



EMPLOYMENT TRIBUNALS

Claimant

James Calder

Respondent

v

Guildford Masonic Centre Limited

Heard at: Bury St Edmunds

On: 6 September 2023

Before: Employment Judge K J Palmer (sitting alone)

Appearances

For the Claimant: Mr Geen (Next friend)

For the Respondent: Mr B Harrington (Solicitor)

JUDGMENT PURSUANT TO A PUBLIC PRELIMINARY HEARING

1. It is the Tribunal's Judgment that the Claimant is a disabled person within the meaning of s.6 of the Equality Act 2010 at the material time. The material time is 1 June 2022 to 7 November 2022.

REASONS

1. This matter came before me today, listed for a 3 hour Public Preliminary Hearing to take place by Cloud Video Platform, to determine for the purposes of the Claimant's claims, whether the Claimant was a disabled person under s.6 of the Equality Act 2010 at the material time. The material time had been identified by Employment Judge Mason at a Telephone Preliminary Hearing on 11 July 2023, as being 1 June 2022 to 7 November 2022.
2. The Claimant presented a claim to this Tribunal on 13 January 2023. The Claimant had been employed by the Respondent as a chef until his dismissal, reportedly by reason of gross misconduct.
3. In his claim the Claimant pursues claims for unfair dismissal and disability discrimination. The Claimant is assisted by a next friend, Mr Geen, who is

not legally qualified. As a result, the claim is home made and, on the face of it, it is difficult to discern the nature of the disability discrimination claims that are pursued. An ET3 was filed and a Full Merits Hearing in Reading Employment Tribunal was subsequently listed to take place in person, over 2 days on 7 and 8 December 2023.

4. There was a Public Preliminary Hearing before Judge Mason by telephone on 11 July and in that Preliminary Hearing Judge Mason sought to identify the nature of the Claimant's claims albeit that it is difficult to do so from the current pleadings. She listed this hearing to determine disability and also to make such further Case Management Orders as are appropriate to the Full Merits Hearing in December.
5. She identified that it appeared to be that the nature of the Claimant's claims in disability discrimination were narrow and centred around a claim for a failure to make reasonable adjustments under s.21 of the Equality Act 2010. She made various Orders and pursuant to those Orders Mr Geen, on behalf of the Claimant, did identify that that appeared to be the nature of the Claimant's disability discrimination claim, that is, a claim for a failure to make reasonable adjustments. He attempted to identify what those were but it is not clear from the documents produced, precisely what they are. My question to him today, and some further clarity was elicited as to the nature of the reasonable adjustments claim.
6. The purpose of the hearing before me today is to determine whether the Claimant is a disabled person for the purposes of the Equality Act 2010. If I determine, on the evidence before me, that the Claimant is not a disabled person, then the discrimination claims in disability fall away. The unfair dismissal claim would remain.
7. I had before me a very helpful bundle provided by the Respondents which included the Pleadings and the very helpful Case Management Summary from Employment Judge Mason. I also had medical evidence before me including an impact statement produced by the Claimant pursuant to an Order of the Tribunal and some medical reports indicating that the Claimant was diagnosed with bipolar disorder in December 2022. I also heard evidence today from the Claimant and certain questions were put to the Claimant by Mr Harrington, the Solicitor who represents the Respondents and I was also able to put certain questions to the Claimant myself.

Disability

8. For the purposes of pursuing discrimination claims on the basis of the protected characteristic of disability, a Claimant must satisfy the test under s.6 of the Equality Act 2010. That states:

Disability

1. A person P has a disability if:

- a. P has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities. When considering whether a disabled person is disabled under s.6 of the Equality Act 2010, the supplementary provisions for determining that disability appear in part 1 of Schedule 1 to the Equality Act 2010. Guidance is also given in the Disability Discrimination (Meaning of Disability) Regulations 1996 and the Equality Act 2010 (Disability Regulations 2010) as well as the Government Guidance on matters to be taken into account in determining questions relating to the Definition of Disability (2011). Tribunals must take this guidance into account where they consider it to be relevant.
9. The issue before me today is to determine, on the evidence in front of me, whether I can conclude that the section 6 tests have been satisfied by the Claimant and he is a disabled person. He relies on the disability of anxiety and depression and Bipolar Disorder. It is important to realise that it is a legal question for determination. It is not a question for medical determination. Often, medical evidence is produced to Tribunals to assist them in arriving at a decision as to whether an individual tests under Section 6, but it is not essential. Medical evidence is only a guide and, even in circumstances where medical professionals have given their view as to whether an individual is disabled under the Act, that is by no means determinative, it is a legal question for a Judge to decide. A Judge will decide those questions on the basis of the evidence before them.
10. In this case, I have evidence that the Claimant is a disabled person from December 2022 onwards when he was first diagnosed with Bipolar Disorder. It is the Claimant's position that he suffered from this condition prior to that diagnosis. There is medical evidence before me stretching from December through to July 2023, both from Medical Professionals and also from other individuals that the Claimant has sought help from in the mental health illness sector. On the basis of that evidence it is clear that from December onwards, the Claimant would satisfy the tests under Section 6. That, combined with his impact statement, makes it clear that the tests for disability under Section 6 would undoubtedly have been satisfied. The question before me is whether I can conclude, on the evidence before me, that the Claimant suffered from the disability in the material period, namely, 1 June 2022 to 7 November 2022.
11. Mr Harrington, for the Respondents, argues that I cannot. He says that there is no medical evidence before me which satisfies me that the disability was present during that period. There is some evidence and that is a sick note produced by the Claimant dated 3 August 2022 where the Claimant was signed off with anxiety. I also heard evidence from the Claimant that it was about this time, in the early part of August 2022, that he was first prescribed medication for his condition and that was Fluoxetine. This occurred in the early part of August 2022 in the material period. The incident which concerned an outburst which led to the Claimant's dismissal purportedly by reason of misconduct, occurred on 18 September 2022, which is the

Claimant's case that his behaviour at the incident was as a result of his condition but Mr Harrington tells me that there is no, or insufficient evidence, for me to draw a conclusion about the Claimant's disability at the material time. I disagree with Mr Harrington on this point. The evidence before me makes it entirely possible for me to draw the conclusion that the Claimant had been suffering from Bipolar, anxiety and depression for some time. The fact that it was not diagnosed until December 2022 does not mean that the Claimant was not suffering from that disability during the material period. The diagnosis occurs very soon after the end of that material period and not long after the Claimant's dismissal. The evidence I heard orally today from the Claimant, convinces me that the Claimant was suffering from the same condition throughout at least the period of the material time and probably before, he simply hadn't sought medical help to address it prior to the end of his employment with the Respondents. I am therefore entirely satisfied that the Claimant has passed the test under s.6 of the Equality Act 2010 and is therefore a disabled person by reason of depression, anxiety and Bipolar.

Employment Judge K J Palmer

Date: 12 October 2023

Sent to the parties on: 13 October 2023

T Cadman
For the Tribunal Office.