



EMPLOYMENT TRIBUNALS

Claimant Ms A Castillo Venzor
Respondent Princeton Biopartners Ltd
Heard at: Cambridge Employment Tribunal
On: 16 May 2024

Before: Employment Judge Talbot-Ponsonby
Appearances
For the Claimant: In person (assisted by friend)
For the Respondent: Gereint Probert (counsel)

JUDGMENT

1. The claimant was disabled from 28 April 2023 by virtue of having severe depression, extreme anxiety or panic, low self-esteem and post-traumatic stress syndrome.

REASONS

Introduction

1. This is a claim brought by Miss Castillo Venzor, the claimant, against Princeton Biopartners Limited, the respondent. The claimant suffered a panic attack on 28 April 2023 and went home sick. On 2 May 2024 she saw her GP, and was signed off work. She was subsequently diagnosed with depression, anxiety or panic and post-traumatic stress disorder and signed off work. On 19 June 2023 she received a letter from the respondent dismissing her. In this claim, among other matters that are not listed to be heard in this hearing, the claimant states that her poor mental health amounted to a disability and she was dismissed because of this. This hearing was listed to determine whether the claimant has a disability within the meaning of section 6 of the Equality act 2010.

Claims and issues

2. The respondent does not take issue with the fact that, from her panic attack and continuing from then until her dismissal, the claimant suffered a mental impairment which had a substantial effect on her day to day activities. The issue between the parties is whether this was a long-term effect within the

meaning of paragraph 2(1) of Schedule 1 to the Equality Act 2010. That is essentially the single issue before me.

Procedure, documents and evidence

3. The hearing was on 16 May 2024, heard remotely by CVP before me, sitting in the Employment tribunal in Reading. The claimant represented herself, and was accompanied by a friend who assisted her. The respondent was represented by Gereint Probert of counsel.
4. The hearing lasted from 10.00 until approximately 13.00, and there was not time during the hearing for me to consider and give my decision. I therefore reserved judgment and am now providing a written decision.
5. There was a hearing bundle of 80 pages, which included a statement from the claimant, together with a supplemental bundle of medical evidence running to 124 pages. Unfortunately, the medical evidence bundle did not reach me before the hearing and so I did not have the opportunity to read it in advance. I was taken to such parts of it as the parties wished me to consider and have since read the entirety of the bundle.
6. I heard evidence from the claimant and submissions both from the claimant and from Mr Probert, and I am grateful to them both for their help. Owing to the events described, the claimant occasionally became a little overwhelmed when remembering them in giving evidence, and we took a few short breaks as needed to allow her time to recover and continue with her evidence.

Fact finding

7. The respondent is a consultancy advising on biomedical innovations.
8. The claimant started work for the respondent on 5 October 2022. She worked full time for the respondent until she went on sick leave at the end of April 2023, and was then dismissed on 19 June 2023.
9. On the claimant's account, it was a stressful and high pressure working environment. She regularly worked over 55 hours a week, and sometimes 60 or 70 hours. According to the terms of her contract of employment, she had agreed to opt out of the maximum weekly working time under regulations 4 and 5 of the Working Time Regulations 1998. The contract also states that the respondent considers that the claimant is a worker whose time is not measured in accordance with regulation 20 of the Working Time Regulations 1998. The claimant states that the control the respondent had over the work she did and the hours she worked was such that she should not be an "unmeasured worker". I am not required to determine this issue.
10. The claimant's account of her working environment, set out in her claim, was that:

- 10.1 The respondent was not a large organisation. When she joined, there were only 7 full time employees: 2 senior ones (the CEO, Taufi Ryder, and her son Dillon Shokar) and 5 junior employees including herself. The claimant reported to Mr Shokar.
- 10.2 The claimant worked from home; the management was based in the US.
- 10.3 While the claimant was employed there, a further principal, Jane Kidd joined the company.
- 10.4 Between October 2022 and March 2023, the other 4 junior members gradually resigned. The claimant states that, each time a full-time member of the team left the firm they were not replaced, and their workload was simply distributed among the remaining employees.
- 10.5 The claimant states that, from the outset, she was very concerned about the long hours she was expected to work, and that this would not be good for the mental health of the employees, and so she raised her concerns with her employers. Her perception was that, far from acting on her concerns, her workload was simply increased as a result, and she was told that the long hours she was working were standard in the industry.
- 10.6 The claimant gave a number of examples of how she felt that this was a high pressure environment. I set out a non-exhaustive list:
 - 10.6.1 For example, in late October 2022, the claimant states that she and other colleagues had a meeting in London in a coworking space booked by the respondent, and someone with whom they worked was clearly ill. The claimant and one of her colleagues caught flu, but the claimant was only able to take 1 day off work, not enough to recover.
 - 10.6.2 The claimant again raised concerns about the long hours in December 2022 and January 2023, after 3 of her colleagues had resigned; she was told that more junior staff would be employed, but this did not happen.
 - 10.6.3 The claimant states that there were several occasions in February 2023 when she was subject to aggressive and threatening behaviour, and on one occasion she was told not to complain, as this could affect her career progression, either with the respondent or elsewhere. Nonetheless, the claimant did again raise concerns about work-life balance at the respondent in late February.
 - 10.6.4 During March 2023, the claimant again raised concerns about work-life balance, because she was told that the hours that she was expected to work were not sustainable. She felt that, as a result, she was put under additional pressure.

- 10.6.5 During February or March 2023, the claimant and colleagues were required to install “Slack” on their phones, so that Mr Shokar could contact them late in the evening or at night with additional work requests.
- 10.6.6 On 1 March 2023, Mr Shokar threatened the claimant by saying, “If I can give you any advice, it would be to avoid complaining to management. This could have detrimental effects on your career and progression in the firm.”
- 10.6.7 From early March 2023, Mr Shokar started cancelling meetings and reducing guidance given to the claimant.
- 10.6.8 On 15-16 March 2023, the claimant tested positive for covid and had a high fever. Nonetheless, she had a meeting with Mr Shokar and he still gave her additional work to do.
- 10.7 I should stress that, since this hearing is about whether the claimant has a disability, no findings are made in respect of the above examples; they are examples given by the claimant of how she states that the workplace was stressful.
- 10.8 During March and April 2023, the claimant states that she started experiencing digestive problems and rectal bleeding. She went to her GP, who suggested that this could be work-related stress or otherwise bowel cancer. After further investigation, cancer was ruled out.
- 10.9 As more colleagues left, the claimant’s workload increased and she found herself with very little time to do anything other than work, eat and sleep.
- 10.10 The claimant was invited to a performance review meeting on 26 April 2023. She had not previously had any performance reviews and, prior to this, no development plan or written goals or objectives. The meeting was to consist of the claimant, Ms Ryder, and Gary Dickinson, an external HR consultant. The claimant asked Ms Ryder before the meeting whether she needed to prepare for it and was told that she did not.
- 10.11 At the meeting, a number of concerns were raised about the claimant’s performance. This was a shock to her, as none of these had been raised previously; conversely, she had been praised for her performance; she gave examples. During this meeting, the claimant felt that Ms Ryder was very hostile towards her.
- 10.12 Within 1½ days of the meeting, the claimant suffered a panic attack. She states that this was because Mr Shokar again changed instructions on a tight deadline, causing the claimant to have to redo her last few days of work. After the panic attack, the claimant called in sick for the rest of the afternoon.

- 10.13 On 2 May 2023, the claimant met her GP and was signed off work due to her panic attack. She could barely get out of bed, and the GP prescribed antidepressants. She was also put on the waiting list for psychotherapy on the NHS.
- 10.14 Following further meetings with her GP, the claimant was signed off sick on 15 May and 14 June 2023. She told the respondent of this, and also that she would seek private psychotherapy if the NHS took too long to provide this. She began to write a grievance letter, but states that she struggled to do this because of her mental health.
- 10.15 While the claimant was off sick, Ms Ryder invited her to a meeting to follow up her performance review, on 18 May 2023, which was the day the claimant was initially due to come back to work. Ms Ryder acknowledged the second sick note and said the meeting would be held after the claimant returned to work.
- 10.16 On 19 or 20 June 2023, the claimant received a letter dismissing her from her employment. The reasons given were time management, attention to detail, and critical engagement; Ms Ryder also stated that, because the claimant had been ill, no follow up meeting had been possible. The claimant states that, on 20 June, after reading the dismissal letter, she had another panic attack.
- 10.17 The claimant thereafter edited her grievance letter and converted it to an appeal letter, which she sent to the respondent on 23 June 2023.
11. In response to the claim:
- 11.1 the respondent broadly accepts that the claimant worked long hours, but states that this was normal for the industry. It denies that the claimant raised concerns about excessive working hours or her work-life balance, or that the claimant's working hours increased as a result of other employees leaving. It further states that the hours worked by the claimant in particular were not forced upon her by the respondent but were as a result of her inability to manage her time, despite guidance and support being offered.
- 11.2 The respondent asserts that, during the claimant's employment, a number of performance issues arose, which were raised with the claimant by Mr Shokar and Ms Taufi, both informally and at weekly one to one meetings. The grounds of resistance identify a number of occasions on which the respondent states that the claimant carried out substandard work.
- 11.3 The respondent gives a list of 10 different performance concerns that were raised by the claimant at her performance review on 26 April 2023. It states that, at the end of the meeting, the claimant was informed that a failure to improve to the level required could result in her dismissal.

12. I should stress that, since this hearing is about whether the claimant has a disability, no findings are made in respect of the claims and responses above; they are examples given by the claimant of how she states that the workplace was stressful and the respondent's response to this.
13. What is clear from the description is that the claimant found that working for the respondent was a stressful and high pressure working environment and that, as a result of this, she became stressed and was ultimately diagnosed with depression, anxiety or panic and post-traumatic stress disorder.
14. In her impact statement, the claimant gave some history of her previous mental health difficulties, which she elaborated on in cross examination.
15. She explained that she had suffered from depression in the past; on each occasion there was a trigger event that led to the depression.
16. The first occasion the claimant had depression was while she was in Germany in 2011, after suffering from pyelonephritis, a kidney disease. With the help of medication, this lasted only a few months.
17. In November 2016, the claimant suffered a short episode of mental health decline while being treated for pyelonephritis at Addenbrooke's Hospital. She did not require medication at the time.
18. In April 2021, the claimant was diagnosed with mixed depression and anxiety. She struggled with anxiety and low mood for a few months before going to the doctor. She was prescribed Sertraline and Propranolol for a period of 5 months. That episode of depression and anxiety lasted for a period of around 7 months. Around September 2021, she began to feel better. Her GP records indicate, and the claimant confirmed in evidence, that the trigger for this episode of depression was that her boyfriend had been dating someone else.
19. In addition to the drugs, the claimant saw a psychologist, Mr Ledezma, once a week from September 2020 until November 2022. After that, the frequency of the sessions decreased, and the claimant's last session with Mr Ledezma was on 22 June 2023.
20. He records that, "In her final sessions, the [claimant] exhibited relapses of depressive symptoms that significantly hindered her daily functioning. Despite significant progress in her emotional issues, she remained susceptible to certain events triggering depressive symptoms."
21. In February 2023, the claimant was concerned about the deterioration of her mental health and began to see a psychotherapist based in Mexico, Mr Salazar. His report is dated 22 March 2024.
22. Mr Salazar reports that the reason for the consultation was that "[The claimant] is anxious, withdrawn, sad, unwilling to carry out her usual tasks and to get out of bed, giving rise to a potential emotional inability to perform

her tasks.” It is not clear whether this relates to the first consultation in February 2023 or is a generic description of how he found the claimant.

23. The claimant states that, following her panic attack on 28 April 2023, she could barely get out of bed and could not manage day to day tasks. Fortunately, she was able to arrange a consultation with her GP.

24. Mr Salazar’s report gives as his opinion of the claimant’s mental health:

“Aracely Castillo Venzor is in a potential situation of emotional and psychological disability given her background and the precipitating factors that she presented in her previous job, as she does not have permanent instrumental and emotional support. However, her emotional condition represents a warning sign that may expose her to a situation of greater vulnerability if she is not being cared for by an interdisciplinary team such as psychology and psychiatry.”

25. In late May 2023, the claimant’s parents arranged for her to travel to Mexico to see a psychologist there, Ms Hernandez. Her report is dated 21 April 2024. It records that she first saw the claimant on 29 May 2023, in Chihuahua, Mexico. On 1 June 2023, she diagnosed the claimant with:

25.1 Severe depression

25.2 Extreme anxiety or panic (highest level)

25.3 Suicidal thoughts 2

25.4 Low self-esteem

25.5 Level 8 to 10 on measurement of intensity of emotional pain (highest level)

25.6 Post-traumatic stress syndrome because of work

26. By 12 June 2023, she reported that the claimant was feeling a bit better and more confident, but worried about her responsibilities.

27. On 8 January 2024, Ms Hernandez reported, “Seems to have improved. Is a bit more relaxed, focussed, looks better, but is still being threatened at work, and there are still traces of post-traumatic stress syndrome” and on 15 January 2024:

“Same tests applied to check on her progress. Diagnosis:

Medium level depression

Severe anxiety

Suicidal thoughts 1

Average self-esteem

Level 2 to 6 on measurement of intensity of emotional pain (highest level)

The post-traumatic stress syndrome has decreased but could continue if she has to work in a hostile environment.

Recommendations-

Continue with suggested measures, as well as dialogue and negotiating with bosses and coming to some sort of agreement. If it is not possible to keep a distance, do so as much as possible.

Open appointment with me when possible.”

Law

28. The definition of disability is given in section 6(1) of the Equality Act 2010, and reads as follows:

- (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.

29. Schedule 1 to the Act sets out the meaning of “Long-term”. Paragraph 2 of Schedule 1 provides, so far as relevant:

- (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.

30. Paragraph 5 relates to medical treatment and provides, so far as relevant:

- (1) 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—
 - (a) measures are being taken to treat or correct it, and
 - (b) but for that, it would be likely to have that effect.

(2) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

31. Further guidance is given in the statutory guidance given by the Secretary of State in 2011. Paragraph B7 relates to behaviour and reads:

“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.”

32. Paragraph B11 relates to environment and reads:

“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. (See also paragraphs C5 to C8, meaning of 'long-term' (recurring or fluctuating effects).)”

33. Paragraphs Section C gives additional guidance as to the interpretation of “long term”. In particular:

33.1 Paragraph C3 states that 'likely', should be interpreted as meaning that it could well happen.

33.2 Paragraph C4 reads:

“In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).”

33.3 Paragraphs C5 to C11 comment on recurring or fluctuating effects and the likelihood of recurrence. The relevant sections are:

33.4 C5:

“The Act states that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the

purposes of the Act, in respect of the meaning of 'long-term' (Sch 1, Para 2(2), see also paragraphs C3 to C4 (meaning of likely).)"

33.5 C6 gives examples of recurring events that are and are not long term. It states:

"For example, a person with rheumatoid arthritis may experience substantial adverse effects for a few weeks after the first occurrence and then have a period of remission. See also example at paragraph B11. If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term. Other impairments with effects which can recur beyond 12 months, or where effects can be sporadic, include Ménière's Disease and epilepsy as well as mental health conditions such as schizophrenia, bipolar affective disorder, and certain types of depression, though this is not an exhaustive list. Some impairments with recurring or fluctuating effects may be less obvious in their impact on the individual concerned than is the case with other impairments where the effects are more constant.

A young man has bipolar affective disorder, a recurring form of depression. The first episode occurred in months one and two of a 13-month period. The second episode took place in month 13. This man will satisfy the requirements of the definition in respect of the meaning of long-term, because the adverse effects have recurred beyond 12 months after the first occurrence and are therefore treated as having continued for the whole period (in this case, a period of 13 months).

In contrast, a woman has two discrete episodes of depression within a ten-month period. In month one she loses her job and has a period of depression lasting six weeks. In month nine she experiences a bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than 12 months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression which is likely to recur beyond the 12-month period.

However, if there was evidence to show that the two episodes did arise from an underlying condition of depression, the effects of which are likely to recur beyond the 12-month period, she would satisfy the long term requirement."

33.6 C9:

"Likelihood of recurrence should be considered taking all the circumstances of the case into account. This should include what the person could reasonably be expected to do to prevent the recurrence. For example, the person might reasonably be expected to take action which prevents the impairment from having such effects (e.g. avoiding substances to which he or she is allergic). This may be unreasonably difficult with some substances."

33.7 C11:

"If medical or other treatment is likely to permanently cure a condition and therefore remove the impairment, so that recurrence of its effects would then be unlikely even if there were no further treatment, this should be taken into consideration when looking at the likelihood of recurrence of those effects.

However, if the treatment simply delays or prevents a recurrence, and a recurrence would be likely if the treatment stopped, as is the case with most medication, then the treatment is to be ignored and the effect is to be regarded as likely to recur.”

34. In the case of Richmond Adult Community College v McDougall [2008] IRLR 227 (CA), Pill LJ said at paragraph 24:

“In my judgment, it is on the basis of evidence as to circumstances prevailing at the time of that decision that the employment tribunal should make its judgment as to whether unlawful discrimination by the employer has been established. The central purpose of the 1995 Act is to prevent discriminatory decisions and to provide sanctions if such decisions are made. Whether an employer has committed such a wrong must, in my judgment, be judged on the basis of the evidence available at the time of the decision complained of. In reaching that conclusion, I have had regard to the Guidance.”

35. This was confirmed in the case of All Answers Limited v W [2021] EWCA Civ 606, in which Lewis LJ held, at paragraph 26:

“The question, therefore, is whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months.”

36. The effect of these two cases is that, with the environment as with the medical evidence, no account should be taken of facts and circumstances after the alleged discriminatory act. In Morris v Lauren Richards Limited [2023] EAT 19, Gavin Mansfield KC allowed an appeal from the employment tribunal. The tribunal had held:

“The evidence did not suggest that the condition was likely to last 12 months, applying the test of whether this was something that “could well happen”. There was nothing to suggest that the Claimant’s condition at this time was severe or was for some other reason likely to persist and become long-term. The cause of the Claimant’s anxiety was centred on her issues with her workplace and the demands of her job, and her anxiety had at the relevant time lasted for a few months. There was nothing to suggest that her anxiety was likely to persist once she left the respondent and its work environment. The claimant was not someone with a pre-existing history of mental-health issues that indicated a particular vulnerability. On the contrary, the only relevant medical history indicated that when the claimant had previously experienced distressful life event (her premature menopause diagnosis) she had recovered well with a short period of counselling. For that reason I considered there was nothing to indicate her condition in 2019 was likely to take a different course or that her anxiety was likely to persist or become a long-term or recurrent condition.”

37. The EAT was referred to a previous decision of the EAT in Parnaby v Leicester City Council UKEAT/0025/19/BA, a decision of the President on 19 July 2019, unreported. Gavin Mansfield KC cited from the headnote:

“The ET’s finding that the effect of the Claimant’s impairment was not likely to last at least 12 months or to recur was informed by the fact that the Claimant had been dismissed, which had removed the cause of the impairment, the work-related stress. The decision to dismiss, was however, one of the matters of which the Claimant complained as an act of disability discrimination. The ET had needed to consider the question of likelihood, whether it could well happen that the effect would last at least 12 months or recur, at the time at which the relevant decisions were being taken, which was prior to the implementation of the decision to dismiss. This error of approach meant the ET’s conclusion could not stand, and the question of whether the Claimant’s impairment was “long-term” for the purposes of Schedule 1 of the EqA would be remitted to a differently constituted ET for re-hearing.”

38. The question of recurrence was addressed in Swift v Chief Constable of Wiltshire Constabulary [2004] IRLR 540 EAT. The EAT found that the tribunal must consider, not whether an underlying illness will recur, but whether the impairment arising out of that illness is likely to recur.
39. In Sullivan v Bury Street Capital Limited [2022] IRLR 159 CA, the Court of Appeal looked at the likelihood of recurrence of substantial adverse effects (SAE). The court held (taking hr headnote):

“The tribunal directed itself correctly as to the legal test of ‘likely’, by reference to the decision in Boyle. It was well aware that, in the present context, the word ‘likely’ meant ‘could well happen’, and did not mean that something was more likely to happen than not. With regard to recurrence, although in many instances the fact that a SAE recurred episodically might strongly suggest that a further episode was something that ‘could well happen’, that would not always be the case. Where, as here, the SAE was (in the judgment of the tribunal) triggered by a particular event that was itself unlikely to continue or to recur, then it was open to the tribunal to find that it was not likely to recur.”

40. Finally, I consider the question of treatment. As noted above, Paragraph 5 of Schedule 1 EqA provides that 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 measures are being taken to treat or correct it and, but for that, it would be likely to have that effect.
41. The effect of this is that, if treatment is ongoing, one must look for the deduced effect of the impairment without the treatment.
42. However, if the treatment has concluded and has had a permanent effect, the effect of the treatment should be taken into account. This is confirmed in Abadeh v British Telecommunications plc [2001] ICR 156 (EAT); the headnote reads:

“in accordance with paragraph 6 of Schedule 1 to the Disability Discrimination Act 1995, where treatment had concluded the effects of that treatment should be taken into account in assessing disability, but, where treatment was continuing and the final outcome of such treatment could not be determined or if it was known that removal of the medical treatment would result in a worsened condition, the treatment had to be disregarded under paragraph 6; that, where the

effect of the continuing treatment was to create a permanent rather than a temporary improvement, that improvement should be taken into account”

43. The EAT went on to give two examples. The first is where physiotherapy has resulted in an improvement in a person’s movement so that that person no longer needs a stick to aid walking. Where the physiotherapy is continuing, the permanent improvement already achieved must be taken into account. However, the residual problems requiring the continuing treatment must be taken into consideration in assessing disability without regard to the continuing treatment if the outcome of that treatment is not known. If, on the other hand, the medical prognosis is that the continuing treatment will resolve the residual problems, that recovery may be taken into account. The second example given by the EAT involves the treatment of depression by medication. The EAT said that if the final effects of the medication are not known, or there is a substantial risk of a relapse when the treatment ceases, the effects of the medication are to be disregarded.

Discussion and conclusions

44. In his submissions, Mr Probert realistically conceded that the claimant’s condition after 28 April was such that she was suffered an impairment that had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities. The sole issue that therefore arises for me to determine was whether it was a long-term effect.
45. As discussed above, to be long term an effect must either have already lasted for 12 months, or be likely to last for 12 months.
46. Mr Probert was critical of what he said was the contrast between the claimant’s particulars of claim, in which she states that her my “mental health disability [...] was actually caused by the company”, and her disability impact statement, in which she gave evidence of a history of previous depressive episodes. He also criticised the fact that the claimant had not provided GP records for any period before January 2020, whereas she had given evidence of episodes of depression going back to 2011.
47. The claimant explained these discrepancies by explaining that English was, in fact, her third language (after Spanish and German) so she might not always express herself as clearly as she might; and also that, at the time of collecting the evidence, she was still suffering from depression and had no legal advice, so did not realise that the earlier GP records might be relevant.
48. I have to consider all the evidence that is before me (but without looking at events after the date of discrimination). Taking these into account:
 - 48.1 The 2 instances of depression in 2011 and 2016 appear to have been relatively short, self-contained events.
 - 48.2 The instance of depression in about 2011 was longer lasting, but its worst effects were limited to about 6 months; the claimant was, however, still received psychotherapy in respect of this when she

started her work with the claimant. However, by the time she started work with the respondent, she was only receiving approximately one session per month, and appeared to have no difficulty with ordinary day to day activities; in the absence of any further immediate triggers, this episode of depression could reasonable be said to have ended.

49. Although there are, therefore, several previous instances of depression, there is no diagnosis from before 2023 that gives any underlying cause, such as the example, at paragraph C6 of the Secretary of State's Guidance, of a young man with bipolar disorder. The claimant appears to be perhaps somewhat susceptible to depression: but that is not, in itself, a diagnosis of an underlying condition that gives rise to the possibility of recurring symptoms.
50. In that sense, there is no inconsistency in the claimant's evidence; she had previously had instances of depression, but what triggered this one was the stressful workplace environment.
51. Accordingly, I do not find that the claimant's depression was a long-term effect by virtue of having lasted for 12 months. The claimant stated in evidence that, but for the therapy she started in February 2023, she might well have had a breakdown some weeks earlier; but there is no real medical evidence to support this and so I find that the impairment started when she had her breakdown on 28 April 2023. Before that she was managing to carry out her day to day activities and, in particular, she was carrying out her work effectively.
52. I turn to the question of whether it was likely to last 12 months.
53. Mr Probert argued in his submissions that the workplace was the cause of the claimant's stress, and that, once she had left the workplace after June 2023, the cause of the stress was removed and she was therefore likely to be able to recover, so the impairment was unlikely to last for more than 12 months.
54. For the reasons given above, this is the wrong approach. In accordance with Morris, just as I cannot take into account evidence of how long her impairment actually did last, at the time of the decision to dismiss her (the alleged discrimination) I cannot take into account the effects of the decision itself, and must assume that the claimant remained employed by the respondent.
55. I also note that the claimant was concerned that her employers would, to use her own words, she was told that "complaining [...] could harm my progression in the company and my career opportunities in the future elsewhere. He went on to say that complaining could affect my reputation."
56. The respondent denies that these words were said and I have not heard evidence from the respondent, I make no finding about whether this was said. I note, however, that Ms Hernandez reported that, on 5 June 2023, the claimant told her that "the boss was verbally and nonverbally violent,

threatening to ruin her career if she complained or made any suggestions for improvements.” While I make no finding about what was actually said by anyone at the respondent to the claimant, I do find that the claimant was concerned about repercussions to her arising from her complaint, especially if she remained working for the respondent.

57. I also note that both Mr Salazar and Ms Hernandez were recommending continued treatment in 2024, so I cannot treat the problem as wholly resolved in accordance with Abadeh, especially in the light of Ms Hernandez’ comment in January 2024 that “The post-traumatic stress syndrome has decreased but could continue if she has to work in a hostile environment”. I appreciate that this opinion is given after June 2023 but it is considered as indicative of the likely situation if the claimant had to continue to work for the respondent, rather than as evidence of what actually happened after June 2023.
58. The claimant’s own evidence was that, absent treatment, she would have not have recovered to any extent and might even have taken her own life, given her suicide ideation referred to in the medical reports. I accept that I must treat this evidence with caution as it is subjective and I have no report of how the claimant would have been without treatment, but it is clear that, absent the treatment, the claimant would at least have been very slow to recover.
59. Accordingly, I find that, as at June 2023, if the claimant had continued to be employed by the respondent, and having regard to the deterioration the claimant’s mental health while working for the respondent, her impairment of depression, anxiety and PTSD could well continue for at least 12 months, and, if she had recovered sufficiently to return to work, could well recur within that time period.
60. On that basis, I find that the claimant was disabled from 28 April 2023 by virtue of having severe depression, extreme anxiety or panic, low self-esteem and post-traumatic stress syndrome, as diagnosed by Ms Hernandez.

Employment Judge Talbot-Ponsonby

Date: ...15 July 2024.....

Sent to the parties on:
15 July 2024

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For the Tribunal Office

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