment helped but he feels that dealing with his current caseload led to a triggering of his PTSD with a recurrence of symptoms.
>
> Mr Cornish is prescribed antidepressant medication, specifically Fluoxetine 60mg daily and he had been taking this medication for over four years.
>
> His medication was not increased by his General Practitioner but he was prescribed a two week supply of sleeping tablets."

And

> "All indications are that he is being medicated appropriately but my opinion is that some form of further talking therapies, ideally cognitive behavioural therapy or trauma support, would be appropriate and if this could be accessed through the Employee Assistance Programme then this is, in my opinion, likely to be beneficial for him.
>
> My opinion is that with appropriate psychological support, Mr Cornish is likely to improve psychologically and to be able to manage his anxieties better.
>
> My opinion is that part of Mr Cornish's psychological support would be advice regarding avoidance of triggers going forward.
>
> On that basis, my concern is that a re-exposure to child sex abuse cases as part of his workload, is likely to act as a trigger for a recurrence of his psychological ill-health and a deterioration in his condition."

19. I have a printout of the claimant's GP records. This was made on 28 November 2022 and so postdates the relevant period. Under Active Major Problems, PTSD is recorded. As already indicated the consultation on 9 February 2022 is not included in those records. There is a reference on 20 May 2022 with one of the presenting problems being Post Traumatic Stress Disorder. The following is recorded under History: "When feels bad takes an extra Fluoxetine rather than considering something like Diazepam… On a bad day has lack energy, can't be bothered, depression, mood swings.

20. Having reviewed the medical evidence I have no hesitation in finding that the claimant had the mental impairment of Post Traumatic Stress Disorder. Indeed, Mr Wallace acknowledges as such. However, he challenges whether that was long lasting in the sense that he asserts that at the relevant time there was no substantial impairment of the claimant's ability to undertake day to day activities.

21. In assessing the effects of the claimant's PTSD I have to disregard the fact that the claimant was taking Fluoxetine 20mg x 3 daily and Amitriptyline 10mg 1 per night.

22. The claimant has provided two impact statements, the second of which is more comprehensive. I accept that the claimant has lifted parts of that from the report of Dr Middleton but I apply no criticism to that exercise since the claimant told me that his symptoms remained similar throughout. I found the claimant to be a credible and reliable witness. The claimant describes in his impact statement the effects that his PTSD has had on the ordinary day to day activities such as being out amongst the public or at home with his wife and children, being at the theatre, restaurant, watching TV, socialising with friends and family and walking in the park. The claimant describes hypersensitivity to sounds, excessive vigilance, mood swings and avoidance behaviour. In my judgment, those are all substantial adverse effects on his ability to undertake day to day activities. In addition, the claimant records sleep disturbance and nightmares which is, in my judgment, another substantial adverse effect on normal day to day activities. In addition, the claimant had six weeks off work due to symptoms from his PTSD during the relevant time. Going to work is an ordinary day to day activity.

23. Mr Wallace urged upon me that there were four substantial hurdles that the claimant could not overcome. The first is his approach to providing the details of the adverse effect he says his disability had on his ability to undertake day to day activities. It is fair to say that he was given a second chance to do so by Employment Judge McNeill KC. In my judgment, for a litigant in person his second impact statement is perfectly adequate.

24. Secondly, Mr Wallace suggests that there is a lack of evidence as to the extent to which his PTSD was symptomatic during the relevant period. I disagree with him. As recorded the claimant had six weeks off work due to his symptoms of PSD in part and had a fit note from his GP. Further, the extracts from the OH Report of 25 March 2022 in my mind clearly set out the symptoms that the claimant was suffering from as reported by him contemporaneously and prior to the onset of litigation. Thirdly, the GP record records a complaint of PTSD. I do not accept that the claimant was referring to his PTSD in the past sense or in any way suggesting that he treatment had cured or removed it such that he was not still suffering from that condition. I accept that his copping mechanisms and drug regime will have ameliorated his symptoms. The claimant told me that his symptoms fluctuate and that is only to be expected given the nature of the condition. I find that there was a recurrence of his disability of PTSD in the relevant period.

25. The third matter Mr Wallace urged upon me was that the claimant's engagement with occupations that potentially exposed him to triggers such as child abuse, was incompatible with someone suffering from PTSD. I draw no such conclusions. Anyone who is disabled will endeavour to find and keep employment. The claimant clearly thought that he would be able to cope with employment at the Football Association. I express no view as to where that went as that would be trespassing on the full merits hearing.

26. The fourth issue Mr Wallace urged upon me was he says there was some inconsistency in the reports of whether or not the claimant was abusing alcohol. The claimant told me that his issues with alcohol would come and go. There were periods when he would drink to excess as a coping mechanism. I accept the claimant's evidence on this point and find nothing sinister in the various references in the reports I have referred to.

Conclusions

27. To answer the questions posed by Employment Judge McNeill KC:-

28. I find that the claimant did have PTSD which is a mental impairment and had it at all material times.

29. I find that the claimant's PTSD did have a substantial adverse effect on his ability to carry out day to day activities.

30. In arriving at my conclusion I have taken into account the medical treatment that he claimant was having.

31. I find that the effects of the impairment were long-term in that they had lasted 12 months and were likely to continue at the material times.

32. I find that at all material times between 26 January and 31 May 2022 the claimant was disabled within the meaning of the Equality Act 2010 by reason of PTSD.

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Employment Judge Alliott

Date: 29 June 2023

Sent to the parties on: 12 July 2023

GDJ
For the Tribunal Office