



# EMPLOYMENT TRIBUNALS

**Claimant:** Elisabeth Lenders

**Respondent:** Kindergarten Forest Hill Ltd

**Heard at:** London South Employment Tribunal (by CVP)

**On:** 17 January 2024

**Before:** Employment Judge Routley

## Representation

Claimant: In person

Respondent: In person

# RESERVED JUDGMENT

1. The Claimant did not meet the definition of a disabled person for the purposes of section 6 of the Equality Act 2010 at the time at which the alleged acts of discrimination occurred.
2. The Claimant's claim for disability discrimination therefore fails and is dismissed.

# REASONS

1. The hearing took place by CVP. There were no connection issues and the parties confirmed that they could see and hear clearly.
2. The parties were well-prepared for the hearing with well-organised documents and statements. I appreciate that both parties were not legally represented and that it can be difficult to appear in front of a Tribunal in respect of a complex legal issue as an unrepresented party. I thanked them for their efforts in ensuring that they were properly prepared.

3. The Claimant suffers from fatigue and can find it difficult to use screens for long periods. We therefore took regular breaks during the hearing in order to allow the Claimant time away from the screen.
4. The Claimant provided a disability impact statement. The Claimant gave sworn evidence in respect of this statement at the hearing. I was also provided with an extensive bundle containing medical evidence, including the Claimant's fit notes, an occupational health report and a letter from the Claimant's GP. I took these into account when reaching my decision.
5. We spent some time at the beginning of the hearing clarifying the issues in this case. I have not set these out in detail here, but in summary the Claimant's case related to various alleged acts of discrimination which occurred between April and July 2022. I therefore assessed whether the Claimant was a disabled person within that timeframe.
6. I have taken into account that the burden of proof for establishing disability status sits with the Claimant (*Kapadia v London Borough of Lambeth (2000) IRLR 699 (CA)*).
7. I have applied the various stages of the statutory test for determining disability status, and my findings were as follows:

**a. Did the Claimant have a physical or mental impairment?**

- i. I find that the Claimant did have a physical impairment at the time of the alleged discriminatory acts, namely post-concussion syndrome.

**b. Did it have a substantial adverse effect on her ability to carry out day to day activities?**

- i. I find that the Claimant's condition did have a substantial adverse effect on her ability to carry out day to day activities at the time of the alleged discriminatory acts. The Claimant gave evidence that she was initially unable to even shower or cook. Although the situation has improved, the Claimant is still unable to use screens for a significant period of time or to take part in sports. She finds communication with friends difficult.

**c. Were the effects of the impairment long-term? The Tribunal will decide:**

- i. **did they last at least 12 months, or were they likely to last at least 12 months?**

As explained to the parties at the hearing, this question has to be answered in respect of the period April-July 2022. I have to consider whether, at this time, the effects of the impairment had lasted or were likely to last at least 12 months.

The Claimant says that her condition began with a head injury that took place in March 2022. Therefore, the effects of her impairment had not lasted 12 months by the time of the alleged discriminatory acts.

I therefore have to consider whether the effects were likely to last 12 months. I have taken into account the fact that “likely” in this scenario means “could well happen” rather than “more likely than not” (*SCA Packaging Ltd v Boyle [2009] UKHL 37*).

However, even in light of this I have not been presented with any evidence which would allow me to make this finding of fact.

The medical evidence in the bundle contains very little detail on the Claimant’s prognosis. The Claimant was unable to add much to this in oral evidence. When asked what information her GP had provided in respect of a prognosis, the Claimant’s response was that her GP had said “it all depends”.

The medical information that is present indicates that the medical professionals involved anticipated that this condition would be short term. The Claimant’s fit notes were for relatively short periods of time (typically 3-4 weeks) with her doctor indicating that she would not need to be assessed again at the end of this period. The occupational health report of 6 October 2022 states that the typical duration of symptoms is “a few weeks to a few months”.

The Claimant’s disability impact statement alleges that there are some patients who struggle with symptoms of post-concussive symptoms for many years. However, I have not been presented with any evidence to support this assertion.

In summary, the limited medical evidence I do have on the question of prognosis indicates that the effects of the condition were likely to be short term. I have not been provided with anything substantive to indicate that the effects of the condition were likely to be long-term. I do not therefore have anything on which I can make a finding of fact that, in the period April-June 2022, the effects of the Claimant’s impairment were “likely to last” for 12 months, even given the wide definition of “likely” in these circumstances.

For completeness, I have considered whether, at the relevant time, the effects of the Claimant’s condition were “likely to recur”. I have not been provided with any medical evidence to indicate that this was the case, and this was not a point that was raised by the Claimant.

8. For these reasons, I find that the Claimant did not meet the definition of a disabled person for the purposes of the Equality Act 2010 at the relevant time. The Claimant has stated that the effects of her condition have continued, and so the Claimant may well meet the definition of a disabled person at the current time. However, I have applied the test in respect of the period from April-July 2022.
9. We discussed case management orders at the hearing, in case I reached a decision that the Claimant was disabled for the purposes of the Equality Act

2010. For the avoidance of doubt, those case management orders will no longer apply in light of this judgment.

Employment Judge **Routley**

17 January 2024

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