EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr George Dredd **v** **Zirkon Ltd**

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Watford (by CVP) **On**: 13 July 2023
Before: Employment Judge Alliott (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Mr R Ryan (counsel)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant was at all material times between 19 May 2017 and 11 March 2021 disabled within the meaning of the Equality Act 2010 by reason of mixed anxiety and depressive disorder.

REASONS

Introduction

1. This public preliminary hearing was ordered by Employment Judge Elliott on 22 March 2023 to determine disability status.

The law

2. 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."

3. Schedule 1 to the Equality Act provides 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
>
> …
>
> (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur."

4. In addition I have the Guidance on the definition of disability (2011) and in particular the following sections:-

> "A4. Whether a person is disabled for the purposes of the Act is generally determined by reference to the **effect** that an impairment has on that person's ability to carry out normal day-to-day activities."

And

> "A7. **It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded.** For example, liver disease as a result of alcohol dependency would count as an impairment, although an addiction to alcohol itself is expressly excluded from the scope of the definition of disability in the Act. What it is important to consider is the effect of an impairment, not its cause – provided that it is not an excluded condition."

And

> "Exclusions from the definition
>
> A12. Certain conditions are not to be regarded as impairments for the purposes of the Act[3]. These are:
>
> • addiction to, or dependency on, alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed)"

And

> A14. A person with an excluded condition may nevertheless be protected as a disabled person if he or she has an accompanying impairment which meets the requirements of the definition. For example, a person who is addicted to a substance such as alcohol may also have depression, or a physical impairment such as liver damage, arising from the alcohol addiction. While this person would not meet the definition simply on the basis of having an addiction, he or she may still meet the definition as a result of the effects of the depression or the liver damage."

And

> "B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general

> understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect."

5. In addition I have had regard to the following extract from the IDS Handbook on disability at 2.92:

> "In Goodwin v Patent Office [1999] ICR 302 EAT, the EAT said that, of the four component parts of the definition of a disability in section 1 DDA (now section 6 Equality Act), judging whether the effects of the condition are substantial is the most difficult. The EAT went on to set out its explanation the requirement as follows:
>
> "What the act is concerned with is an impairment on the person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook, but only with a greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts."

The facts

6. The claimant was employed from 19 May 2017 until 11 March 2021 and I have taken that to be the relevant period.

7. The respondent has relied heavily on the fact that the medical notes disclose that the claimant has been a regular and at some times heavy user of cannabis since the age of 16. That analysis, in my judgment, is correct. The various references in the medical notes bear this out and, to an extent, the claimant accepted it, although he said that his use had not been necessarily daily and had not always been as heavy as some records may suggest. Nevertheless, I do not have a medical diagnosis to the effect that the claimant is addicted. Further, the claimant disputes that he is addicted. The mere fact that the claimant may have regularly used cannabis since the age of 16 does not of itself prove that he is addicted. In my judgment it has not been established that he was addicted to cannabis.

8. I have reviewed the GP notes. I have a printout of the notes form 2014 until 28 February 2021. Then I have a second batch of GP notes from March 2021 until March 2022.

9. In the February 2021 GP notes the heading states as follows:

> "Problems: Active
> 16 May 2017
> Mixed anxiety and depressive order.
> Problem severity: Major"

10. From September 2014 onwards the GP notes record the claimant regularly presenting himself to his GP with a complaint of low mood and anxiety. In September 2014 there is a record of low mood and anxiety for many years. In May 2016 there is a complaint of a history of low mood, anxiety and irritability.

11. In January 2017 the claimant attended at his GP complaining that he was feeling more anxious recently and recited panic in public, having to quit his job and hyperventilating. It was recorded that he was still being treated under the Crisis Team and was taking Mirtazapine and Propranolol.

12. In the medication section of the GP notes it is clear that the claimant had been prescribed and was taking Citalopram regularly since 2014. The claimant was advised to get back in touch with the Crisis Team.

13. In February 2017 the claimant was actually discharged from the Crisis Team which recorded his condition as “depressive disorder”.

14. In February 2017 the claimant was prescribed Mirtazapine and Pregabalin.

15. In March 2017 the claimant was reviewed for ongoing depression and anxiety. He was referred to the Mental Health Team in March 2017.

16. The claimant was assessed on 16 May 2017 by the Leicestershire Partnership NHS Trust Adult Mental Health Directorate. He was assessed by Dr Nusra Khodabicx, a Consultant Psychiatrist. A diagnosis of mixed anxiety with depression was made. A recommended drug regime of Duloxetine , Mirtazapine, Propranolol and Pregabalin was recommended.

17. The notes indicate that the claimant had been seen in the Crisis Team from November 2016 until February 2017. The notes also refer to the claimant having suffered from depression for seven years. It is recorded that the claimant had smoked a lot of cannabis starting at the age of 16 and sets out 1.5 grams per day to October 16 and thereafter at .5 grams per day. This is one of the references to the sustained and heavy use of cannabis that is recorded in the medical notes.

18. The recommended treatment was to be referred to have CBT and the aforesaid drug regime.

19. In July 2017 the GP notes record that the claimant was off Mirtazapine and Propranolol and that his mood was stable.

20. In October 2017 it is recorded that the claimant had stopped all medications a month ago. It also records that he had restarted Pregabalin a few weeks ago but he felt that it was not helping his ongoing panic attacks and anxiety and he wanted a referral to a psychologist.

21. It would appear that thereafter the claimant made something of a recovery. The repeat prescriptions appear to stop in October 2017. In November 2017 he did not contact the NHS in order to arrange CBT appointments. He missed an appointment with the Crisis Team in February 2018 and was discharged.

22. There then appears to be a large gap in any attendance at his GP notes for medical reasons between January 2018 and June 2020. Between then and February 2021 the only attendance at the GP was in relation to a neck issue.

23. In the second batch of GP records it can be seen that the claimant attended on 9 April 2021 very upset and tearful having lost his job with a background of anxiety. Thereafter he attends regularly at his GP for mixed anxiety/depressive disorder and was prescribed Sertraline continuously.

24. When assessing the effects of any impairment the Act provides that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect

25. It is clear to me and I find that the claimant had a mental impairment of anxiety/depressive disorder. This was formally diagnosed in May 2017 by a Consultant Psychiatrist but the references in the medical notes are that it had been going on for at least seven years if not more.

26. I find that the mental impairment was long-term in that it had lasted for more than 12 months.

27. It is noticeable that in the medical records it appears that the claimant made a substantial recovery in about October /November 2017 and there was no recurrence until April 2021. Nevertheless, I find that the mental impairment was likely to recur and consequently I find that the claimant did have the metal impairment of mixed anxiety/depressive disorder during the whole of this period.

28. I have gone on to consider whether that mental impairment had a substantial adverse effect on the claimant's ability to undertake normal day-to-day activities.

29. The claimant has provided two impact statements. In his first impact statement he describes, in very general terms, the effect of his anxiety as follows:-

> "My anxieties were mainly experienced as confusion, misunderstanding, alienation , isolation, becoming tearful, panic attacks, speaking incoherently and unplanned out of frustration."

30. Whilst in very general terms, in my judgment it is understandable when dealing with something as amorphous as anxiety and depression.

31. In his second impact statement the claimant provides more particulars. He refers specifically to difficulties returning to work having been furloughed in June 2020. He sets out that he experienced anxieties when driving long distances and had difficulties on occasions getting out of bed, struggling with basic self-care and being unable to hold conversations coherently. He refers to hyperventilating and extreme eating patterns of either gorging or fasting. He refers to sleep disturbance and anxiety on leaving the house and walking his dog. The claimant said that these symptoms came and went. It was suggested to the claimant that he was exaggerating. In my judgment the claimant was not exaggerating and was describing symptoms that he would experience from time to time. I find that the various activities that he has described were normal day-to-day activities. I find that although he was generally able to undertake these tasks he was only able to do so with feelings of anxiety and stress. The reason I am prepared to accept the

claimant's accounts in his impact statement and in his oral evidence is that they are, to an extent, backed up by the contemporaneous complaints to the GP when he attended for treatment, for example, the references to hyperventilation and panic attacks. Further, on the occasions that the claimant was attending at his GP with these attacks he was on medication which I am required to disregard. Since he had those symptoms whilst on medication I infer they would have been worse but for that medication.

32. As regards the cannabis consumption I do not find that the claimant was addicted to cannabis. In any event, I have no evidence that the impairment relied upon may have been caused by cannabis consumption. Even if it was, the impairment was merely caused by the cannabis consumption and was not the addiction itself.

33. For the above reasons I find that the claimant was disabled within the meaning of the Equality Act 2010 at all material times between 19 May 2017 and 11 March 2021.

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Employment Judge Alliott

Date: 31 July 2023

Sent to the parties on: 4 August 2023

T Cadman
For the Tribunal Office