



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON CENTRAL  
**BEFORE:** EMPLOYMENT JUDGE ELLIOTT

**BETWEEN:**

Mr P Whittaker  
Claimant

AND

Dogwoof Ltd  
Respondent

**ON:** 25 June 2024  
**Appearances:**  
**For the Claimant:** In person  
**For the Respondent:** Ms I Ferber, KC

## **WRITTEN REASONS**

1. This decision was given orally on 25 June 2024. The claimant requested written reasons.
2. This was the fifth preliminary hearing in these proceedings. It was listed at a Case Management Hearing on 2 April 2024 by Employment Judge McGrade and confirmed at a hearing on 21 May 2024 by Employment Judge Plowright. It was to deal with disability status and any changes to the list of issues in the light of the outcome of this hearing.
3. The claimant applied for a postponement of this hearing on health grounds. The application was refused on 17 June 2024 by Employment Judge J Brown for the reasons set out in the tribunal's letter to the parties of that date.
4. The claimant travelled from Singapore to the UK in order to give his evidence at this video hearing.

### **This remote hearing**

5. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under Rule 46. The tribunal considered it as just and equitable to conduct the hearing in this way.

6. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended.
7. The parties able to hear what the tribunal heard and see the claimant who was the only witness as seen by the tribunal. From a technical perspective, there were no difficulties.
8. The participants were told that it was an offence to record the proceedings.
9. The tribunal ensured that the only witness, the claimant, had access to the relevant written materials which were unmarked. I was satisfied that the claimant was not being coached or assisted by any unseen third party while giving his evidence.

### **The issues**

10. The issue for this hearing was whether the claimant was a disabled person at the material time with the conditions of stress, mixed anxiety disorder and depression.
11. The material time, as set out in the list of issues with the Order made on 2 April 2024, was from 1 June 2020 to 19 January 2023.

### **Witnesses and documents**

12. The tribunal heard from the claimant
13. There was an electronic bundle of documents of 385 pages from the respondent.
14. I received on the morning of the hearing a further 42 pages from the claimant.
15. I had written submissions from the claimant to which he spoke and oral submissions from the respondent, plus five authorities. The claimant cited a number of authorities, not all of which were relevant to the point in issue. For example, some of the claimant's authorities related to the duty to make reasonable adjustments, or time limitation which was not in issue for this hearing. All relevant authorities cited by both sides and submissions made were fully considered, whether or not expressly referred to below.

### **Findings of fact**

16. On 2 March 2021 the claimant began receiving treatment at Raffles Hospital in Singapore for mixed anxiety and depressive disorder. The claimant spends the majority of his time in Singapore. He spends a small amount of time in the UK and has consulted a GP in the UK in relation to

the symptoms described in his disability impact statement.

17. The conditions relied upon by the claimant were stress, mixed anxiety disorder and depression.
18. It is important to say at the outset that in submissions the respondent said that it was not saying that the claimant did not suffer from the symptoms he relied upon. I took this as the respondent's acceptance that the claimant suffered from the symptoms he described in his disability impact statement. Having heard from the claimant in evidence and taking account of the respondent's position, I accept and find that the claimant suffered from the symptoms he described.
19. I find based on the evidence in his disability impact statement that the claimant experienced symptoms of anxiety, sometimes severe symptoms. He also experienced depression. This affected his ability to concentrate and his ability to work. He has had anxiety and panic attacks. At times he became socially withdrawn, sometimes to the extent that he stayed in bed for much of the day. He said this was especially between August 2021 and October 2021 and up to and including June 2022.
20. Whereas prior to June 2020 in the course of his work he might have attended 12 film festivals in a year, he only attended one such festival after that date. He experienced poor sleep and fatigue and could no longer engage in regular exercise. Personal care and grooming became "*increasingly burdensome*".
21. The claimant's evidence was that he had been "*battling these disabilities since 26 May 2020, with symptoms worsening over time...*"
22. I also find based on the above that at certain points, the claimant's symptoms did have an adverse effect on his ability to carry out normal day to day activities, particularly during August 2021 to June 2022 when he withdrew from social interaction.

#### The medical evidence

23. The medical evidence consisted in the main of 3 reports from Dr Kua, a consultant psychiatrist at Raffles Hospital, two of which postdated the material period of 1 June 2020 to 19 January 2023, invoices for medication and GP fit notes from the UK.
24. From 2 March 2021 the claimant has been under the care of Dr Kua, for mixed anxiety and depressive disorder. The claimant has had time off work but acknowledged that in 2021 this was also during Covid restrictions when offices were closed.
25. On 5 August 2021 the claimant was admitted to hospital with chest pains and was off sick. On 18 and 19 August 2021 he saw both a cardiologist

and a consultant psychiatrist. He was placed on sick leave until 3 September 2021.

26. Dr Kua provided medical reports on 15 December 2021, 27 April 2023 and 30 June 2023.
27. The medical report of 15 December 2021 (page 200) was short, running to 6 substantive paragraphs. It said that the claimant had been under Dr Kua's care since 2 March 2021 for mixed anxiety and depressive disorder and that he had been on "*medical leave for most of the time since Mar 2021*". The report said that the claimant had reported having intense panic attacks while in Court in the UK. Dr Kua concluded that as at 15 December 2021 the claimant was not fit to attend court to defend himself as his mental state was not stable and that this was likely to last for 3-4 weeks.
28. This report of 15 December 2021 also said that the claimant was undergoing a lot of stress at work, as well as legal matters relating to his divorce and other work-related issues (report paragraph 2, bundle page 200). The claimant accepted that the doctor wrote this based on information he had provided in the consultation. Paragraphs 4, 5 and 6 are the relevant paragraphs which said:

*4. Since his last consultation with me on 6 Nov 2021, I have reviewed him again on 3 Dec 2021. He reported having a few intense panic attacks while in court in the UK and he was also treated for Transient Ischaemic Attack (TIA) while he was in court. Despite being on the maximum dose of his antidepressant Lexapro (Escitalopram), he was still experiencing intense anxiety and depressive symptoms. He added additional medication Lexotan (Bromazepam) for his stress and anxiety symptoms and Stilnox (Zolpidem) for his sleep problem. I have extended his medical leave until 21 Jan 2022.*

*5. He has also continued to see his counsellor for therapy and has been referred to a [sic] neurologist (appointment on 22 Dec 2021) for further evaluation of his TIA.*

*6. At this moment, Mr. Whittaker is not fit to attend court to defend himself as his mental state is not stable. He is not able to concentrate to prepare for his court hearing. He is also not able to prepare written statement or to deal with matters relate to the court hearing. This is likely to last for the next 3-4 weeks. Doing so will likely cause his mental health to deteriorate further as evident by his recent court appearance in the UK. These 3-4 weeks will allow him to rest completely without the stress of court attendance or its preparation, and will also give the neurologist sufficient time to evaluate his neurological and brain status as he is currently being put on a blood thinner medication as a preventative measure against further cerebrovascular event.*

29. The report dated 27 April 2023 (page 225) was even shorter at about 11 lines. This report also referred to the claimant undergoing stress at work “*and other matters*” but that he had become more stable with treatment. The claimant said that the “*other matters*” were his difficult financial situation which increased his stress and anxiety. The claimant also had proceedings ongoing in the Family Court.
30. I set out Dr Kua’s report of 30 June 2023 (page 230-231) in its entirety:

*“Mr. Whittaker has been under my care since 2 Mar 2021 for Anxiety and Depressive Disorder.*

*He was previously undergoing a lot of stress from divorce matters as well as the legal matters related to work related issues.*

*He was started on medications Lexapro in March 2021 and it was titrated up to the maximum dose as he was experiencing intense anxiety and depressive symptoms. In addition, he was also prescribed the benzodiazepine Bromazepam for anxiety and stress symptoms. He was on medical leave for most of the time Apr 2021 to Jan 2022. In Jun 2022, his condition worsened and he was given 16 days of medical leave. He also needed sleeping pill Zolpidem as his sleep was badly affected.*

*Since Mar 2021, Mr. Whittaker has also been seeing regularly by our counsellor for therapy to deal with his mental distress.*

*In 2021, Mr. Whittaker suffered from intense panic attacks while attending his court hearing in the UK. He was later also treated for Transient Ischaemic Attack (TIA) while he was in UK. It was a very stressful and traumatic experience for him.*

*In the recent 2-3 months, he has experienced a resurgence of stress and anxiety again after he received a long list of emails with a lot legal documents to digest from the lawyer of the opposing party. He felt stressed as he is representing himself and hence does not have his own lawyer to advise him. He could not focus, and felt anxious all the time. His regular routine was disrupted and he started to sleep poorly.*

*I reviewed him today at my clinic and found him to be highly anxious and distressed.*

*At times, he could not remember details or appeared to be distractible. I have advised him to continue with his medications and also take some time to rest. I have given him medical leave from today till 21 Jul 2023.*

*Based on his current mental state, he is fit to attend court hearing but given his vulnerability in the past to develop significant anxiety attacks when under stress in court, I hope the court will allow him to rest or take his medication when needed during the court proceeding.”*

31. The report referred to a resurgence of stress and anxiety through legal proceedings which the claimant said was his Employment Tribunal litigation and litigation relating to his shareholding. He was also going through proceedings in the Family Court, referred to by Dr Kua as "*divorce matters*". The claimant said that these proceedings concerned the financial side as he was divorced in 2019.

#### The disability impact statement

32. The claimant's disability impact statement ran to 62 paragraphs. Much of this statement dealt with the disputes in which the claimant was involved during the material time from June 2020 to January 2023. This included his Family Court proceedings, the shareholding and ownership of the respondent company which he founded, his suspension - the validity of which he disputes, grievance and disciplinary proceedings, including grievances both from himself and his ex-wife, the CEO of the respondent, his dismissal and his appeal against dismissal which was unsuccessful.
33. The disability impact statement also covered his financial situation, difficulties in obtaining legal advice, accommodation issues and the impact upon him of the events at work, his dismissal, including reputational issues, his complaints regarding the dismissal and the process.

#### Medication

34. The claimant took a variety of medication including an antidepressant and medication for sleep problems as well as seeing a psychotherapist for counselling. This included Lexotan, Bromazepam, Lexapro, Escitalopram, Citalopram, Xanax and sleeping pills. I did not have evidence to help with what each and every medication addressed.
35. The bundle contained invoices for medication and treatment, including consultations and counselling, received by the claimant at the private hospital in Singapore.
36. At page 195 there was a fit note issued by a GP in the UK, dated 30 November 2021. This stated that the claimant had the condition of anxiety disorder. Subsequent UK fit notes referred to anxiety disorder and stated that the claimant was not fit for work. I saw a further fit note at page 199 dated 10 December 2021 signing the claimant as unfit for work for 3 weeks.
37. The claimant said that while the medication helps with his symptoms, it also causes drowsiness and lethargy, which compromises his daily functioning. I did not have any evidence to assist with the question of how the claimant might be without the effect of this medication.

38. The claimant had not disclosed his GP records in the UK. This was despite the Order made by Employment Judge McGrade on 2 April 2024. Paragraph 9 (bundle page 104) made the standard order for the claimant to disclose all his GP medical notes and specialist reports relevant to the issue of whether he was disabled at the material time. There had been no disclosure of the UK medical records underlying the fit notes.

Adverse life events

39. The claimant says that his condition was not a reaction to adverse life events but a chronic condition requiring ongoing treatment and support.
40. The respondent said that the claimant was reacting to the adverse events going on in his life at the material time.
41. In April 2021 the claimant was involved in proceedings in the Family Court. Those proceedings had been ongoing since 2018. A hearing in April 2021 dealt with the finances. There was a hearing at the end of December 2021 and an appeal process. The claimant said that family proceedings were still ongoing as at the date of this hearing in June 2024 in terms of seeking to appeal.
42. At page 325 there was a Chronology prepared by the claimant. It showed amongst other things that from November 2019 to the end of August 2022 the claimant was involved in a dispute relating to the shareholding of the respondent company and his Directorship as well as these Employment Tribunal proceedings.
43. In June 2021 the claimant's ex-wife, the CEO of the respondent, raised a grievance against him raising a number of serious matters which he disputes. He was also issued with an Agenda for a Board meeting seeking to suspend him. There was a meeting that purported to suspend him on 9 June 2021 which the claimant does not accept as valid. I make no findings of fact in relation to this event.
44. In 2021 the claimant raised two grievances of his own. There was a grievance and a disciplinary process culminating in his dismissal by letter of 1 June 2022 (page 306). There was an appeal which was not upheld. The appeal outcome was at page 322, in a letter dated 19 January 2023.
45. Between June 2021 with the grievance and 19 January 2023 the claimant also had disputes with other officers of the respondent company regarding his shareholding and control of the company.
46. The claimant was also in difficult financial circumstances having been dismissed and had difficulties with his accommodation. In March 2022 he became homeless and was placed in interim accommodation by the local authority (page 210).
47. The claimant himself made the connection between the life events and

his symptoms. By way of example, he referred in submissions to “*retaliatory and targeted action*” against him by the respondent and his ex-wife which produced symptoms which were not normal. He said this was not a normal part of work stress, it was extreme and it significantly impacted his mental health and made it much worse. In submissions at paragraph 27 the claimant said: “*The health challenges I suffered include time in hospital, caused by the stress of everything the Company put me through*”. I find that this was a description in the clearest term of the claimant reacting to the events in which he was involved at the material time.

#### The condition

48. Based on the medical reports referred to above, I find that the claimant had the condition of mixed anxiety and depressive disorder. I find that he did not have the condition of “stress”. This was something he experienced but it was not a condition diagnosed by either the doctor in Singapore or the GP in the UK. The condition of mixed anxiety and depressive disorder existed between August 2021 to June 2022 and had a substantial adverse effect on his ability to carry out normal day to day activities during that period.
49. I did not have evidence as to the severity of the claimant’s condition during the remainder of the material period from June 2020 to August 2021 or from June 2022 to January 2023, so I am unable to find that the condition had a long-term adverse effect on his ability to carry out normal day to day activities. The burden of proof was on the claimant.

#### **The relevant law**

50. Section 6 of the Equality Act provides that a person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
51. The burden of proof is on the claimant to show that he is disabled in relation to each impairment relied upon.
52. Under section 212(1) of the Equality Act 2010 “substantial” means more than minor or trivial.
53. In *J v DLA Piper 2010 IRLR 936 (EAT)* the EAT drew a distinction between two states of affairs which can produce broadly similar symptoms, such as symptoms of low mood and anxiety. The first state of affairs is a mental condition which can be referred to as ‘clinical depression’ and an impairment under the Equality Act and the second is not a mental condition but a reaction to adverse circumstances, such as problems at work – which can be referred to as ‘adverse life events’.



54. **Herry v Dudley Metropolitan Council 2017 ICR 610 (EAT)** holds that stress through reaction to adverse circumstances is not in itself a mental impairment. It can become so, but lengthy absence from work is not of itself evidence of this.
55. In **Royal Bank of Scotland v Morris EAT/0436/10** the EAT dealt with the issue of the evidence needed in cases concerning mental impairments. Underhill J (as he then was) said at paragraph 63: *“in cases where the disability alleged takes the form of depression or a cognate mental impairment, the issues will often be too subtle to allow it [the tribunal] to make proper findings without expert assistance. It may be a pity that that is so, but it is inescapable given the real difficulties of assessing in the case of mental impairment issues such as likely duration, deduced effect and risk of recurrence which arise directly from the way the statute is drafted”*.
56. In **Igweike v TSB Bank plc EAT/0119/19** the EAT held that a natural reaction to adverse life events such as grief following bereavement does not necessarily involve an impairment in itself. The EAT said at paragraph 54, that *“bereavement may lead to ordinary symptoms of grief which do not bespeak any impairment.”* Such symptoms could lead to something more profound or which develops into an impairment in time and *“the application of a clinical label is neither necessary nor, if it has been applied, conclusive”*.
57. Under Schedule 1 paragraph 2(2) Equality Act, says that 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. The word *“likely”* does not mean *“probable”*; it means *“could well happen”* – **SCA Packaging Ltd v Boyle 2009 IRLR 746 (HL)**.
58. Under Schedule 1 paragraph 5, 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. Measures includes medical treatment and can include counselling with a qualified professional – **Kapadia v London Borough of Lambeth 2000 IRLR 699**.
59. Paragraph B9 of the Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability (the Guidance), says as follows:

*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.*

60. This guidance was issued under section 6(5) Equality Act and under Schedule 1 paragraph 12 the tribunal must take into account any aspect of this guidance which appears to it to be relevant.
61. In ***Goodwin v The Patent Office 1999 IRLR 4*** the EAT set out four questions to be considered:
- a. did the claimant have a mental and/or physical impairment?
  - b. did the impairment affect the claimant's ability to carry out normal day-to-day activities?
  - c. was the adverse condition substantial?
  - d. was the adverse condition long term?
62. In ***Paterson v Commissioner of Police of the Metropolis 2007 ICR 1522***, the EAT looked at the meaning of substantial adverse effect as described in the Guidance. At paragraph 27 the EAT said:

*"In our judgment paragraph A1 [now B1] is intending to say no more than that in the population at large there will be differences in such things as manual dexterity, ability to lift objects or to concentrate. 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.*

## Conclusions

63. I do not doubt that the claimant has experienced stress, anxiety and depression. The respondent did not dispute that the claimant had the symptoms that he relied upon and I have found as a fact that he did have those symptoms. At times they were severe. I have found that he did have the condition of mixed anxiety and depressive disorder diagnosed from March 2021 and through to January 2023 being the end of the material time.
64. I had to consider whether the claimant had a mental impairment or whether he had a reaction to adverse life events, bearing in mind that the burden of proof was upon him.
65. During the material time from 1 June 2020 to January 2023 the claimant experienced a number of serious adverse life circumstances as outlined above. This involved the financial side of divorce proceedings, at times having to represent himself, the stress of litigation, both family, employment litigation and related to the respondent company which he founded. There were grievance processes involving his own grievances and his ex-wife's grievance, a disciplinary process, a dismissal and an appeal against dismissal. He had problems with his accommodation. He was in the midst of those challenging life events throughout the material

time.

66. The medical evidence was brief in terms of the material time.
67. I had no evidence to assist me with the severity of his condition at the different points during the material time. I could see Dr Kua's report of 15 December 2021 that the claimant's condition was severe in December 2021 but was expected to improve after 3-4 weeks.
68. There is also no doubt, as I have found above, that the claimant was prescribed a significant amount of medication.
69. As I have found above, the claimant made a direct connection between what was happening with his life events and the deterioration of his symptoms. He was going through protracted divorce proceedings from 2018 and throughout the material time. He was going through disputes relating to the company which he founded and in which he was a shareholder and director. There was litigation in the Chancery Court related to the shareholding. He was subject to disciplinary and grievance proceedings and he experienced the loss of his job which in turn brought considerable financial difficulties.
70. The medical evidence before the tribunal did not address whether the claimant's condition and symptoms amounted an impairment or whether they were a reaction to these extremely challenging life events. The difficulty was that without medical evidence to assist on the point, I ran the risk of making my own medical assessment which I am unable to do. I am unable to say that the symptoms experienced by the claimant fell outwith the normal range of effects that one might expect from a cross section of the population faced with the same extremely challenging life events.
71. There was insufficient evidence for me to find that at some point in time, the claimant's reaction to these events, a link he clearly drew for himself, became something more than a reaction and became an impairment. The most detailed and report from Dr Kua from 15 December 2021 (at page 200) did not assist with whether the claimant had clinical symptoms or was reacting to life events and/or whether and if so when it became an impairment.
72. I accept that the claimant has experienced the symptoms since March 2021. I also find that the stresses affecting his life continued to 19 January 2023. I am unable to draw the distinction as to whether at some point between March 2021 and 19 January 2023 those symptoms became an impairment, because the evidence was not there to support such a finding. This included a lack of evidence in terms of the claimant's GP records in the UK which he had been ordered to disclose.
73. I also accept that the claimant was prescribed a variety of medications. I had no evidence as to how the claimant might be if he did not take that

medication, or whether the medication had at any point been prescribed as a precautionary measure, as was the so in the case of **Morris** (above, see paragraph 61). I did not have sufficient evidence to show the effect of the medication or the extent to which the stress reactions the claimant experienced were likely to recur. The claimant said they were likely to recur, but there was no medical evidence to support this.

74. As I have said above, I find that the claimant had the condition of mixed anxiety and depressive disorder from March 2021 through to January 2023. I did not have a sufficient evidential basis to make a finding that this amounted to a mental impairment from any particular point.
75. The medical evidence did not reveal if, or at what point, the claimant's symptoms moved from being a reaction to his extremely challenging life events to a mental health impairment. The period during which he withdrew from social interactions and when I find that his symptoms were most severe, from August 2021 to June 2022, was during the time when he was dealing with grievance and disciplinary processes and was dismissed. As I have found above, a considerable amount of the claimant's disability impact statement focused on the unfairness to him of those circumstances.
76. The link between the claimant's life events and his symptoms was clear, both from Dr Kua and the claimant himself.
77. The burden of proof is on the claimant. Based on the evidence before the tribunal, he has not satisfied that burden of showing that his symptoms amounted to a mental health impairment, as opposed to an adverse reaction to life events, to the extent necessary to satisfy the definition of section 6 Equality Act 2010. The claimant has not satisfied the tribunal that he was a disabled person at the material time.
78. The effect on the List of Issues for this case is that the issues concerning disability discrimination are removed from the List.

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**Employment Judge Elliott**  
**Date: 19 July 2024**

Judgment sent to the parties and entered in the Register on: 24 July 2024  
\_\_\_\_\_ for the Tribunal