

approach to adopt when applying the Disability Discrimination Act's provisions. This guidance is relevant when deciding matters under the Equality Act 2010. The guidance requires a Tribunal when determining disability to look at the evidence by reference to 4 different questions or conditions.

- i. Did the Claimant have mental physical impairment?
 - ii. Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?
 - iii. Was the adverse effect substantial?
 - iv. Was the adverse condition long-term?
4. In **Wigginton v Cowrie and others t/a Baxter international (A partnership)** the EAT held that these four questions should be dealt with sequentially and not together.
 5. In **Cruickshank v VAW Motorcast Limited 2002 ICR 729** the EAT held that the time to assess the disability is the date of the alleged discriminatory act. In **Richmond adult community college v McDougall 2008 ICR 431** the Court of Appeal held that the date of the discriminatory act is also the material time when determining whether the impairment has a long-term effect.
 6. The burden of proof is on the Claimant to show that he or she has satisfied the definition.

The Respondent's Case

7. The Respondent accepts that the Claimant had an impairment, namely type 2 diabetes and that this was long term. Their argument is that the impairment did not have a substantial adverse impact on his ability to carry out normal day to day activities. There was common ground that the Claimant had a commute to work of about 3.5 hours each day, which together with an 11-hour shift left little time to sleep. It was common ground that this caused tiredness and fatigue. The Respondent's position in summary is that it is the commute that led to the Claimant feeling tired and fatigued and that other matters such as occasional blurry vision (which has been corrected with glasses) and having to change his diet did not amount to a substantial adverse effect on his ability to carry out day to day activities. I was referred to the case of **Metroline Travel Ltd v Soute UKEAT/0302/14/JOJ.**

The Claimant's Case

8. In summary the Claimant's case is that for some time leading up to his diagnosis on 26 February 2021 he had been feeling unwell. He thought it might be covid, but a test was negative. This led to blood tests being taken and the diagnosis. His glucose levels were very high at the point of diagnosis, and he was told to go to hospital if symptoms worsened. He had blurry vision, increased need to urinate,

fatigue, loss of concentration. In addition to medication, he had to modify his diet and eat at regular times and take medication at regular times.

9. The Claimant agreed that the commute to work caused tiredness and fatigue. However, his case is that before the period leading up to his diagnosis, he was able to cope with this level of commuting. However, in the period leading up to his diagnosis his levels of fatigue and tiredness increased substantially. He had a period of sick leave for about a month following his diagnosis, and in this period, even without having to commute he was so tired he spent most of the time in bed. Over a period of time, his medication brought his glucose levels down and he was less tired. He still finds climbing stairs tiring, and restricts his journeys to be able to manage his tiredness, eating and medication.

My conclusions

10. Turning to the four elements of the definition:

The Impairment

11. The Respondent accepts the Claimant was diagnosed with Type 2 diabetes. The Claimant was diagnosed with Type 2 diabetes on 26 February 2021. His glucose levels were very high He has been on medication since then. He described how leading up to the diagnosis he knew he was not well, but did not know what was wrong. Initially he thought he had covid, but a test was negative. The symptoms were increased need to urinate, fatigue, loss of concentration, blurry vision.

Substantial Adverse Effect

12. The words "substantial adverse effect" is defined in section 212(1) Equality Act as meaning "more than minor or trivial". Whether a particular impairment has a substantial effect is a matter for the Tribunal to decide. The focus should be on what the Claimant cannot do, or can only do with difficulty as set out in Leonard v Southern Derbyshire Chamber of Commerce 2001 IRLR 19 EAT.
13. The Claimant accepts that his long commute coupled with an 11-hour shift is tiring.
14. Mr Parmar referred me to what the Claimant said at his disciplinary hearing about the reasons for his fatigue. He attributed this to the length and complexity of his commute. I note that the fit note which first mentions diabetes was the 26 February 2021 which is the same date as the disciplinary hearing. I know from personal experience that getting a diagnosis, in this case of type 2 diabetes, can take some time to get your head around. It is perhaps not surprising that the Claimant did not refer to him having diabetes at the disciplinary hearing given that first he may not have been notified by that time or even if he had, the implications of the diagnosis will not have been digested nor what the symptoms are and how they may relate to other matters.
15. In line with the Metrolink Case referred to by Mr Parmar, I do not consider a change of diet in isolation to be a substantial adverse effect on normal day to day activities. Many people without a disability change their diet for health reasons. However, the need to eat at specific times and the need to take medication at specific times

combined with the Claimant's other symptoms do, in my judgment, combine to create a substantial adverse effect on ability to carry out normal day to day activities.

16. I have distinguished this case from the Metrolin case, as in this case the Claimant was prescribed medication and continues to take medication to control his blood sugars whereas in the Metrolin case there were periods when the Claimant was not taking medication and managed his diabetes by diet alone avoiding sugary drinks. It was held that avoiding sugary drinks was not a medical intervention.
17. The extreme fatigue, loss of concentration that the Claimant experienced, even when not commuting and off work, has been managed by medication and over time the Claimant's blood sugars have stabilised. If he was not on this medication the likelihood is that his glucose levels would rise again, and he would experience the fatigue he described to me. I find that this does have a substantial adverse effect on his ability to carry out day to day activities, he limits the areas he travels to, and finds for example climbing stairs difficult.

Employment Judge Martin
Date: **14 December 2023**