



EMPLOYMENT TRIBUNALS

Claimant: Ms S Michniak

Respondent: Forza Foods Limited

Public Preliminary Hearing

Heard at: Leeds on 24 January 2024

Deliberations in Chambers: 23 February 2024

Before: Employment Judge Shepherd

Appearances:

For the claimant: Mr Ogunyanwo, Legal consultant

For the respondent: Mr Wilson, Counsel

Interpreter: Ms Savjhani

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

The claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 at the material time.

REASONS

1. The claimant was represented by Mr. Ogunyanwo and the respondent was represented by Mr. Wilson.

2. The Tribunal heard evidence from:

Sylwia Michniak, the claimant;

Waseem Raza, Production Manager;

Carol Ann Doyle, Senior HR Advisor.

3. I had sight of a bundle of documents which, was numbered up to page 562. I considered those documents to which I was referred by parties.

4. This was Public Preliminary Hearing to determine whether the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010.

5. Unfortunately, due to the amount of oral and written evidence, it was not possible to complete the hearing and provide a judgment in the time allowed and the parties' representatives agreed to provide written submissions.

The issues

6. The issue I had to determine whether the claimant had an impairment which had a substantial and long-term effect on the claimant's ability to carry out normal day-to-day activities at the material time.

7. The material time being 19 December 2022 - 20 February 2023.

8. The respondent accepted that the claimant had a physical impairment of a dry cough.

The law

Disability Discrimination

16. Section 6 of the Equality Act 2010 states:

- (1) 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.

Schedule 1 provides:

Long-term effects

- (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.
- (2) 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 as continuing to have that effect if that effect is likely to recur.
- (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

Section 212 provides that "substantial" means more than minor or trivial.

9. The claimant has been employed by the respondent from 16 July 2022.
10. The claimant had suffered from asthma symptoms from around 2015. The symptoms increased following her pregnancy in 2017.
11. The claimant has used a number of inhalers and various medicines. On 1 October 2018 the claimant was provided with an adult asthma action plan which referred to a reliever inhaler and preventer inhaler.
12. On 8 July 2022 a report was provided by Dr Watson, Consultant Physician in Respiratory Medicine. This referred to the claimant having taken various medicines including low dose morphine but, unfortunately, none of those had made a difference to her cough which was persistent and tended to be worse in the night and morning. On examination her chest was clinically clear and other investigations had not shown any sinister cause for her cough which had been going on for over five years.
13. On 6 December 2022 a consultation information sheet from the claimant's GP practice showed that the claimant reported asthma symptoms four or more nights a week and disturbed sleep.
14. On 2 February 2023 an Occupational Health Report was provided to the respondent in which it was indicated that the claimant had been diagnosed with asthma approximately seven years before, she had an MRI scan performed two years before and believed this also showed asthma. Following a recent review by the respiratory nurse at her GP surgery her inhaler had been changed with good results.
15. The claimant gave evidence that she struggled with coughing, chest pressure, tightness and breathlessness. She needed support from her children and partner when preparing dinner.
16. More than twice a day she had exacerbations of asthma, breathless tightness and strong cough. She has difficulty washing herself every day and is afraid to take a bath. The coughing can be so strong that it leads her to suffer incontinence and she has to wear pads to avoid embarrassment.
17. She is unable to read aloud without shortness of breath. She is unable to meet new people by herself because she feels uncomfortable, stressed and anxious.
18. Leaving the house makes her distressed and anxious. She is not able to walk more than 20 to 50m as quickly as most people and can only walk very slowly without being at risk breathlessness, asthma exacerbations and hypersensitive chronic cough.
19. It was submitted by Mr Wilson, on behalf of the respondent, that the evidence before the Tribunal demonstrated only that the claimant has had a persistent and unpleasant cough and that her frequent coughing has often resulted in her experiencing hoarseness in her voice. The effects of the cough were no doubt unpleasant and the accompanying hoarseness of voice did not have a substantial effect on her ability to carry out normal day-to-day activities. It was submitted that the symptoms fall within the category of being minor or trivial.

20. I do not accept that submission, I heard clear and credible evidence from the claimant I do not accept that her evidence is an embellishment of her actual condition.

21. I am satisfied that the claimant has suffered from asthma symptoms for a considerable amount of time, approximately 7 years, and it did have a substantial effect on her day-to-day living activities. She has sought and received medical treatment over the years. Whether her condition is actually asthma or Laryngeal hypersensitivity, I am satisfied that it has a substantial effect on her day to day living activities and that she was a disabled person under section 6 of the Equality Act 2010 at the material time.

Employment Judge Shepherd
23 February 2024