



EMPLOYMENT TRIBUNALS

Claimant: Mr Z RAHMAN

Respondents: (1) Salim Algunaidi
(2) Saba Kazmi

Heard at: Leeds (by video)

On: 18 April 2023

Before: Employment Judge Knowles

Representation

Claimant: In person

Respondents: Ms S Firth, Counsel

CORRECTED RESERVED JUDGMENT ON HEARING A PRELIMINARY POINT

The Judgment of the tribunal is that:

1. The Claimant was not a disabled person at the material time for the purposes of Section 6 of Equality Act 2010 by reason of his costochondritis. He has failed to meet the long-term condition.
2. The Claimant was a disabled person at the material time for the purposes of Section 6 of the Equality Act 2010 by reason of his learning difficulties.

CORRECTED RESERVED REASONS

Issues

3. This preliminary hearing was arranged following a preliminary hearing for case management heard by EJ Maidment on 25 January 2023.
4. The Claimant has claimed that he is a disabled person by reason of dyslexia and costochondritis.

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5. The Respondents dispute that the Claimant is a disabled person.
6. The purpose of the hearing is to consider whether or not he has disability status as defined by the Equality Act 2010 by reason of his dyslexia and / or costochondritis.
7. The issues for the tribunal to consider are as follows:
 - a. Did he have a physical or mental impairment?
 - b. Did it have a substantial adverse effect on his ability to carry out day-to-day activities?
 - c. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - d. Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
 - e. Were the effects of the impairment long-term? The Tribunal will decide:
 - i. did they last at least 12 months, or were they likely to last at least 12 months?
 - ii. if not, were they likely to recur?

Evidence

8. This preliminary hearing was a fully remote hearing undertaken through HMCTS's Cloud Video Platform. No connection issues were noted during the hearing by anyone participating in the hearing.
9. The hearing was listed with an estimated length of hearing of 3 hours, to begin at 10am.
10. The Claimant attended the hearing and acted in person.
11. The Claimant served an impact statement which was contained in the bundle of documents (109).
12. The bundle of documents was produced by the Respondents and consists of 198 pages.
13. The beginning of this hearing was delayed because the bundle of documents uploaded to the document upload centre by the Respondent could not be opened and although a revised copy which was uploaded could be opened, that did not arrive until the beginning of the hearing.
14. The Claimant also confirmed that he had not received a copy of the bundle of documents.
15. The first adjournment was for me to have some time to read the impact statement and core evidence from the Claimant as to his conditions and for the Respondents to copy the bundle to the Claimant.
16. There were further delays because the only way of emailing the bundle to the Claimant was to send it by compressed file which was unreadable. Counsel for the Respondents' resolved the issue by providing a link through Dropbox and by 11am the Claimant had a readable copy of the bundle.

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17. The Claimant requested an adjournment of 1 hour to familiarise himself with the bundle and check that he was familiar with the contents.
18. Apart from the pleadings, which the Claimant will have seen previously, the bundle consists of papers disclosed by the Claimant in terms of his previous assessments, his impact statement and his medical records.
19. After the adjournment we were able to begin the hearing at 12pm. The Claimant confirmed that he had previously seen the contents of the bundle and was happy to proceed.
20. Despite the hearing having commenced late, evidence and submissions were completed by 12.51pm.
21. Deliberations and Judgment had to be reserved owing to time. I apologise to the parties for the delay in promulgating these reasons which are a result of having insufficient time to set aside for deliberations earlier than now.
22. This claim is relatively unique in that the Claimant has chosen to pursue his claim against individual managers employed by his former employer, Capita plc, but not his former employer. References to the Respondents in this Judgment are therefore references to the two of the Claimant's former managers names as the Respondent's in the claim. I will refer to the Claimant's former employer simply as "Capita", given that they are not a Respondent in this matter.
23. Numbers in brackets below are references to page numbers in the bundle of documents.

Findings of fact

24. I make the following findings of fact on the balance of probabilities. These findings are not intended to cover all of the Claimant's evidence. I took into account all of his evidence but it would not be appropriate to repeat it all here. These are the core findings for the purposes of my conclusions.
25. The Claimant brought his claims against the Respondents in September 2022.
26. His period of employment with Capita was July 2021 to May 2022. He was employed as a call handler.
27. In his claim form, the Claimant referred to having dyslexia and making his managers aware of his need for additional support.
28. He also referred to his condition of costochondritis and that he needed breaks from his work.
29. He referred to being caused pain and stress at work resulting in him being in bed for days at a time. In his claim form he also referred to depression.
30. At a preliminary hearing for case management on 25 January 2023 the Claimant described his costochondritis as causing inflammation around his rib cage affecting his chest and causing him pain when he takes a breath.
31. Ordinary case management orders were made for an impact statement and the service of medical or other independent records relating to the asserted disabilities.
32. The Claimant's impact statement is contained in his email to the Tribunal dated 10 March 2023 (109).

33. In relation to his stated condition of dyslexia, the Claimant's impact statement sets out the following:

My dyslexia was diagnosed around about 2008, I've been unable to find the original paper work, but I have included screenshots from my medial record showing mentions of this by my doctor at the time. As well as my statement from 2011. My dyslexia means I need more time to read and write, and I often make mistakes when writing something, I also find it hard to focus when reading, so I have to repeat what I have read several times before I understand what it means. When at capita my dyslexia was especially notified when doing complaints, and mandatory training. So I asked for help when a complaint was requested. Do make sure I have done everything write, this was a requirement anyway, but managers were checking complaints properly, and I has told off about my complaints a few times. Later this changed so a Manager name must be signed onto each complaint when they check it. Neither of my conditions have stopped. My dyslexia has been on going since around 2008, it will never end. I have also included my assessment for dyslexia which was issued in 2011. As well as a statement given in around the same time.

34. The Claimant has disclosed the following evidence which he states supports his claim to be a disabled person by virtue of his dyslexia:

- a. GP records from 2008 when he was aged 11. The entries record issues at school but are not specific as to causation (113-114). There is another entry recording immature behaviour (116). There are more specific references to poor communication, being very behind with reading (age 6 reading age at age 11) and needing learning support (118). There is reference to a discussion between the doctor and school in April 2008 regarding his educational needs, speech testing and educational psychology input (121). By October 2008 there is a coded entry for Learning Difficulties. No GP records are produced in support of dyslexia which are dated after 2008.
- b. Education Psychologist report 14 April 2011 (146).
- c. Kirklees Council consultation with school 27 May 2011 (134) including Statement of Special Educational Needs of even date (139).
 - i. The consultation letter refers to nothing of note other than the fact of the identification of special educational needs. Those needs are more specifically set out in the attached statement. This report refers to literacy assessment at age 14 years 7 months indicating a reading age of 7 years 10 months, a comprehension age of 8 years 10 months, and a spelling age of 6 years 10 months.
 - ii. The statement summarises that the Claimant had a long history of learning, medical, physical and communication difficulties which were not identified sufficiently early to allow for targeted and individual support. The report goes on to describe significant Specific Language Disorder. It does however note that he scores average for his age and that his expressive language is good for his age as English is his second language. Lacking confidence is referred to as an issue in language and communication. Difficulty in social interactions and inappropriate actions are referred under social and emotional skills. Literacy skills are referred to as something in which the Claimant made little progress. Most recommended provisions are in the area of language and communication. The need for additional time when trying to retrieve vocabulary and to be allowed to self correct answers if needed reads with similarity to the Claimants present description of his situation.

35. In evidence the Claimant conceded that his only information concerning his learning ability is from 2008 and 2011 and none of the information specifically refers to dyslexia.

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He stated that his parents and sisters told him it was dyslexia. He stated in closing submissions that he was tested later in college and was getting a dyslexia score but has not produced any other evidence of this. He stated that he needed 50% more time to read than it would take others and that writing would take him even longer.

36. In relation to his stated condition of costochondritis, the Claimant's impact statement sets out the following:

I had my Costa conduits for a few months or so before it was officially diagnosed and before I started working for capita, I thought it was just an issue with my head as I felt dizzy, but after talking to a doctor over the phone, who asked me if I was having chest pains, and me telling him I did, told me to go to LGI but this condition was diagnosed much later at my GP. But my condition got worse while working there. My Costa conduits causes me physical pain every time I take a breath, it has gotten a lot better but at the time there were days where I felt like I was being stabbed in the chest every time I took a breath. My Costa conduits caused me pain, this was exacerbated by extended sitting, long walks, and my mental health. So my treatment at capita as well as the long hours made the condition worse, I did stand for a few minutes every so often to relieve the pressure on my chest, which helped with the long shift, but my treatment made the condition worse over all. Neither of my conditions have stopped but my costa conduits has gotten significantly better. As mentioned above, it started a few months or so before joining capita, but it got worse while at the company, originally I believe it was caused by my asthma, but worsed by how I felt while working at capita. My Costa conduits started around about April 2021, and is ongoing, it has gotten better but not gone away completely. My medial record says it was ongoing for a few weeks, but this was a mistake, it was ongoing for a few months before first point of contact. I have added screen shots from my medial record showing what medial I have used. While I was working at capita I also did private physio therapy, which would not be found on my medial record, and I haven't been able to find any proof. But this did not help anyway. This took place from around December 2021, and went on for about 1-2 months before I gave up on it. Without any treatment my Costa conduits would have gotten worse, more so than it already did, and based on how the condition was effecting me I would have been unable to leave the bed, and may even have ended up in hospital.

37. Whilst the Claimant has suggested that his costochondritis symptoms began in April 2021 I have concluded that on the balance of probabilities the Claimant is mistaken. The Claimant's own medical records (119, 124) and the occupational health report (separate to the bundle) all suggest that the symptoms began at the beginning of August 2021. I prefer those records because they are more contemporaneous. Written at the time, they are absent any agenda which might lead to April 2021 being chosen to establish a period of greater than 12 months during the employment which ended in May 2022. When pressed on the subject in questioning, the Claimant conceded that he had, by the time his employment ended, suffered costochondritis symptoms for 8-9 months.

38. The occupational health report prepared in November 2021 suggests that full recovery was expected without anything other than physio. The recommended adjustments were simply allowing the Claimant postural breaks for a couple of minutes each hour. He was advised to continue his physiotherapy exercises.

39. There is only fleeting mention in the Claimant's GP records of recurrence of chest pains for a couple of days in in April 2022 (133) then again in May 2022 (131), with no entries in between November and April 2022.

40. There is no independent evidence suggesting any period that symptoms of the condition were expected to continue at all or for any particular period.

Submissions

41. The Claimant submitted that he assumed dyslexia and learning difficulties were the

same thing and that he had nothing further to add.

42. The Respondents produced written submissions and added to these verbally. The Respondents noted that the Claimant accepted that he could have made a mistake concerning the onset of symptoms of costochondritis.

43. The Respondents' written submissions refer to NHS website information about costochondritis and they note that the condition is expected to last weeks or months but usually gets better on its own over time. The Respondents submit that there is no indication the condition would be likely to last 12 months or recur. The Respondents submitted that the impact was trivial and that the only coping strategy was standing for a couple of minutes every hour. The Respondents submitted that in relation to dyslexia, there is no medical evidence, for example in his GP records, or by way of a dyslexia assessment, which supports his bare assertion that he continues to experience language difficulties, or that he experienced them beyond the age of 14. The Respondent submits that even if the Tribunal were to accept the Claimant's bare assertion, the Claimant has not explained how the impacts tip the balance into being substantial.

The Law

44. The Equality Act 2010 contains the definition of disability and provides:

6. Disability

(1) *A person (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 carry out normal day-to-day activities.*

(2) *A reference to a disabled person is a reference to a person who has a disability.*

(3) *In relation to the protected characteristic of disability—*

(a) *a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*

(b) *a reference to persons who share a protected characteristic is a reference to persons who have the same disability.*

(4) *This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—*

(a) *a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and*

(b) *a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.*

(5) *A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).*

(6) *Schedule 1 (disability: supplementary provision) has effect.*

45. Section 212(1) of the 2010 Act (General Interpretation) provides that "Substantial" means more than minor or trivial.

46. Schedule 1 sets out supplementary provisions including:

Paragraph 2

- (1) *The effect of an impairment is long-term if—*
 - (a) *it has lasted for at least 12 months,*
 - (b) *it is likely to last for 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.*
- (3) *For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.*
- (4) *Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.*

47. The burden of proof is on the Claimant to show that he or she satisfies this definition. The standard of proof is on the balance of probabilities.

48. The Government has issued 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) under S.6(5).

49. The guidance states:

Section A – Definition of disability

A5. A disability can arise from a wide range of impairments which can be:

...impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy; developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia; learning disabilities; mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post traumatic stress disorder, and some self-harming behaviour; mental illnesses, such as depression and schizophrenia;

A6. It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment, and vice versa.

A7. It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. For example, liver disease as a result of alcohol dependency would count as an impairment, although an addiction to alcohol itself is expressly excluded from the scope of the definition of disability in the Act. What it is important to consider is the effect of an impairment, not its cause - provided that it is not an excluded condition.

A8. It is important to remember that not all impairments are readily identifiable. While

some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious, for example some mental health conditions and learning disabilities.

50. Section B - Meaning of 'substantial adverse effect'

B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect. This is stated in the Act at S212(1).

The time taken to carry out an activity

B2. The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.

The way in which an activity is carried out

B3. Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.

Cumulative effects of an impairment

B4. An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

B6. A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities.

Example - A person has mild learning disability. This means that his assimilation of information is slightly slower than that of somebody without the impairment. He also has a mild speech impairment that slightly affects his ability to form certain words. Neither impairment on its own has a substantial adverse effect, but the effects of the impairments taken together have a substantial adverse effect on his ability to converse.

Effects of behaviour

B7. Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.

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B9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability it is important to consider the things that a person cannot do, or can only do with difficulty.

B10. In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.

B11. Environmental conditions may exacerbate or lessen the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, how tired the person is, or how much stress he or she is under, may have an impact on the effects. When assessing whether adverse effects of an impairment are substantial, the extent to which such environmental factors, individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered. The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities.

Section C – Meaning of 'long-term'

C3. The meaning of 'likely' is relevant when determining:

- whether an impairment has a long-term effect;*
- whether an impairment has a recurring effect;*
- whether adverse effects of a progressive condition will become substantial; or*
- how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour.*

In these contexts, 'likely', should be interpreted as meaning that it could well happen.

Section D – meaning of 'day-to day activities'

...

D3. In general, day-to-day activities are things people do on a regular or daily basis, and examples include 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 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.

...

D10. ... many types of specialised work-related or other activities may still involve normal day-to-day activities which can be adversely affected by an impairment. For example they may involve normal activities such as: sitting down, standing up, walking, running, verbal interaction, writing, driving; using everyday objects such as

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a computer keyboard or a mobile phone, and lifting, or carrying everyday objects, such as a vacuum cleaner.

...

D17. Some impairments may have an adverse impact on the ability of a person to carry out normal day-to-day communication activities. For example, they may adversely affect whether a person is able to speak clearly at a normal pace and rhythm and to understand someone else speaking normally in the person's native language. Some impairments can have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how such factors can have an adverse effect on normal day-to-day activities.

D18. A person's impairment may have an adverse effect on day-to-day activities that require an ability to co-ordinate their movements, to carry everyday objects such as a kettle of water, a bag of shopping, a briefcase, or an overnight bag, or to use standard items of equipment.

...

Example - A young man who has dyspraxia experiences a range of effects which include difficulty co-ordinating physical movements. He is frequently knocking over cups and bottles of drink and cannot combine two activities at the same time, such as walking while holding a plate of food upright, without spilling the food. This has a substantial adverse effect on his ability to carry out normal day-to-day activities such as making a drink and eating.

D19. A person's impairment may adversely affect the ability to carry out normal day-to-day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking in new knowledge, and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.

51. The time at which to assess the disability is the date of the alleged discriminatory act (*Cruickshank v VAW Motorcast Ltd* 2002 ICR 729 EAT).

52. The words used to define disability require a tribunal to look at the evidence by reference to four different questions (or 'conditions', as the EAT termed them):

- a. did the Claimant have a mental and/or physical impairment? (the 'impairment condition')
- b. did the impairment affect the Claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')
- c. was the adverse condition substantial? (the 'substantial condition'), and
- d. was the adverse condition long term? (the 'long-term condition').

(*Goodwin v Patent Office* 1999 ICR 302 EAT).

53. There should be a causative link between the condition or conditions, where they are identified, and symptoms that the condition or conditions produce (*Morgan Stanley International v Posavec* EAT 0209/13). It need not be a direct link (*Sussex Partnership NHS Foundation Trust v Norris* EAT 0031/12).

54. The term 'mental impairment' covers learning disabilities.

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55. In *Dunham v Ashford Windows* 2005 ICR 1584 EAT, a case involving the condition of dyslexia, the EAT accepted that a Claimant is unlikely to establish a mental impairment solely on the basis of 'difficulties at school' or because he or she 'is not very bright'. Expert evidence as to the nature and degree of the impairment is required, although in a case involving learning difficulties, evidence from a doctor is not essential. Medical evidence is not required in every case, especially where there is appropriate expert evidence as to the type and nature of impairment.

56. If the impairment is not long-term, the next test is whether it is likely to be long-term. The relevant test then whether or not it "could well happen" (*SCA Packaging Limited (Appellants) v Boyle (Respondent) (Northern Ireland)* [2009] UKHL 37). The IDS Handbook on Discrimination states that "*establishing that the effect of dyslexia is long term will not normally be a contentious issue, since it will generally have been present from an early age, even if undiagnosed until later in life*".

57. In *Goodwin v Patent Office* 1999 ICR 302, EAT, concerning 'substantial' the EAT said '*What the Act is concerned with is an impairment on the person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook, but only with the greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts. Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves. Thus a person whose capacity to communicate through normal speech was obviously impaired might well choose, more or less voluntarily, to live on their own. If one asked such a person whether they managed to carry on their daily lives without undue problems, the answer might well be "yes", yet their ability to lead a "normal" life had obviously been impaired. Such a person would be unable to communicate through speech and the ability to communicate through speech is obviously a capacity which is needed for carrying out normal day-to-day activities, whether at work or at home. If asked whether they could use the telephone, or ask for directions or which bus to take, the answer would be "no". Those might be regarded as day-to-day activities contemplated by the legislation, and that person's ability to carry them out would clearly be regarded as adversely affected.*'

58. "Substantial" is defined in S.212(1) EqA as meaning 'more than minor or trivial' and unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial (*Aderemi v London and South Eastern Railway Ltd* 2013 ICR 591).

59. In *Paterson v Commissioner of Police of the Metropolis* 2007 ICR 1522 the EAT held that in order to be substantial '*the effect must fall outwith the normal range of effects that one might expect from a cross section of the population*', but '*when assessing the effect, the comparison is not with the population at large... what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired* although in *PP and anor v Trustees of Leicester Grammar School* 2014 UKUT 520, Upper Tribunal (Administrative Appeals Chamber the Upper Tribunal's held that the statutory definition of 'substantial' in S.212(1) should be applied without any additional gloss.

60. All of the above principles were carefully set out and analysed in the case of *Elliot v Dorest County Council* UKEAT/0197/20 which provides a helpful reminder to any practitioner.

Conclusions

61. Reference to the relevant time below are to the period July 2021 to May 2022 i.e. the period of the Claimant's employment with the Capita. This was agreed between the parties at the outset of their submissions. The Claimant's complaints of discrimination cover his period of employment with the Capita.

Did the Claimant have a physical or mental impairment?

62. I conclude from the evidence that the Claimant had costochondritis between August 2021 and May 2022. That does not appear to be in dispute between the parties.

63. I further conclude that the Claimant has learning difficulties which experts have historically diagnosed as learning difficulties and specific language disorder. I cannot find, on the evidence that the Claimant has produced in this case, that the Claimant has the learning difficulty known as dyslexia. The Claimant simply has not produced specific evidence that this is the case and appears to rely only upon advices from his sisters and parents but I know nothing of how they came to this conclusion.

Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?

64. The Claimant's costochondritis caused him to be bed-bound in pain for a period in August 2021 but the affects appear to have manifested themselves thereafter only as chest pain. The situation appears to have been relieved by postural breaks and physiotherapy which the Claimant discontinued.

65. The Claimant's learning difficulties affect his ability to read and write. I accept that he is genuinely describing difficulties in those areas and they accord with the Respondents' description of his performance problems, references to dyslexia and adjustments for time which are all set out in their response to the Claimant's claim.

Was the adverse effect substantial?

66. The adverse effect of the costochondritis was substantial for a brief period in August 2021 and required the Claimant to take some time off work. I do not consider that the Claimant's description of symptoms thereafter could be described as anything more than minor, nor can I say that they would have been were it not for the treatment and exercises described by the Claimant, which he concedes he gave up. Postural breaks were relatively trivial coping strategies which the Claimant could reasonably be expected to continue with at the relevant time.

67. I conclude that the Claimant's learning difficulties are more than minor. His reading and writing skills have been significantly impacted and the affects appear to be apparent in the time it takes in these generic task which are part of the fabric of everyday life and work. Whilst independent evidence of dyslexia is absent, expert evidence of learning difficulties and Specific Language Disorder has been produced. I found the Claimant's evidence in the round sufficient to establish a finding that he has learning difficulties which continued to produce a substantial adverse effect at the relevant time.

Was the adverse condition long term?

68. I conclude that the costochondritis had not lasted 12 months at the relevant times. There is no evidence before me that at the material time it could well happen that it would last for at least 12 months or be likely to recur. The Claimant has simply produced no evidence that that was the case in his particular circumstances and I cannot conclude that it could well be the case on the Claimant's verbal evidence alone. The Claimant has simply not linked the later chest pains which he says continued at the point of this preliminary hearing to an adverse effect on normal day-to-day activities.

69. I accept that the Claimant's learning difficulties and Specific Language Disorder have lasted throughout his life and he meets the long-term condition. The Claimant's evidence is in line with ordinary knowledge of this type of condition. I conclude that the Claimant has given credible evidence that his reading and writing are impacted substantially by his learning difficulties to this day. It does not matter that I have not been able to make a conclusion that the Claimant has dyslexia. That is only one form of learning

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disability, whether or not the Claimant has that particular form is not relevant of the Claimant has, as he clearly has, learning difficulties and Specific Language Disorder which will affect him substantially throughout his life.

Conclusion on disability status

70. The Claimant was not a disabled person at the material time for the purposes of Section 6 of Equality Act 2010 by reason of his costochondritis. He has failed to meet the long-term condition.

71. The Claimant was a disabled person at the material time for the purposes of Section 6 of the Equality Act 2010 by reason of his learning difficulties.

Employment Judge Knowles

Date: 5 June 2023