



EMPLOYMENT TRIBUNALS

Claimant: Mr J Price

Respondent: Cellar Drinks Company Limited

Heard at: Cardiff, by video

On: 8 January 2024

Before: Employment Judge Cawthray

Representation

Claimant: In person - not legally qualified and Ms. S Price, Claimant's mother - not legally qualified

Respondent: Ms. S Young, Paralegal

RESERVED JUDGMENT

1. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of dyslexia (also referenced as Specific Learning Disability) and migraines.
2. At the relevant times the claimant was not a disabled person as defined by section 6 Equality Act 2010 because of ADHD, dyspraxia and short-term working memory problem.

REASONS

Issues

1. At the start of the hearing a discussion took place regarding the conditions relied upon as disabilities and the relevant times. Ms. Price confirmed that the Claimant was seeking to rely on six health conditions: Dyslexia, ADHD, Specific Learning Disability, Migraines, Dyspraxia and Short Term Working Memory Problems, both separately and cumulatively.

2. Ms. Price confirmed the Claimant was not relying on “traits of autism” as a disability.
3. The issues to be resolved at this public preliminary hearing were: -
 - Does/did the Claimant have a physical or mental impairment, namely Dyslexia, ADHD, Specific Learning Disability, Migraines, Dyspraxia and Short Term Working Memory Problems?
 - If so, did the impairment have a substantial adverse effect on the claimant’s ability to carry out normal day to day activities?
 - If so, was that effect long term? In particular when did it start; and
 - a. Has the impairment lasted at least 12 months?
 - b. Is or was the impairment likely to last at least 12 months?
 - Are any measures (e.g., medication) being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the Claimant’s ability to carry out normal day-to-day activities?

Procedure and evidence

4. The Claimant was supported and assisted by his mother, Ms. Price. Ms. Price is not legally qualified. The Respondent was represented by Ms. Young, paralegal.
5. At the start of the hearing Ms. Price explained that the Claimant had broken two bones in his leg and had an operation on 23 December 2023. The Claimant had made no request for an adjournment of the hearing today. After discussion, the Claimant confirmed that he was well enough and able to continue with the hearing today.
6. We discussed reasonable adjustments at the start of the hearing and agreed breaks would be taken regularly. I also directed Ms. Young to ask short and clear questions. This direction was not always followed and I had to remind Ms. Young to breakdown questions or put her question more clearly at several points during the hearing.
7. I read the Claimant’s Impact Statement and list of effects and he gave an affirmation and relied upon these documents as his written evidence. The Claimant was cross examined by Ms. Young and I asked him a few questions to obtain necessary clarification.
8. There was an agreed bundle of 123 pages. The Claimant had provided the extracts from his GP records, the documents at pages 115 – 123 of the Bundle after the deadline, on 22 November 2023. Ms. Young objected to the GP records being taken into account for several reasons, namely: they were provided following the deadline set by Employment Judge Povey, that the Respondent had provided its position on disability document on 10 November 2023 and that she considered the documents to be irrelevant. In response to questions from me, Ms. Price explained that she had initially disclosed everything that she thought was required but that after the Respondent wrote and said there was not sufficient information she

went back through the Claimant's GP records and provided further information. I ascertained that Ms. Young, and the Respondent, had received the 8 pages of GP documents on 22 November 2023, they had been included in the Bundle and Ms. Young had sufficient time to review and was able to make any oral comments she wished in relation to the documents at the hearing. Accordingly, I decided it was appropriate for the documents to be considered.

9. I informed the parties that unless I was taken to a document in the bundle, it may not be read and both parties indicated the key reading required. Both the Claimant and Respondent provided oral submissions.

Facts

10. I have only made findings of fact as far as necessary for determination of whether or not the Claimant was disabled at the material times.
11. It should be noted that any typing errors in extracts from documents reflect the typing errors in the documents within the Bundle.
12. The Claimant was born on 1 April 2005. The Claimant left school in 2021.
13. The Claimant started working at the Respondent on 18 September 2021. The Claimant was dismissed on 11 July 2023.
14. The Claimant attended an occupational therapy assessment in 2015.
15. An extract from the Claimant's GP record dated 18 May 2016 states:

"chat with mum and patient, issues with anger and behaviour at school. gets into fights and has outbursts. Is on AEP, and due for review on friday. fight on Monday. Year6, has mild dyspraxia and possible dyslexia. chat re this. says sees double"
16. An extract from the Claimant's GP record dated 6 December 2016 states:

"Comes to chat about Josh. Concentration and attention difficulty. dyslexic tendencies. especially with literature, gets frustrated and angry. has friends but needs time out after a while then goes back to then. always fidgeting. school supportive. Mother worried about what will happen when he leaves school. late to develop fine motor skills but these are slowly improving."
17. The report appears to attach a referral letter entitled "CCG Referral Nevill Hall Hospital Paediatrics (09-Dec-2016).
18. In the Claimant's GP records against an entry dated 14 February 2017 it states:

"Attachment – Clinical Letter Nevill Hall Hospital Paediatrics Multidisciplinary Assessment."
19. The GP records, against an entry dated 13 March 2017, state:

“Discussed his current school difficulties/behaviour problems. Has been referred to ISCAN for assessment...”

20. The Claimant attended his GP on 16 March 2017, the history section states:

“Comes with mother for chat. Mother worried Josh is getting depressed. Hates school. Can't seem to work out if its the lessions / siubjects / school work / teachers which he finds the worst. Fine with the other kids. Supposed to be given extra time / breaks to write things down but teachers are not letting him and he rebels by not writing at all if told to carry on, then gets into trouble and gets 'mouthy - so viscous circle. Head teacher has spoke to teachers but it is still happneedd. laxity in joints in hands from PH report and advised to have extra time. Has been ref neurodevelopmental nurse but 26w wait...”

21. On 7 August 2017 the Claimant's GP referred him to the Primary Mental Health Care Team following the rejection of a CAMHS referral for behavioural problems, self harming, frustration, patient hurting himself and becoming more angry.

22. On 27 April and 3 May 2018 the Claimant had a private Educational Needs Assessment. This was undertaken by Sarah Gillie of Beacons Unique. The Claimant was in year 8 at school at the time of the assessment.

23. The assessment diagnosed the Claimant as dyslexic. The assessment did not diagnose the Claimant as having ADHD or dyspraxia/developmental coordination disorder, but suggested that the Claimant may wish to explore further certain difficulties. The report is 37 pages long, and although the full report has been considered, I have copied what I consider to be important extracts below.

24. Page 4 of the report:

“Conclusions

Diagnostic testing has revealed clear signs of specific learning difficulties of a dyslexic nature, affecting the development of academic skills and undermining learning efficient. Josh presents with co-occurring difficulties related to executive function, focus and attention, as well as motor control for writing”.

Future Recommendations

...

Noted difficulties related to executive functioning skills, focus and attention may be entirely related to Josh's specific learning difficulties; however, parental and school reports as well as behaviours noted in this assessment warrant further exploration of the inattentive form of attention deficit hyperactivity disorder. Evidence of joint laxity and poor core strength, detailed in this report indicate that it may be worthwhile for Josh to be re-referred to occupational therapy services. This may be possible via rereferral to ISCAN or by Josh's GP to other appropriate local services”.

25. Page 5 of the report:

“Physical and Motor Skills

...

Josh has been assessed by occupational therapy services and has joint laxity, which makes writing uncomfortable and awkward.

“Organisation

...

“Josh is described as finding it difficult to develop a routine for daily organisation, for example, for school”.

26. Page 7 of the report:

“Paediatric Occupational Therapy

... his general motor coordination was not considered sufficiently weak to meet the criteria for a diagnosis of developmental coordination disorder (DCD/dyspraxia). Recommendations were again provided for school and home”.

27. Page 12 of the report:

“Writing Skills

...

“Josh has previously completed this test as part of an occupation therapy assessment in 2015.”

28. Page 25 of the report:

“The Neurodiverse SpLD Checklist

...

“The Neurodiverse checklist groups traits of different SpLDs but does not label these as being specific to e.g. autism or dyscalculia, so that the person completing the form is not influenced by these labels. Each item is checked never, sometimes or often. Of the listed signs for each SpLD, Josh’s parents reported that he most often experiences difficulties associated with dyslexia (80% often, 20% sometimes), with signs associated with ADHD (63% often, 37% sometimes) and developmental coordination disorder (DCD, also called dyspraxia, 56% often, 44% sometimes). Other signs noted included traits of autism and mathematical difficulties (both 38%); these could be co-occurring features of a specific learning difficulty.”

“Conclusions

...

“These discrepancies reveal weaknesses in aspects of memory and processing consistent with a specific learning difficulty”.

29. Page 26 of the report:

“It is my professional opinion that Josh’s difficulties with learning and his performance in this assessment battery are consistent with the definition

of dyslexia quoted above and confirm that Josh has a specific learning difficulty of a dyslexic nature. Co-occurring motor coordination difficulties as measured by the Beery VMI, and noted in this assessment, are further evidence of a specific learning difficulty.

Although they may be related to his dyslexia, difficulties with attention, organisation, motor co-ordination, planning and sequencing observed during this assessment and noted both at home and in school reports may be part of a co-occurring developmental condition such as ADHD or developmental co-ordination disorder (DCD/dyspraxia). Josh's GP can re-refer as appropriate."

30. In response to a question by me the Claimant stated that this was the only assessment he had had. Noting page 5 of the report refers to an earlier occupational therapy assessment I have kept in mind he was only just 13 years old at the time of this assessment, and therefore would have been younger at the time of an occupational therapy assessment. I find that that an occupational therapy assessment did take place in 2015.
31. The Claimant's evidence is that following the assessment by Sarah Gillie he attended the GP and that the GP accepted the report. I find that the Claimant does believe that he has been diagnosed with dyslexia, ADHD and dyspraxia by Sarah Gillie.
32. In response to cross-examination the Claimant explained that he did not consider his short-term working memory problem to be a medical disability but was part of his ADHD and dyslexia.
33. The Claimant did not undergo any further assessments, specifically because he and his mother considered the GP to have accepted the diagnosis by Sarah Gillie, which the Claimant and his mother believe includes a diagnosis of ADHD and dyspraxia in addition to dyslexia.
34. Between July 2020 and March 2021 the Claimant had seven therapy sessions with Adrian Perkins, Systemic Psychotherapist, Caerphilly Primary Care Mental Health Support Service. In a letter dated 26 May 2021 Mr Perkins stated: *"At the same time, Josh continued to have underlying issues regarding his self-esteem and social communication (linked to ADHD with which his Mum reported he had been diagnosed) and I anticipate he may need further support as he moves into the work place or into any further education setting."*
35. The Claimant, in response to a question from me, said he started experiencing migraines in around January or February 2021. I find that the Claimant was actually experiencing migraines earlier than that, from at least October 2020, as set out below.
36. The migraines would entail loss of vision in one eye, headaches, feeling weak, vomiting, being unable to stay awake and feeling pain and sickness for a day after waking up. Initially, the Claimant was experiencing migraines 2 or 3 times a week.

37. The first mention of migraines in the Claimant's GP report was following a telephone consultation on 16 October 2020. It is noted "likely migraine" in the comment.
38. The Claimant attended the GP again on 20 November 2020 due to migraine symptoms and the GP prescribed Migralve medication.
39. The Claimant attended the GP again on 5 February 2021 and discussed migraines. The history section states: *"Discussed with Mum ongoing frequency of migraine 1 – 2 a week typically Not finding Migralve or NSAID that effective in aborting Has seasonal asthma so BB relatively C/I Trial of Pizotifen 1,5mg nocte, warned re weight gain issue etc."*
40. The Claimant's GP first prescribed Pizotifen on 5 February 2021. The Claimant has been taking this medication daily since it was prescribed. The Claimant has fewer migraines now due to the medication, but they continue.
41. The Claimant attended a Consultant Ophthalmologist on 12 January 2022. The consultant confirmed that the Claimant had a normal eye examination and stated: *"Based on the history of improvement of headaches with Pizotifen it is likely that these are migrainous and Josh is experiencing visual auras associated with those."*
42. On 25 August 2022 the Claimant, with his mother, attended his GP and discussed anger issues. There was no diagnosis and reference was made to referral for adult counselling and self-help. The end comment includes a statement: *"Frustrating but wouldn't want to consider starting medications in a 17yr old"*. There was no reference to what form of possible medication and for what medical condition.
43. Within the Claimant's written evidence, namely a document with 8 numbered paragraphs, which the Claimant affirmed as being true and accurate, at paragraph 2 he sets out the difficulties he says he experiences due to his conditions.
44. The Claimant in response to a question by me, stated that these difficulties were how his conditions impacted him.
45. The Claimant was only cross examined in relation to his lack of ability to tell the time on an analogue clock. The Claimant considers that his inability to tell the time on an analogue clock is related to his ADHD and dyslexia and he struggles with the concept of time'
46. The Respondent did not challenge any other parts of paragraph 2, and therefore they are accepted. For ease of reference within my conclusions, I have copied all of paragraph 2 below:

"The Claimant has difficulty with organisation, time keeping, he must be reminded to turn off the hob/oven once he has finished cooking and needs a level of assistance to be able to cook. Reminders to lock the door at night and to switch lights off. He needs assistance with understanding any correspondence he receives and finds it difficult filling out forms etc and needs a high level off assistance to do this. Continual reminders and high

level of assistance required to meet deadlines, appointments etc due to forgetfulness, poor organisational skills and poor concept of time, the Claimant tends to lose things regularly. On occasions the Claimant needs to be reminded of risks as he can act without thinking and sometimes has difficulty recognising danger or any consequences Unable to tell the time from an analogue clock. Needs prompting to take any medication. The Claimant also has difficulty sleeping at night and can sometimes take hours to fall asleep.”

47. In response to a question from me seeking to clarify the timeframe and frequency of the above, the Claimant explained that he experienced the above most days.

Law

48. For the purposes of section 6 of the Equality Act 2010 (EqA) a person is said to have a disability if they meet the following definition:

“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.”

49. The burden of proof lies with the Claimant to prove that he is a disabled person in accordance with that definition.

50. Further assistance on the definition is provided in Schedule 1 of the EqA. The definition poses four essential questions:

- a) Does the person have a physical or mental impairment?
- b) Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
- c) Is that effect substantial?
- d) Is that effect long-term?

51. However, it is important to look at the overall picture.

52. In *Aderemi v London and South Eastern Railway Ltd [2013] ICR 591*, Langstaff P stated: “It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which the 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 on his ability, that is to carry our normal day to day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading of “trivial” or “insubstantial”, it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other”.

53. The term “substantial” is defined at section 212 as “more than minor or trivial”. Normal day to day activities are things people do on regular basis including shopping, reading and writing, having a conversation, getting washed and dressed preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, socializing.
54. Under paragraph 2(2) of Schedule 1 to the Equality Act 2010, 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 to have that effect if that effect is likely to recur.
55. Paragraph 2(1) of Schedule 1 explains: “(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.”
56. Likely should be interpreted as meaning “it could well happen” rather than it is more probable than not it will happen; see *SCA Packaging Limited v Boyle* (2009) ICR 1056.
57. A claimant must meet the definition of disability as at the date of the alleged discrimination.
58. As to the effect of medical treatment, paragraph 5 of Schedule 1 provides:
- “(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if- (a) measures are being taken to treat or correct it and (b) but for that it would be likely to have that effect. (2) Measures include in particular medical treatment...”
59. Paragraph 12 of Schedule 1 provides that a Tribunal must take into account such guidance as it thinks is relevant in determining whether a person is disabled. Such guidance which is relevant is that which is produced by the government’s office for disability issues entitled “Guidance on matters to be taken into Account in Determining Questions Relating to the Definition of Disability” (‘the Guidance’). The guidance should not be taken too literally and used as a check list (see *Leonard v Southern Derbyshire Chamber of Commerce* (2001) IRLR 19).
60. I have also considered the principles set out in *J v DLA Piper UK LLP* (UKEAT/0263/09).

Conclusions

61. I have set out in very brief summary of the key submissions from the parties.
62. Neither party addressed me on or directed me to any legislation or case law.

63. The Respondent's general position is that there is no medical evidence to support any a finding that any of the conditions relied upon amount to a disability. The Respondent submits that there is no diagnosis of ADHD and dyspraxia. In relation to dyslexia, the Respondent asserts that this condition is not relied on as per the issues set out in Employment Judge Povey's Order dated 22 September 2023. In relation to migraines, the Respondent's submission is that the migraines do not meet the definition of disability and made reference to the Ophthalmologist not scheduling a further appointment with the Claimant. With regard to Short-Term Working Memory Problems the Respondent submits there is no medical evidence to support any a finding that this amount to a disability and stated that the Claimant admitted this was not a disability.
64. Ms. Young also made submissions on knowledge, namely that the Claimant did not disclose any condition to the Respondent and that this was admitted in evidence.
65. The Claimant's key points were that the Claimant has a diagnosis of ADHD, dyslexia and dyspraxia and short-term working memory problems. The Claimant relies on the private assessment by Sarah Gillie and submits that this was accepted by their GP. The Claimant avers the GP was reluctant to medicate the Claimant under the age of 18.
66. The Claimant says his GP diagnosed migraines and prescribed medication, and sent him to an ophthalmologist to see is any issues with his eyes were causing the migraines.
67. The Claimant asserts that he has the following conditions which all, separately and cumulatively, amount to a disability/disabilities.
- Dyslexia
 - Specific Learning Difficulty
 - Short Term Working Memory Problem
 - ADHD
 - Dyspraxia
 - Migraines
68. I explained to the parties several times during the hearing today that the only issue I was determining was whether or not the Claimant was disabled at the material time, namely, in July 2023.
69. I have set out my conclusions in relation to groups of conditions, and the reasoning is explained within each group.
70. I have reached my conclusion on the evidence provided to me, both orally and in documentary form and reminded myself that the burden is on the Claimant to prove that he is disabled in accordance with section 6 of the Equality Act 2010.
71. I considered the Guidance on matters to be taken into account in determining questions relating to the definition of disability, noting that neither party in its submissions addressed me in this regard.

72. The Guidance under each of the sections states that a section should not be looked at in isolation but in conjunction with the all sections. The sections are: A (the definition), B (substantial), C (long term) and D (normal day to day activities).
73. I note that it is important to consider whether the alleged effects on day-to-day activity, when taken together, could result in an overall substantial adverse effect, paragraph B4.
74. I also considered the Guidance given in relation to cumulative effects of an impairment in paragraph B6.
75. In paragraph B9, the Guidance stresses the importance of considering the things that a person cannot do or can only do with difficulty.
76. I have considered the guidance set out in *J v DLA Piper* in relation to approaching the issue of whether someone has an impairment. The EAT noted it was good practice in every case for tribunals to look at the issue of whether someone has an impairment separately from the question of whether it has an adverse effect on their ability to carry out normal day-to-day activities. However, that did not mean that tribunals should rigidly adhere to that approach, and in some cases (particularly if it involves resolving difficult medical questions) it is appropriate to firstly consider whether the Claimant's ability to carry out normal day to day activities has been adversely affected. Where the answer is yes, in most cases a tribunal can infer that the Claimant was suffering from a condition which has produced that adverse effect, namely an impairment.

Dyslexia, Specific Learning Disability and Short Term Working Memory Problem

Does the Claimant have a physical and mental impairment?

77. I conclude that the Claimant has been diagnosed with dyslexia, and this is a mental impairment.
78. I have given careful attention to the contents of the Educational Assessment Report undertaken by Sarah Gillie. I conclude that the reference to "Specific Learning Disability" is reference to dyslexia, they are one and the same thing, namely the Claimant was diagnosed with a specific learning disability which was dyslexia, there is not a separate impairment.
79. On the evidence, both orally from the Claimant and the content of the Educational Assessment report, I consider the Claimant's difficulties with short-term working memory is not a standalone impairment but rather a symptom of the Claimant's dyslexia.

Did the impairment have a substantial adverse effect on the claimant's ability to carry out normal day to day activities?

80. Considering the Claimant's evidence and the Educational Assessment Report I have concluded that the Claimant's dyslexia, does have a

substantial adverse effect on his ability to carry out normal day to day activities. The Claimant has difficulties in reading, writing, producing and understanding written documents, his short term memory and with organisation. He cannot read, understand and complete documentation without a high level of assistance.

81. In assessing this, I have kept in mind that substantial means more than trivial. I do not consider the effects to be trivial. The Claimant's dyslexia resulted in a number of recommendations for his school and his evidence of requiring a high level of assistance was not challenged. This assessment was made on the evidence before me.

If so, was that effect long term?

82. Dyslexia is a life-long condition, the Claimant has experienced the symptoms of dyslexia for several years before his diagnosis in 2018. The effects of the condition are long term and where present for many years by the date of the alleged discriminatory events in July 2023. I conclude that the Claimant's dyslexia lasted for 12 months, was likely to last for at least 12 months and is likely to last for the rest of the Claimant's life.

Are any measures (e.g., medication) being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

83. The Claimant does not take any medication for dyslexia. However, as set out in the Educational Assessment Recommendations such as coloured overlays, reading rulers, assistive technology and additional time for processing and examinations were recommended whilst the Claimant was in school. There is not enough evidence on the use of any such measures to reach any clear conclusion on the extent to which they assisted to correct the impairment.
84. On balance, overall, I conclude that the condition of dyslexia amounts to a disability in accordance with section 6 of the Equality Act 2010.
85. As noted above, I consider the term "Specific Learning Disability" to be a phrase used to reference dyslexia. It is not a separate condition/impairment.
86. In regard to short-term working memory problem. I have concluded that this is not a disability in its own sense, but is a feature of dyslexia.

ADHD and Dyspraxia

Does the Claimant have a physical and mental impairment?

87. I conclude that, on the evidence available, at no time was the Claimant diagnosed with either ADHD or dyspraxia by either Sarah Gillie or another medical practitioner. The Claimant was diagnosed with dyslexia, and in the Educational Assessment I note there is reference to behaviours that may

indicate that the Claimant may have ADHD and dyspraxia but no diagnosis was made, but rather recommendations that these be considered for a further referral for assessment.

88. Although the Claimant, and his mother, believe that he was diagnosed with both ADHD and dyspraxia by Sarah Gillie, and that this was accepted by the Claimant's GP, this is not borne out by the evidence. I have concluded that the Claimant and his mother, perhaps mistakenly, believed the Claimant to have been formally diagnosed with ADHD and dyspraxia, and then reported this belief in later appointments. I can understand on a plain reading of the report that a reader could consider that it was likely that the Claimant may have ADHD and dyspraxia, but the author was clear to explain that this has not been diagnosed. I also understand that a person living and managing symptoms may recognise and reconcile their behaviour with a medical condition.
89. In relation to ADHD, I conclude, based on the Educational Assessment Report and the Claimant's evidence, that throughout his school life he had difficulties with focus and organisation, but I cannot conclude on the evidence before me that this was due to a clinically diagnosed condition of ADHD.
90. In relation to dyspraxia, I conclude, based on the Educational Assessment Report and the Claimant's evidence, that throughout his school life he has had some difficulties with coordination and executive function, but I cannot conclude on the evidence before me that this was due to a clinically diagnosed condition of dyspraxia.
91. However, the lack of a clinical label or diagnosis is not fatal, it is not a requirement of the legislation. I must consider the matter taking into account the legislation and the Guidance, together with principles derived from case law, and have moved to consider whether there was a substantial adverse effect on day to day activities in order to conclude whether the Claimant was suffering from a condition.
92. Numbered paragraph 2 of the Claimant's written evidence describing the difficulties/symptoms does not separate out the challenges he has in relation to dyslexia, ADHD or dyspraxia, although I appreciate there may be significant overlap.
93. The Claimant experiences challenges most days. However, the Claimant has given very minimal detail in relation to the impact. I note that in relation to ADHD, the Claimant describes in general terms and minimal detail some challenges with focus and needing reminding to do tasks such as lock doors, losing things and being reminded about time keeping and appointments and to take medication. However, I have no specific detail, for example, I have no information on who may remind him, whether he would remember to return and lock a door, whether he has any systems in place for time management and organisation. I have no clear detail on the level of difficulty experienced by the Claimant and what he can and cannot do without support.
94. I have also considered the GP reports and the concerns reported by the Claimant's mother to the GP over the years regarding the Claimant's behaviour, but again, there is no specific detail regarding ADHD.

95. In relation to dyspraxia, noting this is a developmental coordination condition, the only reference from the Claimant in paragraph 2 appears to be “needs a level of assistance to be able to cook”. There is no clear information on the level of assistance needed.
96. I have also noted the fact that despite clear recommendations that a re-referral be made for these potential conditions to be assessed, this was not pursued by the Claimant or his mother, but I have not drawn any adverse inferences from this as have found that they have considered the Claimant to have these conditions based on the Educational Assessment Report.
97. In assessing this, I have kept in mind that substantial means more than trivial. Again, this assessment needs to be made on the evidence presented to me.
98. I have also considered what the Claimant was not able to do, I note that on the information available it appears that the Claimant may be supported to manage some normal day to day activities but I also note the Claimant maintained working full time and passed his driving test. Other than not being able to tell the time on an analogue clock, there is no clear evidence about what the Claimant cannot do.
99. There is not sufficient detailed evidence to support a conclusion that the effects were substantial at the relevant time, being July 2023.
100. I therefore conclude that, considering my finding of facts and applying the law, that the Claimant’s conditions as described relating to ADHD and dyspraxia does not meet the definition under section 6 of the Equality Act 2010 as there is not sufficient evidence to support a conclusion that there is a substantial and adverse effect on day to day activities.

Migraines

Does the Claimant have a physical and mental impairment?

101. I conclude that the Claimant has been diagnosed with migraines, and this is a physical impairment.

Did the impairment have a substantial adverse effect on the claimant’s ability to carry out normal day to day activities?

102. Considering the Claimant’s oral evidence and the documentary evidence within the Bundle, I have concluded that the Claimant’s migraines, do have a substantial adverse effect on his ability to carry out normal day to day activities.
103. When the Claimant experiences migraines he has pain, loses vision, is sick and is unable to stay awake. As he loses vision and falls asleep he is not able to undertake normal day to day activities, as falls asleep and cannot attend work. The effects are not trivial or minor.

If so, was that effect long term?

104. The Claimant started experiencing regular migraines from as early as October 2020. The Claimant continues to suffer with migraines, but at a reduced frequency. Therefore the effect fluctuates. However, the Claimant the effects had lasted over 2.5 years at the time of the alleged discriminatory events.

105. I note that there may be periods in which the Claimant has not had and does not have migraines, and therefore the impairment temporarily ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities. However, given the nature of the condition, it is to be treated as continuing to have that effect if that effect is likely to recur. I conclude that given the frequency and the evidence available, the effect was likely to recur and last over 12 months.

106. I conclude that the Claimant's dyslexia lasted for 12 months, was likely to last for at least 12 months and is likely to last for the rest of the Claimant's life.

Are any measures (e.g., medication) being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

107. As set out in the findings of fact above, the Claimant was prescribed different medication to help treat and manage his migraines. The Claimant was prescribed Pizotifen on 5 February 2021 and continues to take this medication daily.

108. The Claimant was experiencing migraines two or three times a week before medication started to help and reduce the frequency of the migraines. Accordingly, I conclude that if the Claimant had not taken the medication prescribed, his migraines would be likely to have had a substantial adverse effect on the claimant's ability to carry out day to day activities.

109. On balance, overall, I conclude that the Claimant's migraines amount to a disability in accordance with section 6 of the Equality Act 2010.

Cumulative effect

110. It appears there may be some overlap between the symptoms the Claimant attributes to the conditions of dyslexia, ADHD and dyspraxia/ I have concluded that separately, the symptoms relied upon under the head of dyslexia/specific learning disability and migraines amounted to a disability in the relevant period.

111. I do not consider there to be clear attribution of symptoms related to ADHD and dyspraxia to reach a conclusion that those symptoms (and naturally the conditions) taken together had a cumulative effect which rendered the Claimant for the purposes of the Equality Act 2010.

Employment Judge Cawthray
Date 9 January 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 10 January 2024

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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