



EMPLOYMENT TRIBUNALS

Claimant

Mr Sujith Manuel

v

Respondent

Netduma Limited

Heard at: Cambridge (In Person)

On: 20 May 2024

Before: Employment Judge M Ord

Appearances:

For the Claimant: Mr R Kohanzad, Counsel

For the Respondent: Ms T Sandiford, Counsel

JUDGMENT having been sent to the parties on 31 May 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. This Hearing was held to determine the question of whether or not the Claimant was at the material time a disabled person within the meaning of s.6 of the Equality Act 2010. The Claimant relied on two conditions: breathing issues which he says persisted from April 2021 following a mobile air conditioning unit fitted near to his place of work with a blower facing his desk; and various issues, sleeplessness, headaches, racing heart, anxiety, irritability and inability to interact with his children which he attributed to high blood pressure from June 2021 onwards.
2. The Claimant has provided three Impact Statements, although the second was completely repeated and added to in the third statement so it was not relied upon; copies of GP notes and Records; a summary letter from his GP Practice and a number of photographs of a blood pressure monitoring device taken on various dates.
3. The Claimant's employment lasted from 9 February 2021 until 27 May 2022 and the relevant time, based on the Claimant's evidence, therefore is April 2021 when he says he first experienced the symptoms following the installation of the air conditioning unit, until 27 May 2022 when his employment ended.

4. The definition of disability is set out in Section 6 of the Equality Act 2010 and I will not recite that here.
5. It is trite law that there does not need to be a diagnosis of any particular condition when considering the question of disability. The requirement is for the Tribunal to look at the impact any condition or conditions have on the Claimant to determine whether that impacts in a substantial way, i.e. more than trivial and whether that state of affairs had at the relevant time lasted, or was at the time likely to last for 12 months or more.
6. Based on the Claimant's evidence, his answers given in cross examination and the contemporaneous documents medical and otherwise, I have found as follows.

Findings of Fact and Conclusions

7. The first medical reference of the Claimant's breathing difficulties relates to a dry throat in June 2021. The Claimant had received his first dose of vaccine for Covid-19 on 28 March 2021 and his second dose on 31 May 2021.
8. On 18 June 2021, presumably because of a contact from the Claimant to the Surgery, the Claimant was sent a video showing how to photograph his throat. On that day the GP observed no puss in the Claimant's throat suggesting no infection and records this,

"Throat, last Tuesday. Office multiple fans used. Dust blown goes into throat. Works in Cambridge. Uses air conditioning in car."

The GP also records,

"No vomiting, just dry mouth caused by fans in car and AC since this week Tuesday".

9. Tuesday of that week was 15 June 2021.
10. On 24 June 2021, the GP reported the removal of the AC yesterday and that whilst that process had caused some problems,

"... no more coughing today, no colour to it, no runny nose",

And

"... speaking well and no breathing problems",

And

"... sounds like the dust at work triggered Asthma".

11. The Claimant was given a prescription for an inhaler. There is no evidence that the Claimant's prescription for an inhaler was repeated and this appears to have been a short term solution to the then prevailing problem.

12. On 12 July 2021, the Claimant was reported to have said on several occasions that he did not have asthma. He reported that he had had a similar issue in February 2021 when clearing a spare room. The Claimant was considered by the GP to have a dust allergy.
13. The Claimant did not refer to his GP regarding this problem thereafter until 27 January 2023, when the GP recorded difficulty with the Claimant's throat likely to have been caused by a viral infection.
14. The Claimant reports the following problems as a result of a dust allergy, or allergic reaction:-
 - 14.1. First, he says that he must drive his car with the windows up and with the air conditioning on low;
 - 14.2. Second, that whilst driving he cannot have a conversation because he will begin to cough;
 - 14.3. Third, that he could not work in or go into the test room at work, whilst the regularity of his requiring to use that room is not clear, he referred to others as having to go to the room to switch machinery on and off for him;
 - 14.4. Fourth, he cannot Hoover at home and he is concerned not to be near any of his children if they are engaged in an activity that could cause dust to rise; and
 - 14.5. Finally the Claimant referred to coughing if he is engaged in a lengthy meeting through Teams and attributed that to the fan in his laptop.
15. The Claimant made regular complaints to his workplace regarding dust, air conditioning and fans causing difficulties throughout the period up to the end of his employment.
16. The issues which he refers to persisted from April 2021 when the air conditioning unit was installed, until his employment ended. I accept that evidence.
17. Even if the symptoms did not arise until June 2021 when the Claimant first spoke to his General Practitioner, they were clearly likely to last for more than 12 months at that time. On the evidence presented I find that the Claimant has, as diagnosed by his General Practitioner, a dust allergy and therefore any exposure to dust is likely to trigger an onset of the problems which he has referred to.
18. This impacts on his day to day life in the ways which the Claimant has described to me and that impact is more than trivial. They are within the meaning of s.6 Equality Act 2010 substantial. The Claimant cannot engage in a number of noted activities, his home life is impacted and whilst he has established some work arounds to deal with the problem (including whilst driving as set out above), the impact on his ability to carry out normal day to day activities is impacted so that he was, at the material time, a disabled person within the meaning of Section 6 of the Act.

19. The Claimant also relies on a condition of high blood pressure as set out in the List of Issues, since December 2023. He says this has caused headaches, interrupted sleep, irritability and anxiety, with a racing heart.
20. The Claimant has reported in his Witness Statement one specific episode of sleep interruption or deprivation, on or about 15 June 2021. He referred to feeling,

“... perplexed, disorientated and unable to do anything”,

in the afternoons due to,

“... sort of a chemical release from my heart”,

and that he was unable to sleep until very late in the night because of,

“... humiliation and shame, feeling hopeless...”
21. This follows, however, what he considers to be unreasonable demands from his Manager. Subsequently he felt uncomfortable with his heart pumping if he thought that the Manager was going to shout and

“... call me like a dog to his glass room...”
22. He felt better in October 2021 when he received Spiritual Counselling which he said helped him to,

“... get calm and get peace and proper sleep”.
23. He referred to the blood pressure issue and said that he was distressed after receiving a Costs warning letter from the Respondent, but that is a long time after his employment and not relevant for my considerations.
24. The General Practitioner notes regarding blood pressure record matters as follows,

“On 14 February 2022 Mr Manuel says his blood pressure is rising because he was anxious and stressed at work and he had done blood pressure testing.”
25. On 25 February 2022, the average blood pressure reading was said to be 127/86.
26. On 1 March 2022, the Claimant reported his blood pressure as “good”.
27. On 7 March 2022, the Claimant was worried that his blood pressure was fluctuating.
28. When he was seen at the Surgery on 28 April 2022, he had no headache, he was reported to be under stress at work and seven days’ blood pressure monitoring was advised.
29. On 6 May 2022, the Claimant sent one day of his blood pressure reading to the GP. He said he was concerned about swelling in his feet and ankles as his shoes were tight, which he attributed to pressure or being

overweight.

30. On 13 May 2022, the Claimant submitted seven days' readings from his blood pressure monitor. The Nurse's notes of that day records,

"Examination: normal, home blood pressure average."
31. There is no further reference to the GP for any reason until January 2023.
32. The impacts of alleged high blood pressure which the Claimant relies on, come from his third Impact Statement as follows:
 - 32.1. Not being able to spend time with his children because of headaches;
 - 32.2. Struggling to learn things, in particular he bought a number of courses for career development which he felt unable to complete;
 - 32.3. Occasional headaches at work; and
 - 32.4. Broken sleep. (the references to sleep have been recorded above)
33. The Claimant consulted his GP on the question of blood pressure on 23 August 2023. He was asked to monitor his blood pressure at home. That was the day he was due to provide medical information following the Order of Employment Judge M Warren in this case, which had been made on 5 May 2023.
34. The Claimant also has disclosed a number of photographs of home blood pressure readings taken on one day in November 2021 and thereafter, between 15 February and 3 May 2022. I repeat, on 1 March 2022 the Claimant recorded his blood pressure as "good".
35. The Claimant's reference to headaches with his GP is on 14 February 2022 when he is reported to have,

"... had a bit of a sore head on Friday".

Friday was 11 February.
36. On 7 March 2022, he is reported as having,

"headaches occasionally after work",

But on 28 April 2022,

"no headache".
37. Weighing all of that information together, the Claimant has not satisfied me that his headaches were long term. They were occasional and appear to have been limited to the period February to April 2022.
38. Further, the Claimant refers to the impact of a racing heart, the inability to interact with his children and anxiety. There is no evidence, other than the Claimant's own reportage of any racing heart. I cannot therefore accept

that this was an issue from which the Claimant suffered. It does not appear likely that someone suffering from a racing heartbeat would consult his GP about blood pressure, but fail to mention a racing heart.

39. He was asked about his blood pressure, which was by 1 March 2022 on his own report and on 13 May 2022 by the record of the Nurse who saw him that day, as “very good” and “average”.
40. The Claimant’s relevance to interaction with his children appears to be no more than a repetition of what he says in his concerns over dust allergy / breathing problems. No further details have been given.
41. Accordingly, the Claimant has not satisfied me that he was suffering from high blood pressure for a period of 12 months or more, or that he was likely to do so. Further, he has not satisfied me that any of the impacts which he has attributed to high blood pressure were substantial or long term. His blood pressure was a concern to him from November 2021, taking his evidence at its best, but was not reported to any GP until February 2022 and by May 2022 the position had resolved.
42. His anxiety was, I find, not caused by any condition but as a result of what he considered to be inappropriate interactions with his Manager. He has not established to my satisfaction that this was a disabling condition. It was short term in duration and related to a specific incident or incidents.
43. Accordingly, the Claimant was disabled at the material time by a virtue of breathing difficulties. The Claimant has not established that he was otherwise disabled at the material time.

Employment Judge M Ord

Date: 18 June 2024

Judgment sent to the parties on:
2 July 2024

For the Tribunal office

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