



EMPLOYMENT TRIBUNALS

Claimant: Mrs T Hackney

Respondent: Cidari Education Trust

Heard at: Manchester (by CVP) **On:** 24 March 2023

Before: Judge Cowx (sitting alone)

REPRESENTATION:

Claimant: Mrs T Hackney supported by Mr S Hackney

Respondent: Mr James Barron, Solicitor

RESERVED JUDGMENT

1. The claimant's claim that she is a disabled person as defined by Section 6 of the Equality Act 2010 is well founded and succeeds.

REASONS

2. This was a preliminary hearing conducted remotely by CVP on 24 March 2023. The parties did not object to the case being heard remotely.

3. The claimant has brought claims against the respondent of unfair dismissal and direct discrimination on grounds of disability.

4. At a preliminary hearing before Employment Judge Butler on 7 November 2022, the respondent confirmed that it accepts the claimant suffers from Fibromyalgia and is a disabled person consequent to that condition.

5. The respondent does not concede that the claimant is a disabled person on the basis of Temporomandibular Joint Dysfunction, anxiety and depression, Hallux Valgus and Rigidus, and chronic back pain. Mr Barron made it clear that these aspects of Mrs Hackney's claim are denied because Mrs Hackney has not produced

sufficient medical evidence to satisfy the respondent she suffered from these conditions at the relevant time or sufficient evidence of the impact those conditions had on her normal day-to-day activities.

6. Prior to the hearing the Tribunal was provided with an electronic bundle running to 340 pages. Also served by the claimant was a statement explaining the impact the medical conditions have on her life. Mr Barron also provided the Tribunal with written submissions.

FACTS

7. I find the following facts.

8. The claimant was employed by the respondent from 1 September 2005 as a teacher and subsequently became one of three Deputy Headteachers at the school.

9. The claimant was selected for redundancy following a restructuring of the Senior Leadership Team and her Effective Date of Termination was 31 August 2021.

The Health Conditions

10. The claimant suffers from Temporomandibular Joint Dysfunction, anxiety and depression, Hallux Valgus and Rigidus, and chronic back pain. The claimant's own evidence on these conditions is sufficiently supported by medical evidence from various objective sources.

11. On 27 August 2021, the claimant's GP completed a form for Teachers' Pensions in which the GP set out in detail a summary of all the aforementioned conditions, save for anxiety and depression.

12. The GP described how the claimant has suffered from Fibromyalgia all of her adult life. Multiple avenues of therapy have been attempted, the condition is becoming more debilitating, and she suffers from chronic pain and fatigue as a result.

13. The GP described the claimant having suffered from temporomandibular joint pain and myofascial pain for 20 years for which she has undergone surgery in the past, has seen multiple specialists and has to have Botox injections every 3-months to control the pain.

14. Mr Andrew Edwards, the consultant oral and maxillofacial surgeon who has been in charge of the claimant's care for her Temporomandibular Joint Dysfunction since March 2011 produced a report. In it he described the claimant's symptoms which have persisted for many years, such as pain and tension in the jaw muscles extending into the head and neck, restricting jaw function. The claimant underwent a meniscoplasty procedure and a high condylar shave to the left temporomandibular joint on 10 January 2002. This was followed by splint therapy, but further surgery was required, this time to the right side of her of her jaw on 7 June 2005 when she underwent a meniscoplasty and right high condylar shave. Mr Edwards subsequently instituted a conservative splint therapy regime but from December

2011 Mr Edwards decided to pursue a regular course of Botox therapy with the claimant as a pain relief measure.

15. The form completed by her GP dated 27 August 2021 indicates that the claimant had been suffering from chronic back pain for 6-months at that time and was taking morphine for it. She was referred to physiotherapy and a chiropractor for that condition.

16. The chiropractor, Mr Joseph Joyce, treated the claimant on a number of occasions from 14 June 2021. He said she had been suffering her symptoms for about 6-months from that date. Mr Joyce confirmed that at that time, the claimant was suffering from buttock and leg pain and the claimant mentioned that she had an upcoming appointment with a consultant about a possible L5-S1 disc issue. This supports the claimant's testimony that she suffered from, and still suffers from, back pain. The claimant stated that she underwent unsuccessful surgery on her back in October 2022. No medical evidence was produced to support this surgery, but I accept the claimant did undergo such surgery as it is a reasonable inference to draw from the preceding history set out in the medical evidence produced, which includes mention of a referral to a surgeon.

17. I also accept that the claimant suffers from anxiety and depression as claimed. A depressive disorder is recorded as being active in her medical records printed off on 31 August 2021. The claimant also produced a written record of a consultation with her GP on 6 Oct 2016 for the purpose of reviewing her depression medication. I accept that the anxiety and depression is a consequence of her various physical debilitating health conditions.

18. The medical records produced by the claimant are also sufficient to satisfy me that she did suffer, and still suffers, from the foot problems described (Hallux Valgus and Rigidus). I am also satisfied she has had this condition since childhood as she asserts in her evidence.

Impact

19. The claimant gave evidence on the impact the above conditions had, and continue to have, on her day-to-day life. In short, I find that the claimant was, at the relevant time, in constant pain from her various health conditions. Lengthy periods when she was on her feet on outside duties caused pain and swelling to her feet. Her jaw condition caused aches and pains in her jaw, neck and shoulders which she found exhausting. The impact on the claimant's life was exacerbated by her back problem which resulted in additional pain and discomfort, especially when walking, standing or sitting.

20. I asked the claimant to elaborate on the day-to-day effect of the varying forms of pain and discomfort she suffered. She said she was constantly tired. She could not fully function because of the pain she suffered every day. She told me that her husband had to make the family's meals and clean the house because she was unable to do so.

21. The claimant said that her health conditions did not prevent her performing her roles at the school, but said that she was only able to do so by taking painkillers. The claimant said, “*I just coped*”. Although she was able to cope at school, the result of doing so was that her life outside school was limited, for example she said at weekends she was “wiped out”.

THE LAW

22. The relevant law is to be found in the Equality Act 2010 at:

Section 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.

Section 212 **General Interpretation**

defines “substantial” as being more than minor or trivial.

Paragraph 5 of Schedule 1 to the Act:

(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 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.*

APPLYING THE FACTS TO THE LAW

Impairment

23. The four health conditions in issue each reduce the claimant’s physical and mental abilities in some way. Therefore, each one amounts to an impairment.

24. I find on the evidence produced by the claimant, both written and oral, that by themselves the chronic back pain and the Hallux Valgus and Rigidus, did not have a *substantial* adverse effect on the claimant's ability to carry out normal day-to-day activities, although each was a long-term impairment.

25. I accept that when performing day-to-day activities, the claimant may well have experienced pain and discomfort in her back and feet. The former perhaps more so when sitting and standing for prolonged periods, and the latter when required to stand and walk for extended periods when on outside duties. But I am not satisfied that those conditions, if they were the only conditions she suffered from, would have had anything beyond a *minor* adverse effect on her day-to-day activities. However, as I will explain below, these impairments cannot be viewed in isolation and must be seen in the context of the other health conditions.

26. I find that the Temporomandibular Joint Dysfunction and anxiety and depression did have substantial adverse effects on the claimant's ability to carry out normal day-to-day activities and those effects were long-term. Paragraph 5 of Schedule 1 to the Equality Act 2010 tells me that 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 measures are being taken to correct it and but for those measure, it would be likely to have a substantial adverse effect.

27. Mrs Hackney told the Tribunal that she was just coping at school, on a day-to-day basis. Considerable measures had been and were being taken to correct the Temporomandibular Joint Dysfunction, to alleviate her pain. Without those measures it is more likely than not that she would not have been able to cope with her duties as the school, or at the very least her ability to do so would have been significantly degraded. It was only the combination of 3-monthly Botox injections and daily painkillers which allowed her to carry on.

28. Similarly, it is more likely than not that without her medication, the claimant's depression would have had a more obviously adverse effect on her working life. It was that corrective measure which allowed her or helped her to carry on.

29. By themselves, the Temporomandibular Joint Dysfunction and the anxiety and depression qualify as disabilities.

30. When looking at the whole picture, as I must, I also find that the combination of the five physical and mental conditions (the Fibromyalgia, Temporomandibular Joint Dysfunction, anxiety and depression, chronic back pain and the Hallux Valgus and Rigidus), had a substantial cumulative adverse effect on the claimant's normal day-to-day activities, because each of the physical conditions caused the claimant some form of pain and I accept the claimant's evidence as a logical deduction that it was the increasing number of long term sources of pain which caused her anxiety and depression. Taking all five impairments into account collectively, the claimant was a disabled person as a result of them.

Judge C J Cowx

25 March 2023

REASONS SENT TO THE PARTIES ON

7 November 2023

FOR THE TRIBUNAL OFFICE