



EMPLOYMENT TRIBUNALS

Claimant: Mr. G. Mason

Respondent: Morrison Data Services Limited

Heard at: Bristol (CVP)

On: 16 April 2024

Before: Employment Judge Barton

Representation

Claimant: Mr. G. Mason (In person)

Respondent: Mr. S. Davies (Litigation Specialist MDS Ltd.)

JUDGMENT FOLLOWING A PRELIMINARY HEARING IN PUBLIC

1. At the relevant times the claimant was not a disabled person as defined by section 6 Equality Act 2010 because of an inguinal hernia.
2. The complaint of discrimination on the grounds of disability is therefore dismissed.
3. The remaining claim will proceed to a final hearing.

REASONS

1. The Claimant had a hernia which was repaired by surgery on 18 April 2023. There was no dispute that this was a physical impairment.
2. Based on the available evidence, I cannot find that the hernia had a substantial adverse effect on the ability of the Claimant to carry out day to day activities. There was very little in the way of evidence on this point. The Claimant provided two written statements in response to the case management orders. The first statement did not mention any adverse effect on his ability to carry out day to day activities. The second statement has the following reference "...e.g. carrying shopping, driving etc for which I had had to rely on friends and neighbours..."

3. The Claimant did explain that he had to undertake self-care to manage his ongoing medical conditions. There was no evidence that the Claimant was unable to undertake these activities. There was no evidence that this management had a substantial adverse effect on the Claimant's ability to perform day to day activities.
4. The fit notes in the bundle were both signed by the Doctor saying that the Claimant may be fit for work with adjustments. The Doctor did not sign off the Claimant as unfit for work. The letter from the GP dated 25 January 2024 stated that the Claimant was issued with a sick note advising that he amend his duties. He was also advised to not perform any heavy lifting and that his employer should look to adapt his working environment to allow for this. There was no mention in the GP's letter of any substantial adverse effect the hernia had on the Claimant's ability to carry out day-to-day activities.
5. During submissions I invited the Claimant to elaborate on the substantial adverse effect the hernia had on his ability to perform day to day activities. The Claimant stated that he had to be careful with heavy shopping. He did not offer any further details.
6. The Claimant was taking painkillers to deal with the pain caused by the hernia. On the available evidence I cannot find that the hernia would have had a substantial adverse effect on his ability to carry out day to day activities without the painkillers. The Claimant provided no evidence about the effect of the painkillers.
7. The hernia did not last at least twelve months. On the evidence available I do not find that the hernia was likely to last at least twelve months. While it is possible that a hernia could recur, I do not find that this was likely based on the available evidence. On that basis I did not find that the impairment was long-term.

Employment Judge Barton

Date 23 April 2024

JUDGMENT SENT TO THE PARTIES ON
28 May 2024 By Mr J McCormick

For the Tribunal Office

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

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Recording and Transcription

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>