



EMPLOYMENT TRIBUNALS

Claimant

Mr Harry Stedman

v

Respondent

Haven Leisure Limited

Heard at: Norwich

On: 7 November 2023

Before: Employment Judge Postle

Appearances

For the Claimants: In person

For the Respondent: Mr Perry, Counsel

JUDGMENT on PRELIMINARY HEARING

The Claimant is not a disabled person within the meaning of Section 6 of the Equality Act 2010, in that his impairment does not have a substantial adverse effect on his normal day to day activities.

REASONS

1. This is a Preliminary Hearing to determine whether the Claimant has a disability, namely Autism / ADHD, which satisfies the s.6 definition contained in the Equality Act 2010.
2. In this Tribunal we have the benefit of a Bundle of documents consisting of 63 pages.
3. Of particular importance is the Claimant's Impact Statement (page 55 – 57), a letter from the Claimant's GP regarding a referral for an Autism Assessment (page 59), a two page extract from the Claimant's GP's Notes covering the last ten clinically relevant Consultations from June 2023 to August 2023, a brief Report from a Professor Fox who is a Consultant Psychiatrist confirming a diagnosis of Adult ADHD, plus an additional unnumbered document contained in the Bundle.

4. The Tribunal have also heard evidence from the Claimant confirming the contents of his Impact Statement, (again at pages 55 – 57).

5. We noted from the Claimant's Impact Statement, the Claimant refers to,

"I struggle to form friendships and struggle when break ups happen, I struggle a lot with rejection..."

"In regards shopping, I can shop for myself, struggle to remember things without lists..."

"I can no longer concentrate for long periods of time on reading, writing or even watching a long documentary or movie..."

"In regards to other issues, cannot face using public transport if it is overcrowded and I cannot drive due to my lack of focus..."

"I also don't take part in social activities often due to my social anxiety and although when performing I am very sociable..."

"In regards work related activities, I struggle at times to interact and communicate with colleagues and customers but overall can mask my disabilities."

"I have had speaking therapy, Relationship Counselling..."

6. However, when questioned the Claimant confirmed during 2018 he was able to undertake a Business Studies Degree which he persevered with. He says that the pandemic also impacted on his concentration.

7. The Claimant told us he did well at school obtaining the equivalent of three A* 'A' Levels, a BTEC qualification and a number of 'O' Levels and said he is able to concentrate and has good coping strategies. The Claimant accepted that he has had friends although he does take a long time to form a friendship. He also said that when performing he is very sociable but outside of that he can be shy.

8. When questioned about his ability to drive, he said that he could not drive. Then actually admitted he had never taken a Driving Test, although he held a Provisional Licence and had never taken any driving lessons or attempted to drive.

9. Insofar as Public Transport is concerned, he uses Public Transport but he just avoids transport that is overcrowded because he feels he is somewhat claustrophobic.

10. Regarding medical treatment, he had Speaking Therapy about two years ago which the Claimant chose himself and he has used Relationship Counselling about one and a half years ago but not recently.

The Law

11. As set out in s.6 of the Equality Act 2010,

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.

12. This definition is qualified in the Equality Act 2010 Schedule 1, Paragraph 2,

(1) The effect of the 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.

13. The Tribunal is required to look at the evidence by reference to four different questions, therefore:-

13.1. Did the Claimant have a mental and / or physical impairment? (the impairment condition);

13.2. Did the impairment effect the Claimant's ability to carry out normal day to day activities? (the adverse effect of the condition);

13.3. Was the adverse condition substantial? (the substantial condition); and

13.4. Was the adverse condition long term (the long term condition) ?

14. These four questions should be posed sequentially and not together.

15. Guidance is given in Aderemi v London and South Eastern Railway Limited [2013] ICR 591 (14),

"... What a Tribunal has to consider is an adverse effect, that is an adverse effect not upon his carrying out normal day to day activities, but his ability to do so. Because the effect is adverse, the focus of the Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a

result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability that is to carry out normal day to day activities, a Tribunal has then to assess whether that is or not substantial.”

16. Here, however, it has to bear in mind the definition of substantial which is contained in s.212(1) of the Equality Act 2010, means,

“... more than minor or trivial.”
17. The burden is on the Claimant to show that he falls within this definition which requires the Claimant to prove information about particular activities work related, or otherwise, that he was unable to undertake or that were adversely effected by his impairment.
18. Originally the Claimant’s own case is that his Autism and ADHD was self-diagnosed but we now have Professor Fox’s Report which confirms the diagnosis.
19. The Claimant clearly has a mental impairment. The question is does that mental impairment have an adverse effect on his ability to carry out normal day to day activities? Reminding the Tribunal, the focus must be upon that which a Claimant maintains he cannot do as a result of his impairment.
20. Looking at the Claimant’s Impact Statement, it is difficult to conclude that in relation to normal day to day activities, the Claimant has any difficulty other than perhaps what one might expect from somebody who is not disabled carrying out such activities, such as shopping, dealing with a break up and forming friendships.
21. It is also noted, the Claimant is not currently on any medication.
22. The Claimant clearly is a social person, he performs in public, he forms social relationships albeit sometimes with some difficulties and he visits friends. The Tribunal believed the Claimant may have over stated his issues with reading, writing and concentration, bearing in mind recently he has completed satisfactorily a Degree in Business Studies and was able to complete BTEC Examinations obtaining the equivalent of three ‘A’ Levels at A*, he was clearly doing well at School.
23. Insofar as driving is concerned, the Claimant said he had a lack of focus, but when pushed, no one has told him he couldn’t drive and he has not even taken lessons. Again, he has overstated his position.
24. The Claimant has no problems with Public Transport other than if they are overcrowded.
25. Taking all matters into account, it is clear that the Claimant’s disability does not have a substantial impact on his normal day to day activities and

therefore although having a mental impairment does not satisfy the full definition of a disabled person under s.6 of the Equality Act 2010.

Employment Judge Postle

Date: 7 December 2023

Sent to the parties on:
21 December 2023

T Cadman
For the Tribunal Office.