



# EMPLOYMENT TRIBUNALS

## Claimant

Mr J Goss

## Respondent

Parravanis Icecream Ltd

v

Heard at: Bury St Edmunds

On: 23 January 2023

Before: Employment Judge Laidler (sitting alone)

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr B Brooks – Advisor

## JUDGMENT ON PRELIMINARY HEARING ISSUE

The claimant has suffered from Chron's disease and anxiety and depression since at least 2015 and both conditions amount to a disability within the meaning of section 6 Equality Act 2010.

### RESERVED REASONS

- (1) This hearing was listed to determine whether the Claimant was disabled by virtue of anxiety and depression. It had been understood that the Respondent accepted the Claimant had Crohn's disease and that in his case it amounted to a disability under section 6 of the Equality Act 2010. At his hearing, however, the Respondent advised that was not its position. It accepts the Claimant told them he had Crohn's disease when he started with them, but they continued to dispute that it amounts to a disability in his case. They no longer dispute that the Claimant was disabled by virtue of anxiety and depression, it having been diagnosed in September 2015 and confirmed in a letter from the Claimant's GP of 16 January 2023.
- (2) As was recorded in a Case Management Discussion document sent out to the parties after the January 2023 hearing, it was in that letter that the GP also confirmed diagnosis of Crohn's disease in September 2015. The Respondent disputes it amounted to a disability based on the amount of work the Claimant had said he was able to perform in his previous

employment and the absence of medical evidence as to the medication he states he was prescribed and had been taking since 2015.

- (3) As was recorded in the Case Management document sent to the parties, the Claimant had had difficulty in obtaining a full set of medical records. He believed he could have obtained more information from his doctor and the hearing was adjourned to enable him to do so. Directions were made for him to obtain further information from his GP of the medications taken and provide that to the Employment Tribunal and the Respondent by 30 January 2023. The Respondent was then to write to the Claimant and the Tribunal by 6 February 2023, confirming receipt of the prescription details and its position with regard to Crohn's disease. The Judge would then consider the matter and either provide reserved reasons or make other directions as appropriate.
- (4) Unfortunately, although the Orders were complied with, this was not brought to the Judge's attention until 4 May 2023. As the parties have been informed by the Regional Employment Judge by email of the 19 June 2023 further delay has been occasioned by the absence of the Judge on sick leave due to an injury.
- (5) The Tribunal has been trying to ascertain how the original information, in compliance with this its Order, was provided. It appears to have come from the Respondent with its email of 6 February 2023 to which were attached two spreadsheets. One headed 'Antidepressants' and one 'Other medication'. The Judge issued a direction asking for confirmation as to how those spreadsheets were prepared as they are not in a format that is usually seen from a General Practitioner and at the time of finalising these reasons has not seen the response to that direction.
- (6) The Claimant provided an Impact Statement for this hearing and was called to give evidence. He also handed up a document entitled 'Claimant Submissions' which appeared to have been prepared for him by solicitors. The Tribunal had a bundle of documents running to 180 pages but these were primarily documents that went to the full merits and that was not what this hearing was to deal with. As recorded already in the Case Management Summary, there was very little information in the bundle dealing with the medical position. From the evidence heard the Tribunal finds the following facts.

### **THE FACTS**

- (7) The Claimant was diagnosed with Crohn's disease in or about 2015. It took a couple of years of tests before he obtained the diagnosis. He has suffered with symptoms for a few years before the condition was diagnosed.
- (8) During flareups of the condition the Claimant would suffer from extreme and debilitating pain. He would get stomach cramps, diarrhoea, mouth sores, joint pain, rectal pain and nausea. These could last days, weeks, months or longer. It was a constant worry for him as to when these would occur

as, in addition to the pain during the flareups, he would become isolated from people and miss out on spending time with friends and family.

- (9) Even when not experiencing a flareup of the Crohn's disease, it still affects him in that he will be affected by urgent and/or frequent bowel movements, diarrhoea and gas. In addition to this being extremely uncomfortable, it affects all aspects of his life and something that he has to plan around.
- (10) The steps that the Claimant takes will involve skipping meals if he knows he must go out for an event. If he is arranging to go out he will arrange the day around the location of toilets. In a restaurant he will ask for a table to be located near a toilet. Sometimes, if there are not suitable facilities, he will avoid going out altogether and thus miss out on time with family and friends.
- (11) The Claimant feels very self-conscious about his condition although he tries to laugh off some of the side-effects. He feels that it has affected his personal relationships and self-esteem.
- (12) The condition has affected his relationship with food as every meal is a reminder that his body does not function correctly and that he has a lifelong disease. It also impacts upon his energy levels. As well as interrupting his sleep, it causes him to be fatigued owing to the disease affecting how nutrients are absorbed.
- (13) The Claimant believes that his low mood which got worse following the death of his mother in 2018, was linked to the Crohn's disease and the symptoms of it. He feels constantly sad and upset and sometimes finds himself "spiralling". He can become restless and agitated as he thinks people are judging him or failing to understand how he is feeling. He feels intense, uncontrollable fear and frustration which leads him to question every little thing and ruminate over everything. There is also a physical aspect of the anxiety in that his heart races and he becomes short of breath. This makes him feel nauseated which can affect his stomach and aggravate the Crohn's disease. The lack of sleep only makes the Crohn's fatigue worse. The Claimant feels he is in a never-ending cycle with no reprieve. He experiences overthinking which makes it hard to make decisions, even with things that seem trivial. This leads to feeling worried and anxious about the decision and in general. He can suffer from tension headaches that can sometimes last days rather than just hours. The Claimant believes that without medication and careful diet management he would suffer much more severe effects.
- (14) It was in relation to medication that the Tribunal did not have much information in the bundle. It had a letter from the Claimant's General Practitioner of 16 January 2023, which merely stated "Jamie was diagnosed with depression and Crohn's on 12 September 2015. He continues to be treated actively for both complaints.
- (15) At pages 54-56 of the bundle was an extract from the Claimant's medical records. The Claimant explained that this was just a summary as he could not print off the full record. He had been having difficulties trying to get the

medical evidence from his doctor, hence the adjournment of this hearing which has been explained above.

- (16) One of the points taken by the Respondent in cross-examination of the Claimant was that when he applied for the job with them he had said he used to work a 90 hour week and they questioned how that would be possible with the condition. The Claimant explained that he would either have use of a toilet on site or have to stop on his way and find ways to work around his condition.
- (17) What the Claimant has then produced by way of spreadsheets, is one spreadsheet showing the medication he has received for anxiety and depression starting with Sertraline from 2015 to January 2023, he had Citalopram in 2000, and in 2016-2017 Mirtazapine. In another spreadsheet was the medication related to the Crohn's disease.
- (18) After the submission of this further evidence, both parties lodged further written arguments in email correspondence between them. The Respondent, on 6 February 2023, took issue with the gaps contained in the spreadsheets for medication. It drew attention to the fact that on the spreadsheet for antidepressants, only 28, 50mg tablets appeared to have been issued for Sertraline between 8 August 2018 and 16 January 2023.
- (19) The Respondent went on to clarify its position following the earlier Preliminary Hearing which took place before Employment Judge George on 9 November 2022. In that, it had been recorded that it accepted the Claimant had Crohn's disease and that it amounted to a disability. It made it clear that what it accepted was that the Claimant had informed the Respondent that he was suffering from Crohn's disease on his starter form but that it was controlled by medication and diet. It continued in its more recent submissions that there was no evidence on his medication records to support his claim, that he was taking medication between 22 February 2021 and 24 January 2023.
- (20) The other point made by the Respondent is that the Claimant had not attended any doctor's appointments according to his medical records since 18 March 2011 until June 2022.
- (21) On behalf of the Claimant, solicitors instructed on his behalf, stated in an email of 23 February 2023 that the Claimant had provided as much medical evidence as he was able to obtain from his doctor's surgery but had had great trouble having his full notes released to him. They stated that continues to be a problem. They state on the Claimant's behalf that he has been on Asacol/Octasa since 2015 without a break. He is currently still on it.

## **RELEVANT LAW**

(22) The Tribunal must determine whether the Claimant satisfies the definition of disability contained in the Equality Act 2010. Section 6 provides:

- (1) A person has a disability
  - (a) has a physical or mental impairment, and
  - (b) the impairment has a substantial and long-term adverse effect on the Appellant's ability to carry out normal day-to-day activities.

(23) In considering the definition the Tribunal must take account of Schedule 1 to the Act. This provides as follows:-

2 Long term effects.

- (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.
- (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.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
- (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

5 Effect of medical treatment.

- (1) 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.
- (2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

(24) The Tribunal must also have regard to Guidance on the Definition of Disability (2011). Section B deals with the meaning of 'substantial', in relation to adverse effects. This can include the time taken to carry out an activity, the way in which an activity is carried out, cumulative effects of an

impairment, the effects of behaviour, the effects of environment and the effects of treatment.

- (25) With regard to the effects of behaviour, section B7 states that account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example, by use of a coping or avoidance strategy to prevent or reduce the effects of an impairment on normal day to day activities. The guidance acknowledges,

“In some instances a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day to day activities”.

- (26) At B9, the Guidance reminds tribunals that 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 the question, it is important to consider the things that a person cannot do or can only do with difficulty. The Guidance also acknowledges at B10 that in some cases, people have coping or avoidance strategies which cease to work in certain circumstances, for example, whilst under stress.

- (27) At B12 the Guidance deals with the effects of treatment, reminding that the Act provides that when 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. The provision applies even if the measures result in the effects having been completely under control, or not at all apparent.

- (28) The Guidance at Section D also assists with the definition of normal day to day activities.

## **CONCLUSIONS**

- (29) Much emphasis in this case has been placed on the difficulties the Claimant has experienced in obtaining a full set of his medical records. However, he has provided an Impact Statement and oral evidence to this hearing. He is best placed to explain his conditions and the effect they have on him. The Tribunal is satisfied from the evidence that it has seen and heard, that the Claimant has suffered from Crohn’s disease since 2015 and that such amounts to a disability. Whilst he is in receipt of medication for it, this does not completely alleviate the symptoms and the Claimant must take avoidance strategies to be able to cope with everyday life. He made it very clear, and the tribunal accepts that he has been able to work only by making sure he makes appropriate arrangements for access to public conveniences.

- (30) The Claimant has also been diagnosed with anxiety and depression, partially linked to his Crohn's disease. He has clearly, from the spreadsheet provided, been receiving medication to support this condition since 2015. Whilst there may be gaps in it, from the oral evidence heard, the Tribunal is satisfied that, at the time of the acts complained of in the claim 13 September 2021 to 8 December 2021, the Claimant was suffering from the disability of anxiety and depression.

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Employment Judge Laidler

Date: 31 August 2023

Sent to the parties on:  
1 September 2023

For the Tribunal Office