



EMPLOYMENT TRIBUNALS

Claimant: Mr Jasvinder Kang

Respondent: British Airways PLC

Heard at: Watford Employment Tribunal (CVP) **On:** 23 April 2024

Before: Employment Judge Young

Representation

Claimant: Mr Christopher Howells (Counsel)

Respondent: Ms Helen Kendrick (Solicitor)

PRELIMINARY HEARING JUDGMENT

It is the judgment of the Employment Tribunal:

1. The Claimant is not disabled within the meaning of section 6 Equality Act 2010.
2. The Claimant's claim is dismissed for want of jurisdiction.

REASONS

Introduction

1. The Claimant was employed as the Respondent's Cargo Handling Agent. The Respondent is the flag carrier airline of the United Kingdom. The Claimant was employed from 14 June 2016 and is still employed. The Claimant contacted ACAS early conciliation on 23 December 2022. The early conciliation 29 December 2022. The Claimant presented his claim on 17 February 2023.

Hearing

2. The hearing was listed for 1 day. I was provided with an agreed bundle of 420 pages. The Claimant relied upon his disability impact statement as his evidence. I also heard evidence from the Claimant. The Respondent also

provided written submissions. The Claimant asked for leave to ask questions about the Claimant's change of medication which was granted. I gave oral reasons at the end of the hearing and Mr Howell requested written reasons.

Postponement Application

3. The Claimant made an application to postpone the hearing on the grounds that he wanted to present medical evidence to contradict the Respondent's argument contained in paragraph 17 of their submissions. Firstly, that the medical records referred to in paragraph 17.4 are wrong and that given time the error can be corrected. Secondly, the Claimant's issues in relation to paragraphs 17.1 & 17.2 is that it suggests that the Claimant is able to do things because of medication. There was no medical evidence dealing with the deduced effect point and the basis of the application to adjourn the hearing is to give the Claimant time to address the issue.
4. Mr Howell's accepted that the Claimant had not given the Respondent notice of the application but said that was because he had only spoken to the Claimant for the first time that morning at 9am and received instructions from the Claimant to make the application. The Claimant had received his medical records in December 2023, but he was not in a position to review the records then because he was suffering from emotional distress because of the ongoing Employment Tribunal proceedings, and he had 2 recent bereavements, so his mind was not focused. The Claimant said that he considered that his solicitor was dealing with it all. The Claimant did not receive the bundle until last week and he was only asked to look at the medical records on Friday 19 April 2024. In 2018 the Claimant suffered an injury to his right knee; he had two operations, and it is his knee complaint that stopped him doing the activities in paragraph 17.4 of the Respondent's submissions. The Claimant wanted the postponement to obtain medical evidence from his knee surgeon.
5. The Respondent's response to the Claimant's application was they did not have any notice of the application at all and were hearing it for the first time. The application was opposed by the Respondent. The Respondent received the Claimant's disability impact statement and the medical evidence on 15 December 2023. The Respondent sent their written submissions to the Claimant on 11 April 2024. The Respondent could not see how the provision of additional medical evidence and or the medical evidence being changed would change the outcome of the hearing. The Claimant still had not provided sufficient examples of the impact of his condition on his day to day activities. Mr Howell's response to the Respondent's objection to the application was the Respondent's approach was wrong, the deduced effect point is highlighted at paragraph 15 of the Claimant's disability impact statement. The Claimant was unable to say when he received the Respondent's written submissions.
6. Rule 30A of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 ("Tribunal Procedure Rules") states "*where a party makes an application for postponement of a hearing less than seven days before the date on which the hearing begins the Tribunal may only order the postponement where (a) all of the parties consent to the postponement and (i) this is practical and appropriate for the purposes of giving the parties the*

option to resolve their disputes by agreement or (ii) it is otherwise in accordance with the overriding objective; (b) the application was necessitated by an act or a mission of another party or the tribunal; or (c) there are exceptional circumstances.”

7. Notwithstanding, in determining the Claimant's application, the Employment Tribunal must consider the overriding objective of the Tribunal Procedure Rules, which reminds the Tribunal that it must deal with cases fairly and justly. Dealing with a case fairly and justly includes so far as practicable (a) ensuring that the parties are on an equal footing (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues (c) avoiding unnecessary formality and seeking flexibility in the proceedings (d) avoiding delay so far as compatible with proper consideration of the issues and (e) saving expense.
8. The Tribunal refused the Claimant's application to postpone the final hearing for the following reasons: The Respondent did not consent, and the application was not necessitated by an act or omission of the Respondent or the Tribunal. The Claimant was legally represented throughout, and the Claimant's solicitors would have had an opportunity to see the gaps in the evidence of the Claimant based upon the medical evidence received in December 2023 and at the latest the Respondent's submissions from 11 April 2024. They would have had more than 7 days to apply for a postponement at that stage. But in any event the Claimant had had 3-4 months to rectify any medical evidence that he considered to be incorrect as he had the evidence since December 2023. The Tribunal was not satisfied there were exceptional circumstances for the postponement application. The Tribunal had an obligation to try as it might to avoid delay in so far as it was compatible with proper consideration of the issues and save expense.

Claim & Issues

9. The Claimant brought complaints of harassment on the grounds of the Claimant's disability, reasonable adjustments and unfavourable treatment arising from disability.
10. I was tasked with dealing with the sole issue of whether the Claimant was disabled which would dispose of the Claimant's claim if the Claimant was found to be disabled.

Findings of Facts

11. I make the following findings of fact on the balance of probabilities.
12. I have had careful regard to all the evidence that I have heard and read about concerning the Claimant's personal circumstances. I asked the Claimant to provide any page numbers that would refer me to any evidence that he wished me to consider in respect of any points he made in his evidence. The Claimant did not do so, either in his written evidence or oral evidence. It is not necessary for me to rehearse everything that I was told in the course of this case in this judgment, but I have considered all the evidence in the round in coming to make my decision. All numbers in square bracket are page references to the bundle.

13. Unless stated otherwise on particular points or issues, I found the Claimant to be evasive on occasion in answering questions and the Claimant's evidence was inconsistent in part and not credible or reliable. Where I found this to be the case, I have set it out in my findings below.
14. In 1996 the Claimant was diagnosed with Cardiomyopathy. The relevant period of the alleged discrimination covers the period of 31 December 2021-30 September 2022. In this period the Claimant was taking 1 tablet a day of Ramipril for his cardiomyopathy condition, which the Claimant described in his oral evidence as a beta blocker. However, in a report dated 4 January 2023 by Dr Lindsay Tilling consultant cardiologist, she stated under the heading 'medication' "2. Intolerant of beta blockers". I find the Claimant stating that the medication of Ramipril was a beta blocker inaccurate and unreliable.
15. In February 2022 in a letter dated 8 February 2022 from the Claimant's GP, Dr Weeks of Brookside Group Practice, stated "*I am writing today to say that this 56 year old man has dilated cardiomyopathy he has had extensive investigation and is currently stable asymptomatic and is not affecting his day-to-day life. DVLA do not have restrictions for car or motorcycle licence. He has seen cardiologists and DVLA health check officials with no issues raised.*" [373] I find that in February 2022 the Claimant was stable and asymptomatic and his condition was not affecting his day-to-day life.
16. On 13 May 2022 the Claimant visited his GP, Dr Sharma who reported "*no SOB no CP no impairment day-to-day with heart*" [65]. I find that that was the case at the time. The Claimant did not have any impairments with his heart on a day to day basis.
17. The Claimant's evidence was that if he did not take his medication, he was advised by the heart surgeon that there would be a deterioration in pump functions of the heart. This would result in manifestation of heart failure symptoms such as lethargy, breathlessness, fluid accumulation and potentially dangerous heart rhythms, even death. Dr Tilling, the Claimant's consultant cardiologist wrote in her report dated 4 January 2023 "*Although he is well, I do think we should optimize his heart function to try and improve pump function and prevent onset symptoms*" [340] I find that the medication that the Claimant took regulated the Claimant's heart prevented the onset of symptoms. Dr Tilling also stated in her 4 January 2023 report "*he has a very long history of heart function problems possibly dating back to his SVT ablation in 1996. Since then, his ejection fraction has varied considerably; It was 40% on echo in 2016, 50% on echo in 2018 39% on cardiac MRI in 2018 (LEG) and 24% on echo in September last year*" [340].
18. The Claimant did not provide evidence of how likely the manifestation of symptoms such as lethargy, breathlessness, fluid accumulation and potentially dangerous heart rhythms were without medication at the relevant time, or how frequently the alleged symptoms would occur, or which doctor told him this and when the doctor told him this and I therefore find the Claimant's evidence unreliable. I do not find that the Claimant himself would have experienced lethargy, breathlessness, fluid accumulation and potentially dangerous heart rhythm in the absence of medication, though I accept that potentially this could be the case for any one with

cardiomyopathy. I find however, that the medical evidence suggests Claimant's heart function varied wildly over the years and because the Claimant did not provide any details of what he was told and by whom, I find that the medication the Claimant took the relevant time was not necessarily needed to prevent the onset of the symptoms mentioned by the Claimant as opposed to improvement of heart function. Without medical evidence and further details as mentioned, the symptoms and their likelihood, impact, regularity, and severity it is simply unknown to the Employment Tribunal.

19. In Dr Jonathan Swinburn consultant cardiologist's report dated 10 November 2022, he states "*the DVLA have refused your Class 2 licence because your heart function is too poor we discussed that this was a possibility in the summer when we spoke on the phone but unfortunately your recent echocardiogram shows that your left ventricular function is even worse and definitely in the range that would prevent you from driving a Class 2 vehicle. I know when we last spoke you were well and symptom free so may will be that we do not need to do anything further medically.*" [350]. The Claimant disagreed with the cardiologist's opinion, however accepted in cross examination that he did not challenge the medical evidence at the time.
20. The Claimant said he did challenge his cardiologist because he was not happy that his cardiologist was not prescribing him up to date medication that could help his condition better. The Claimant said that he changed from Dr Jonathan Swinburn, consultant cardiologist to Dr Lindsay Telling. However, in Dr Jonathan Swinburn's report dated 10 November 2022, he writes "*I think it would be helpful for us to see you in clinic to ensure you are on the right medication as there's been some advancement in the management of left ventricular impairment in recent years and also to consider whether you have or have to have a defibrillator implanted.*" [350] I find the Claimant's evidence on this point to be not credible, it was Dr Swinburn who advised in November himself to require the Claimant to have his medication reviewed not the Claimant. I find that the Claimant did not challenge medical evidence at the time because he accepted the medical opinion.
21. In Dr Lindsay Telling, consultant cardiologist's, report dated 4 January 2023, she stated "*Jasvinder generally physically well however he goes to the gym and does cardio and weight, he walks 3 miles a day including inclines and plays tennis fairly regularly. He does not have any significant palpitations and has never been syncopal*" [340]. The Claimant's evidence was that he did not agree with this evidence either, however, I find that this evidence is consistent with the Claimant's previous consultant cardiologist's advice and accept this medical evidence.
22. The Claimant admitted in evidence that it is since the incident at work on 30 September 2022, where he was told that he had been driving illegally and the would be reported to the police, that he experienced tightness around the heart area and stiffness of the neck, breathlessness, and discomfort when he saw blue lights behind him whilst driving. He nearly had an accident and had to come off the road. The Claimant's oral evidence was that when he felt like this he would not go out or drive. However, the Claimant did not mention any examples of stress that caused such symptoms in his witness statement. The Claimant's written evidence was

that he tried not to get worked up if he is stressed as his heart rate increases rapidly and he was advised to take deep breaths, gently massages his heart and that allows him to stay calm. The Claimant did not provide any examples of day to day incidences of stress when his heart rate did increase rapidly, and he experienced the aforementioned symptoms. I find that the Claimant's reference to not leaving home and not driving was not mentioned at all in his witness statement, the Claimant in cross examination mentioned it for the first time having accepted that he stood by the examples of day to day activities set out in his witness statement. I find the Claimant's reference to not leaving the house and not being able to drive, not credible and not reliable in respect of the relevant period of discrimination.

23. In the Claimant's written evidence, he states at paragraph 10 "*However, I was told by a heart consultant that I should not do free weights, only machine weights due to the stress that this causes on my heart. As a result of this, I no longer feel that I can push myself in the gym and I am worried that if I do overexert myself, even on the machine weights, this could cause serious issues to my heart. This creates further anxiety for me and as a result I no longer go to the gym.*" And at paragraph 11 he states "*I also used to play a lot of tennis, particularly with my son. I have now stopped playing tennis because I must be careful not to overexert myself and I am worried that if I do push myself whilst playing, this could cause further damage to my heart*".
24. However, in oral evidence the Claimant admitted in cross examination to not being able to play tennis any more or visit the gym as down to his problems with his knees. The Claimant said that now he has to walk for exercise but did not explain whether he was prevented from walking because of his condition or that he had adverse effects from walking. I find that the Claimant was not prevented from exercising due to his cardiomyopathy condition.
25. The Claimant did not add to any day to day activities he said he could not do as a result of his medication during the relevant period and gave evidence that he stuck to the examples in his disability impact statement. When the Claimant was asked to give examples of stress, the Claimant's pointed to his mother dying which was outside the relevant period but did not provide any examples of how this mother's death impacted his condition and affected his ability to carry out his day to day activities. The Claimant was somewhat evasive in answering the question and he said that was in relation to work related stress which took place in October 2023 after the 30 September 2022 incident that he had discomfort, tightening of his heart and stiffening and palpitations.
26. The Claimant relied upon his GP record, which stated on 3 October 2022 that "*reports felt shaky and stressed afterwards, unable to concentrate and felt so bad that unable to drive his car afterwards*" [63]. "*reports feels getting panic and shaky on talking about this work incident, having a call from work and also on driving, not feeling well enough to drive and go to work*" [63]. However, I find that these records recorded the Claimant's stress reaction to the 30 September 2022 incident and there is no mention of symptoms arising from the Claimant's cardiomyopathy in the records.
27. In response to cross examination on the absence of any medical evidence

of the Claimant experiencing cardiomyopathy related symptoms, the Claimant gave evidence that he did not contact his GP for every incident where he was affected by his cardiomyopathy. I find that the work incident on 30 September 2022 was a significant life event that affected the Claimant's cardiomyopathy condition. Whilst the Claimant may not have contacted his GP in relation to every incident, I was not pointed to any evidence that he contacted his GP in relation to any other stressful event that affected his cardiomyopathy. I find that before the 30 September 2022 incident, stress did not affect the Claimant's condition so as to have an effect on the Claimant's ability to attend work and or carry out his day to day activities that he would contact his GP.

28. The Claimant has been off work since October 2022. The Claimant's sick notes say the reason why the Claimant is off work is because of stress related problems [355, 352, 349]. The sick notes make no reference to the Claimant's cardiomyopathy condition or any related symptoms. I find that the Claimant's time off work is not related to his cardiomyopathy condition.

The Law

29. Section 6 Equality Act 2010 ("EqA") states

"(1) P has a disability if: (a) P has a physical or mental impairment, and (b) The impairment has a substantial and long-term adverse effect on P's ability to do normal day to day activities."

30. The burden of proving that he meets the section 6 definition under the Equality Act 2010 is on the Claimant, on the balance of probabilities (see Morgan v Staffordshire University [2002] IRLR 190).

31. When determining the question of disability, the Tribunal should take in to account "Guidance on matters to be taken into Account in Determining Questions Relating to the Definition of Disability" ("Guidance") as the Tribunal thinks is necessary (paragraph 12, Schedule 1 Equality Act 2010). Notwithstanding, priority must be given to the statutory provisions if, on a proper construction, these differ. In Elliott v Dorset County Council EAT 0197/20 the EAT noted that where 'consideration of the statutory provision provides a simple answer, it is erroneous to find additional complexity by considering the Code or Guidance'

32. In the pre Equality Act 2010 authority of Goodwin v Patent Office [1999] I.C.R. 302, Morison J (President, as he then was), provided guidance on the proper approach for the Tribunal to adopt when applying the provisions of the Disability Discrimination Act 1995. At paragraph 3 of that decision, Morison J held that the following four questions should be answered, in order: a) Does the Claimant have an impairment which is either mental or physical? (the 'impairment condition'); b) Does the impairment affect the Claimant's ability to carry out normal day-to-day activities ..., and does it have an adverse effect? (the 'adverse effect condition'); c) Is the adverse effect substantial? (the 'substantial condition'); and d) Is the adverse effect long term? (the 'long-term condition').

"Physical impairment"

33. In Rugamer v Sony Music Entertainment UK Ltd and another case 2002 ICR 381, EAT, the EAT suggested the following definition of physical or mental impairment under the DDA: ‘some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition’.

“Substantial adverse effect”

34. Substantial is defined in section 212(1) EqA as ‘more than minor or trivial’.

35. Paragraph 5(1) of Schedule 1 to the EqA 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 treat or correct it and, but for that, it would be likely to have that effect. In this regard, likely means ‘could well happen’ (Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) [2009] ICR 1056, HL).

36. The likelihood is to be determined based on the facts known at the date of the alleged discriminatory act (McDougall v Richmond College [2008] IRLR 227) Anything that happens later is not relevant. See also Guidance, sections C3 & C4.

37. The Court of Appeal agreed in Woodrup v LB Southwark [2003] IRLR 111 that to rely on deduced effects under paragraph 5 of Schedule 1 EqA, it is usually necessary to present clear medical evidence. Simon Brown LJ stated at paragraph 13, *“In any deduced effects case of this sort the claimant should be required to prove his or her alleged disability with some particularity. Those seeking to invoke this peculiarly benign doctrine under paragraph 6 of the schedule should not readily expect to be indulged by the tribunal of fact. Ordinarily, at least in the present class of case, one would expect clear medical evidence to be necessary”*

38. Neither is it necessary to adjourn for the Claimant to obtain medical evidence (Woodrup v LB Southwark [2003] IRLR 111).

“Normal Day to day activities”

39. Appendix 1 to the EHRC Code of Practice on Employment 2011 (“Code”) states that ‘normal day-to-day activities’ are activities that are carried out by most men or women on a fairly regular and frequent basis.

40. The Guidance proposes that the term ‘normal day-to-day activities’ is not intended to include activities that are normal only for a particular person or a small group of people. Account should be taken of how far the activity is carried out by people on a daily or frequent basis. In this context, ‘normal’ should be given its ordinary, everyday meaning (see paragraph D4).

41. The EAT in Paterson v Commissioner of Police of the Metropolis 2007 ICR 1522, concluded that ‘normal day-to-day activities’ must be interpreted as including activities relevant to professional life.

42. The Guidance states that it is not possible to provide an exhaustive list of

day-to-day activities. However, in general, day-to-day activities are things people do on a regular or daily basis. The examples given are shopping, reading, and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing, and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can also include general work-related activities and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern (see paragraph D3).

43. In Aderemi v London and South Eastern Railway Ltd [2013] ICR 591, Langstaff J summarizes the approach to be taken by the Employment Tribunal at paragraph 14, as *“It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is on adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading “trivial” or “insubstantial”, it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other”*

“Long term”

44. The long-term requirement relates to the *effect* of the impairment (which must be a substantial adverse effect on the ability to carry out normal day to day activities), rather than merely the impairment itself (Seccombe v Reed in Partnership Ltd EA-2019-000478-OO).

Submissions

45. The Respondent provided written submissions. Both parties were permitted 15 minutes each to provide oral submissions. In summary the Respondent’s submissions were the Claimant had not provided evidence of his ability to carry out normal day to day activities. The Claimant was saying that his medical professionals got it wrong but didn’t challenge their opinions at the time. The Claimant was unable to provide evidence that without his medication his normal day to day activities were effected substantially and adversely. The Claimant just referred to his knees and his change of medication was irrelevant. The Respondent referred to the case of Sullivan v Bury Street Capital Ltd. [2021] EWCA1694, which I considered.
46. The Claimant’s submissions in summary were the Claimant had set out what the effect was on his day to day activities in his witness statement. The Claimant’s evidence was even with medication in circumstances of stress, his day to day activities were adversely affected. The Claimant referred to the deduced effect in paragraph 16 of his witness statement. The evidence relied upon by the Claimant and accepted by the Respondent was that the

Claimant has cardiomyopathy, there was no challenge to the type of medication and the purpose for which the medication was issued, if the medication isn't having an effect in regulating the heart particularly over a long time, with a view to ensuring that symptoms do not materialise, it begs the point of medication. The Claimant mentioned not being able to function and leave the house. In respect of the question of stress and how that impacts the Claimant was the wrong approach. We have evidence of how stress impacts the Claimant, by reference to what the Claimant said to his GP on 03.10.23 about what he experienced following the incident at work. The Claimant did go through periods of stress and didn't always report it to his GP. The feeling of being shaky and panicky was a manifestation of stress, as well as the ability to work. The Claimant says there is a correlation between stress and cardiomyopathy, not merely because stress affects the Claimant in adverse ways. Stress comes in degrees. The GP report of 03.10.22 is an example of the Claimant in an extreme state of stress. There are lesser examples. It is wrong to say that there are no examples.

47. In practical terms if the ET accepts that the Claimant's cardiomyopathy impacted in a way that adversely affected day to day activities in October 2022, it is difficult to reasonably conclude that the month before he would not have been affected in the same circumstances.

Analysis & Conclusions

Did the Claimant have a physical impairment of cardiomyopathy?

48. The Respondent accepted that the Claimant's condition was a physical impairment. The Claimant had cardiomyopathy a condition that affected the regulation of his heart. The fact that the Claimant was prescribed medication in order to regulate his heart leads me to conclude that the Claimant did have a physical impairment. Furthermore, it was not disputed that the Claimant had this condition long term as he had been diagnosed since 1997. The Claimant complained of acts of alleged discrimination that took place between 31 December 2021-30 September 2021. I determined that the Claimant had the condition long term and during the relevant period in question from 31 December 2021- 30 September 2022.

If so, did it have a substantial, adverse effect on his ability to carry out day-to-day activities?

49. I found that the Claimant did not give any evidence on what he could not do as regards day to day activities in respect of his cardiomyopathy. The Claimant pointed to work incidents after which in October 2022 where he could not drive because he was stressed. The Claimant did not provide any evidence of how the stress affected his cardiomyopathy. Saying that he was stressed was not the same as saying the tightening feeling around his heart prevented him from driving for example. However, importantly the Claimant did not say that he experienced stiffening of his neck or his palpitations or anything associated with symptoms of cardiomyopathy that prevented him from driving on that occasion or even affected his ability to drive. But in any event in a scenario where the Claimant's employer asks the Claimant about whether they are driving legally and explains that they will report the Claimant to the police and the Claimant drives after that meeting and then sees the police and is shaken and unable to drive is likely to affect anyone.

50. The Claimant explained that the reason he could no longer play tennis or go to the gym was because of his knees not because of his cardiomyopathy. The Claimant has been off work since October 2022 because of the stress associated with the incident that took place, not because of any symptoms of his cardiomyopathy. The Claimant only mentioned that stress leading to symptoms of palpitations and in respect of incidents relating to work after the relevant period.
51. The Claimant's mention of the 30 September 2022 incident and his mother death are in any event not normal day to day activities but life events. Even the Claimant's mention of not being able to drive on the occasion coming home was a specific event. There was no suggestion in evidence that the Claimant's reaction to stress causes him symptoms that meant he was not able to drive. The event on 30 September 2023 was not a thing that was likely to happen on a day to day basis or with any frequency or regularity that would lead to the Tribunal to the conclusion that the Claimant's condition affected his ability to carry out his day to day activities.
52. I considered what the deduced effects of the Claimant's medication were. The only medical evidence was of onset symptoms not what those symptoms were. I did not accept what the Claimant said that those symptoms were. Considering Woodrup I conclude that without medical evidence explaining the actual symptoms that would affect the Claimant and their severity and regularity, the Claimant had not met the burden of proof and there were no findings from which I could conclude that there was a substantial adverse effect on the Claimant's ability to carry out normal day to day activities at the relevant time especially when the Claimant's condition varied so wildly. I therefore conclude that the Claimant had not shown that the deduced effect of the Claimant's condition was a substantial adverse effect on the Claimant ability to carry out his normal day to day activities at the relevant time.

Were the effects of the impairment long-term? (Consider at the time of the discriminatory acts) and if so, did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?

53. As I have concluded that the effect on Claimant's ability to carry out his normal day to day activities was not a substantial adverse effect, I conclude that the effects of the impairment were not long term in that there did not last 12 months, were not likely to last 12 months and there was no likely recurrence.
54. I therefore conclude that the Claimant was not disabled for the purposes of section 6 EqA.

Employment Judge Young

Date: 24 April 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON
24 May 2024

FOR THE TRIBUNAL OFFICE

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