



EMPLOYMENT TRIBUNALS

Claimant: Mrs. P. Richardson

Respondent: Brooknight Security Limited

Heard at: Watford (by CVP) **On:** 12 June 2023
Before: Employment Judge **S Evans**

Appearances

For the Claimant: In Person

For the Respondent: Ms. Kaur (Solicitor)

PRELIMINARY HEARING RESERVED JUDGMENT

The judgment of the Tribunal is that, at the time material to the Claimant's claim of disability discrimination, she was a disabled person by reason of osteopenia.

REASONS

The Hearing

1. A remote hearing was held with the agreement of all parties. There was a technical issue at the outset as neither party could access the sound in the virtual hearing room. Further, the Clerk was unable to see me when I joined. This took some time to re solve but the hearing was eventually transferred to a different virtual hearing room and the hearing began at 11:03. There was then a further delay as the hearing bundle had not been made available to me (although both parties confirmed that they had access to the bundle). There was a short adjournment to enable me to receive and read the bundle. The hearing resumed at 11:30.
2. Both parties confirmed at the end of the hearing that the technology worked satisfactorily throughout the hearing and both parties confirmed they had been able to take a full part in the hearing.

3. The purpose of the Preliminary Hearing was to determine whether the Claimant was a disabled person, within the meaning of the Equality Act 2010, at the material time in relation to her claim.
4. At the outset of the hearing, the Claimant was asked whether she needed any adjustments to be made. She indicated that she might become emotional and could not sit for long periods. It was agreed with the Claimant that she should take her time in giving evidence and let me know if she needed any additional breaks. This was checked by me throughout the hearing.
5. The bundle before the Tribunal consisted of 10 pages. The index to the bundle indicated a much larger number of documents. I explained the significance of today's hearing to the Claimant and stressed the importance of checking that all the documents to which she wanted to refer were in the 10 page bundle. Initially, the Claimant said that the bundle did not represent the totality of the evidence relevant to today's hearing. I explored this further with the Claimant and stressed again the importance of ensuring any relevant documents were available. The Claimant considered this carefully and confirmed that there were no further relevant documents. Page references below are to pages in the bundle.
6. Oral evidence was taken from the Claimant which included supplementary detail to add to her impact statement (at page 1 of the bundle).
7. The Claimant confirmed that her claim of disability discrimination relates to her dismissal by the Respondent. The material time for determination of the issue of whether the Claimant can rely on the protected characteristic of disability is therefore 26th March 2020.
8. Oral submissions were made by both the Claimant and the Respondent's representative at the conclusion of the oral evidence.
9. The Tribunal took account of all the evidence to which it was directed in reaching its decision. The Tribunal also carefully considered the oral submissions made by the Claimant and the Respondent's representative.

The Issue

10. The issue for determination was whether, at the material time of 26th March 2020, the Claimant was a disabled person.
11. The Claimant's case is that she was disabled at the material time by reason of .
12. The Respondent's representative indicated at the outset of the hearing that the issue of disability was not conceded. In her closing submissions, she confirmed that the Respondent accepted the Claimant has had a physical impairment since September 2019 and conceded that the effects of the condition were likely to last for the rest of the Claimant's life.

13. It is therefore accepted by the Respondent that the Claimant had a physical impairment at the material time and that the effects of that impairment were long term, in accordance with the provisions of the Equality Act 2010.
14. The Respondent's representative confirmed at the end of her closing submissions that the only issue in dispute, as far as today's hearing is concerned, is whether, at the material time, the Claimant's physical impairment has a substantial adverse effect on her ability to carry out normal day-to-day activities. That point is not conceded by the Respondent.

Findings of Fact

15. The Claimant is 52 years old and was previously employed as a security guard by the Respondent.
16. On 25th April 2019, the Claimant fell down stairs and broke a toe on her right foot. She initially assumed it would heal within 6 to 8 weeks but when it did not, her doctor arranged for a bone scan which identified osteopenia in her left hip and in her back at spinal nerves L1, L2 and L4 (page 9). The diagnosis was shared with the Claimant on 27th September 2019.
17. Since breaking her toe, the Claimant's mobility has deteriorated. The Claimant's factual evidence as to the impact on her ability to carry out the activities listed below was not challenged by the Respondent's representative. I found the Claimant to be a credible witness and accept that her impairment has had the effects set out below since mid-2019.
18. The Claimant suffers pain in her shin and cannot bend. She sometimes cannot get out of the bath without assistance as she cannot put weight on her foot without a shooting pain going through her foot and into her shin. When she lies in bed on her side, her hip and arm hurts so that her sleep is interrupted and she cannot sit or stand comfortably.
19. She describes walking up and downstairs as "hard". The Claimant used to love going on long walks and camping but can no longer do so because of her pain. She described her balance as "awful" and explained that she wobbles if she is getting dressed, especially when standing on her right leg. She cannot stand at the kitchen sink for too long as it causes her pain and she cannot garden as she cannot stand or kneel. She describes all her activities, except reading, as having "virtually stopped".
20. The Claimant's physical symptoms have also had an impact on her mental health. She was very emotional as she described herself as feeling "useless" and explained that she is scared that if she falls, she could break parts of her body.
21. The Claimant manages her pain with paracetamol as she is unable to take other medication. Her medical records (pages 2 and 3) show the Claimant takes other prescribed medication which is incompatible with NSAIDs. She also takes

Accrete D3 medication twice daily to address the reduced levels of calcium caused by osteopenia.

The Law

22. Under s.6 Equality Act 2010 (“EqA”), a person has a disability if they have a physical or mental impairment and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
23. Pursuant to s.6(5) EqA, the Secretary of State has published Guidance on the definition of disability (2011) (“Guidance”). As the Guidance states, it does not impose any legal obligations in itself, nor is it an authoritative statement of the law. However, Schedule 1, Paragraph 12 EqA requires the Tribunal to take into account any aspect of this guidance which appears to it to be relevant and the Tribunal confirms that it has done so.
24. Section 212 (1) EqA defines “substantial” as meaning “more than minor or trivial”.
25. Schedule 1, paragraph 2 EqA states that the effect of an impairment is long term if it falls into one of the following provisions :
 - (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.
26. Schedule 1, Paragraph 5 (1) EqA provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
 - (a) measures are being taken to treat or correct it, and
 - (b) but for that, it would be likely to have that effect.
27. Normal day-to-day activities are not defined in EqA. Examples of such activities are given in the Guidance, which is illustrative and not definitive. Paragraph D3 states:

In general, day-to-day activities are things people do on a regular or daily basis, and 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 general 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.
28. Neither party referred me to any authority beyond the provisions of the Equality Act 2010 but I have taken account of the established legal principle that the

focus must be on what the Claimant is unable to do, rather than what she can do. I am also mindful that the burden lies with the Claimant to prove, on a balance of probabilities, that she was a disabled person, within the meaning of the Equality Act 2010, at the material time.

Conclusions

29. The Claimant met the legal definition of disability at the material time. The Respondent concedes that she had a physical impairment at the material time and that any effects are long-term as they were likely to last for the rest of the Claimant's life.
30. The Respondent's representative confirmed that the only issue for me to determine is whether, at the material time of 26th March 2020, the Claimant's physical impairment had a substantial adverse effect on her ability to carry out normal day-to-day activities.
31. The Respondent says that it did not : it submits that the adverse effect was only minor or trivial. No further detail was provided by the Respondent's representative as to the reasons for that submission and the point was not explored with the Claimant under cross-examination.
32. From mid-2019, the Claimant's impairment has negatively affected her ability to bend and to walk up and downstairs. She sometimes cannot get out of the bath and she cannot lie in bed or sit or stand comfortably. She can no longer go on long walks or camping and cannot do her gardening. She cannot balance properly to get dressed.
33. The Tribunal finds that the activities listed in paragraph 32 are normal day-to-day activities.
34. The claimant's impairment, at the material time, had an adverse effect on her ability to carry out each of the day- to- day activities listed in paragraph 32. These adverse effects were not trivial or minor at the material time. They had a significant negative impact on her ability to carry on a normal day-to-day routine and to carry on her previous hobbies of walking, camping and gardening which she had to stop.
35. Having considered the submissions from both parties and reviewed the evidence to which it was referred, the Tribunal finds that the claimant met the definition of a disabled person within s.6 Equality Act 2010, at the material time, for the reasons stated above.

Employment Judge S Evans
12 June 2023
Sent to the parties on:
27 June 2023
GDJ
For the Tribunal Office