



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr David Chapman

v

R & G Drapers Haulage Limited

**Heard at:** Cambridge

**On:** 16 April 2024

**Before:** Employment Judge M Ord

## Appearances

**For the Claimant:** Mr J Yetman, Counsel

**For the Respondent:** Miss C Goodman, Counsel

## JUDGMENT on DISABILITY

The Claimant was at the material time disabled by virtue of his hearing loss.

## REASONS

1. The Claimant suffered a traumatic injury in an accident at the Respondent's workplace on 1 February 2023. He was hospitalised for 26 days.
2. The Claimant was dismissed by the Respondent on 24 March 2023.
3. As a result of the accident the Claimant has significant visual impairment which the Respondent has accepted amounts to a disability under s.6 of the Equality Act 2010.
4. The question for me today is whether or not the Claimant is also disabled by virtue of his impaired hearing. His evidence is that he has very little hearing, he describes it as next to no hearing in his left ear and that he has approximately half the normal hearing in his right ear.
5. The history of the investigation into the Claimant's hearing loss begins in late March 2023. The Claimant was suffering from reduced hearing capacity, though his evidence is that he could not carry out home syringing to his ears. He had been told that as a result of an accident the body can increase the amount of wax produced so that there is a build up of wax in the ears.

6. On 29 March 2023 is the first reference for any medical intervention or consultation on this point. The Claimant had been seen by his Consultant Oral and Maxillofacial Surgeon on 15 March 2023 when the issue of hearing was not recorded in the Consultants letter. However on 29 March 2023 the General Practitioner's Notes refer to the Claimant's inability to do home ear syringing and records that the District Nurses cannot carry out this task so that if the Claimant still needed his ears to be syringed he would need to book an appointment.
7. The Claimant had been told following the accident about the potential build up of wax and therefore that was his focus at the time.
8. On 19 April 2023 the Oral and Maxillofacial Consultant reported the Claimant's three main issues as including reduced hearing with reference made to the left ear. There was so much wax that the Consultant could not see the ear drum. In the light of the long waiting list to see the ENT Clinic the Claimant was advised that he should try to arrange a hearing test in the community.
9. That led to the Claimant attending Specsavers for a hearing test in July of 2023. His ears were checked for a build up of wax and his hearing was found to be at about 50% in his right ear and virtually nil in his left ear.
10. Following that the Claimant was subsequently referred by his Consultant to the ENT Department at Northampton Hospital, but the Claimant was not given an appointment until 16 January 2024. The Consultant's Report confirms the Claimant to be hard of hearing in both ears with bilateral tinnitus. He was to be referred to be assessed for hearing aids. That took place on 28 February 2024. The Claimant now has hearing aids for both ears.
11. Before me today he was able to engage in the Hearing with those hearing aids turned up fully. He sat throughout with his right ear towards the other speakers.
12. The Claimant refers to the following impacts from his deafness, whilst accepting that there is obvious difficulty in distinguishing in some cases between the impact of his blindness and his deafness. The Claimant says it is difficult to be in busy or noisy places for very long. He finds that overwhelming. Crowded rooms are difficult. His interaction with his grandchildren is impaired. He has difficulty with conversation, either in person or on the telephone which he has on loudspeaker at all times. He needs help as he mis-hears things and constantly turns his right ear towards anyone speaking. He feels detached and isolated. All of those matters relate to his hearing loss. He does not go out alone because even with his cane his hearing loss prevents him from hearing traffic and as he cannot hear people approaching him he needs someone with him because he says he feels "jumpy".

13. The definition of disability as set out in s.6 of the Equality Act 2010 does not need to be repeated here. For this Hearing the essential issues are these:
  - 13.1. Firstly, whether at the material time, i.e. between 1 February 2023 and 24 March 2023, the Claimant had a hearing loss which was likely to last for more than 12 months; and
  - 13.2. Secondly, whether it had a substantial adverse impact on the Claimant's ability to carry out normal day to day activities.
14. On behalf of the Claimant Mr Yetman has provided a helpful note on the Law, including reference to the Equality Act 2010 Guidance and to the case of Nissa v Waverly Education Foundation Limited UKEAT/0135/18, on the meaning of "likely" in relation to the question of whether or not a condition is expected to last for more than 12 months.
15. The Claimant has also referred me to the case of Chief Constable of Norfolk v Coffey [2020] ICR145, on the question of hearing loss as a potentially progressive condition.
16. At the material time the Claimant's condition, I find, was likely to last for more than 12 months. The word "likely" is taken to mean that it could well happen.
17. I accept the Claimant's evidence that in the early part of his recovery his focus was on recovering from his physical injuries which were more substantial. Faced with the injuries he suffered it is reasonable and understandable that this was his primary concern. However, the Claimant was troubled by his hearing and was sufficiently troubled by his hearing to have it investigated. The question of syringing his ears was explored. The Claimant had been told at the time that his hearing could have been caused by the build up of wax following trauma. This possibility was the focus of the efforts to resolve the Claimant's hearing loss and it was not until he was referred to and eventually seen by an ENT Consultant in January 2024 that the true position that the Claimant has a permanent and substantial hearing loss caused by trauma, was established.
18. I am satisfied therefore that whilst the treating Physicians believed that the Claimant's condition could have been caused by the build up of wax, this was a false assumption. The Claimant had and had from the date of the accident, a hearing loss caused by trauma which was, although this was not established at the time, permanent and was clearly likely to last for 12 months or more. That was the actual condition from which the Claimant suffered. That was his impairment and therefore that meets the test.
19. Turning to the question of the impact on the Claimant's day to day activities, I am satisfied based on his evidence that his hearing loss does have a significant impact on his day to day activities and did have at the material time. He is now doubly isolated from the world at large through

both the loss of his sight and the substantial loss of his hearing. He gains some assistance from hearing aids now, but I must disregard this. The loss of his ability to converse freely, to be able to be outdoors alone as he cannot hear traffic or people approaching, the loss of interaction with his grandchildren; these are all significant matters. The Claimant finds any form of socialising difficult and has become introverted. That is a substantial adverse impact on his ability to carry out normal day to day activities.

20. All of these matters, whilst they may also be impacted by the Claimant's sight impairment, are significantly impacted by his hearing loss.
21. Accordingly I am satisfied that at the material time the Claimant was disabled by virtue of hearing loss, as well as by virtue of visual impairment.
22. The hearing damage was, on the basis of the evidence before me, caused by the severe trauma he suffered on 1 February 2023. At that time it was likely to last for more than 12 months. However mis-diagnosed it was at the time, it was a permanent condition.
23. For completeness I should say that the Claimant also refers to suffering from tinnitus which whilst it can be a substantially disabling condition, he has not given any detail of the impact of that condition and he has not satisfied me, indeed there is no need for him to do so, that his condition is progressive. I find it to be permanent.
24. For those reasons the Claimant complaint that he is disabled by virtue of hearing loss is established.

17 April 2024

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Employment Judge M Ord

Sent to the parties on: 21/05/2024  
For the Tribunal Office: N Gotecha

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