



EMPLOYMENT TRIBUNALS

Claimant: Mr J Power

Respondent: Jaguar Land Rover Limited

HELD AT: Manchester (By CVP) **ON:** 16 August 2023

BEFORE: Employment Judge Fearon (sitting alone)

REPRESENTATION:

Claimant: Mr Power in person

Respondent: Mr Alexander Bryant (Counsel)

RESERVED JUDGMENT ON THE ISSUE OF DISABILITY

The judgment of the Tribunal is that:

1. The claims of disability discrimination are dismissed as at the relevant times the claimant was not a disabled person.
2. The claimant's claim of unfair dismissal will be determined at the final hearing, before a judge sitting alone, which is listed to take place on 19 20 and 21 February 2024.

REASONS

Introduction

1. This was an public preliminary hearing listed to determine the issues of whether the claimant was a disabled person for the purposes of section 6 Equality Act 2010 at the relevant time which was agreed as between 18 November 2021 and 3 May 2022 (“relevant period”).
2. The claimant was employed as a production operative with the respondent from November 2009. On 19 November 2021, the claimant was suspended from work and on 14 December 2021 he was summarily dismissed for gross misconduct on the basis that he had made comments of a violent nature in the workplace and behaved an intimidating and aggressive manner towards some of his colleagues.
3. The claimant appealed the decision and the outcome of that appeal was the decision to dismiss the claimant was upheld. The claimant lodged a second appeal against the decision to dismiss him and again the decision to dismiss was upheld. The claimant lodged a third appeal. The Final Stage Appeal Hearing took place on 3 May 2022. At the end of the hearing, the claimant was informed that the respondent’s decision to dismiss him was upheld. The claimant presented a claim on 11 March 2022.
4. The claimant brings claims for harassment and discrimination relating to his alleged disability, which he says is his ADHD. The claimant's discrimination claim is that the unfavourable treatment by the respondent was because he had made violent, aggressive and unacceptable comments in the workplace. He does not deny making those comments nor that he was dismissed for making them. The claimant says that due to his ADHD he had a tendency to make violent and aggressive comments. The claimant does not specifically rely on depression as a separate impairment, but he relies on the fact that depression is one of the symptoms he experiences as a result of his diagnosed ADHD.

The Issues for the Tribunal to decide

5. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about 18thNovember 2021 –3 May 2022? The Tribunal will decide:
 - 5.1 Did the claimant have a physical or mental impairment?
 - 5.2 Was the impairment or the consequence/manifestation of the impairment that is relevant for the Claimant’s claims, an excluded condition pursuant to regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010 (SI2010/2128), namely a tendency to physical abuse of other persons;

5.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

5.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

5.4 If so, would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures

5.5 Were the effects of the impairment long-term? The Tribunal will decide:

5.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

5.5.2 if not, were they likely to recur?

Evidence

6. I considered the bundle of evidence provided by the parties comprising 369 pages. References to the hearing Bundle appear in square brackets []. The bundle included the claimant's disability impact statement dated 20 November 2022 [124], the claimant's letter dated 6 March 2023 setting out further detail regarding disability [130-141] and the claimant's supplemental impact statement dated 3 July 2023 [142-143] which Judge Sharkett had given permission for at the case management preliminary hearing on 20 April 2023.

Findings of Fact

7. The claimant was employed by the respondent as a production operative from 15 November 2009 until 14 December 2021.
8. The claimant does not claim that he was treated unfavourably because of any of the following effects of his ADHD: being restless or hyperactive, being bored and distracted; being anxious/panicking in social situations; suffering depression; having a reduced amount of sleep.
9. The claimant's GP records provided in evidence date back to 1986. There are no entries in those records indicating any issues during the claimant's childhood with depression, any other mental health issues or any of the effects of his ADHD which he has set out in his witness statements.
10. The GP clinical entries record on 15 August 2014 that the claimant reported a longstanding history of depression. There are, however, no references to depression in the GP records prior to that date nor any reference to issues relating to the claimant's stated effects of his ADHD. The claimant was originally diagnosed with depression in August 2014 and prescribed Citalopram and later with Mirtazapine. The claimant confirmed in evidence that he decided to stop taking those medications as they "didn't agree with me".

11. After 15 August 2014 there is no further mention of depression, nor any other mental health issues, in the GP clinical notes until 19 November 2021, which is the date on which the claimant was suspended from work for having made comments of a violent nature in the workplace and behaving in an intimidating and aggressive manner towards some of his colleagues on 18 November 2021. On 19 November 2021 the GP diagnosed mixed anxiety and depressive disorder, at which time the claimant reported to the GP, restlessness, that over the last year his mental health had been up and down, that he was finding anger to be an issue and that he tries to control himself but can't. He confirmed he had been suspended from work due to a verbal outburst. The claimant was prescribed Sertraline, an anti-depressant, but said he felt he would struggle to engage with talking therapy. This was the first mention of any effects on the claimant of his ADHD.
12. In his first impact statement the claimant admits that in 2014, he was aggressive towards his group leader, Adam Deverux, including making threatening comments to him. The claimant does not mention in his witness evidence any other aggression at work until the incident on 18 November 2021, which led to his dismissal. In March 2021 the claimant had an argument with his mother during which, as he admits, he was very aggressive in how he spoke to her. This incident of verbal aggression was the only one the claimant mentions in his witness statements before the relevant period.
13. The Investigation Meeting Minutes Notes dated 21/11/2021 [264] record that in July 2021, when the claimant had moved to a different process at work, he had threatened to wait for a colleague in the car park and stab another colleague; it is recorded those colleagues at the time had not formally reported those incidents on the basis they were used to people kicking off generally. The claimant says he cannot recall anything about the incidents and accordingly it does not appear to have impacted him in any way. No other incident of abusive, violent or aggressive comments and behaviour occurred between July 2021 and 21 November 2021.
14. In November 2021, the claimant was unhappy about a colleague going on to his job and he had made violent threats against that colleague. The claimant admits doing so on 18 November 2021 and this was the main incident leading to his dismissal. The meeting minutes dated 30 November 2021 record the claimant stated his temperament had not been the best in the last few years: he'd had a lot going on with his Auntie being at end of care, and that someone taking his job was the straw that broke his back. He said when he has an episode, he knows he shouldn't do it but can't stop it and that depression can cause angry outbursts over the smallest things. The claimant said he got in a pure blind horrible rage, like he was years ago with his mental health and that medication was now helping; at the time of the meeting the claimant had just been prescribed anti-depressants by his GP.
15. The claimant accepted in evidence during the hearing that the verbal threats he made when having an episode were threats of physical harm or violence. He denied having a tendency to physical abuse, saying he had not been physically

abusive since he was about fourteen and had not laid hands on anyone as an adult. There was no evidence presented to the Tribunal that the claimant had physically harmed anyone during the material period and I find that whilst the claimant could be verbally aggressive he did not physically abuse anyone.

16. The GP clinical entry dated 21 December 2021 records a telephone consultation with the claimant in which the claimant said he had discussed his issues with family and friends who had suggested he may have ADHD, he had read further about it and felt he may have had it all his life and was seeking referral to a private clinic.
17. [224] Dr Pius, Consultant Psychiatrist, confirmed the claimant's diagnosis of ADHD following his examination of the claimant on 22 January 2022. In his report dated 26 January 2022, Dr Pius in the "Opinion and Management plan [226] states "There is evidence to suggest that John struggled with symptoms of ADHD from his childhood years, but he was able to deal with some of the symptoms due to skills he developed as part of his upbringing. The episodes of anger and his impulsive temper issues stayed the same over the years, but the difference is that he is now able to control it when back in his own home environment." The Meeting Minutes for 02 December 2021 [277] record the claimant was asked how often such incidents were happening and if it was daily or weekly? He replied "No, not that bad. Not had a run in or problem for months. Sometimes, gone like full years and not had a flare up." This all suggests that the claimant had had no substantial effects on his daily activities from the cumulative effects of his ADHD and any effects were controlled and any serious effects occurring only very irregularly.
18. The Minutes of the Investigation Meeting held on 30/11/2021 [271] record the claimant as saying "I can't calm down in here. Jaw locks and everything, takes hours and hours. Once home I sit and listen to music. Just to calm down." The claimant admits this was a coping mechanism he had in place during the relevant period from 18 November 2021 to 3 May 2022. The claimant also confirmed in evidence during the hearing that he could use smoking breaks to calm himself and that he could listen to music on his mobile phone. Whilst he said he was not allowed headphones at work, he did not dispute he could listen to music on his phone away from the production line nor that he could use these coping mechanisms outside of work.
19. When challenged on cross examination, the claimant accepted that knowing he had tendencies to verbal threats and aggression it was reasonable to expect he would find ways to modify them, including anger management.
20. Regarding sleep issues affecting the claimant throughout the relevant period, the claimant in his witness statement dated 20 November 2022 [126], states that after an aggressive incident he would feel guilty which affected his sleep and he would wake up the following day in a worse mood. In his second impact statement dated 6 March 2023 [137] he states "My mood would affect my performance and capability in work. This would lead to conflict in work or outside of work. This would then affect my sleep which I already struggle with greatly. The lack of sleep would then mean my mood, motivation and attitude would be worse the next day, leading

to further conflict or mistakes being made on the job. This would lead to me going home with anxiety and stress, which means I don't sleep. And so on."

21. The claimant accepted on cross examination that an episode would lead to him not sleeping and then being "tetchy".
22. The claimant told Dr Pius in January 2021 that he struggles to sleep for more than six hours. There is no evidence presented to the Tribunal of whether the claimant had such sleep issues monthly, weekly, daily or otherwise, nor any evidence of the impact the sleep difficulties had on the claimant's daily activities other than it could make him tetchy.
23. In his statement dated 6 March 2023, the claimant says "One of the biggest challenges I face is difficulty paying attention. I find it hard to concentrate on tasks for more than a few minutes at a time, and I am easily distracted by external stimuli or my own internal thoughts and feelings. This can make it challenging to complete tasks that require sustained attention, such as reading or writing". Dr Pius records in January 2026, the claimant having reported difficulty sustaining attention and being easily bored/distracted and symptoms of hyperactivity (fidgeting, pacing and standing up). On cross examination it was put to the claimant that such difficulties are not consistent with him being able to do a repetitive job. The claimant admitted he could do his job with the respondent without thinking about it, even though it was repetitive, as he knew exactly what he was doing. The claimant admitted he was trained to such an extent his job was like second nature and was not affected by him pacing up and down. By the time of the relevant period the claimant had worked for the respondent for 13 years and was regarded as a good worker. There was no evidence of an inability to do his job by reason of the effects of his impairment.
24. In evidence the claimant said he could do this job repeatedly and not forget to do any task but he would have difficulty remembering to do the dishes at home. There is no evidence as to how often the claimant would actually forget to do the dishes or other specific tasks outside of work.
25. There is no evidence, other than the claimant's general comments in his witness statements, of the claimant regularly having anxiety and panic attacks mainly in social situations nor of him struggling with closed spaces, how they impacted on his ability to do day activities nor how long he had had such difficulties and how often they occurred. Dr Pius in his report does not link these issues to the claimant's ADHD nor does he state how long the claimant has had these difficulties.
26. Dr Pius prescribe Concerta XL for the claimant's ADHD in January 2022. The initial dose was increased in February 2022.
27. On 3 February 2022 during a telephone conversation with Dr Pius, the claimant said he felt better having been given an ADHD diagnosis. He reported his mood wasn't low, he still had a lot going on at work and it was noted he appeared to be managing.

28. The letter from Dr Pius to the GP dated 21 February 2022 notes medication has calmed the claimant's racing thoughts and has improved his ability to stand and sit still. The claimant said he continues to struggle with restlessness which is mainly in the evenings and struggles with sleep problems [220].
29. The claimant in his November 2022 statement says that after diagnosis and being prescribed medication, he still behaved defensively in the appeal meetings, especially in the final May 2022 meeting as his medication was not then sufficiently effective. He gives no evidence of any issues outside the appeal meetings nor any evidence of any particular incident of verbal abuse and aggression during the appeals process.

Law

30. The Equality Act 2010 provides that a person has a disability if he or she has a 'physical or mental impairment' which has a 'substantial and long term adverse effect' on his or her 'ability to carry out normal day to day activities'. Supplementary provisions for determining whether a person has a disability is contained in Part 1 Schedule 1 of the Equality Act 2010 which essentially raises four questions:
 - a. Does the person have a physical or mental impairment?
 - b. Does that impairment have an adverse effect on their ability to carry out normal day to day activities?
 - c. Is that adverse effect substantial?
 - d. Is that substantial adverse effect long term?
31. Although these questions overlap to a certain degree, when considering the question of disability, a Tribunal should ensure that each step is considered separately and sequentially (*Goodwin v Patent Office* [1999] IRLR (EAT)). In *Goodwin Morison P*, giving the decision of this Court, also set out very helpful guidance as to the Tribunal's approach about the determination of the issue of disability. At paragraph 22 he said: "The tribunal should bear in mind that with social legislation of this kind, a purposive approach to construction should be adopted. The language should be construed in a way which gives effect to the stated or presumed intention of Parliament, but with due regard to the ordinary and natural meaning of the words in question.
32. The statutory guidance ('Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability': "EqA Guidance") offers further guidance on the application of the statutory definition.
33. The EqA 2010 Guidance 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' (D3).

34. The EqA 2010 Guidance (D3) indicates that normal day-to-day activities can include general work. The EAT in *Paterson v Commissioner of Police of the Metropolis* [2007] IRLR 763 concluded that 'normal day-to-day activities' must be interpreted as including activities relevant to professional life. It emphasised that the phrase is to be given a broad definition that can include irregular but predictable activities that occur in professional life.
35. Furthermore, a non-exhaustive list of how the effects of an impairment might manifest themselves in relation to these capacities, is contained in the Appendix to the Guidance on matters to be considered in determining questions relating to the definition of disability. Whilst the Guidance does not impose any legal obligations, tribunals must take account of it where they consider it to be relevant.
36. The requirement that the adverse effect on normal day to day activities should be considered a substantial one is a relatively low threshold. A substantial effect is one that is more than minor or trivial (s.212 EqA and B2 Guidance).
37. Para 5 Sch. 1 Part 1 EqA provides that an impairment is treated as having a substantial adverse effect on the ability of the person to carry out normal day to day activities if measures, including medical treatment, are being taken to treat or correct it and, but for that, it would likely to be the effect. In this context, likely is interpreted as meaning 'could well happen'. The practical effect is that the impairment should be treated as having the effect that it would have without the treatment in question (B12 Guidance).
38. The question of whether the effect is long term is defined in Sch. 1 Part 2 as a. Lasting 12 months; b. likely to last 12 months; c. likely to last the rest of the person's life.
39. The Guidance at C3 confirms that in this context 'likely' should be interpreted as meaning it could well happen. The Guidance (C4) also clarifies that in assessing likelihood of the effect lasting 12 months, account should be taken of the circumstances at the time of the alleged discrimination. Anything which took place after will not be relevant in assessing likelihood.
40. In *All Answers Ltd v W* [2021] EWCA Civ 606, paragraph 26 it was stated how long an impairment is likely to last should be determined at the date of the discriminatory act and not the date of the tribunal hearing. The determination of how long an impairment is likely to last must be made by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months.
41. The burden of proof is on the claimant to show he or she satisfied this definition. The time at which to assess the disability i.e. whether there is an impairment which has a substantial adverse effect on normal day-to-day activities, is the date of the alleged discriminatory act (*Cruickshank v VAW Motorcast Ltd* 2002 ICR 729, EAT). This is also the material time when determining whether the impairment has a long-term effect.

42. In *Igweike v TSB Bank Plc* [2020] IRLR 267 at paragraph 60, the EAT held that:
The requisite effect on normal day-to-day activities may be established if there is a requisite effect on normal day-to-day professional or work activities, even if there is none on activities outside of work, or the particular job.
43. It is incumbent on a claimant to provide evidence of the activities they claim they are less able to carry out (*Mutombo-Mpania v Angard Staffing Solutions Ltd* UKEATS/0002/18 (17 July 2018, unreported), paragraph 14).
44. A tendency to physical abuse of other persons is not to be regarded as an impairment for the purposes of the EqA (paragraph 4 of Part 2 of the Equality Act 2010 (Disability) Regulations 2010 (SI2010/2128)). The EAT set out guidance when considering whether exclusions apply in the cases of *Power v Panasonic UK Ltd* [2003] IRLR 151 and *Wood v Durham County Council* EAT 0099/18.

Submissions

45. The claimant submitted that the respondent did not take opportunities available to them to investigate his medical condition to gain the insight they needed. He says that he was born with ADHD and it has always affected him, even though he did not have the formal diagnosis until after his dismissal. He says he is stable only when on medication and the ADHD has had a substantial long term adverse effect on him.
46. The respondent provided written submissions which were also referred to in oral submissions during the hearing.
47. The respondent submitted that the claimant's tendency to make threatening and aggressive comments amounted to the excluded condition of a tendency to physical abuse of other persons. The respondent made alternative submissions if that position were not accepted by the Tribunal. The respondent submits that the Claimant's ADHD, or any other alleged impairment, did not have a substantial adverse effect on his day-to-day activities; and/or the substantial adverse effect of any alleged impairment, at the time of the alleged discriminatory acts, had not lasted at least 12 months, was not likely to last at least 12 months, nor was it likely to recur beyond 12 months.

Discussion and conclusions

Did the claimant have a physical or mental impairment?

48. I find that the Claimant had ADHD from childhood based on his evidence and the report of Dr Pius. I therefore find that the Claimant had the impairment of ADHD throughout his employment with the respondent, from November 2009 and throughout the relevant period from 18 November 2021 to 3 May 2022. The claimant's ADHD was diagnosed in late January 2022, by which time the Claimant had been summarily dismissed by the respondent and was in the course of the appeals process.

Was the impairment or the consequence/manifestation of the impairment that is relevant for the Claimant's claims, an excluded condition pursuant to regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010 (SI2010/2128), namely a tendency to physical abuse of other persons?

49. The relevant impairment arising from the claimant's ADHD is the tendency to make violent, aggressive and threatening comments including threats to carry out physical harm or violence.
50. Whilst there is evidence of verbal abuse, there is no evidence of the claimant in the relevant period having carried out any acts of physical abuse against any person. In the circumstances I do not find that the claimant's impairment is an excluded condition, pursuant to regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010 (SI2010/2128), namely a tendency to physical abuse of other persons.

Did the impairment have a substantial adverse effect on the claimant's ability to carry out day-to-day activities?

51. The relevant period is between 18 November 2021 and 3 May 2022. The claimant says he would suffer episodes where his ADHD symptoms were heightened to the point where they were not manageable, leading to him becoming extremely verbally aggressive and threatening.
52. In considering whether the effects of the Claimant's ADHD had a substantial adverse effect on his ability to carry out day-to-day activities, I have taken account of the medical records provided, the Claimant's statements and oral evidence, and the submissions made by both parties. The burden of proof is on the claimant and it is incumbent on him to provide evidence of the activities he claims he was less able to carry out because of the impairment. I took into account that the threshold of what is substantial is low; it is more than minor or trivial.
53. The GP records do not evidence the claimant suffering consistently from the effects of his ADHD. The GP records confirm the claimant suffered with depression in 2014; no further mental health issues are recorded until after the claimant's suspension from work on 19 November 2019. Before then, no issues are noted in the GP records of any effects of the claimant's ADHD such as anger or aggression, anxiety, panic, an inability to sit or stand still, or sleep problems.
54. In his disability impact statements the claimant has copied and pasted information on ADHD generally. There are no specifics of the impact of each of the alleged effects of his ADHD on his ability to carry out day-to-day activities during the relevant period. The case management orders were clear that the claimant was to give specific and clear examples of the effects of his ADHD during the relevant period, but despite being given an opportunity to provide three disability impact statements, he has not set out any clear examples of the effects of the impairments on his daily activities.

55. The claimant says he cannot do the dishes as it involves standing in one place which he struggles to do because of his restlessness, he doesn't state how often he is unable to do so. This is inconsistent with him being able to stand throughout a full shift and do repetitive work on the production line; the claimant admitted on cross examination that he can do his job effectively despite any restlessness. The claimant has not evidenced that any restlessness had a substantial adverse effect on his day to day activities. The claimant also says he would forget to do the dishes but doesn't say how often this would happen.
56. The claimant's alleged anxiety/panic in social situations has not been diagnosed by a health professional as an effect of the claimant's ADHD and the claimant has evidenced no specific examples of this occurring.
57. The claimant accepted on cross examination that an episode of verbal aggression would lead to him not sleeping and then being "tetchy". I do not find that this consequence of feeling tetchy would lead to another episode of verbal aggression.
58. The claimant said his mood would affect his performance and capability in work, which would lead to conflict in work or outside of work. He admitted on cross examination, however, that he was able to do his job effectively despite a need to pace up and down and any issues of concentration or sleep did not prevent him from carrying out his work.
59. In his disability impact statement dated November 2022 [123] the claimant confirms that in March 2021 he was aggressive towards his mother. No further incident of violent and aggressive behaviour or comments in work or outside of work is noted by the claimant in any of his disability impact statements (other than the incident on 18 November 2021). The meeting minutes indicate there was an incident at work in July 2021, prior to the relevant period which the claimant did not mention. The only incident of verbal abuse of a violent, aggressive and threatening nature which occurred during the relevant period is that on 18 November 2021. The claimant in his disability impact statements does not note any other incidents of making violent and aggressive comments throughout the relevant period. The only matter he does mention is in his first statement in that he had a difficult time during the final appeal meeting in May 2022. Finding such a meeting difficult is understandable, there is, however, no evidence that the claimant was particularly verbally aggressive or threatening.
60. The claimant's tendency to make violent and aggressive comments does not appear to have had a substantial adverse effect on his day to day activities. On his own evidence he was a well respected employee and there was only one incident in work during the relevant period and only one incident outside of work, being that with his mother in March 2021, months prior to the relevant period.
61. In considering the effects of behaviour, the EqA guidance sets out that account should be taken of the degree to which a person can reasonably be expected to behave in such a way that the impairment ceases to have a substantial adverse effect on his or her ability to carry out normal day to day activities.

62. The claimant in his statement dated 6 March 2023, says before having his ADHD diagnosis he had no control over himself. This is inconsistent with his evidence that he could calm down in his home environment and by listening to music in a calm, quiet environment. Prior to taking medication, (which he was first prescribed in January/February 2022) the claimant was able to control this tendency to making aggressive and abusive comments, as Dr Pius records in his report dated 28 January 2022. The claimant could also control this tendency by listening to music, as he himself confirmed in the Investigation Meeting on 30 November 2021 and during cross examination when he admitted that listening to music was a coping mechanism he had at the time of the incident in November 2021. I find this was a coping mechanism he had during the relevant period.
63. I find that the claimant could reasonably have been expected to use these coping mechanisms so that the effects of his ADHD in terms of becoming verbally aggressive and verbally abusive ceased to have a substantial adverse effect on his ability to carry out normal day to day activities.
64. I conclude that the claimant did control his tendency to become verbally abusive and aggressive using these coping mechanisms such that it did not have a substantial adverse effect on his ability to carry out day to day activities.
65. With regard to the cumulative effects of the claimant's ADHD, the claimant said in evidence during the hearing the cumulative impact of the effects of his ADHD was that it made him "tetchy". Being "tetchy" is not an effect raised in the claimant's disability impact statements.
66. I do not find that a cumulative impact of the effects of the claimant's ADHD amounting to him feeling tetchy had a substantial adverse effect on the claimant's ability to carry out day to day activities.

If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

67. From 19 November 2021 to the end of January 2022, the claimant did not take any ADHD medication. The claimant was first prescribed medication for his ADHD by Dr Pius in January 2022. With medication the claimant reported to Dr Pius some restlessness in the evening and some sleep difficulties during the relevant period as during that time his treating doctors were trying to work out the most suitable medication dose for him. Even at the time of the claimant's statement in July 2023, over a year after the relevant period, the claimant said he was still having his medication reviewed as it was still not right for him. The claimant had other coping mechanisms both before and after taking medication, including being in his home environment, taking smoking breaks and listening to music in a calm environment. There was no evidence that the medication taken by the claimant during the relevant period materially altered the effects of the claimant's ADHD on his ability to carry out day to day activities. I conclude that the claimant has not been able to prove there would have been a substantial impact on his ability to undertake day to day activities if he failed to take his medication during the relevant period,

particularly in the light of the coping mechanisms he had available to him and used effectively.

Conclusion

68. I therefore conclude in light of all the above that the Claimant has not demonstrated that he was a disabled person by reason of his ADHD during the relevant period and that his disability discrimination claims should be dismissed.

Employment Judge Fearon

Dated 4 October 2023

JUDGMENT SENT TO THE PARTIES ON
12 October 2023

FOR THE TRIBUNAL OFFICE

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