



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss U Dierstein

**Respondent:** Conveyancing Direct Limited

**Heard at:** Cardiff ET

**On:** 13 May 2024

**Before:** EJ W Brady

## Representation

Claimant: In person

Respondent: Ms Badham (Counsel)

# JUDGMENT

- 1. The Claimant has a disability namely Cervical Vertigo. She has had that disability since 29<sup>th</sup> June 2021 and it is ongoing.**
- 2. The Claimant also has a disability namely Anxiety and Depression, she has had that disability since 1<sup>st</sup> June 2023 and it is ongoing.**

# REASONS

## **Background:**

1. The Claimant is employed by the Respondent as a Property Lawyer and has been employed since 23 September 2019. Early conciliation started on 20 March 2023 and ended on 1 May 2023, The claim form for her first claim was presented on 12 May 2023.
2. The First claim is about alleged failures by the Respondent to provide equipment at its offices; in the form of an adjustable desk, chair, keyboard, and mouse; to counter the impact of her condition. The Claimant contends that the Respondent's acts and omissions in that regard give rise to various forms of disability discrimination. The Respondent resists the claims.
3. The Claimant has made a second claim bringing further complaints of disability discrimination and complaints of unlawful deduction from wages. She continues to be employed by the Respondent. Early conciliation on the Second Claim started on 2 January 2024 and ended on 17 January 2024, The

claim form in the Second Claim was presented on 23 January 2024.

4. The case was listed today for a public preliminary hearing to decide on the issue of disability. The Claimant relies on cervical vertigo as a disability but also anxiety and depression. She states that she has had cervical vertigo since June 2021 and Anxiety and Depression since October 2022. The Respondent does not accept that the Claimant was a disabled person at the relevant times.

**Findings of Fact:**

5. The Claimant was admitted to hospital on 29<sup>th</sup> June 2021 with “Dizziness and vomiting with vertigo”. The hospital records for that day say that she “woke and suddenly felt dizzy, the room was spinning and she was vomiting”. She was diagnosed with Benign Paroxysmal Positional Vertigo (BPPV) and was discharged with medication after feeling much better.
6. On 2<sup>nd</sup> June 2023 she received a diagnosis of “Cervical Vertigo”. In that letter the symptoms of her illness are described as “Feels unsteady while there is rapid movement of the neck to one or other side”. Symptoms last for a few seconds.”
7. BPPV and Cervical Vertigo are different diagnoses with similar symptoms. The diagnosis for Cervical Vertigo is a diagnosis by “exclusion” which means that other possible causes are ruled out before the final diagnosis is reached.
8. Between June 2021 and June 2023 the Claimant visited her GP, consultants and a physiotherapist to attempt to alleviate her condition and to attempt to find answers.
9. During this time the Claimant was working from home. She purchased some ergonomic office equipment to alleviate her condition.
10. The Respondent cross-examined the Claimant about her medical records. In particular, the Respondent asked her about the record from the physiotherapist on 16<sup>th</sup> March 2023. The notes on that occasion read “doesn’t feel neck movements affect dizziness”. On 7<sup>th</sup> December 2023, the Claimant telephoned her surgery and asked for the notes to be changed to “does feel neck movements affect dizziness”. On that occasion she was frustrated and the notes say that she said, “You are causing me problems legally by not changing it”. In cross-examination, Counsel for the Respondent asked the Claimant whether this was an attempt by the Claimant to alter a document in order to bolster her case. The Claimant strongly refutes this allegation and said that she was just attempting to get the error corrected. She then referred the Tribunal to a printout of neck exercises that, although undated, were issued by the same physiotherapist. She argued that this shows that she did tell the physiotherapist that the neck problems were causing her dizziness. I accept this explanation and find that her neck problems were causing her dizziness on 16<sup>th</sup> March 2023.
11. After her initial episode of vertigo and her diagnosis Ms Dierstein visited her GP on 7<sup>th</sup> January 2022 and queried why she had not had a follow up call from Dr Mallipedhi after her initial presentation in hospital. This indicates that her symptoms were ongoing.
12. On 15<sup>th</sup> February 2022 a letter was received from the consultant in Diabetes and Endocrinology who said that she had organised an MRI scan and believed it may be possible viral labyrinthitis which is settling down over time.

The letter says she experiences “2-3 second symptoms of feeling like she is in a flight but no vertigo” “The episodes are infrequent, mostly when she is tired and when she moves her head rapidly to the side.”

13. An MRI scan was carried out on 18<sup>th</sup> July 2023 which ruled out further issues and then the diagnosis of Cervical Vertigo was received in June 2023.
14. I accept the Claimant’s evidence that throughout this time she was exercising and trying to alleviate her symptoms herself but that they were ongoing.
15. The effect on Ms Dierstein’s daily living is substantial. I accept the evidence in her disability impact statement which says that she suffers from dizziness, disorientation, neck pain, stiffness, and cervicogenic headaches when turning her head, when moving her head up and down, when turning to change direction whilst walking, when bending over to put on shoes etc, when making or changing a bed, when getting washed and dressed in the morning, when undertaking household cleaning, while preparing a meal, She also suffers from a feeling of unsteadiness and balance issues.
16. With regard to the anxiety and depression, the first sick note that referred to the anxiety and depression was dated 13<sup>th</sup> October 2023. Prior to this date there is no record of anxiety and depression in the GP notes. Ms Dierstein submitted that prior to the 13<sup>th</sup> October 2023 she was suffering from anxiety and depression and that she informed her employer by way of email. She said that she had been receiving Cognitive Behavioural Therapy from June 2023. Stress is mentioned in an email dated 9<sup>th</sup> December 2022, but there is no record of Anxiety and Depression prior to 13<sup>th</sup> October 2023. I accept Ms Dierstein’s evidence that she received CBT prior to that date, from June 2023.

### **The Law:**

17. Disability is defined in Section 6 of the Equality Act 2010. It says, “A person has a disability if that person has ‘a physical or mental impairment’ which has a ‘substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities’” — [S.6\(1\)](#). The burden of proof is on the claimant to show that he or she satisfies this definition.
18. Paragraph 5 of Schedule 1 of the Act states:  
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:
  - 18.1 Measures are being taken to correct it, and
  - 18.2 But for that, it would be likely to have that effect.
19. In *Goodwin v Patent Office* (1999) I.C.R 302 Morrison J held that the following four questions should be answered when determining whether or not a claimant has a disability:
  - a. Did the Claimant have a mental or physical impairment?
  - b. Did the impairment affect the claimant’s ability to carry out normal day-to-day activities?
  - c. Was the adverse condition substantial?

d. And was the adverse condition long-term?

20. Para. 12 of Schedule 1 of the EA 2010 provides that when determining whether a person is disabled, the Tribunal “must take account of such guidance as it thinks is relevant.” The “Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability” (May 2011) (the “Guidance”) was issued by the Secretary of State pursuant to s. 6(5) of the EA 2010.
21. The Guidance says that “A disability can arise from a wide range of impairments” including “impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis, chronic fatigue syndrome, fibromyalgia, depression and epilepsy.

### **Conclusion:**

22. The Respondent challenged the Claimant on the basis that her reports to the medical staff were not always consistent and on some occasions she did not mention the neck pain. However, she was seeking help in the meantime and carrying out the exercises that she had been given by the physiotherapist. She also referred to the condition in emails that were sent to her employer on 5<sup>th</sup> and 7<sup>th</sup> December 2022. This persuades me that this is an ongoing recurring impairment. I am satisfied that she had a physical impairment, namely cervical vertigo.
23. The Claimant gave evidence about several measures that she has taken to alleviate her condition. These include daily exercises and purchasing ergonomic office equipment. She also gave evidence to say that when she moves her neck she has “feedback” which causes her dizziness and gave examples of everyday movements that are restricted in her disability impact statement. This impairs her ability to carry out day-to-day activities and is substantial.
24. The condition of **Cervical Vertigo has been ongoing since June 2021** and is therefore long term. It is a “disability” as defined by the Equality Act 2010.
25. With regard to the Claimant’s **Anxiety and Depression**, the first evidence of this is in the fitness for work note dated October 2023. Ms Dierstein told the Tribunal that she had been receiving Cognitive Behaviour Therapy since June 2023 and that she did that for 9 months. I accept Ms Dierstein’s evidence that she still suffers from that condition today and that it is likely to continue. I therefore find that that condition is also long-term and substantial and therefore a “disability” and that on the balance of probabilities, it was a disability from **1<sup>st</sup> June 2023 onwards**.

Employment Judge W Brady

Date: 23<sup>rd</sup> May 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON 30 May 2024

FOR THE TRIBUNAL OFFICE Mr N Roche

**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.

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