



EMPLOYMENT TRIBUNALS

Claimant: Mr Shaun Campbell

Respondent: The Chief Constable of Devon and Cornwall Police

Heard at: Bodmin

On: 22 November 2023

Before: Employment Judge Le Gry

Appearances

For the Claimant: In person

For the Respondent: Ms N. Gyane, counsel

JUDGMENT having been sent to the parties on **12 December 2023** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. By way of a claim form presented on 24 January 2023 the Claimant brings a complaint of discrimination on the grounds of disability. He has been a police officer since 19 August 2002, serving initially in Dorset before moving to Hampshire and then to Devon and Cornwall, the Respondent's force, in 2020. The facts and details of his wider claim are not directly relevant to this preliminary issue, and so I simply note that he has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and makes complaints of indirect disability discrimination and a failure to make reasonable adjustments.
2. The purpose of the preliminary hearing was to determine whether the Claimant was disabled at all material times within the meaning of section 6 Equality Act 2010 (EqA). It was agreed at the outset that the period I am concerned with is between 19 April 2021 and 31 March 2023. While it is accepted that the Claimant has had a diagnosis of ADHD, the Respondent does not accept that he has shown that any impairment has had a substantial impact on his day to day activities. The Respondent suggests that the examples that the Claimant has given in this respect are vague, and furthermore that a number of them relate to specialist activities. In the

alternative, it is said that the impact has not been shown to be substantial, or that such impacts have been long term.

LEGAL FRAMEWORK

3. In resolving this dispute it is helpful to begin by having regard to the relevant legal provisions. Section 6 EqA 2010 states that a person has a disability if (a) they have a physical or mental impairment and (b) the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
4. Section 212 defines “substantial” as being more than minor or trivial. Paragraph 5 of schedule 1 states that an impairment is to be treated as having a substantial adverse effect if, but for any measures being taken to correct it, it would have that effect.
5. Paragraph 12 of Schedule 1 says that the Tribunal must take account of such guidance as it thinks is relevant. Guidance on matters to be taken into account in determining questions relating to the definition of disability was issued in May 2011 pursuant to s.6(5) EqA.
6. Unless it is agreed by the Respondent that the Claimant was at the relevant times a disabled person then the responsibility is on the Claimant to show that he was. The relevant time to be looked at is not the date of the hearing, but the time of the alleged discriminatory act.
7. In *Goodwin v Patent Office* [1999] ICR 302 guidance was provided on the proper approach for the Tribunal to adopt, which was approved more recently in *Sullivan v Bury Street Capital Ltd* [2021] EWCA Civ 1694. The four questions to be considered are:
 - 1) Was there an impairment;
 - 2) What were its adverse effects [on normal day to day activities];
 - 3) Were they more than minor or trivial;
 - 4) Was there a real possibility that they would continue for more than 12 months.
8. While the Tribunal might be assisted by medical evidence it was not bound by any opinion expressed. While these questions are addressed separately, it is important not to forget the purpose of the legislation and to look at the overall picture.
9. Day to day activities encompasses activities which are relevant to participation in professional life as well as personal life, and the Tribunal should focus on what the Claimant cannot do rather than what they can do. In *Elliot v Dorset County Council* UKEAT/0197/20/LA HHJ Taylor pointed out that it is difficult to look at this question in isolation, for example how is it possible to decide on whether there is a substantial adverse effect without first identifying which normal day to day activities are affected.
10. The guidance provides examples of what is meant by normal day to day activities, which include:

- a. In general day to day activities are things people do on a regular or daily basis, including shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, taking part in social activities.
- b. They can also include general work related activities such as interacting with colleagues.
- c. It is not intended to include activities which are normal only for a particular person, or a small group of people. In deciding whether an activity is a normal day to day activity account should be taken of how far it is carried out by people on a daily or frequent basis. In this context normal should be given its ordinary, everyday meaning.
- d. There needs to be evidence that the relevant impairment caused the adverse impact on the Claimant's ability to carry out normal day to day activities.

11. Section 212(1) EqA defines substantial as meaning "more than minor or trivial". The guidance includes the following:

- a. The requirement reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. Any inconsistency in this regard between the guidance and the legislation must be resolved in favour of the statute.
- b. The cumulative effects should be taken into account when working out whether it is substantial.

12. In relation to whether the effect is long term, there are three categories concerning the impairment.

- a. That it has lasted for 12 months.
- b. The period for which it lasts is likely to be at least 12 months or;
- c. It is likely to last for the rest of the person's life.

13. Likely means that it is a "real possibility" and could well happen rather than something is probable or more likely than not.

FINDINGS

14. Turning next to the evidence and submissions I have heard, the Claimant has stated that he was born with the lifelong condition of attention deficit hyperactivity disorder (ADHD), this being the combined type. He was diagnosed on 15 November 2021 having felt throughout his life that he was somehow different, but from April 2021 he became increasingly aware of cognitive difficulties in his role. I have had sight of a diagnosis from Dr Hamid Rahmanian, which states *that "it appears that your concentration/hyperactivity/impulsivity difficulties started from early years as a lifelong condition (before the age of 12), with mild/moderate impact as such on your early life"*. He goes on to say that *"your presentation satisfies the criteria for ADHD, most likely combined type of mild to moderate degree"*. He advises that the Claimant may benefit from treatment and that coaching and medication is the way forward.

15. This diagnosis is accepted by the Respondent, and so I answer the first of the four questions I previously outlined in the affirmative, that is to say that I am satisfied that there was an impairment.
16. I therefore turn to the second question, namely what were its adverse effects on normal day to day activities. In assessing this I have regard to what the normal day-to-day activities are.
17. In his written evidence the Claimant lists nine points, and states that the cumulative impact of each of these were such as to have a substantial impact. These can be summarised as:
 - a. When taking witness statements he would forget details, need to continually clarify what had been said, and would yawn throughout;
 - b. In conducting interviews he was unable to recall case details, think dynamically, or take legible notes;
 - c. Difficulty with prioritising all the to-do's generated from his caseload, which would blur into one chaotic pot;
 - d. Chronic fatigue leading to laboured task completion, difficulties reading bulk text, restlessness, and slow cognitive processing, which would lead to ridiculing for failing to detect a crime;
 - e. Taking weeks to write prosecution files due to forgetting what had previously been written, or not remembering the specifics of the case or the structure to apply;
 - f. Being anxious and lacking in confidence, with no acknowledgment of urgency, and missed victim updates and deadlines;
 - g. Binge eating for energy to try and counteract fatigue, causing increased weight and low mood;
 - h. Unable to watch TV for longer than 10 minutes, other than football or crime documentaries which interested him;
 - i. Unable to complete day to day tasks without forgetting something, such as the school run or shopping. When cross examined he stated that his reference to the school run was forgetting to undertake this at all, albeit it was then clarified that he hadn't actually done this on any occasion but said he had nearly done so.
18. The Respondent suggests that the majority of these points relate to specialist tasks that are undertaken by a police officer and so do not relate to normal day to day activities. While I do accept that the precise detail of the examples given by the Claimant may be specific to his job, in my judgement each one can be fairly categorised as also relating to wider activities such as following instructions, preparing written documents, keeping to a timetable, or his professional interaction with the wider public. I am therefore unpersuaded that I should treat these examples as being merely specialist.
19. This is not, however, determinative of the question of whether they amount to normal day-to-day activities and simply means that I have not disregarded them on this basis. I therefore return to this wider question.
20. I begin by saying that I found the Claimant to be open and honest with the Tribunal about the difficulties that he has faced. He was clear as to the extent of these difficulties without seeking to exaggerate, and was willing to concede where he thought others might have also faced problems in their

life or work while explaining why he considered his situation to be nevertheless different. I do not doubt that he has experienced an incredibly challenging period in his life and nothing I say here should be taken as suggesting otherwise.

21. Having said this, however, I must accept the Respondent's contention that the examples provided by the Claimant as to day-to-day activities are vague and non-specific. For none of the listed impacts is there a reference to a precise occasion or specific example, nor an outline of how often these issues would arise or that the Claimant would need to undertake these tasks. The Claimant instead speaks in general terms and wide assertions, repeating in his oral evidence that these things happened every day and all the time. He accepted, however, that none of it had ever led to any formal action or disciplinary procedures and while he did suggest that complaints had been made, he accepted that there was no contemporaneous or documentary evidence of such complaints. It therefore appears that any such issues, if they did arise, were subject to no more than informal discussion or advice, with an accompanying lack of certainty as to whether this was truly a day-to-day issue or a one-off problem.
22. The relevance of this is that a general account of forgetting details such as what a person had just said can encompass a significant range of possible situations, from one in which it occasionally happened during lengthy meetings having already been concentrating for some time, to one in which an individual needs to ask the person to repeat each and every thing they have said during every conversation. Without more detail it is extremely difficult, if not impossible, to assess the extent to which these were really day-to-day activities and, if so, the impact on them.
23. This difficulty also applies to the non-work related examples that were given. For example, in relation to watching the TV the Claimant refers to a lack of concentration unless it was a programme of specific interest to him. This is, in my view, a relatively generic statement that could apply to many, if not all, people and it is therefore unclear as to the extent to which any issues are connected to his diagnosis, or to compare the Claimant with the position he would be in if he did not have ADHD.
24. In respect of shopping, the Claimant describes how he would go to buy one thing but forget and come home with another. Again, this is so general as to potentially apply to many people; the need to write a shopping list in order to remember what was needed is a commonly used device, and there is little information as to how frequent this problem was other than that it 'always' happened. The Claimant has therefore not shown that this was a day-to-day activity, or that any issues were connected to his diagnosis when compared to the position he would be in if not for the ADHD.
25. In relation to problems with the school run, these were not referred to in the ADHD report and so it is not clear when this occurred, and if it related to the relevant period. In any event, the Claimant again gave a rather general example of nearly having forgotten, but said he did remember in time. It therefore appears to have been a near miss rather than an actual impact.
26. Even taken together and considering the cumulative impact of these matters, the lack of specific detail makes it virtually impossible to identify

the impact on the day-to-day activities. I am essentially asked to accept an assertion that these generic and non-specific examples are sufficient.

27. I do accept the difficulties, particularly for an unrepresented Claimant, in preparing a statement which covers all of the required information in sufficient detail within the specified word limit. I do note, however, that the case management orders were clear as to what was required and yet the examples take up a relatively small portion of the statement, with much of it instead referring to matters that are potentially relevant to the wider claim rather than this specific hearing. Furthermore, the Claimant accepted that he had not provided further detail in his skeleton argument, to which no such word limit applied. I therefore cannot accept that the word limit in itself explains the lack of detail.
28. The Claimant did, however, refer in his skeleton argument and oral evidence to other examples of the impacts on him, such as the need to get up earlier for his shifts and the need to be on a particular chair during the course of the Tribunal hearing. However, the detail given was again generalised; furthermore, it was either unclear as to when these related and whether they were therefore during the relevant period or, as in the case of the chair at the hearing, abundantly clear that they were not. I therefore do not consider that they are of any significant assistance.
29. I also consider the medical evidence before the Tribunal to be relatively limited. While it is accepted that the Claimant was diagnosed with ADHD, the report of Dr Rahmanian effectively repeats the self-reported impacts of the Claimant before concluding with this diagnosis. It does not, therefore, directly address the effects of the ADHD. It does suggest various broad areas of impairment (such as relationships, communication), but these extracts were largely unspecific and some of these dated back to issues the Claimant had experienced many years before the relevant events, or before the Claimant had begun treatment. There was not, therefore, clear medical evidence to link the impacts relied upon to the impairment.
30. Some contemporaneous medical evidence was provided in an Occupation Health (OH) report from the Respondent, which suggested that the Claimant was managing his condition and was coping reasonably well. While the Claimant states that this was while he was taking his medication and therefore showed how much of a difference this made to him, the reports do not directly link any improvements to the medication other than recording what the Claimant himself has reported. There was no other evidence, for example GP records or other medical notes, to show the extent to which any issues were related to ADHD and the effects that this was having on the Claimant during the relevant period.
31. Neither the Claimant nor the Tribunal is medically qualified to assess or determine whether a particular adverse effect which is asserted flows from a particular mental impairment and so this is a case in which such medical evidence would have greatly assisted but was largely absent. The fact that a certain condition can lead to particular problems does not, in itself, mean that this was the actual cause in an individual case.
32. This was of particular importance given the wider circumstances of the initial diagnosis. The Claimant described that he was a uniformed officer for

approaching 20 years before becoming a detective. He described being a uniformed officer as more diverse, dynamic, and spontaneous. Whereas that role would probably be about 90% practical and 10% administrative, his job as a detective was the direct opposite. He also described the change as being one that wasn't entirely his choice, with the force being required to put people forward for the role.

33. Against this background the Claimant then also moved home, from Hampshire to Cornwall, and changed the force he worked for. He therefore found himself in a new environment, with all the adjustments that come with such a move.
34. The diagnosis therefore came after a time of significant personal change for the Claimant, both in terms of his professional work and his home life. It is entirely reasonable to expect that any individual might struggle with such a change, and find that they are perhaps less effective in their role than they had been when doing a job they were more comfortable with and in the same location for many years. There is, therefore, more than a fanciful chance that the impacts the Claimant relies upon could be related to these significant life changes rather than the impairment. Given this, medical evidence that directly linked those examples to the impairment would have been of significant assistance. In its absence I am not satisfied that he has shown that the impacts are connected.
35. Given that the Claimant has not shown that the impairment relied upon was having adverse effects upon his normal day-to-day activities, for the same reasons he has not established any substantial adverse effects. In my judgement the Claimant's evidence in this regard was affected by a number of assumptions he had made as to how others were managing their work. For example, he referred to the difficulties he personally experienced in digesting large text books and asserted that his colleagues experienced no such problems. I do not consider that I can accept such assertions at face value; the fact that others might have been perceived by the Claimant as coping better does not, in fact, mean that they were, and some people are simply more able – whether rightly or wrongly - to hide their struggles than others. The Claimant's role is demanding and he is describing challenging tasks of a kind that could cause anyone difficulties. The fact that he experienced such difficulties does not, therefore, establish that he would not have had such problems but for the ADHD.
36. Similarly, difficulties in reading lots of material, or experiencing fatigue at times of very high workload, or forgetting something when going to the shops, are all things that can be experienced by people who don't have poor memory or fatigue, particularly as noted above during periods of significant change. I am therefore not satisfied that the Claimant has shown that these are matters which would have been different if not for the impairment, and that the impact of the ADHD was therefore more than minor or trivial.
37. It is abundantly clear that the Claimant takes his duties and responsibilities very seriously and expects the highest standards of himself and others. The fact that he may have on occasion fallen short of such high standards, however, does not in itself demonstrate that the impact is objectively substantial.

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38. Finally, in light of my findings above I very briefly deal with the long term aspect of the case to note that again, in the absence of further medical evidence linking the impairment to any suggested adverse impact, I am not satisfied that the Claimant has demonstrated that the impact is one that would meet any of the three requirements.
39. Taking all of this into account I am not satisfied that the Claimant has demonstrated that he was disabled at the material time within the meaning of section 6 EqA 2010. It therefore follows that his claim does not succeed and is dismissed.

Employment Judge Le Grys

Date: 11 January 2024

Reasons sent to the Parties: 19 January 2024

FOR THE TRIBUNAL OFFICE