



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Craig Allen

**Respondent:** Mitie Limited

**Heard at:** Southampton

**On:** 23 November 2023

**Before:** Employment Judge H Lumby

## REPRESENTATION:

**Claimant:** Mr A MacPhail (Counsel)

**Respondent:** Dr A Z Louffi (Counsel)

## PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

### Disability

1. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of depression.
2. The complaints of unfavourable treatment because of something arising in consequence of disability, failure to make reasonable adjustments and victimisation can therefore proceed.

### REASONS PURSUANT TO A REQUEST FROM THE RESPONDENT

1. These are written reasons following a verbal judgment on the preliminary issue of disability in the case of Mr Craig Allen v Mitie Limited, given on Thursday 23

November 2023, following an in person preliminary hearing. I have been asked to determine whether the claimant was a disabled person at the material times. The claimant has argued that the disability is depression, the respondent has questioned whether there was an impairment, and if so whether it had a substantial and long-term effect.

2. The documents that I was referred to are in a bundle of 206 pages, the contents of which I have recorded. I have also received skeleton arguments from both sides, for which I am grateful. I have also been provided with two authorities by Mr McPhail.
3. I have heard from the claimant, and from Mr McPhail on his behalf. For the respondent I have heard from Dr Loutfi.
4. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

### **Facts**

5. The claimant worked for the respondent from February 2000 until his dismissal on 24 August 2022, working as a security manager at Festival Place in Basingstoke. The appeal in relation to his dismissal was dismissed on 19 December 2022. For the purposes of his claim the relevant events of discrimination are the dismissal and the subsequent rejection of the appeal. The relevant dates on which disability needs to be shown are therefore 24 August 2022 and 19 December 2022.
6. The claimant contends that his manager, Mr Gary Cooper, for many years subjected the claimant and other employees to unacceptable behaviour. In 2021, he asserts that this was focused on him, following the return of Mr Cooper from absence with Covid. This caused him increasing stress and anxiety, leading him to submit a grievance on 24 June 2021.
7. On 28 June 2021 he was diagnosed by his GP with stress at work and signed off sick. He never returned.
8. His grievance was largely rejected and was appealed by him on 13 September and 17 October 2021.
9. On 8 October 2021 he was diagnosed with a depressive disorder. The claimant argues that he had depression earlier but there is insufficient evidence prior to that date and I am content to rely on the diagnosis at the time. I therefore find that the depression began on that day.

10. The claimant was prescribed medication for his depression, which he began to take on 22 November 2021. I find that this did have an impact on his depression.
11. Based on welfare meetings minutes and occupational health reports from 2022 and the evidence I had heard at the hearing, I find that the reason that the claimant was depressed was directly caused by his treatment by Mr Cooper and the respondent in the aftermath of his grievance. I also find that this depression amounted to a mental impairment.
12. The claimant has described the impact the depression had on him in his impact statement. Other evidence of the impact is apparent from other evidence. Impacts included an inability to socialise, a reduction in concentration and his intolerance of others. I was taken by the comment that he did not recognise himself. Social activities that he did not undertake included mountain biking and barbeques. I find that this did amount to an impact on his day-to-day activities.
13. This impact fluctuated throughout the period from diagnosis until the claim was made. Medication appeared to improve matters whilst encounters with the respondent made it worse. Leaving the employment of the respondent did not improve matters and the disability continued at least until the outcome of his appeal.

## **Law**

14. The claimant alleges discrimination because of the claimant's disability under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA.
15. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months or is likely to last the rest of the life of the person.
16. The tribunal has considered the cases of Goodwin v Patent Office [1999] ICR 302 EAT; Environment Agency v Rowan [2008] IRLR 20 EAT; Archibald v Fife Council [2004] IRLR 651 HL; Project Management Institute v Latif [2007] IRLR 579 EAT; Richmond Adult Community College v McDougall [2008] IRLR 227; Wigginton v Cowie & others t/a Baxter International (A Partnership) EAT 0322/09; J v DLA Piper UK LLP [2010] ICR 1052 EAT and Herry v Dudley Metropolitan Council [2017] ICR 610 EAT. We take these cases as guidance, and not in substitution for the provisions of the relevant statutes.
17. Disability is defined in section 6 and schedule 1 of the Equality Act 2010. A person has a disability if he has a physical or mental impairment that has a substantial

and long-term adverse effect on their ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months or is likely to last the rest of the life of the person.

18. The EAT in Goodwin v Patent Office said that the words used to define disability in what is now section 6(1) of the Equality Act 2010 required tribunals to look at the evidence by reference to the following four conditions, all of which need to be satisfied for there to be a disability:
  - a. did the claimant have a mental and/or physical impairment? (the 'impairment condition')
  - b. did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')
  - c. was the adverse condition substantial? (the 'substantial condition'), and
  - d. was the adverse condition long term? (the 'long-term condition').
19. The EAT has separately held that these four questions should be posed sequentially and not together.
20. The time at which to assess disability is the date of the alleged discriminatory act, which is relevant to assessing the long-term condition.
21. Depression is capable of being a mental impairment and so potentially capable of constituting a disability, depending on the application of the questions raised in Goodwin v Patent Office. In the DLA Piper case, the EAT said that, when considering the question of impairment in cases of alleged depression, tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances. While both can produce symptoms of low mood and anxiety, only the first condition should be recognised by the then applicable Act.
22. The EAT reiterated this distinction in the Herry v Dudley Metropolitan Council case, drawing the distinction between depression of a kind amounting to a disability under the Equality Act 2010 and an adverse reaction to life events, such as stress brought on by allegations of misconduct. In that case, it found that particular care needs to be paid to medical evidence and that where a person suffers an adverse reaction to workplace circumstances that becomes entrenched so that they will not return to work, but in other respects suffers no or little apparent adverse effect on normal day-to-day activities, this does not necessitate a finding of mental impairment.

### **Application of law to facts**

23. I applied this law to the facts as follows.

24. The two acts of discrimination relied upon by the claimant are the dismissal on 24 August 2022 and the subsequent rejection of the appeal on 19 December 2022. These are the material dates to be considered when assessing whether the claimant had a disability for the purposes of section 6 of the Equality Act 2010.
25. In this context, I considered each of the four tests in Goodwin v Patent Office in turn.
26. First, the impairment condition. I have found that the claimant had depression. Having assessed the medical evidence I have found that this depression was a mental impairment. It went beyond an adverse reaction to life events and affected him and had an affect beyond an inability to return to work. This condition is therefore satisfied.
27. Secondly, the adverse effect condition. I have found that the depression had an adverse effect on the claimant's ability to carry out normal day-to-day activities. It changed him to the point that he did not recognise himself and he ceased to do many things which he carried out before the purported discrimination. This condition is therefore also satisfied.
28. Next, the substantial condition. Was that adverse impact more than minor or trivial? An inability to perform tasks or to socialise with people is more than minor or trivial. The tendency to shout at his wife where he had not before, and intolerance of his children similarly passes the threshold. This condition is therefore also satisfied.
29. Finally, the long-term condition. I have found that the condition began on 8 October 2021. The material dates to assess whether the effect of the impairment has lasted or is likely to last at least 12 months is 24 August 2022 and 19 December 2022. I have found that its impact fluctuated. Improvement due to medication must be disregarded. Encounters with the respondent made it worse and these continued until the rejection of the appeal in December 2022.
30. At the time of the dismissal, the claimant had not had the impairment for a sufficient period to show 12 months. The question is therefore whether it was likely to last from 24 August 2022 until 8 October 2022, some six weeks or so. "Likely" in this context is to be interpreted as "could well happen" (according to the 2011 Guidance on the definition of disability).
31. It is clear from the evidence that the depression was caused by work events and treatment. It would also appear from the claimant's own statements and the occupational health reports that the path to a cure was likely to run through the resolution of the claimant's relationship with the respondent. Standing in August 2022, the dismissal of itself was not likely to resolve that relationship and a reaction to the dismissal was likely. As a result, I find that the depression caused by the respondent could well continue beyond 8 October 2022.

32. Accordingly, in terms of the 24 August 2022 date, the disability was likely to continue for more than 12 months and so satisfies the long-term condition in relation to that date.
33. The other relevant date is 19 December 2022; that date is more than 12 months after the beginning of the disability. I have found that the disability was continuing at that date.
34. Accordingly, in terms of the 19 December 2022 date, the disability had continued for more than 12 months and so satisfies the long-term condition.
35. Given that all four conditions have been satisfied, I find that the claimant had a disability, namely depression, at the relevant times.
36. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 5 to 13; a concise identification of the relevant law is at paragraphs 14 to 22; how that law has been applied to those findings in order to decide the issues is at paragraphs 23 to 35

**Employment Judge Lumby**  
**Date: 4 December 2023**

Judgment sent to the Parties:  
20 December 2023

For the Tribunal

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