



EMPLOYMENT TRIBUNALS

Claimant: Miss Diamond
Respondent: Kyra Enterprises Limited

Heard at: Watford Employment Tribunal
On: 30 October 2023

Before: Employment Judge Murdin

Representation

Claimant: In person, with the assistance of Mr Diamond.
Respondent: Ms Owusu-Agyei (Counsel).

RESERVED JUDGMENT

1. The Claimant is, and was at all material times, a disabled person for the purposes of section 6 of the Equality Act 2010.
2. Save where otherwise stated, page numbers referred to are the page numbers of the Bundle used by the Tribunal at the preliminary hearing.
3. The ET1 was received on 13 January 2023, following ACAS Early Conciliation from 15 to 17 November 2022.

The Issue

4. The issue for determination at the preliminary hearing concerned whether the Claimant was disabled for the purposes of section 6 of the Equality Act 2010.
5. The Claimant relies on vasovagal syncope with additional anxiety driven symptoms and headaches (pre-syncope) as a disability. The Respondent does not accept that the Claimant satisfied the statutory test.
6. Thus, the Tribunal considered the following:
 - (i) Did the Claimant have a physical impairment – namely: vasovagal syncope with additional anxiety driven symptoms, and/or headaches (pre-syncope);
 - (ii) If so, did this physical impairment have a substantial adverse effect on her ability to carry out normal day to day activities?
 - (iii) If so, at the material time(s), had there been such an effect for more than a year, or was there likely to be?

Background

7. The 1st Respondent is a company operating 18 McDonald's restaurants under a franchise arrangement.
8. The Claimant was employed by the 1st Respondent from 9th August 2021 until 15 October 2022, as a Crew Member. The Claimant worked at the 1st Respondent's Burton Latimer restaurant.

The Claim

9. The Claimant brings the following claims, all of which are denied:
- (i) Breach of the Working Time Regulations 1998;
 - (ii) Direct discrimination on account of the Claimant's disability, age and/or sex;
 - (iii) Harassment;
 - (iv) Discrimination arising in consequence of her disability;
 - (v) A failure to make reasonable adjustments;
 - (vi) Victimisation.
 - (vii) Wrongful dismissal;
 - (viii) Unlawful deduction from wages.

The Evidence

10. For the purposes of determination of the issue of disability, the Claimant relies on the following documentation contained within the bundle:
- (i) The Claimant's submission on disability (p60);
 - (ii) The Claimant's Impact Statement (p69);
 - (iii) The Claimant's medical evidence (p75).
11. The Claimant also gave evidence. Her evidence was credible, consistent with her documentation, and impressive. Notably, she made a number of significant concessions in respect of the timescale of her symptomatology, which did not assist her claim. I entirely accepted her evidence.
12. Following the conclusion of the evidence, the Claimant made helpful submissions, and submitted 2 authorities upon which she relied.
13. The 1st Respondent relied on their letter to the Tribunal dated 26th May 2023 (p152) together with their Grounds of Resistance (p27), an authorities

bundle, and the helpful submissions of Ms Owusu-Agyei. I have carefully read and considered all of the above documentation.

Findings of Fact

14. From 2018 the Claimant has suffered from headaches and vasovagal syncope with additional anxiety driven symptoms. The Claimant manages her condition by way of the migraine medication pizotifen prophylaxis and through the use of coping mechanisms.
15. The Claimant suffered a medical episode on 13 September 2022, when the Claimant left her shift early due to fainting at work. The First Respondent recorded this as a seizure at work. Again, on 14 October 2022, the Claimant suffered from a headache, requiring her to go to the toilet for a break.
16. The above symptomatology amounts to a physical impairment for the purposes of section 6(1)(a) of the Equality Act 2010. I accept the evidence of the Claimant that this impairment has had, and continues to have, a substantial adverse effect on her ability to carry out her normal day-to-day activities. I note, and accept, that she is required to take pizotifen prophylaxis, a prescribed medication, in order to manage her condition, and I accept her account of how this condition has affected, and continues to affect her normal day-to-day activities. I further accept the evidence of Mr Barnes. In relation to the duration of that physical impairment, I find that it began in or around 2018, is ongoing, and is likely to be permanent.
17. I am entirely satisfied therefore that the Claimant had a disability for the purposes of section 6 of the Equality Act 2010 during the entire period of her employment with the 1st Respondent.

Conclusion

18. The Claimant is, and was at all material times, a disabled person for the purposes of section 6 of the Equality Act 2010.

19. The matter be relisted for a further 1 day preliminary hearing to determine the issue of limitation, and thereafter to address case management.

Employment Judge **Murdin**

Date 19th December 2023

JUDGMENT SENT TO THE PARTIES ON
22 December 2023

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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