



THE EMPLOYMENT TRIBUNALS

Claimant: Ms Satbinder Nakra
Respondent: Breezemount Services Limited
On: 7 August 2023
Heard at: Norwich by CVP
Before: Employment Judge M Warren
Representation:
For the Claimant: In person
For the Respondent: Mr Johnson, Tribunal Advocate

JUDGMENT at a PUBLIC PRELIMINARY HEARING

The Claimant was a disabled person at the material time between 28 June and 27 July 2022.

REASONS

Background

1. The matter before me on this Public Preliminary Hearing is to make a decision as to whether or not Ms Nakra was a disabled person as defined in the Equality Act 2010 at the material time, which is during her employment with the Respondents between 28 June and 27 July 2022.
2. I was provided with a Bundle for today's Hearing by the Respondent's Advisors and I am grateful to them for that. Within the Hearing Bundle was an Impact Statement prepared by Ms Nakra, this was pursuant to an Order by Employment Judge Ord on 5 February 2023 in this Region's standard terms.

3. It is an unfortunate feature of this morning that Ms Nakra's Impact Statement, while providing some useful information, did not quite match that which was called for by EJ Ord's directions. Not an unusual feature when one is dealing with litigants in person who are unrepresented.
4. The disability relied upon is the impairments resulting from Ms Nakra's anxiety and depression. I took her to her Impact Statement and asked her some follow up questions, before submitting her to cross examination from Mr Johnson. She gave some more information. It is fair to say that if she had provided that information from the outset, we might not have been here today and the Respondent may well have conceded the issue of disability. The same applies to a couple of additional pages from her Medical Records, which she had mistakenly not attached to an email she had previously sent to the Respondent and which was not in the Bundle. She emailed that to us during the course of the Hearing so that Mr Johnson and I could take a look at them.

Relevant Law

5. For the purposes of the Equality Act 2010 (EqA) a person is said, at section 6, to have a disability if they meet the following definition:

"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.*

6. The burden of proof lies with the Claimant to prove that he is a disabled person in accordance with that definition.

7. The expression 'substantial' is defined at Section 212 as, '*more than minor or trivial*'.

8. Further assistance is provided at Schedule 1, which explains at paragraph 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 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".

9. As to the effect of medical treatment, paragraph 5 provides:

“(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 ...”

Findings of Fact

10. My findings are that Ms Nakra has suffered from anxiety and depression since 2019. She had a breakdown in 2019 and was unable to work for a period of between 18 months and 2 years. She described the situation as, “not having a life”. She said she spent most of her time in bed or on the sofa, eating junk food. She was not able to cook; either her daughter or her friends cooked for her. She was unable to do housework; she described her house as disgusting. She said that friends would come and clean for her and get shopping for her, as she was unable to go out shopping. She said she could not dress herself properly, she could not shower and she could not brush her teeth. I accept that evidence
11. Ms Nakra came out of that 2019 breakdown in 2021 and in September or August 2021, was able to go back to work, but in November 2021 she had another breakdown and had to leave that job. She said the effects that time were not quite as bad, but that she was still struggling with motivation, suffering from panic attacks, she was very tearful, she would breakdown, she suffered from sweating and sometimes would cry inconsolably for long periods of time. I accept that evidence.
12. Ms Nakra got back to work in about December 2021, but had another relapse in May 2022. She could not do anything, she could not sleep and she could not go out. She went back to her Doctor who referred her to the Mental Health Nurse for referral onwards for CBT and she was given an increased dose of Fluoxetine.
13. In terms of medication during these periods, following the 2019 episode she was on 10mg of Citalopram, gradually rising to 40mg during that period. After the relapse in November 2021, she was on Fluoxetine 20mg. While she was working for the Respondent she was on Fluoxetine and Beta Blockers. On 21 June 2022, we saw in one of the new documents that she sent us, that she was given an increased dose of Fluoxetine on 21 June 2022, when she was working for the Respondent.
14. On 8 June 2022, we could see from the Doctor’s Records that she visited

the Doctor and complained of being tearful and anxious and being given an increased dosage of Fluoxetine. The symptoms were described as, “some pain, menopausal, ongoing anxiety, frequent flare ups, insomnia, working in HR, anxiety attacks and PTSD like symptoms”.

15. At paragraph 5 of her Witness Statement, Ms Nakra explained the condition that she was in whilst she was in employment with the Respondent, basically being very tired, not able to do anything in the evenings, not able to do her studying for her CIPD Level 5 and not being able to tidy up her room. I accept that evidence.
16. At paragraph 9 of her Witness Statement, Ms Nakra set out ongoing issues along the lines of those already described. The statement is written in the present tense, but she confirmed and I accepted those were conditions or impairments that she found herself struggling with throughout the time that we are talking about from 2019 onwards, during relapses.
17. There was one significant challenge to the credibility of Ms Nakra’s evidence which is that Mr Johnson put to her that her references to not being able to go out were inconsistent with what she was saying to the Respondents during her employment, to her work colleagues, talking about going out and socialising and partying, taking cocaine and so on. Aside from the vehement denial of the suggestion she had ever said that she was taking cocaine, she also vehemently denied that there was any truth in the suggestion that she was going out regularly or talking or boasting about going out regularly.
18. There is actually no evidence from the Respondents about that and I accept Ms Nakra’s evidence in that regard.
19. The one complication which I have is the potential overlap between three conditions which we have seen and which Mr Johnson has rightly referred me to, a letter in the Bundle from the Claimant’s Doctor which is at page 42. It is dated 30 September 2022, after her employment had come to an end. The letter talks about Ms Nakra suffering from ongoing anxiety and depression for which she was receiving medication and support. It also refers to menopausal symptoms and gynaecological issues and it refers to increasing pain in her hip. I accept the evidence of Ms Nakra that the gynaecological HRT symptoms relate to bleeding and also that the various symptoms or impairments that she has described were experienced by her before the gynaecological issues. In respect of hip issues, that is not part of her ongoing problems.
20. Therefore the effect on her day to day activities, the impairments which I have described, I find on the evidence are attributable to the anxiety and depression.
21. The impact of Ms Nakra’s anxiety and depression has been substantial and had, as at the time of her employment with the Respondent, lasted

for more than 12 months. The effects would have been worse, but for the medication she was taking. Accordingly, I find that Ms Nakra was a disabled person at the material time.

Employment Judge M Warren

Dated: 15 September 2023

JUDGMENT SENT TO THE PARTIES ON

22 September 2023

FOR THE TRIBUNAL OFFICE