



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr N Nguru

**Respondent:** **MAXIMUS UK SERVICES LIMITED – FIRST RESPONDENT**  
**NATHAN HUET – SECOND RESPONDENT**  
**JOSEPH LLOYD – THIRD RESPONDENT**

**Heard at:** South London Employment Tribunal (by CVP) **On:** 9 January 2024

**Before:** Employment Judge Othen

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Miss Polimac (Counsel)

## PRELIMINARY HEARING IN PUBLIC CORRECTED JUDGMENT

The judgment of the Tribunal is as follows:

1. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of ADHD, anxiety disorder and severe depression.

## REASONS

### Introduction

2. The claimant brings claims of disability discrimination against the respondent which have been the subject of previous case management hearings, the first of which was on 7 June 2023. At this hearing, Employment Judge Cawthray ordered that a preliminary hearing should take place to determine whether the claimant was disabled at the material time.
3. The respondent defends the claims and disputes that the claimant was disabled at that time.

4. The claimant represented herself and gave sworn evidence. The respondent was represented by Miss Polimac, counsel. I considered the documents from an agreed 185-page bundle of documents.
5. At the outset of the hearing, it was established that the claimant would require frequent rest breaks, every 45 minutes or so to accommodate the effects of her health conditions. This timetable was adhered to and in fact, further and more lengthy breaks were taken on request by the claimant.

#### **Issues for the Tribunal to decide**

6. After preliminary discussion with the parties, it was established that the material period of the claimant's claim was the entire duration of her employment with the respondent from 14 September 2020 to 2 February 2022.
7. The claimant's alleged disability as set out in the case management order of Employment Judge Cawthray and agreed by the claimant today was:
  - a. ADHD
  - b. Autism spectrum profile
  - c. Severe depression
  - d. Anxiety disorder
  - e. PTSD.
8. None of the elements of the definition of disability were conceded by the respondent. Therefore, the Tribunal has to determine the following issues:
  - a. Did the claimant have a mental impairment?
  - b. If so, did that impairment have an adverse effect on her ability to carry out normal day to day activities?
  - c. If so, was that effect substantial (as in more than minor or trivial)?
  - d. If so, was the effect long term?

#### **Relevant Findings of fact**

9. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed Bundle of Documents.
10. Prior to commencement of her employment with the respondent, the claimant was employed as an NHS doctor. This required her to work on hospital wards during the Covid pandemic which she found extremely stressful. She said that this experience caused her to suffer from PTSD.
11. On 14 August 2020, she was admitted to hospital. Her GP records confirm the reason for this admission as being "*anaemia*" (page 173) but in subsequent occupational health reports during her employment with the respondent, she explained that she was exhausted (page 62) and was burnt out (page 52).
12. The claimant's evidence in cross-examination was that she was in survival mode during this time, was extremely anxious and was working "*crazy hours*" because of

the pandemic. When questioned by me, she said that her symptoms of anxiety were present from that period of her collapse in 2020 when she kept going until she could no longer physically carry on, and did not remit after that point. She commenced employment with the respondent in the hope of finding a less stressful working environment.

13. On 30 October 2020, she was off sick from work with reported "*stress*" and again on 2 November 2020 with "*anxiety*" (page 185).
14. On 30 October 2020, the claimant emailed her manager to explain she had been suffering from poor sleep, focus and mood. She stated: "... *I feel stressed all the time*" (page 144).
15. On 14 January 2021, the claimant attended a meeting with Katie Reynolds and Angie Clarke from the respondent (job titles unknown). Notes from that meeting which are page 60 record that the claimant advised of her "*significant personal difficulties and health concerns, particularly around [your] mental health and ability to sleep, and concentrate fully*".
16. The claimant was then off sick from 15 February 2021 to 9 April 2021 (page 185). Her GP fit note for those dates confirm her reason for absence being "*anxiety – burnout*" (page 66/67).
17. An occupational health report dated 10 February 2021 describes her difficulties with sleeping, overthinking, fatigue, panic attacks and tearfulness. She was advised to take some time off work, to access GP assistance and trial medication (page 63). The report records at page 60, the view of the occupational health clinician that the claimant would not be deemed to be disabled at that stage as her recovery was anticipated with support and adjustments.
18. The claimant was diagnosed by her GP with anxiety disorder in March 2021 (page 174). She went back to work on 12 April 2021 but by 24 August 2021 revisited her GP with stress, panic attacks and anxiety. At that point her trichotillomania (pulling out eyelashes and hair) is noted. She was prescribed propranolol.
19. On 21 October 2021 she was diagnosed with depression by her GP (page 167) and was prescribed sertraline. Her GP recommended that she contact the "NHS practitioner programme" which was a specialist, confidential mental health support programme for NHS practitioners.
20. The claimant followed that recommendation and had a video consultation with a specialist some time before 9 December 2021, when she saw her GP again and her sertraline prescription was increased (page 166).
21. The NHS practitioner programme enabled the claimant to access CBT from a specialist therapist. A detailed letter from that therapist appears at page 184 which sets out the support provided to the claimant by him from 24 December 2021 to 4 May 2022. That letter records the stress and anxiety felt by the claimant during the pandemic and thereafter describes her symptoms of anxiety, low mood, compulsive behaviour, problems with sleep, focus and concentration. It also discusses the possibility that the claimant may have ADHD, something which is also recorded in her GP records on 27 April 2022 (page 164).

22. The claimant found the CBT sessions to be helpful and an improvement in her condition is noted in July and August 2022 but there is no reduction in her medication (page 160 and 158).
23. On 18 November 2022, the claimant was diagnosed with ADHD. A subsequent report dated 28 December 2022, written by Dr Ziajka (consultant psychiatrist) confirms that on assessment, the claimant met the DSM-5 diagnostic criteria for adult ADHD by demonstrating the following symptoms which could not be explained by another psychiatric disorder:
  - a. inattentive and hyperactive/impulsive symptoms;
  - b. a history of a lifelong pattern of symptoms
  - c. impairment in multiple domains of functioning.
24. The report explains a number of examples of how this condition manifests in daily activities such as losing objects, poor timekeeping and often being late, forgetfulness which results in (for example) leaving the oven on, leaving doors unlocked, difficulty in concentrating on conversations, waiting in queues and following routines. It describes that she has suffered from the symptoms since at least childhood and that they have resulted in stress, anxiety and depression. Medication is recommended, specifically Elvanse. It also reports that the claimant presents with an "ASD profile" and recommends assessment for ASD but records little information about how or whether this profile affects her daily activities (that not being the objective of that assessment) apart from limited examples such as a dislike of clothing labels and noise-sensitivity.
25. During questioning by me, the claimant explained that Elvanse did help with her levels of agitation, hyperactivity and emotional instability. At the time of the hearing, she was unable to access the medication due to a nationwide shortage and she had noticed the difference since then.
26. A letter from the claimant's GP dated 6 January 2023 contains a summary of the claimant's diagnosed mental health and neurodivergent conditions consistent with the above facts and records that the claimant is at that time, awaiting diagnostic assessment for ASD (page 174).
27. There was no evidence of a diagnosis of PTSD and when asked about this, the claimant was unable to confirm that she had been formally diagnosed or to provide evidence of this. There is evidence within the bundle that she had informed other practitioners of this diagnosis without any other details (page 149) but there is no medical evidence about how it impacted her daily activities at the material time.
28. The claimant's impact statement at page 175 sets out the way in which her alleged conditions affect her day-to-day activities. This impact statement states at the top that "*every single condition is pertinent as being present from birth....*". With regard to her ADHD, anxiety and depression, the extensive symptoms that she describes are consistent with the diagnostic psychiatric report of Dr Ziajka, and other medical evidence, but those she ascribes to her Autism Spectrum Profile are far more limited such as some confusion in social situations and hypersensitivity to loud noises and bright lights. Similarly, the effects of her alleged PTSD are limited and appear to be the same as those attributed to her anxiety (apart from flashbacks

which are mentioned). The statement asserting that all the conditions listed within the claimant's impact statement have been "*present from birth*" is clearly incorrect with regard to PTSD and I have concluded it likely that the claimant intended this statement to specifically apply to her diagnosed condition of ADHD.

29. The submissions of Counsel for the respondent were that there was no GP evidence of the claimant's mental ill-health until March 2021. The OH report in February 2021 contained an opinion that the claimant was not disabled and that at the material time, her alleged conditions of anxiety and depression were not long term and did not have substantial adverse effect on her day-to-day activities. It was submitted that her ADHD was diagnosed a lot later and that there was insufficient evidence that while employed by the respondent, her symptoms were substantial.
30. The claimant submitted that the respondent had focused on what she could do rather than the difficulties that she experienced with day-to-day activities. She submitted that ADHD is a lifelong neurodevelopmental disorder, albeit that she was diagnosed after termination of her employment and that the cumulative effect of all her impairments means that she was disabled at the material time. She further explained in cross examination and submissions that the lack of any GP evidence in the bundle regarding mental health conditions or ill-health before March 2021 was because of the difficulties that she experienced with accessing GP support before this due to a variety of factors and that this was not an indication of her lack of symptoms from her alleged impairments during this time.
31. I conclude that the claimant has experienced substantial ADHD-related symptoms (as set out in paragraph 24 of this judgment above) from at least 12 months before she commenced employment with the respondent. In particular, the significant effect of the claimant's symptoms of forgetfulness, an inability to concentrate, to remain still or to achieve daily tasks are all noted as being prevalent from childhood.
32. I accept that there is sufficient evidence that the claimant suffered from significant symptoms of anxiety and depression from August 2020 at the time of her hospitalisation. Although this is not evident from the claimant's GP records, it is consistent with her oral evidence which I found to be credible and consistent, with her impact statement (page 175), with the fact that she started to take periods off work ill with anxiety stress and low mood soon after commencing employment with the respondent (from October 2020) and with the medical evidence regarding her symptoms of ADHD which include her vulnerability to stress.

### Relevant law

33. Section 6 of the Equality Act 2010 (EQA) provides a definition of "disability" as follows:
  - a. (1) A person (P) has a disability if:
    - i. P has a physical or mental impairment , and
    - ii. the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
34. The burden of proving disability lies with the claimant.

35. The case of Goodwin v Patent Office [1999] IRLR 4 translated the above statutory test into the questions which are set out in this judgment at paragraph 8 above which, although it provided that each question is to be considered separately, also conceived that they may overlap and that the tribunal should bear in mind "*the whole picture*".

#### Impairment

36. In J v DLA Piper UK LLP UKEAT 0263/09, the EAT warned against considering the 'Goodwin questions' in a rigid, consecutive manner in cases where alleged impairments are in dispute. Instead, it recommended that: "*it will make sense [...] to start by making findings about whether the claimant's ability to carry out normal day-to day-activities is adversely affected (on a long-term basis), and to consider the question of impairment in light of those findings*" (paragraph 40). Nonetheless, the Tribunal was still urged to use this approach to distinguish between general, descriptive labels that can often be given to mental illnesses (such as "anxiety", "stress" and "depression") and mental impairments as conceived by EQA.
37. The Tribunal must take into account Statutory Guidance on the definition of Disability (2011) (2011 Guidance) which stresses that whether a person is disabled is generally determined by reference to the effect of an impairment (A4). Further, "*it may not always be possible, nor is it necessary, to categorise a condition as either a physical or mental impairment*" and "*it is not necessary to consider how an impairment is caused*" (A6 and A7).

#### Day to day activities

38. It is important to consider the things that a person cannot do, or can only do with difficulty (B9). This is not offset by things that the person can do. This is also confirmed in Aderemi v London and South Eastern Railway Ltd 2013 ICR 391. Day to day activities are things people do on a regular or daily basis such as shopping, reading, watching TV, getting washed and dressed, preparing food, walking, travelling and social activities. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc (Guidance D2 — D7).

#### Substantial effect

39. S212(1) of EQA provides that "*substantial*" means more than minor or trivial.
40. Schedule 1 of the EQA gives further details on the determination of a disability. For example, Para 2(2) of Schedule 1 provides that if an impairment ceases to have a substantial adverse effect, it is to be treated as continuing to have that effect if that effect is likely to recur. In SCA Packaging Ltd v Boyle 2009 UKHL 37, the House of Lords ruled that "*likely to*" means "*could well happen*".
41. Para (5) provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if measures are being taken to correct it and but for that, it would be likely to have that effect.

#### Long term

42. Schedule 1 para 2(1) provides that the effect of an impairment is long term if it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

#### Cumulative effect

43. The 2011 Guidance also states that:
- a. *"The cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect for the purposes of meeting the definition of a disabled person. The substantial adverse effect of an impairment which has developed from, or is likely to develop from, another impairment should be taken into account when determining whether the effect has lasted, or is likely to last at least 12 months, or for the rest of the life of the person affected".*
44. This mirrors the case of The Governing Body of Rushcroft Primary School UKEAT/0225/09, in which it was held that two consecutive impairments can be aggregated for the purposes of determining the duration of an impairment, provided they are related.

#### ADHD

45. The Equal Treatment Bench Book (ETBB) to which employment judges should have regard lists some of the following symptoms as typical of ADHD in adults:
- a. *"Inability to focus or prioritise*
  - b. *Forgetfulness*
  - c. *Restlessness and edginess*
  - d. *Mood swings, irritability and quick temper*
  - e. *Inability to deal with stress".*

#### **Conclusions**

##### Did the claimant have a mental impairment?

46. I have concluded in accordance with the statutory authorities from EQA as set out above and the 2011 Guidance that the claimant's condition of ADHD, anxiety and depression were mental impairments. There is a clear relationship between these conditions on the medical evidence and ETBB guidance although it is not possible in my view to determine whether her anxiety and depression resulted from her ADHD or not. There is insufficient evidence to determine this question and I am not required to determine it (paragraphs A6 and A7 2011 Guidance) suffice to conclude that these conditions are related.
47. I do not feel that there is sufficient evidence of the claimant's alleged impairments of PTSD and autism spectrum profile. With regard to the former, other than the claimant's impact statement, there was no other evidence before me of this diagnosis. As for the condition of autism spectrum profile, this is something which is included in the psychiatric report of Dr Ziajka as she presents with some features which may be attributable to ASD and as such, he recommends diagnostic assessment. The letter from the claimant's GP confirms that she awaits this

assessment (page 74) as she is felt to have an autistic profile. I am mindful of the fact that no diagnosis is necessary and that I am required to determine disability on the basis of effect rather than cause, in accordance with J v DLA Piper UK LLP UKEAT 0263/09 . I will therefore consider these alleged impairments in the paragraphs below.

Did that impairment have an adverse effect on her ability to carry out normal day-to-day activities?

48. With regard to the claimant's ADHD, anxiety disorder and depression, I note the terms of the Statutory Guidance that I should focus not on what the claimant could do but what she could not do or only do with difficulty. I accept that there were things the claimant was able to do, such as attend work for significant periods at the material time but I do not consider that these findings contradict the claimant's evidence, which I have accepted, and other medical evidence, that she had difficulty in sleeping, timekeeping, remembering daily tasks and concentrating on daily activities and interactions. She was able to do these things but only with difficulty and with assistance from others.
49. There is evidence from the claimant's impact statement alone (and to a limited extent from the psychiatric report of Dr Ziajka) that her alleged impairments of ASD profile and PTSD affected her daily activities but usually in relation to her existing impairments of ADHD, anxiety and depression rather than in isolation.

Was that effect substantial?

50. The seriousness of the effects varied over the material period. It was clearly a substantial effect when she was absent from 15 February 2021 to 9 April 2021. However, on the basis of the evidence given to me by the claimant I consider that throughout the material period, her impairments of ADHD, anxiety and depression had an effect on her day to day activities as described above, that was more than minor or trivial.
51. I have taken into account the cumulative effect of these conditions<sup>1</sup> and also the measures taken by the claimant to treat symptoms of the above impairments from March 2021 in visiting her GP for support and thereafter in the medication which she is prescribed and CBT treatment as set out in the paragraphs above.
52. With regard to her alleged impairments of ASD profile and PTSD, I do not consider that at the material time, there is sufficient evidence that they affected the claimant's day-to-day activities to a substantial extent. The claimant's impact statement is dated February 2023, a year after her dismissal. At the material time, there is little or no evidence to demonstrate any substantial adverse effect from those alleged impairments, even on a cumulative basis as defined by 2011 Guidance.<sup>2</sup>

Was the substantial adverse effect long term?

53. As noted in paragraph 31 above, I have concluded that there was sufficient evidence of the substantial adverse effect of the claimant's ADHD-related symptoms from childhood. In any event, given the nature of ADHD as a

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<sup>1</sup> See paragraph 0 above.

<sup>2</sup> See paragraph 00 above.



neurodevelopmental condition, it was likely that this effect would continue beyond 12 months from the material period of claim. It is difficult to distinguish and artificially divide the claimant's anxiety and depression as distinct impairments from the symptoms of ADHD. I have in mind the equal treatment bench book list of symptoms of ADHD which includes an "*inability to deal with stress*" and "*edginess*" and "*mood swings*" and this is consistent with the psychiatric report of Dr Ziajka which reports the claimant's vulnerability to stress because of her ADHD. I have concluded that these impairments are all related.

54. As distinct impairments, I have found that the claimant's impairments of anxiety disorder and depression did not have a significant (substantial adverse) effect on her until August 2020. As this was not a period of 12 months before the start of the material period of claim on 14 September 2020, I will consider whether those conditions were likely to last for 12 months (until 13 September 2021). The fact that they had in fact, lasted for that period is not relevant. The usual question is whether they were likely to last for that period at 14 September 2020 when the alleged discrimination commenced.
55. I consider that this was likely precisely because of the effect of the claimant's ADHD. The medical evidence within the bundle to which I have referred in this judgment clearly sets out the relationship and comorbidities of the claimant's neurodivergent and mental health conditions. The symptoms of all of them are often identical and indistinguishable. This was something not taken into account in the occupational health report of 10 February 2021<sup>3</sup> as there had been no ADHD assessment at that point. Therefore, I consider it likely that when the claimant began to experience substantial adverse effect (on day-to-day activities) from anxiety and depression from August 2020 onwards, it "*could well happen*"<sup>4</sup> that these effects could last for at least 12 months. In any event, I have concluded that the claimant's conditions of ADHD, anxiety and depression were all related and as such, can take into account the consecutive and aggregated effect of these impairments.<sup>5</sup>
56. I therefore conclude that the claimant was disabled because of ADHD, anxiety disorder and depression at the material time.

**Employment Judge Othen  
22 April 2024**

Corrected Judgment sent to the parties on:  
**23 April 2024**

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For the Tribunal:

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<sup>3</sup> See paragraph 17 above.

<sup>4</sup> See paragraph 40 above.

<sup>5</sup> See paragraph 44 above.

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