



# EMPLOYMENT TRIBUNALS

**SITTING AT:** LONDON CENTRAL by CVP

**BEFORE:** EMPLOYMENT JUDGE F SPENCER

**BETWEEN:** MISS D CAREVIC CLAIMANT

AND

PENINSULA LONDON LP RESPONDENT

## PRELIMINARY HEARING IN PUBLIC

**ON:** 11 April 2024

### **Appearances**

**For the Claimant:** In person  
**For the Respondent:** Mr M Salter, counsel

## REASONS

*These written reasons for the judgment delivered orally on 11 April 2024 are given at the request of the Claimant on 24 April 2024.*

1. The Claimant was employed by the Respondent as a Workforce Planning Manager from 9 January 2023 until 14 June 2023. The Respondent owns and manages the Peninsula Hotel in Belgravia. At the time of the Claimant's employment the hotel was in a pre-opening phase.
2. By a claim presented on 10 November 2023 the Claimant brings claims for direct disability discrimination, discrimination arising from disability, harassment related to disability and breach of contract. The alleged disability is anxiety and depression. It is not disputed that the Claimant did not tell the Respondent during her employment that she had experienced, or was experiencing, anxiety and depression – although the Claimant suggests that her symptoms were such that the Respondent should reasonably have known, and that her symptoms impacted upon her performance.

3. The Claimant says, amongst other things, that the Respondent failed to provide her with support, made unreasonable demands and unjustified criticism of her and dismissed her.
4. The Respondent denies the claim and says that the Claimant was dismissed for poor performance. The Respondent denies that the Claimant was disabled within the meaning of section 6 of the Equality Act 2010.
5. A preliminary hearing for case management took place on 9 February 2024 to clarify the issues and to give case management directions. At that hearing the Claimant's claim for unfair dismissal was withdrawn - the Claimant having insufficient service to qualify for that right. Orders were made for the further clarification of the issues, and for the provision of medical evidence, including a disability impact statement.
6. This hearing was listed to determine:
  - a. Whether the Claimant had a disability within the meaning of section 6 of the Equality Act 2010 at the relevant times (April- June 2023).
  - b. Whether the claims should be struck out or a deposit order made on the basis that they have no or little prospect of success, following the Respondent's application dated 21<sup>st</sup> December 2023.
  - c. Further case management if necessary.
7. I had a bundle all documents running to 157 pages, and I heard evidence from the Claimant, and, on behalf of the Respondent, from Ms Desnot, Director of People and Culture at the Respondent.

Medical evidence.

8. In her disability impact statement the Claimant says that she was diagnosed with anxiety and depression in 2002 and was three months on antidepressants. She says that in 2003 and again 2004 she was diagnosed with mixed anxiety and depressive disorder and acute stress disorder. She was prescribed antidepressants and anxiolytics.
9. In 2012 and 2013 and 2022 she had a stress episodes and was treated with various medications.
10. In June 2023 after her dismissal she was diagnosed with depression and anxiety which was now ongoing.
11. In her impact statement the Claimant says that her mother came to stay with her in April 2023, and that she was "often distracted and/or tense and there were days that she and her mother were planning to go sightseeing, but they stayed home instead as the Claimant felt too stressed to go out. She says that the stress affected her speech, and she began sweating heavily. She suffered from stomach pain and on 22<sup>nd</sup> April her partner came from abroad to support her, and she started to rely on him to carry out household tasks which was not her style.

12. In addition to the disability impact statement I had the following medical evidence:

- a. extracts from the Claimant's GP notes from December 2012 to February 2024 (132).
- b. A letter from her current GP where the Claimant has been a patient since 29 March 2021.(132)
- c. A letter from a neuropsychiatrist in Serbia (139) which her mother had obtained in February 2024 (139). This states

*“the patient's mother comes and states that Dragana has been living in the UK for about twenty years and needs a report on previous treatment...*

*According to the data from Dragana's outpatient medical record, Dragana was treated in this Department in the period from May 13, 2003, to February 19, 2004 during which on six occasions she came for an outpatients examination under DG*

*F412 F43.0. Th she then took: Flunlrln (fluoxetine) caps 20 mg 1 in the morning, Ksalol (Alprazolam) Tab. 0.25 mg 2x1 .. later Auromid (Moclobemid) 150 1 + 1 + 0 and Ksalol... and finally Auromid 150 1 + 1 + 0, Rivotrll mg % in the evening up to 2x1/4 if necessary.*

*After February 19, 2004, she no longer came to this Department.”*

- d. Reports dated 7 June 2022 and 14 November 2022 (translated from Serbian). The first report states that it is a “Follow-up examination” and that the patient “feels good, except for occasional crises in psychic spheres are caused by constant struggle for existence. Has taken the medical therapy regularly. Regarding the psychic image it is dominated by the change of mood, anxiety, fear of the future, occasionally a sense of misunderstanding by the environment and the superiors.” The second report dated 14 November 2022 notes that the Claimant has come for follow-up examination and that she “has occasional problems related to stressful situations, fear of future and existence related to interpersonal relationships.” A checkup is indicated “if necessary”.

13. The GP records also identify that the Claimant had visited her surgery in December 2012 (137) and that she was feeling stressed out and anxious. (There is a further visit in April 2013, but it has been wholly redacted so apart from prescribing diazepam 2 mg not much can be concluded from that entry.) In May 2013 there is a further redacted entry for a problem (presumably unrelated to anxiety or depression as the “problem” has been redacted) but there is a reference in the “History” that she “required alprozolam for anxiety as she had this previously and found it helpful... Wants to be calmer so able to study. Worried will have a panic attack. Consider antidepressant.” She was prescribed propranol.

14. On 29 March 2021 there is an “administration note” referring to anxiety and depressive disorder.
15. The Claimant had a telephone consultation with her GP in July 2022 for “a stress related problem”. In the “history” it is recorded that the Claimant had reported a tough time as, in September 2021, her father had passed away and in November 2021 two aunties passed away. The GP reports that “on discussion with me not too anxious or depressed” “suggest time off.” No medication is prescribed.
16. The next entry relates to an appointment on 14 June 2023,, the day of her dismissal in which the Claimant described her problems at work and said she felt stress “affecting sleep for the last four weeks, difficulties in falling asleep” low mood, fatigue, reduced concentration restlessness and agitation. It records a trial with Mirtazapine and messages to ACAS and Citizens Advice.

#### Work History

17. The Claimant began work for the Respondent on 9 January 2023. She did not tell the Respondent of any history of anxiety or depression or declare it on her starter form. . During her short employment, she had three episodes of sickness. The first was in February (85) where she reported she had been to her GP and got an antibiotic. In April she reported having fallen on her stairs causing pain in her arm and her leg and in December the Claimant said that she had stomach pains after eating shrimps.
18. Issues with the Claimant’s performance were raised with the Claimant from April 2023 and weekly meetings were organised with her line manager. It is the Claimant’s case that issues with the software provided by the Respondent caused the problems and that thereafter the Respondent made unreasonable demands and made unjustified criticisms of her work and conduct.
19. The Claimant was off sick for two days on the 12<sup>th</sup> and 13 June and made an appointment to visit her GP. On her return to work on 14<sup>th</sup> June she was dismissed with immediate effect. Later that day she visited her GP complaining of stress and was prescribed sertraline.
20. The Claimant appealed against the decision to dismiss her. Although the letter of appeal is detailed there is no reference in that letter to any stress or depression and her grounds of appeal rely on procedural matters.
21. I accept the Respondent’s evidence that any impact on her speech and or sweating was not noticeable at work.

#### The law.

22. The definition of a disabled person is set out in section 6 of the Equality Act 2010 which provides that “a person (P) has a disability if he has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities”
23. This definition is supplemented by the provisions of Schedule 1 and the “Guidance on matters to be taken into account in determining questions relating to the definition of disability” issued by in April 2011 (the Guidance).
24. The time at which to assess whether a person has a disability is the date of the alleged discriminatory act. The word ‘substantial’ has been defined in the Guidance as being “more than minor or trivial” reflecting “the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people.”
25. Paragraph 2 of Schedule 1 provides that:
  - “(1) The effect of an impairment is long-term if—
    - (a) it has lasted at least 12 months;
    - (b) the period for which it lasts is likely to be at least 12 months; or
    - (c) it is likely to last for the rest of the life of the person affected.
  - (2) If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.”
26. In considering whether an effect is likely to recur for the purpose of paragraph 2(2) the House of Lords has determined that likely means “could well happen” rather than “more likely than not” *SCA Packaging Ltd v Boyle* [2009] IRLR 746.
27. Paragraph 6 of Schedule 1 provides that in considering whether or not an impairment had a substantial adverse effect on the ability of a person to carry out normal day to day activities, the effects of medical treatment should be ignored, and it is necessary to consider the normal day to day activities which the individual will not be able to undertake without the medical treatment. The focus is on the things that the Claimant cannot do, or can only do with difficulty rather than on the things that she can do. When assessing the effect of an impairment, the comparison is between the way the Claimant carries out the activity in question and how she would carry it out if not so impaired,
28. In *Paterson v Commissioner of Police and the Metropolis* 2007 ICR 522 the Employment Appeal Tribunal concluded that “normal day-to-day activities” must be interpreted as including activities relevant to professional life following the European Court of Justice decision in *Chacon Navas v Eurest Colectividades SA*.

## Conclusion

29. The medical history provided by the Claimant shows a number of episodes of stress or depression as set out above.
30. In April 2023 the Claimant was having problems at work. There is no objective medical evidence of any substantial adverse effect on her day-to-day activities. Such time as she had off work (with the exception of 12 and 13 June 2023) was not related to anxiety or depression. While I have no doubt that she probably was stressed because of difficulties at work, she had not consulted her doctor, was not on medication, and there was no medical evidence of any substantial adverse effect on her day-to-day activities.
31. In her impact statement the Claimant says that in April 2023 she felt heightened emotions related to events at work,, struggled to relax was often distracted or tense. She says when her mother came to stay there were days that she was too tired and stressed to leave the house to go sightseeing with her. I have no doubt that she was worried about her job, as it was not going well, whatever the reasons, but I do not accept that occasionally being too tired to go sightseeing is a substantial adverse effect on day-to-day activities. She says that “the stress affected my speech occasionally and I was sweating heavily”, but there is no reference to that in the GP’s notes of her consultation on 14<sup>th</sup> June 2023, and no reference to any such effects in the Claimant’s letter of appeal. On the balance of probabilities I do not accept this evidence.
32. Moreover even if in April there could be said to be a substantial adverse effect the impairment had not lasted for twelve months, nor could it be said either that it was likely to last twelve months. In June 2023 the Claimant had had adverse reaction to events at work and was very upset and the perceived unfairness of what had happened. Nor is it the case that the Claimant had a long standing condition of depression whose effects fluctuated such that the substantial adverse effect was likely to recur. While there was evidence of a depressive episode in 2002 -2004, the subsequent medical notes in 2012/2013 and the reports from Serbia and her GP in 2022, suggest stress and low mood following life events rather than it being part of an underlying condition of depression which had a substantial adverse effect on day-to-day activities. In 2022 her GP reports that she had had a tough time but was “not too anxious or depressed”. There is no evidence of substantial adverse effect at that time.
33. While the Claimant has subsequently been prescribed medication what I have to examine is what the position was at the time of the alleged discrimination and the evidence does not suggest that at that time the Claimant met the definition of a disabled person in section 6 of the Equality Act.
34. Having found that the Claimant was not disabled there was no need to go on to consider whether, if she was disabled, her claims had little or no reasonable prospect of success. The Claimant also had a small breach of

contract claim which was settled the hearing. As the remaining claims were for disability discrimination, no further orders were required.

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Employment Judge Spencer  
15 May 2024

JUDGMENT SENT TO THE PARTIES ON

30 May 2024

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FOR THE TRIBUNAL OFFICE

**Note**

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