



EMPLOYMENT TRIBUNALS

Claimant: Mr K Riley

First Respondent: The Chief Constable of North Yorkshire Police

Second Respondent: The Chief Constable of West Yorkshire Police

REASONS

JUDGMENT having been sent to the parties on 7 November 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

1. The judgment of the Tribunal is that the claimant did not have a disability as defined in section 6 of the Equality Act 2010 at the material time. In those circumstances, neither of the respondents had knowledge or could reasonably be expected to have knowledge of a disability.

2. The claimant was represented by Ms Brooke-Ward. The first respondent was represented by Ms von Wachter and the second respondent was represented by Mr Mallett.

3. I had sight of a bundle of documents prepared for the purposes of this Preliminary Hearing. This bundle consisted of 316 pages. I considered the documents to which I was referred by the parties.

4. I heard evidence from the claimant and the written statement of Rhona Riley, the claimant's wife.

5. The claimant brings claims of disability discrimination and detriment on the ground that he made a protected disclosure. This Public Preliminary Hearing was listed to determine whether the claimant had a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about (the material time), and if so, to determine the date on which the claimant's impairment first satisfied the definition in section 6 of the Equality Act 2010 and to determine the date on which each of the respondents first knew the claimant had an impairment which satisfied the definition of disability.

7. The material time being when the alleged discrimination occurred on 21 July 2022.

8. Section 6 of the Equality Act 2010 provides:

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.
- (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
- (6) Schedule 1 (disability: supplementary provision) has effect.

Section 212. General interpretations

- (1) in this Act... 'Substantial' means more than minor or trivial.

Schedule 1.

- 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 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.

9. The question of whether an impairment is 'long-term' should be answered as at the date of the alleged discriminatory acts, not with the benefit of hindsight at the date of the hearing (**Richmond Adult Community College v McDougall [2008] ICR 431**)

10. In **SCA Packaging Ltd v Boyle [2009] UKHL 37** the House of Lords held at the word 'likely' should be interpreted as meaning 'could well happen' rather than 'more likely than not'.

11. The claimant had been employed by North Yorkshire Police since 2005. He was seconded to work for West Yorkshire Police from 1 April 2022.

12. The claimant referred to suffering a mental breakdown on 1 April 2022. The statement from Mrs Riley referred to there having been concerns prior to that date about the claimant's behaviour when discussions began regarding a merger of his unit with West Yorkshire Police force.

"He would return home from work frustrated and unhappy with the progress of negotiations. This frustration began to lead to him being withdrawn, short tempered and emotional at home, the very opposite of his usual personality. By Christmas of 2021, even our son was at university, had raised concerns to me about his dad's emotional state of mind.

By March 2022, it was apparent that Ken wasn't coping at all. He would often return home upset and his crying was a regular occurrence. Since Christmas I have been begging him to talk to me or anybody, highlighting that his mental state was fragile and not his 'normal'.....

13. Mrs Riley spoke to an Inspector in March 2022 and the claimant was referred to the counselling service. The claimant attended a five day training course and on 1 April 2022 he suffered what he referred to as a mental breakdown.

14. The claimant attended his GP on 5 April 2022. He remained off work after that date. He had counselling and medication and was gradually improving until a meeting on 21 July 2022. This is when acts of alleged discrimination took place.

15. I have to decide when the claimant's depression, stress and anxiety was such as to be substantial and long-term.

16. I have no doubt that the claimant's impairment is now a substantial and long-term impairment which would satisfy the definition of disability pursuant to section 6 of the Equality Act.

17. However, I have to determine the position at the material time, 21 July 2022. There was no medical evidence to show this was likely to be a long-term substantial impairment at that time. The GP notes show an attendance on 28 January 2022 with regard to:

“6 week history of becoming SOB [Short of breath] on little exercise, months have been wheezing with exhale, has thick green mucus from nose, lack of energy, taking long time to recover from work shifts. Possible anxiety-like symptoms.”

18. There are further entries in respect of contacts or visits to the GP surgery at the end of January, throughout February and March but no mention of stress, depression and anxiety until 6 April 2022 when it is recorded that he had suffered a mental breakdown. It is also stated:

“struggling with stress, depression and anxiety for months. Breaking down in tears – On Friday was on a course all week in Gloucester – driving back – mental breakdown...”

19. I had sight of an Occupational Health report dated 15 June 2022 in which it is stated that:

“Although there has been a slight improvement since Ken went off work sick. At this stage, it is difficult to predict how long Ken's recovery will take...”

20. The claimant referred to having suffered symptoms from mid-2021.

21. Depression and anxiety is a difficult condition for medical professionals to be able to provide a prognosis and the question of when it becomes likely to last 12 months is uncertain in many cases.

22. In this case, I am not satisfied that there was any evidence from which it could be concluded that the impairment had a substantial and long-term effect on the claimant's ability to carry out day-to-day activities at the material time.

23. The claimant had been off work since April 2022 when it was clear that the impairment was having a substantial effect. However, the claimant was improving and hope to return to work. Returning to work itself would not mean that the substantial impairment had come to an end. However, there was no evidence that at the material time, the claimant's condition was such that it could be said it was a substantial adverse affect that was likely to last 12 months or more.

24. Likely means that it could well happen. I have to consider the situation at the material time. That is the date of the alleged discriminatory act. I am not satisfied that on 21 July 2022 the claimant's impairment was such that it could well happen that the substantial adverse affect would last 12 months or more. The fact that it has now lasted more than 12 months does not mean that it was likely to last 12 months at the material time.

Employment Judge Shepherd
27 November 2023