



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Panchakumar

**Respondent:** Surrey County Council

**Heard at:** London South (by CVP)

**On:** 12 and 13 February 2024

**Before:** Employment Judge Morton

## REPRESENTATION:

**Claimant:** Ms E Sole, Counsel

**Respondent:** Mr R Doughty, Counsel

## PRELIMINARY HEARING IN PUBLIC

### Written reasons produced pursuant to a request by the Respondent

1. The Respondent has asked in an application dated 27 February 2024 for written reasons for my decision, given orally at the hearing on 12 and February 2024, that the Claimant was a disabled person within the meaning of s6 Equality Act 2010 ("Equality Act") at the time of the matters giving rise to his claims. I apologise to the parties for the delay in dealing with this request, attributable to pressure of other work.
2. I also gave a decision on the Claimant's amendment application at the same hearing, but reasons for that decision were included in the case management orders that followed the hearing and I therefore do not need to repeat them here.
3. The Claimant relies on two disabilities in this case and the Respondent concedes that one of them, his back condition, was a disability within s6 at all material times. The issue I was asked to decide is whether the Claimant was

also a disabled person by reason of stress/anxiety/depression at the time of the matters giving rise to this claim. I initially formed the view that the Claimant's mental health condition was not a disability, because the Claimant had not satisfied me that it was a long-term condition, but after hearing further from Ms Sole at the hearing I decided that I should reconsider that conclusion. I then noted that neither representative had referred me to one of the key authorities applicable to disputes about the duration of a disability and which I judged to be relevant in this case – *SCA Packaging Limited v Boyle* [2009] UKHL 37. Having considered that case and applied it to the facts of the situation as I had found them, I revised my judgment and now set out those revised reasons.

### The relevant law

4. The relevant definition is set out in s6 Equality Act which provides that a person is disabled for the purposes of the Equality Act if they have a physical or mental impairment that has a substantial adverse long-term effect on their ability to carry out their normal day to day activities.
5. Also relevant is Schedule 1, Part 1 paragraph 2 Equality Act which deals with the meaning of "long term" in s6. Paragraph 2 provides:

**(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;**
- (c) It is likely to last for the rest of the life of the person affected**

**(2) Where 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.**

The meaning of "likely" in Schedule 1 was considered by the House of Lords in *SCA Packaging Limited v Boyle* [2009] UKHL 37. The Court of Appeal in *Boyle* had discussed what was meant by the word "likely" and concluded that "likely" was used in the sense of "could well happen" rather than probable or more likely than not. That approach was upheld by House of Lords as the correct meaning of "likely" whenever the word is used in the statute, making it clear in its reasoning that the test is a lower test than the balance of probabilities. This meaning is now reflected in paragraph C3 of the 2011 *Guidance on matters to be taken into account in determining questions relating to the definition of disability*, to which I have also had regard in preparing these written reasons.

6. In this case, as what was at issue was whether the Claimant had a long term condition, it was necessary to look at the question not just from the perspective of what had happened during the period of employment to which the claim related, but also at what was likely to happen at the relevant time, using the test set out in *Boyle*.

## Discussion and conclusions

7. The Respondent's position on disability was explained as follows in response to an order made by the Tribunal:
  - a. The Claimant was signed off from 21st February 2022 and was referred for treatment on 23rd March 2022 where he reported his symptoms of low mood and his self-reported scores in respect of depression & anxiety measured him in the severe range.
  - b. Prior to February 2022 the Claimant reports trivial/minor impacts which cannot be easily attributed to depression/stress/anxiety or more importantly to the above episode which he describes in his impact statement as a 'catastrophic nervous breakdown' in February 2022.
  - c. It is accepted that from or about 22nd February 2022 (the date the Claimant was signed unfit to work) the impairment of anxiety/depression had a substantial impact on the Claimant's day-to-day activities.
  - d. This was not long term at any point during his employment with the Respondent. The Claimant's employment ended on 3rd February 2023 and at that date it had not lasted 12 months.
  - e. The last incident relied upon by the Claimant in his claim is an adjustment in respect of 'being accompanied' on 11th November 2022 which was just under ten months after his anxiety/depression commenced.
  - f. The Claimant was therefore not a disabled person by reason of anxiety/depression at any material time.
  - g. The Respondent does not accept that stress per se is a mental impairment alternatively if it is a mental impairment, it was not long term for the reasons set out above.

(On this final point I agree that stress is not itself a mental health condition but a description external factors that can cause mental health conditions to arise. But I do not think that matters in this case as the Respondent accepts that the Claimant suffered from anxiety and depression).

8. The Respondent therefore did not dispute that the Claimant was experiencing adverse effects from his mental state that were more than minor or trivial from February 2022. It disputes however that the effects were long term. It does not accept that they began earlier than February 2022 and submits that the Claimant's employment ended on 3rd February 2023 before 12 months had elapsed. Dealing with that point first I do not think that it is relevant that the Claimant's employment ended before the 12-month anniversary of the onset of effects that the Respondent accepted were substantial. A condition clearly does not cease to be long term under the statutory test because there is a cessation of employment during the course of it.
9. The Claimant argues that he experienced effects that were more than minor or trivial from a much earlier stage than February 2022 and that by the time he had to take time off in February 2022, they were already long term.

10. I take the following facts from the Claimant's disability impact statement and witness statement being matters the Respondent did not challenge at the hearing:
- a. The Claimant was experiencing difficulty sleeping, fatigue and difficulty concentrating in early 2021 as a result of difficulties arising from working at home;
  - b. He described this to occupational health ('OH') in or around 10 February 2021 as a deterioration in his mental wellbeing;
  - c. OH recommended a stress risk assessment. The Claimant says that this and other recommendations were not implemented;
  - d. The Claimant's mental state began to decline;
  - e. From June 2021 he began to work full time at a new location (Reigate). His mental state deteriorated further. He says in paragraph 9 of his witness statement: 'By June/July 2021 my mental health had deteriorated to the point where I often deregulated and fell into a rage easily (as set out in my Impact Statement). This was not a minor or trivial impact but, instead, a complete change to my normal character and personality, causing real and substantial difficulties at home with my family.'
  - f. He describes his mental state at that time in considerable further detail in his impact statement. This describes a time for the Claimant when the situation at work coupled with the challenges posed by the pandemic became very difficult for him to manage. I note the following passages from the statement:
    - 2. I find myself easily deregulated and falling in to rage very easily particularly during the period from June/July 2021 when I was forced to attend the office every day and had to cope with the resulting impact to my health. When I am angry, I was irritable and would often become irrational. My wife and children could not recognise the person I had become. I was desensitised to the feelings of my wife and our children. My ability to empathise was at an all-time low and my focus remained on my pain and discomfort which was there all the time. In addition, as a result of not being able to exercise or move around very much, managing my hypertension and diabetes became more complicated and involved, it required closer monitor and attention from me.**
    - 3. I have two young children and I had always been a very involved father. It had been my responsibility to pick up the children from school and take them to their activities. We had developed a strong bond.**
    - 4. I lost interest in wanting to engage with the children or taking them to their activities. If I took them to an activity, I had to spend at least an hour or so resting to recover. I did not have the patience or presence of mind to provide them with the support they needed with homework or just reciprocate a loving and nurturing relationship with them.**
  - g. His mental health continued to deteriorate between that point and February 2022. He attributes this deterioration to conditions at work;
  - h. He had what he described as a 'nervous breakdown' in February 2022 and was away from work for seven weeks.

11. The medical evidence from the Claimant's GP all postdates February 2022 and confirms that the Claimant was suffering from anxiety and depression for a period starting in February 2022. That does not by itself assist with the question of whether the Claimant had a long-term condition. As noted, the Respondent accepts that from that date the Claimant had the impairment of anxiety/depression and that it had a substantial impact on the Claimant's day-to-day activities. But it submits that in the period prior to February 2022, although the Claimant reported a deterioration in his mental state from February 2021, there is nothing in the evidence to suggest that this was substantial enough for him to seek help for it either from his GP or other sources of support. Accordingly, the Respondent submits, evidence of a long-term condition is lacking.
12. Whilst I do not consider it essential that the Claimant should have specific medical evidence of an impairment at every stage as evidence can also be found in a person's impact statement, the Claimant's impact statement provides clear evidence of mental impairment only in a period between July 2021 and February 2022.
13. As regards the medical evidence itself, there were also three Occupational Health reports:
  - a. The first (10 February 2021) makes a brief reference to mental wellbeing and confirms that the Claimant had reported that his mental wellbeing had started to deteriorate as a result of his working from home;
  - b. The second (11 April 2022) followed the Claimant's seven-week period of ill health absence that began in February 2022. This records 'their functioning is being impaired by their current mental health including; increased stress and anxiety relating to interpersonal difficulties (with their manager), experiencing low mood, lack of interest and heightened fatigue as well as feeling nervous anxious and on edge on a day-to-day basis.' and 'In my opinion, Kumar has been experiencing significant symptoms of stress, anxiety and low mood. These symptoms have mainly been the result of their ongoing interpersonal difficulties with their line manager, which has led to a formal grievance being raised'.
  - c. The third (27 May 2022), written shortly after the Claimant's return to work, records that the Claimant's mental condition had improved, but that he needed his employer to be mindful of his need for adjustments. It contains the following passages

**Kumar tells me that he returned to work on Wednesday, with advice from the GP about a phased return of hours. Please be mindful of his workload and that he needs to take it easy to return back into the work environment, he will be reviewed on 23rd June by the GP. Kumar tells me that his fit note has provided information about his return to work and his work environment needs to be conducive to his mental health.**

**'He has good stable mood, but has experienced work related stress which has made him low in mood and lack motivation at times'**

**'Kumar tells me that his mental health is good, but due to the work situations he has lacked motivation to do things due to this. He reports**

that having to drive to offices that are further away has increased his stress levels’.

‘Kumar has told me that he has been away from work for 3 months due to work related stress. He has started a work related stress course, via his GP surgery and has had 1 session. He reports that the triggers to his stress have built up over time, changes to work location and duties has impacted him. Kumar has disclosed that he has discussed this with work, he reports feeling as though he has been discriminated against at work.’

‘He returned to work on Wednesday, we have discussed that a work related stress risk assessment should be completed at the earliest opportunity to enable both parties the chance to review and resolved the perceived work related issues. In my opinion he is fit for work with the adjustments as advised by his GP and myself.’

‘Please consider the adjustments over the next 3 month, with regular workload reviews. Please consider the working environment, please complete a work related stress risk assessment at the earliest convenience to ensure that both parties can work to review and resolve any issues.’

14. The occupational health report of May 2022 therefore effectively picks up where the Claimant’s impact statement ends and the three occupational health reports confirm the overall trajectory described by the Claimant, with the beginning of a decline in his mental state in February 2021 and a severe episode in February 2022, from which the Claimant had not fully recovered when he returned to work in May 2022. As a result, the Claimant returned to work on a phased basis until 28 June 2022 and adjustments remained in place until August 2022.
15. Despite the lack of contemporaneous medical evidence, the evidence put forward by the Claimant by means of his impact statement and witness statement and which, as noted, were not challenged by the Respondent, describes effects that in my judgment were more than minor or trivial from at least July 2021 and continued during the period that followed, culminating in the mental collapse he experienced in February 2022. He describes a mental state that substantially interfered with his ability to relate to his family and that was wholly atypical for him. I consider that to have been a substantial effect of a declining mental state and not something that was minor or trivial. He described in effect a tipping point in the summer of 2021 by which a mental impairment had developed that from that point was having a substantial effect on his ability to carry out normal day to day activities, particularly in the form of his mood and his relationships with his immediate family. The Respondent objects that nothing in the medical evidence supports the Claimant’s position, so that the tribunal is entirely reliant on what he says about himself in his impact statement. Given that the burden of proof is on the Claimant I have considered carefully whether his statement about his experience during the period starting in July 2021 is sufficient evidence of a substantial mental impairment at the time. With some hesitation I have concluded that it was
16. But in case I am wrong about that I have also considered what would be the case if I were to accept the Respondent’s premise, that the impairment only became sufficiently substantial with effect from February 2022.

17. The Claimant's statement describes a serious collapse in February 2022, which itself continued for a seven-week period. The occupational health report of May 2022 establishes that whilst the Claimant's condition had improved by May 2022, he was not fully recovered and was only able to return to work with adjustments. There is also a fit note that records a continuation of stress and anxiety in June 2022 – this provides evidence of a condition that was continuing. At that point therefore the Claimant's position is that he had been experiencing a mental impairment that had a substantial effect on his ability to carry out normal day to day activities throughout a period of 11 months and the medical evidence confirms that there was a condition that had reached crisis point by February 2022 (the point at which the Respondent accepts that a substantial impairment arose) and was continuing into August 2022 when adjustments were still in place. In fact it does not appear to me to have been the Respondent's case that the Claimant's condition ceased to have a substantial adverse effect at any time after February 2022 – that is not how it puts its argument as set out at paragraph 8 above. By alluding to the date of termination of employment (February 3 2023) and submitting that 12 months had not elapsed at that date, it appears in fact to concede that by then the Claimant had an ongoing substantial impairment.
18. What is the correct approach to these facts when considering whether the Claimant was suffering from a long-term condition? The test that needs to be applied is that in *Boyle*, which invites the Tribunal to take a broad view of the evidence and consider whether in assessing if the condition in question could last more than 12 months, it could well happen. That is a lower threshold than the balance of probabilities. I have considered the evidence in this case in the round alongside the statutory definition of "long-term" as clarified in *Boyle*. I am satisfied that that looking at how things stood in July 2021, it could well have happened that the mental health impairment would continue to be substantial in its effects for more than the 12-month period ending in July 2022 (the Claimant's case). Looking at how things stood in February 2022 it could well have happened that the mental health impairment would continue to be substantial in its effects for more than the 12-month period ending in February 2023 (the Respondent's case). Alternatively, if the condition was one that was more accurately described as having recurrent effects (Schedule 1 Part 1 paragraph 2(2)) it could well have happened that a further occurrence during which the impairment's effects were substantial would occur in the future after July 2021, or February 2022. For the avoidance of any doubt, it is my judgment that the test was met from July 2021.
19. The long-term element of the statutory definition in s6 Equality Act 2010 is therefore in my judgment satisfied in this case on the evidence available to me at the hearing. Given that the other elements of the test were not in dispute, the Claimant has therefore established that he was a disabled person by virtue of the mental impairment of anxiety and depression at the time of the matters giving rise to his claims.

**Case number 2304865/2022**

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**Employment Judge Morton**

**Date: 14 June 2024**