EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss S Morris	v	Lauren Richards Limited

PRELIMINARY HEARING

Heard at: Reading Employment Tribunal (by C.V.P.)
On: 1 March 2024
Before: Employment Judge George

Appearances:
For the Claimant: Self-representing
For the Respondents: Mr A Watson, counsel

JUDGMENT

1. The complaint of unfair dismissal is dismissed on withdrawal.

2. At the relevant times the claimant was not a disabled person as defined by section 6 Equality Act 2010 because her impairment of anxiety, as found by the Tribunal, was not long term in that it was not likely to last for at least 12 months.

3. The complaint of disability discrimination is therefore dismissed.

4. For the avoidance of doubt, this disposes of the entire claim.

REASONS

The background and issue to be determined

1. At this preliminary hearing in public I have had the benefit of a file of documents to which both parties have contributed; pages in that file are referred to in these reasons as pages 1 to 303 as the case may be. There was a separate index and the parties had also exchanged skeleton arguments: the claimant's was 16 pages long (referred to as CSKA in these reasons) and the respondent's was 11 pages long (referred to as RSKA in these reasons). The parties' written skeleton arguments have been very helpful, and I pay tribute to the

thoroughness and careful reflection that has clearly gone into both of those skeleton arguments and the oral submissions.

2. The background to the dispute and the procedural history is set out in the judgment of Employment Judge Milner-Moore of 9 February 2021, paragraphs 3 and 4 (pages 49 and 50). I refer to but do not repeat those details in these reasons in order that they should not be unnecessarily long. I do note however that my analysis of the file suggests that no dismissal judgment was issued in respect of the unfair dismissal complaint which was withdrawn at an earlier stage for lack of qualifying service. I include such a judgment above.

3. As was set out in paragraph 1 of the EAT's judgment, Judge Milner-Moore concluded that the claimant was not a disabled person for the purposes of s.6 Equality Act 2010 (hereafter the EQA), and she appealed against that. Her appeal was allowed (see the order at page 63). By the order of Gavin Mansfield KC (sitting as a Deputy Judge of the High Court), the judgment of the Employment Tribunal was set aside and the case was remitted to the Tribunal for rehearing. The limited question to be determined on the rehearing was

> "whether the effect of the claimant's impairment (as found by the Tribunal) was long-term, in the sense that it was likely to last for at least 12 months within the meaning of Schedule 1 paragraph 2(1)(b) Equality Act 2010".

4. Judge Milner-Moore was unavailable so the Regional Employment Judge directed that I should consider the remitted appeal.

5. At the same hearing Judge Milner-Moore refused the claimant's application to amend her claim to rely upon an additional alleged impairment of the symptoms of early menopause (paragraph 15; page 54). Her Case Management Summary (pages 43 to 46) show that the relevant period for the claim was July 2019 (the first incident after the adverse effects became substantial in May 2019) to 19 September 2029. This is a period of about three months culminating with dismissal with effect on 19 September 2019.

6. Judge Milner-Moore made a number of conclusions and findings that were not impugned by the Employment Appeal Tribunal's judgment. In particular, in paragraphs 17 to 19 (page 55) she concluded that the claimant had an impairment, namely anxiety.

    a. She stated in paragraph 17 that the impairment of anxiety was first diagnosed in July 2019 and that evidence indicated it was likely that the impairment began in late May or early June 2019 when the claimant began to suffer from a loss of confidence and reported feeling overwhelmed at work. Judge Milner-Moore expressly stated that she did not consider the claimant had the impairment of depression at that time recording that depression was not diagnosed by the GP until much later.

    b. In paragraph 18 Judge Milner-Moore set out some effects of anxiety which she found affected the claimant's ability to carry out day-to-day activities. She found that the claimant experienced "persistent general low motivation/loss of interest, difficulty being in environments that she found frightening, difficulty concentrating and difficulty with normal social

interactions". She recorded in that paragraph a number of specific instances in June, July and September which presumably led to that overall finding about the adverse effects.

c. It is clear that she found that, although the adverse impact of the impairment on the claimant's ability to carry out day-to-day activities may have fluctuated over the relevant period of time, it was consistently more than trivial from late May 2019 up to the dismissal with effect on 19 September 2019.

d. In paragraph 20 she recorded that the impairment had not lasted 12 months as at the last date of the acts complained of. Since the significant adverse effects started in May 2019, that is self-evident and that conclusion was not affected by the Employment Appeal Tribunal's judgment.

7. Therefore, the question is whether there is information before me which satisfies the paragraph 2(1)(b) Schedule 1 EQA definition of long-term. The factual finding that at the date of dismissal the claimant had experienced the substantial adverse effects of anxiety for about three and a half months is unaffected. In considering whether paragraph 2(1)(b) was satisfied, Judge Milner-Moore impermissibly relied upon the claimant's removal from the workplace source of anxiety to conclude that those adverse effects were not likely to continue for a further eight and a half months. That was impermissible because her removal was as a result of the alleged discriminatory dismissal itself.

8. The Employment Appeal Tribunal judgment at paragraph 25 (page 74) sets out the task that it considers the tribunal, if it is properly directing itself, should carry out to determine the issue which has been remitted to it. That is

"to make an assessment on the available evidence as to whether the Claimant's condition and its effect, from which she was suffering at the date of dismissal, could well continue for another eight-and-a-half-months, having persisted for three-and-a-half months up to the date of the dismissal. … I do not say the burden is placed upon the Respondent (the burden is on the Claimant throughout to establish that they are a disabled person), but I do accept the Claimant's submission that relevant questions for the tribunal to consider in assessing likelihood would be factors such as if the substantial adverse effect was persisting, when would it have been likely to have ceased and what would have made it cease."

The Law applicable to the issue

9. The Court of Appeal's summary of the relevant law in All Answers Ltd v W [2021] EWCA Civ 606, is at paras.24 to 26 of the judgment and is not controversial:

"24. A person has a disability within the meaning of section 6 of the 2010 Act if he or she (1) has a physical or mental impairment which has (2) a substantial and (3) long term adverse effect on that person's ability to carry out day to day activities….

25. Paragraph 2(1)(b) of Schedule 1 to the 2010 Act defines long term, so far as material to this case, as "likely to last at least 12 months". "Likely" in this context

means "could well happen": see *Boyle v SCA Packaging Ltd*. [2009] UKHL 37, [2009] ICR 1056, per Lord Hope at paragraph 4, and Lord Rodger at paragraph 42, Baroness Hale at paragraphs 70 to 72 (with whom Lord Neuberger agreed at paragraph 81), Lord Brown at paragraph 77.

26. The question, therefore, is whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months. That is what the Court of Appeal decided in *McDougall v Richmond Adult Community College*: see per Pill LJ (with whom Sedley LJ agreed) at paragraphs 22 to 25 and Rimer LJ at paragraphs 30-35. That case involved the question of whether the effect of an impairment was likely to recur within the meaning of the predecessor to paragraph 2(2) of Schedule 1 to the 2010 Act. The same analysis must, however, apply to the interpretation of the phrase "likely to last at least 12 months" in paragraph 2(1)(b) of the Schedule. I note that that interpretation is consistent with paragraph C4 of the guidance issued by the Secretary of State under section 6(5) of the 2010 Act which states that in assessing the likelihood of an effect lasting for 12 months, "account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood".

10. In Boyle v SCA Packaging Ltd [2009] ICR 1056, the House of Lords unanimously decided that the Northern Irish Court of Appeal had been correct in endorsing that "could well happen" was the right test over the "more probable than not" approach. According to Baroness Hale, the word likely means something that is a real possibility rather than something that is probable or more likely than not.

11. As the Court of Appeal made clear in All Answers para.26, what is being assessed is what the prognosis was for the impairment relied on and, in particular, what the prognosis would have been for the effects of that impairment taken from the vantage point of the alleged acts. It is clear that it is the correct vantage point, as Mr Watson pointed out in his reference to McDougall v Richmond Adult Community College (RSKA para.23).

12. Mr Watson also refers to guidance of Slade J in Patel v Oldham Metropolitan Council [2010] IRLR 280 (EAT) and emphasized (RSKA para.24) her statement that "It will no doubt be necessary in most if not all cases falling within Schedule 1 para.2(1)(b) that a diagnosis will have to be given in order to obtain a prognosis of the likely duration of the effects of an impairment."

13. Mrs Justice Slade did not go so far as to say that a medical diagnosis or medical evidence of the prognosis would be necessary in all cases and I did not understand that to be argued for on behalf of the respondent. The claimant reminded me of the observations of Gavin Mansfield KC in para.24 of his judgment in the present case when referring to Royal Bank of Scotland v Morris (UKEAT/0436/10) (CSKA para.13) to the effect that there is no rule of law that it is necessary to have medical evidence in any given case and that whether or

not a particular effect is likely to persist is a matter of factual assessment for the tribunal.

14. The claimant (CSKA paras.17 & 18) relied on two judgments in the litigation of Nissa v Waverly Education Foundation Limited in the EAT (UKEAT/0135/18) and on remittal to the ET (Case No: 1300482/20217) to argue that there should be a focus on whether there was evidence that the adverse effects of the impairments could well remain substantial rather than on the diagnosis, while accepting that considering with hindsight a prognosis which post-dates the relevant period would be an error. She supports this argument with reference to the Guidance on Definition of Disability (2011) para.A7 (CSKA para.12). Her chosen references to other paragraphs in the Guidance refer to situations where one impairment has developed from or is likely to develop from another impairment, where the cumulative effect of related impairments should be considered (in para.C2 the example is depression which developed from anxiety).

15. She also points out that, when assessing the likelihood of an effect lasting for 12 months, account should be taken of both the typical length of such an effect on an individual, and any relevant factors specific to that individual (Guidance para.C4). It is the likelihood that the impairment would continue to have a substantial adverse effect if the effects of corrective treatment is disregarded that must be assessed (Guidance para.B12). That is usually referred to as the deduced effect. This means that, when considering the likelihood of an effect continuing in the future from a relevant point in time, evidence of the treatment which would have been administered and its effects should be evaluated and disregarded, where that is available.

16. The observations of Mansfield KC that medical evidence is not necessary in every case (para.13 above) should be put in the context of his full discussion of the judgment of Underhill J (as he then was) in RBS v Morris in paras.13 to 19 of the EAT judgment in the present case (pages 70 to 72). In relation to deduced effect, Underhill J said that it was "very unlikely" that a tribunal would be able to make a safe finding without the benefit of medical evidence and "difficult" for the tribunal to be able to assess the likelihood of recurrence or likely severity of the effect of any recurrence without expert evidence. I note also the caution expressed by Underhill J in RBS v Morris para.63 about the real difficulties there are in assessing likely duration, deduced effect and risk of recurrence in cases involving mental impairments.

The Parties' Arguments

17. The claimant relies upon a number of first instance decisions as illustrative of the points that she wishes to make (Authorities 5 to 8 in the Authorities Bundle). Before setting out the particular arguments which I have needed to rule on when deciding the issue, I wish to make an observation about the claimant's reliance on Case No: 2602117/2017 Parnaby, in particularly at CSKA paragraph 52 (quoting para.6.10 of the judgment dated 11 December 2020).

18. She relies thereon a comment by the first instance employment judge that the longer the effects of "such mental impairment" continued to be experienced, "assessing the effects without the benefit of any medication or medical intervention) it

is, on balance, likely to deteriorate rather than improve". Whether the learned judge had before them evidence which supported such comments in that case is not a matter for me. However, the generalized comments do not provide evidence in the present case from which I consider inferences can safely be made when considering the prospects that the effects on the claimant of her impairment would continue.

19. I set out in summary form the two main arguments that the claimant has advanced and the respondent's responses to them. Those are set out in two sections in her skeleton argument, one headed "Anxiety is a symptom of menopause" starting at paragraph 40 and the other "Work environment evidence" starting at paragraph 46.

20. In 2011 Miss Morris was diagnosed with early menopause. Her impact statement (page 35) sets out what she describes as the usual symptoms typically experienced by someone with early menopause including "mood changes, such as low mood or anxiety". She states (first full paragraph on page 36) that if she was not taking hormone replacement therapy she is more likely than not to suffer with symptoms such as the above, however, she does not specifically describe an experience with and without HRT which provides direct evidence in her case that symptoms of anxiety were linked with early menopause. The description in her impact statement of her own deduced effects (the bullet points on page 36) focus more on self-consciousness and low mood than the adverse effects of the impairment of anxiety noted by Employment Judge Milner-Moore (see para.8.a on page 51 which recounts the impact statement evidence about anxiety). The evidence accepted by Judge Milner-Moore was that, in January 2021, a psychiatrist reported that the claimant had no pre-existing problems with mental health before May/June 2019 (para.9 page 51). Her findings about the adverse impact on the claimant's ability to carry out day to day activities (para.18 page 55) describe feelings of fear, difficulty concentrating and with normal social interactions, persistent general low motivation/loss of interest and feeling nauseous at the thought of going into work.

21. The claimant's description of the effects of anxiety are in section 2 of the impact statement, starting at page 36. In the bullet points on page 37 she describes the effects of anxiety which have been helped by coping mechanisms introduced following therapy. She did not in that section give primary evidence from which it could be inferred that HRT helped with any of those symptoms.

22. The claimant's first argument before me was that account should be taken of the effects of HRT treatment on anxiety because it masks the impacts of anxiety. She relies upon Guidance para.A7 to argue that there is a parallel between the example given and her own situation: in the example a woman who is obese cannot rely upon obesity as an impairment but the effects of obesity (difficulty breathing and walking) can be considered because it is the effects of the impairments that need to be considered rather than the underlying conditions themselves. She says that the impacts of anxiety should be considered without the effects of the treatment for early menopause and relies on a number of passages in the Guidance on the definition of disability dated 2011 in particular in relation to this paragraphs B12 and B13.

23. She also argues that the general state of her health, including the symptoms of early menopause that she experiences, excluding reference to medical treatment, are relevant to whether the adverse effects of the anxiety that is the instant impairment in the present case, are likely to continue. In the same way, she argues that the question of whether the adverse effects of anxiety were likely to continue should be judged with reference to the effects and not the cause: that the general state of the claimant's health included that, save for HRT, she would be experiencing anxiety associated with premature menopause which affects whether the effects of anxiety could well continue.

24. She argues that where Judge Milner-Moore relies upon her recovery due to counselling in 2011 she impermissibly failed to take account of the effects of treatment, that the claimant was then undergoing, when concluding that when experiencing poor mental health in 2019 she was likely to recover. I see some force in that; the effect of 2011 counselling is something I disregard in reaching my conclusions.

25. She also argues that account should be taken of the overlapping effects of other conditions and points to B6 and C2 in the Guidance saying that anxiety and menopause have underlying and overlapping effects with anxiety.

26. In countering this argument the respondent arguses that this is effectively seeking to argue the impairment of menopause despite that being ruled out when the amendment application was unsuccessful. They go on to argue that there is no evidence from which the tribunal can safely conclude the deduced effects of the claimant's treatment for the effects of menopause during 2019; nor does the treatment in 2011 assist because she was on different medication at that time. Mr Watson also argued that the argument was entirely speculative because there was no evidence before me about what impact the drugs prescribed for the claimant's menopause had on anxiety.

27. Linked to this argument, the claimant suggested that, although Employment Judge Milner-Moore said she did not have depression at the relevant time, this could be considered when looking at what could well happen in the future because of the common experience that people who have anxiety may also develop depression.

28. The secondary argument by the claimant is that I should consider the evidence of the work environment. She argues that that evidence leads to an inference that the impacts on her of the impairment of anxiety were likely to continue and it can safely be concluded they were likely to continue for at least eight and a half months.

29. She points to page 151, an emailed analysis dated 11 September 2019 of a number of events from the respondent's perspective. In numbered paragraphs matters are recorded such as an emotional reaction after receiving an appraisal in April 2019. The events in China at the end of May/beginning of June from the respondent's perspective and complaints of the claimant feeling overworked and overwhelmed are recounted. The author recounts, from their perspective, an apparent improvement and then (No 6) that the claimant started to disengage. The claimant says that this is an effect of anxiety. They then recount the sickness absence that the claimant had in July and that is the time

when she had the first visit to her GP. They record that the claimant was signed off for two weeks on 22 July with work stress being on the MED 3.

30. The email then goes on to record (No 9) that Miss Morris returned to work on 5 August and that there was a discussion about workload. I am mindful that this is the respondent's point of view, not the claimant's point of view. This is not something about which there has been contested evidence because it would be the subject matter of the substantive dispute if the matter were to reach a final hearing.

31. The one-week holiday in the week commencing 12 August is recorded and then it is noted (No 10) that in the week commencing 19 August a new account split was issued with the claimant expressing some reluctance on taking on existing orders within her new account, according to the respondent.

32. They record in No. 11 that they have observed things improving since her holiday. This is consistent with the record in Dr Edgar's report that the claimant had obtained some benefit from the holiday but not as much as she had anticipated. And then they record the claimant becoming upset on 10 September. As an aside, the claimant's own email at page 157 makes allegations of poor conduct against the respondent in relation to that meeting.

33. The claimant also drew attention to page 155, just above the signature of the Operations Manager, in an email forwarding some minutes of a meeting dated 10 September where the comment is recorded:

> "Everything was working really well last week, was [sic] has changed? How is Steph going to cope when we get busier, as at the moment we are very quiet."

34. The summary of the claimant's argument is that in this period, according to the findings of Judge Milner-Moore, the impacts of her condition were never less than substantial. The evidence is, from the respondent's perspective, that they were likely to get busier at work, there was no reason to conclude that anything would change except for her to be likely to experience greater workplace stresses, and therefore it is likely, in the sense that it could well happen, that she would continue to experience the substantial adverse effects of the condition.

35. Mr Watson countered that by pointing to work events which appeared to have increased the claimant's feelings of stress at work before she consulted her GP. There had been a recent departure of some colleagues (see the first line of the entry for 17 July 2019) and he argued that at least one of those three people would expect to be replaced.

36. He accepted that medical evidence of prognosis was not necessary in every case but contrasted the present with one where the effects of an impairment have lasted 11 ½ months and it was relatively easy to infer that those effects could well last another 2 weeks. In the present case he pointed out (see RSKA para 29) that the claimant attended her GP twice for stress/anxiety in July 2019 but did not return to them before she was dismissed. The diagnosis was of anxiety state NOS and the claimant was signed off work for a short period of time. He argued that the medical evidence does not provide a basis for saying the effects could well last at least 12 months in total.

37. By contrast, Mr Watson divided the material period into three sub-periods (RSKA para.30) and, in oral argument, pointed in particular to the last of those. He stated that the documentary evidence from the claimant's return to work from sickness absence provided little evidenced of outward signs of anxiety (e.g. her email on page 157), holiday but no further sickness absence and no return to her GP for an alternative to Propranolol.

Findings of Fact and Conclusions on the Facts

38. Neither at the hearing before Judge Milner-Moore nor at that before me did the respondent challenge the claimant's account through her impact statement date 16 September 2020 of the impact on her of the impairment. She was not required to be cross-examined.

39. It is important that I say a few words about medical evidence. There is clear authority that medical evidence is not essential, it is not necessary in deciding this particular aspect of the statutory test for disability. However, evidence of some kind clearly is. The threshold is more than what is merely possible and there were times during the claimant's submissions when she seemed to elide the word 'could,' whether something was possible, with "could well". The question is whether there is a real possibility - the statutory language is likely. I set out at para.12 & 16 above occasions where the EAT has made clear the reasons why medical evidence from the vantage point of the relevant time, following a diagnosis, is necessary in most cases and certainly advantageous. However, a diagnosis can be made and recorded in GP notes, medical evidence can be found in Occupational Health reports or sickness certificates where those exist.

40. There is a report (dated 14 January 2021) and addendum report (dated 29 March 2021) in the hearing file from Dr Edgar but it is common ground that the expert opinion evidence in that report does not assist me with the question of whether, as at 19 September 2019, the adverse effects of the impairment were likely to last for 12 months. It does not include opinion evidence of a prognosis from the vantage point of the relevant time. Dr Edgar wrote his report without having seen the claimant's contemporaneous medical records.

41. In dealing with the claimant's first argument I remind myself of the findings that bind both of the parties and myself that the claimant started to experience the symptoms of anxiety only in May 2019 (paragraph 17 of Judge Milner-Moore's judgment). Furthermore, this is consistent with the extract recounted in Judge Milner-Moore's judgment from the claim form where the claimant had apparently said she had not suffered stress and anxiety before the events that are the subject of the claim. That is also consistent with the account given to Dr Edgar in the report that is in the hearing file.

42. I am conscious that I need to take care not to make findings that are inconsistent with those of Judge Milner-Moore and, as I set out in para.19 above, Miss Morris's impact statement account of the deduced effects of menopause or anxiety do not claim that the adverse effects of the impairment of anxiety which is under consideration were or would be experienced by her if she were not being treated for early menopause. The impact statement recites "the usual symptoms" of menopause without claiming they have without

exception been experienced by the claimant and, separately, what she claims are deduced effects of menopause in her case. There is some overlap with the adverse effects described in Judge Milner-Moore's paragraph 18, but they do not include some of the hallmarks of anxiety state.

43. My view is first that, by this argument, Miss Morris in effect is urging me to make findings which risk conflicting with the binding findings of Judge Milner-Moore because I am asked to conclude that in fact the claimant had the effects of anxiety before May 2019 since they are now said to be linked to menopause.

44. Secondly, the claimant is arguing that the actual effects should be magnified by taking account of what would have been the situation had menopause related anxiety or low mood not been masked by HRT. Contrary to the respondent's argument, I do not think that this goes behind the decision to refuse permission to rely upon early menopause as an impairment; there is no reason in principle why the effect of treatment for an excluded condition on the adverse effects of the relevant impairment should not at least be considered if there is evidence that it had an effect. However, Miss Morris's impact statement does not set out primary evidence that the effects of anxiety on her ability to carry out day to day activities were masked in any way by HRT during the material time (see my analysis at para.20 above). Therefore reliable primary evidence to support the argument is not available in the documentation before me. Had that been her argument, there is no reason why that would not have been argued previously.

45. When considering whether the claimant has shown that it is likely that the HRT treatment has had an effect on her mood, the only evidence of substance that has been provided concerns the common symptoms of menopause. I do not think that it is right to give weight to evidence that is effectively set at population level rather than addressing the experience of the individual in a condition where experiences vary so much. Miss Morris supplements the available evidence with reference to findings in other first instance decisions but findings about the impacts on individuals in other cases are not evidence in the present case.

46. The height of the claimant's evidence is her assertion in the impact statement that if it were not for the effects of HRT treatment (which has changed from time to time) she would be likely to suffer from the usual symptoms taken from the NHS website. I do not consider this to be a reliable basis for a finding that she was likely to be experiencing a specific symptom. In effect she asserts that she would be likely to experience all of the usual symptoms or that it should be presumed that she would experience anxiety. This does not amount to more than mere possibility.

47. The argument about cumulative effects and the link to depression effectively asks me to speculate that the claimant could well or would have become depressed (CSKA paragraph 53). There is no evidence that has been presented before me that is not otherwise explained on which to base that inference. There is no evidence (whether expert medical evidence or primary evidence of fact) from which I could safely infer that Miss Morris could well have developed depression as a secondary condition from anxiety and should therefore conclude that the adverse effects of anxiety were likely to last for a total of at least 12 months.

48. I turn to the claimant's secondary argument, that the likely work environment from September onwards means that it is likely that the adverse effects of the impairment would continue until at least May 2020.

49. The claimant has disclosed her GP's records and the relevant period starts at page 216. The first contact with the GP for anxiety is noted on 17 July 2019 when claimant was prescribed propranolol. Although she was given 28 days prescription she says, and I accept, that she only took it for two weeks because she did not derive much benefit from it. The effects of any Propranolol therefore do not need to be considered for the purpose of any deduced effects argument.

50. A brief chronology of relevant events over the period is as follows:

    a. May 2019: the adverse effects of anxiety become more than trivial;

    b. May to June 2019: page 151 evidence occasions when the claimant felt overwhelmed;

    c. 16 July 2019: page 151 – respondent reports a conversation in which they asked Miss Morris if there was anything they could do to help;

    d. 17 July 2019: Miss Morris is absent from work (self-certifies) and visits the GP about work related stress and a general diagnosis of anxiety state NOS is made (page 217). 28 days' supply of Propranolol prescribed;

    e. 22 July 2019: Miss Morris certified unfit to work for 2 weeks (page 110);

    f. 5 August 2019: Miss Morris returns to work (page 113);

    g. 12 August 2019: Miss Morris has a week's holiday – she later tells Dr Edgar that she obtain some benefit from this but not as much as she had expected;

    h. 19 August 2019: Miss Morris returns to work from her holiday (page 151 No: 10);

    i. 10 September 2019: Miss Morris becomes upset at work with feelings of being overwhelmed and overworked which she explains to the respondent (her email page 157). The email of 11 September (page 151) from the Operations Manager follows this.

    j. 19 September 2019: Miss Morris is dismissed.

51. The record of conversations over the relevant period with the GP (page 217) record that work related stresses include the number of people who have left mean the claimant has had to step up to carry more work and that she is now in a position of having to train assistants. I accept the respondent's argument that I can draw inferences from the respondent having vacancies and, in my view, also from the apparent discussions about distributing workload (page 151). I conclude that these matters provide reason to think that the work environment would not have either remained the same or got worse in all respects, as

alleged by the claimant, had she not been dismissed. This is some evidence that the respondents were responding to the claimant's description of being overwhelmed but also there might be an expectation that people would be replaced. Having said that, it is not right at this hearing that I make definitive findings about what would have happened. I have not heard from the relevant witnesses. My task is to take a broad look at the evidence that has been presented so far in deciding whether or not the claimant has established that it is likely that the adverse effects of anxiety would continue for a further eight and a half months. She argues that there are grounds to think the work environment would have become more pressured; conversely there are grounds to think that it would not.

52. As at 19 September 2019, Miss Morris had been feeling overwhelmed at work and experiencing the relevant adverse effects for a relatively short period of time. Someone with those experiences also might reasonably be expected to adopt some coping strategies of the kind which are not themselves a significant adverse impact upon the individual's abilities. An example might be a lunchtime walk. This illustrates the difficulty of speculating on what was likely to happen in the period mid-September 2019 to May 2020. I am not able on the evidence to distinguish between the likely effects of such a coping strategy and the effects of the period of holiday or sick leave, given the claimant's relatively short attendance at work after the return from holiday. The fact of any improvement suggests that the adverse effects, themselves of comparatively short duration, were not indicative of a chronic problem.

53. The passage in the email at page 151 referred to by the claimant does suggest that this was a workplace with stresses; there would be no doubt peaks and troughs to come. But I am being invited to speculate that the environment would continue essentially unremitting in the pressure upon the claimant or become worse without taking account of potential alleviating factors. That would be to take a one-sided view of the information available.

54. The claimant argued before Gavin Mansfield KC that consideration needed to be given to whether and in what circumstances the impacts of anxiety might have reduced to the point when they were trivial. A number of scenarios might have played out. It is speculation to consider whether any particular scenario could well mean that the adverse effects of anxiety could well continue until May 2020. It is not for me to consider whether it is unlikely that the claimant would recover but whether she has shown it could well be that she would not. I reject the argument, on the information before me, that as the duration of the effects extended that itself becomes a reason to expect the duration of the effects to lengthen further. That is not an argument I'm willing to accept without medical evidence when in the present case the effects had been of relatively short duration at the material time. Indeed, this is the sort of case where the subtleties of whether, when and to what extent an individual might recover from anxiety and/or then the adverse effects recur are difficult if not impossible to assess when there is no medical evidence about the prognosis of anxiety state even in the population as a whole, let alone for this claimant.

55. The burden is on the claimant to show that this was the situation and that, as at September 2019, the workplace situation could well continue for a further eight and a half months and she could well have continued to experience those

adverse effects. I am not satisfied that that burden has been discharged although the nuance and the complexity of the arguments that have been set out today show why it was necessary for that issue to be remitted following the appeal.

_____

Employment Judge George

5 April 2024

Sent to the parties on:

08/04/2024

For the Tribunal:

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/