



Case Number: 1302525/2022
Type V

A EMPLOYMENT TRIBUNALS

**BETWEEN
AND**

**Claimant
Mr A Singha**

**Respondent
Diamond DCO
Two Limited (in
Creditors
Voluntary
Liquidation)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON A PRELIMINARY HEARING

HELD AT Birmingham **ON** 28 – 30 November 2023
10 January 2024
(Panel Only)
13 February 2024

EMPLOYMENT JUDGE GASKELL

Representation

For the Claimant: Mr Ed Carey (Counsel)
For the Respondent: Ms C Jennings (Counsel)

JUDGMENT

(Issued to the parties on 16 February 2024 set out for ease of reference)

- 1 The claimant has not established that at any time material to his claim he was a disabled person as defined in the Equality Act 2010.
- 2 Accordingly, the claimant's claim for disability discrimination is dismissed.

REASONS

Judgement was given orally. These written reasons are produced in response to a request from the claimant pursuant to Rule 62 of the Employment Tribunals Rules of Procedure 2013

Introduction

1 The claimant in this case is Mr Amarvir Singh Singha who was employed by the respondent, Lloyds Pharmacy Limited, now known as Diamond DCO Two Limited (in Creditors Voluntary Liquidation), as an HR Business Partner from 30 August 2018 until 16 November 2021 when he was dismissed. At the time of the claimant's dismissal, he had been absent from work since 26 May 2021. The

reason given for the claimant's dismissal at the time was his persistent failure to comply with the respondent's absence reporting procedures.

2 By a claim form presented to the tribunal on 20 May 2022, the claimant brings claims for disability discrimination and equal pay. Claims for unfair dismissal and protected disclosure detriment were withdrawn and have been dismissed.

3 There was a preliminary hearing for case management conducted by Employment Judge Beck on 23 November 2022. It was upon the direction of Judge Beck that the case was listed for a further preliminary hearing to be held in public to determine a number of preliminary issues. One of those issues being:

"Whether at the material time (May 2021 - January 2022), by reason of suffering from anxiety and depression, the claimant was a disabled person within the meaning of Section 6 and Schedule 1 to the Equality Act 2010"

The Law

4 I considered the provisions of Section 6 and Schedule 1 to the Equality Act 2010 (EqA) which provides the legal definition of disability for the purposes of claims under EqA. I also considered the Guidance issued by the Secretary of State on matters to be taken into account in determining questions of disability 2011.

5 I considered the following decided cases:

Kapadia -v- London Borough of Lambeth [2000] IRLR 699 (CA)
Woodrup -v- Southwark LBC [2003] IRLR 111 (CA)
Goodwin -v- The Patent Office [1999] IRLR 4 (EAT)
Morgan -v- Staffordshire University [2002] IRLR 190 (EAT)
McNicol -v- Balfour Beatty Rail Maintenance Limited [2002] IRLR 711 (CA)
McKechnie Plastic Components -v- Grant UKEAT/0284/08 (EAT)
J -v- DLA Piper UK LLP [2010] IRLR 936 (EAT)
Vicary -v- British Telecommunications Plc [1999] IRLR 680 (EAT)
Leonard -v- Southern Derbyshire Chamber of Commerce [2001] IRLR 19 (EAT)
Ekpe -v- Commissioner of Police of the Metropolis [2001] IRLR 605 (EAT)
Ahmed -v- Metroline Travel Limited [2011] EqLR 464 (EAT)
Aderemi -v- London and South East Railway UKEAT/0316/12 (EAT)
Ginn -v- Tesco Stores Limited UKEAT/0197/05/MAA (EAT)
Patel -v- Oldham Metropolitan Borough Council [2010] IRLR 280 (EAT)
Law Hospital NHS Trust -v- Rush [2001] IRLR 611 (CS)
Herry -v- Dudley Metropolitan Borough Council UKEAT/101/16/LA

Morris v Lauren Richards Ltd [2023] EAT 19, 2022 WL 19768188
Parnaby v Leicester City Council UKEAT/0025/19/BA
Royal Bank of Scotland plc v Morris UKEAT/0436/10/MAA

The Evidence

6 The evidence before me relating to the question of whether or not the claimant was a disabled person was contained in the following documents:

- (a) The claimant's disability impacts statement dated 21 August 2022.
- (b) The witness statement of Mr Ravinder Heer – the claimant's friend, dated 19 November 2022.
- (b) The witness statement of Miss Joanna Beesley – Senior Human Resources Business Partner, dated 3 November 2023.
- (c) The documents contained in Section 3 of the Hearing Bundle which included the claimant's GP notes and records and other medical information relied upon.

7 The claimant, Mr Heer and Miss Beesley gave oral evidence. The claimant was cross-examined. The evidence of Mr Heer and Miss Beesley was unchallenged.

The Facts

8 Until May 2021, the claimant had no history of illness or absence from work. It is the claimant's unchallenged evidence that he was a high performer.

9 There was a change of line management in January 2021. Mr Johnny Dowd became the claimant's line manager.

10 On 24 May 2021, the claimant had a telephone consultation with his GP in which he reported suffering stress at work linked to a recent change of line manager. The claimant was prescribed sleeping medication. Two days later, on 26 May 2021, the claimant self-certified that he was unfit for work and would be unfit for a period of 7 days. The claimant identified the condition of work-related stress.

11 On 2 June 2021, the claimant had another telephone consultation with his GP. He was issued with a medical certificate to the effect that he would be unfit for work due to stress at work until 2 August 2021.

12 On 3 August 2021, the claimant had a further telephone consultation with his GP. Again, he reported stress at work referable to his line manager Mr Johnny Dowd. The claimant was issued with a further medical certificate of

unfitness for work for the period 5 August 2021 to 5 October 2021. This certificate made reference to the conditions of depression and stress at work. It was the first reference to depression.

13 On 7 October 2021, the claimant had a further telephone consultation with his GP. He stated that he was now in lower mood and remained very anxious. He felt that he needed to try medication and was prescribed Mirtazapine. The claimant was issued with a medical certificate of unfitness for work for the period 5 October 2021 to 1 December 2021. The medical conditions were stated to be stress at work, anxiety and depression.

14 On 9 November 2021, in a telephone consultation with his GP, the claimant reported that things were “a bit better”. He felt too drowsy during the day to take the Mirtazapine and so have elected to switch to Sertraline (the initial sleeping medication). The claimant reported that contact from work was causing his anxiety.

15 On 15 February 2022, in a telephone consultation with his GP, the claimant reported that he had not used any medication for over a month. He told the GP that he had been dismissed and that he had financial concerns as a result. He listed his symptoms, some of which were a direct result of financial concerns following the dismissal.

16 Essentially the claimant failed to engage with the respondent’s attendance management procedure prior to his dismissal. His evidence to the tribunal is that he was prevented from doing so because of his medical conditions. However, in contrast, the claimant was well able to contact the respondent over things which he felt were important - such as, in September 2021, when his bonus had not been paid in full.

Discussion & Conclusions

17 It is common ground between the parties that the material time for the purpose of the claimant’s disability discrimination claim is 26 May 2021 when his sickness absence commenced until 1 February 2022 when the claimant’s appeal against his dismissal failed.

18 The burden of proof is on the claimant to establish that he was a disabled person as defined in Section 6 and Schedule 1 EqA. The standard of proof is the balance of probabilities.

19 The claimant has to prove:

(a) That he suffered from a physical or mental impairment.

- (b) That such impairment caused a substantial, long term, adverse impact on the claimant's ability to carry out normal day-to-day activities.
- (c) Substantial means more than trivial.
- (d) Long term means that the effects have lasted for 12 months, or at the time of consideration are likely to last for more than 12 months.

20 The claimant has clearly established and indeed the respondent concedes that at the material time the claimant was suffering with a mental impairment which has been variously described as stress, anxiety and depression. Clearly suffering from such a mental impairment had a degree of impact on the claimant's life and his ability to carry out normal day-to-day activities. This

21 As to whether the effects of this mental impairment had a substantial adverse effect which, I have considered the guidance issued by the Secretary of State and some of the examples contained therein. I have also considered the claimant's disability impact statement and the reports he made at his various consultations with his GP. In his disability impact statement, the claimant concentrates on how his mental impairment interfered with his performance at work but says very little regarding any effect on his ability to carry out normal day-to-day activities. The claimant's interaction with his GP is clearly focused on his concerns about what is happening work and what would happen if he returned. There is nothing there is nothing in the GP records to suggest that the claimant was unable to carry out any day-to-day activity or any for which he experienced great difficulty. The claimant lived alone and was providing for his own essential care including nutrition and hygiene. At no time did the claimant's GP record any concerns about the claimant's physical condition as might have been the case if he were unable to properly care for himself.

22 During the period under consideration the claimant was clearly able to communicate and press his case: for example over the question of his alleged unpaid bonus.

23 On the evidence available to me, the claimant has not established that the mental impairment from which he was suffering created a substantial adverse impact on his ability to carry out normal day-to-day activities. On this basis, he does not meet the definition of disability.

24 As to whether such effects as the claimant did experience would be long term, again I have noted this in the claimant's interactions with his GP the focus is on what is happening work and clearly the GPs view would be that if the work difficulties were resolved (the relationship between the claimant and Johnny Dowd) then the claimant's mental health problems would reduce and he would be in a position to return to work. The GP never signed the claimant as unfit for work for longer than a period of 2 months. She did this for 3 or 4 consecutive

periods. My judgement is that if asked at the time to assess the likelihood of the claimant's mental health conditions continuing for 12 months or more, the GPs response would have been that this was unlikely - in the anticipation that the relationship difficulties could be resolved quickly.

25 On the evidence before me, I am not therefore satisfied that any adverse impact on the claimant, judged at the material time, could be said to have been long term. On this basis also, the claimant fails to meet the definition of disability.

26 In considering both the impact of the claimant's condition and the likely length of such impact, I am required to discount the effects of medication. In this case however the claimant appears to have used medication very sparingly - rather less than as prescribed. It is clear that the impact as I have assessed it is the impact with or without the use of medication.

27 For the reasons I have set out above therefore, I find that at no time material to this claim was the claimant a disabled person as defined in Section 6 and Schedule 1 to the Equality Act 2010. Accordingly, the claimant's claim for disability discrimination cannot proceed and is dismissed.

Employment Judge Gaskell

14 May 2024