



# EMPLOYMENT TRIBUNALS

**Claimant:** Janet Bostic

**Respondent:** Mitie Limited

**Heard at:** London Central (by CVP)

**On:** 27 October 2023

**Before:** Employment Judge Lumby

## REPRESENTATION:

**Claimant:** In person and Mr R Downie (representative)

**Respondent:** Mr M Akram, 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 first mobility issues arising from the lower back and right knee and secondly Post Traumatic Stress Disorder.
2. The complaints of discrimination arising from disability, harassment relating to disability and failure to make reasonable adjustments can therefore proceed.

### **REASONS PURSUANT TO A REQUEST FROM THE CLAIMANT**

1. This is the judgment following a preliminary hearing to determine whether the claimant was a disabled person at the material times.
2. This has been a remote hearing using CVP. The claimant experienced connectivity issues. She participated by being connected to her representative through his mobile, with the phone being on speaker so that all other participants could hear her.
3. The documents that I was referred to are in a bundle of 111 pages, the contents of which I have recorded. The claimant's representative alleged that the respondent had removed medical records from the bundle, the respondent's representative stating that any documents removed were not relevant. Having reviewed the bundle, I considered that there was sufficient information provided for the hearing to proceed. The order made is described at the end of these reasons.
4. I have heard from the claimant, and from Mr Downie on her behalf. For the respondent I have heard from Mr Akram.

### **Facts**

5. There was a degree of conflict on the evidence. I have heard the claimant give her 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.
6. The claimant contends that she has two disabilities, both stemming from being hit on 19 April 2021 by a getaway car whilst working as a security guard at a branch of B&Q. The impact was to her right knee. She alleges that she suffered discrimination from the respondent from 20 April 2022.
7. As a result of the accident, she suffered mobility issues to her lower back and right knee. The Tribunal was satisfied based on the medical evidence provided and the claimant's evidence that these issues stemmed from the accident. It is also satisfied that the issues were continuing in 2023 and so had lasted over 12 months.
8. Prior to the accident the claimant enjoyed physical exercise, going running and decathlons. She has stopped doing this since the accident. The pain also affects her sleep, she says that she only sleeps 3 to 4 hours a night now, compared to 7 to 8 hours a night before the accident. Before the accident she enjoyed socialising but has stopped this as she becomes too fatigued. She also enjoyed cooking but the pain of lifting heavy pans means that has ceased. She was prescribed naproxen to manage the pain.

9. The claimant claims that she also suffered Post Traumatic Stress Disorder (PTSD) as a result of the accident. The medical records show this was first diagnosed on 16 August 2022, following a referral on 21 July 2022. There is evidence of anxiety before that; a medical record from 25 August 2021 refers to emotional upset and a depressed mood. The Tribunal finds, on balance, that this was the beginning of her PTSD. The medical records show that she still had PTSD on 4 April 2023, which is over 12 months later.
10. The PTSD has caused her depression and prevented her from socialising as it causes her panic attacks. She has not been out socialising for two years.
11. There was a suggestion by the claimant's representative she was also suffering PTSD from having been on the last train through Kings Cross before the fire there. No evidence has been provided to support this suggestion. As a result, the Tribunal makes no findings of fact in relation to this.

## **Law**

12. Having established the above facts, I now apply the law.
13. 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.
14. 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.
15. An impairment is to be treated as having a substantial adverse effect if measures are taken to treat it but if these were not taken, the substantial adverse effect would continue. Put another way, the tribunal needs to disregard treatment to solve an adverse effect and consider the position without that treatment.
16. Guidance has been issued by the Secretary of State on matters to be taken into account in determining questions relating to the definition of disability. That guidance recommends when considering the affect of an impairment that the focus should be on what the claimant cannot do.

17. In Goodwin v Patent Office [1999] ICR 302 Morison J set out for conditions that require consideration when assessing whether as a person is disabled, at page 308B: “The words of the section require a tribunal to look at the evidence by reference to four conditions. (1) The impairment condition. Does the applicant have an impairment which is either mental or physical? (2) The adverse effect condition. Does the impairment affect the applicant’s ability to carry out normal day-to-day activities in one of the respects set out in paragraph 4(1) of Schedule 1 to the Act, and does it have an adverse effect? (3) The substantial condition. Is the adverse effect (upon the applicant’s ability) substantial? (4) The long term condition. Is the adverse effect (upon the applicant’s ability) long term?”

### **Applying the facts to the law**

18. In considering whether the claimant has a disability, the Tribunal applied the conditions set out in Goodwin v Patent Office, by applying the facts referred to above to each of the contended disabilities. I have considered each of these in turn.
19. Beginning with the mobility issues, I found as follows in response to these four conditions:
- a. The impairment condition. The claimant has an impairment which is physical pain to her lower back and right knee, so satisfies this condition.
  - b. The adverse effect condition. The impairment prevents her from cooking, socialising, sleeping and exercising. These are all normal day-to-day activities and her impairment has an adverse effect on her ability to carry these out. This condition is therefore also satisfied.
  - c. The substantial condition. This adverse effect is more than minor or trivial and so is substantial, so satisfying this condition.
  - d. The long term condition. The adverse effect began at the time of the accident in 2021 and is still continuing. By having lasted for over 12 months, it has satisfied the long term condition.
20. As the claimant has satisfied each of these conditions in relation to her mobility issues, I determined that the claimant was a disabled person as defined by section 6 Equality Act 2010. The disability began in April 2021 and was continuing at the time of the hearing. She is therefore a disabled person at the relevant times for the purposes of her claim.

21. Turning to the PTSD issues, it is agreed between the parties that this is capable of being a disability. I found as follows in response to the four conditions:
- a. The impairment condition. The claimant has a mental impairment which is PTSD. This condition is therefore satisfied.
  - b. The adverse effect condition. The impairment prevented her from socialising due to panic attacks. The medication she took should be disregarded but in any event the adverse effect has continued, notwithstanding her medication. Socialising is a day-to-day activity which she enjoyed before developing PTSD so not doing that has an adverse affect on her ability to carry out normal day-to-day activities. This condition is therefore also satisfied.?
  - c. The substantial condition. This adverse effect is more than minor or trivial and so is substantial, so satisfying this condition.
  - d. The long term condition. The Tribunal has found that the start date of the PTSD was 25 August 2021. The latest diagnosis is 4 April 2023. By having lasted for over 12 months, it has satisfied the long term condition.
22. As the claimant has satisfied each of these conditions in relation to her PTSD issues, I determined that the claimant was a disabled person as defined by section 6 Equality Act 2010.
23. I have determined that the disability began on 25 August 2021 and was still continuing in April 2023. She is therefore a disabled person at the relevant times for the purposes of her claim.
24. Accordingly the Tribunal determined that at the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of first mobility issues arising from the lower back and right knee and secondly Post Traumatic Stress Disorder. As a result, her complaints of discrimination arising from disability, harassment relating to disability and failure to make reasonable adjustments can therefore proceed
25. 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 11; a concise identification of the relevant law is at paragraphs 12 to 17; how that law has been applied to those findings in order to decide the issues is at paragraphs 18 to 24.

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Employment Judge H Lumby

Dated 18 March 2024

Judgment sent to Parties on

4 April 2024

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For the Tribunal Office