



EMPLOYMENT TRIBUNALS

Claimant: Mr John Atherton

Respondent: 3DGBIRE Ltd

Heard at: Manchester (By Video)

On: 31 July 2024

Before: Employment Judge Buzzard

REPRESENTATION:

Claimant: In Person

Respondent: Ms Evans-Jarvis (Solicitor)

PRELIMINARY HEARING JUDGMENT

The claimant is found to have been a disabled person at all relevant times by reason of the impairments the claimant describes as Attention Deficit Hyperactivity Disorder, Autistic Spectrum Disorder and Generalised Anxiety Disorder.

Reasons

The Issues

1. The issue at this preliminary hearing was solely whether the claimant was a disabled person. The claimant refers to symptoms he defines as three different medical conditions as amounting to disabilities. These conditions are:
 - 1.1. Autistic Spectrum Disorder;
 - 1.2. Attention Deficit Hyperactivity Disorder; and
 - 1.3. Generalised Anxiety Disorder.

The Evidence

2. The claimant had prepared and disclosed to the respondent in advance of this hearing a statement in which he describes the impacts of the impairments he relies on.
3. In addition to this the parties both produced a bundle of documents for this hearing. These bundles mostly contained the same documents, but had different numbering. This was extremely unhelpful in this hearing. The parties were clearly reminded of the importance of appropriate cooperation to ensure that this is not repeated at any future hearing.

The Law

4. The definition of disability is set out in s6 of the Equality Act 2010. This states:

“6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”

5. This definition has several relevant elements:

5.1. The claimant must identify and prove that he has a physical or mental impairment at the relevant time. This does not require the claimant to establish that any particular medically recognised condition has been diagnosed;

5.2. The claimant must prove that the impairment had a substantial and adverse effect on the claimant's ability to carry out normal daily activities at the relevant time; and

5.3. That substantial adverse effect must be long term. This means it either has lasted for 12 months or was likely to last 12 months at the relevant time.

6. In this case the relevant time was not in dispute. It was from 9 May to 21 June 2023, the period in which the claimant was briefly employed by the respondent.

7. When assessing adverse effects, the mitigating impact of medication that is being taken has to be discounted. This may inevitably require some level of inference by the Employment Tribunal.

Findings

8. The claimant's impact statement describes significant impacts on his ability to undertake normal daily activities and the impacts of the impairments he relies on.

A number of these were repeated in oral evidence. In addition, the claimant's medical records recorded descriptions on these impacts the claimant had given to medical professionals at various times before and after the relevant period. Whilst not suggested to be a complete list (which is not necessary here) specific examples of these impacts given by the claimant both in his evidence and as recorded by medical professionals at various times includes:

- 8.1. Self-isolation, avoiding all social interaction by avoiding leaving his home;
 - 8.2. Eating alone, something the claimant stated he had done for many years to avoid having to cope with the sounds of others eating. This precludes the claimant from being able to eat in a public place, the claimant referring to having been unable to go for a meal out with family for many years;
 - 8.3. Self-loathing resulting in self-harm, including punching himself in the face, when he makes simple everyday mistakes;
 - 8.4. Becoming overwhelmed and finding himself 'shutting down' in reaction to situations including the limited social interactions he cannot avoid; and
 - 8.5. Panic attacks triggered by activities such as going to the shops if there are other people in the shop.
9. The respondent did not, in cross examination or submissions, seek to suggest that any part of this evidence was untrue or exaggerated. The respondent's focus appeared to be on the lack of a formal diagnosis of any underlying condition as a cause of the impacts described.
10. The records provided by the claimant are entirely consistent with his statement and evidence regarding the impacts on his ability to carry out normal daily activities.
11. Accordingly, it is found that the claimant was encountering the effects as he describes.
12. The suggested underlying conditions the claimant says were causing these effects are discussed in turn below.
13. *Generalised Anxiety Disorder:*
- 13.1. This was formally diagnosed in 2020. This diagnosis was not in dispute and was made by a psychiatrist. The claimant states he was prescribed Sertraline medication in December 2020 and has taken it continuously ever since.
 - 13.2. There was some focus on this medication in the hearing. The claimant's GP records do not appear to record when this started, but clearly show a repeat

prescription to that effect by late 2023 was in existence. There is however a record of an assessment related to the claimant's hearing in October 2021, that records that the claimant confirmed he was taking Sertraline at that time and it was helping with his anxiety symptoms which had '*eased since taking the medication*'.

13.3. On balance, the evidence suggests that the claimant was diagnosed with generalised anxiety disorder in 2020, and it has been controlled by medication since that date.

13.4. No evidence or argument was put forward by the respondent that the effects of the claimant's anxiety disorder would not be the same today as they were when he was assessed in 2020 if no medication was being taken. There does not appear to be any basis before this tribunal to believe that they would be any different.

14. Autistic Spectrum Disorder & Attention Deficit Hyperactivity Disorder

14.1. The claimant has no formal diagnosis in relation to either of these conditions. There is no dispute that the claimant has been referred for a diagnosis, and that his GP has supported a funding application for that purpose.

14.2. The effects that the claimant describes, and that the records suggest were the basis of that referral, were not challenged by the respondent.

15. *The respondent* referred in cross examination of the claimant and in submissions to harmful cannabis use by the claimant. The claimant freely admits that he has been using cannabis on a daily basis for over 15 years. The claimant's doctors describe this use as being '*harmful*'.

16. The respondent appeared to seek to infer that the effects that the claimant relies on could be a side effect of (i.e. the harm caused by) the claimant's long term and continuous use of cannabis. This may be correct, although no evidence to support such an inference was presented.

17. Regardless, even if the claimant's harmful use of cannabis has caused or contributed to any of the impairments the claimant refers to, that does not have any material impact on the determination of whether the claimant was a disabled person. There is no suggestion that the disability relied on is in fact addiction to cannabis, accordingly even if cannabis consumption has caused the claimant to develop problems those problems can still be found to be a disability.

Conclusions

18. The claimant has presented evidence that he has struggled, and still struggles, with various adverse impacts on his ability to carry out normal daily activities for

many years. Those adverse impacts were not materially challenged in this hearing, nor was the fact that the claimant has struggled with them for many years.

19. An underlying diagnosis of these impacts is not required. Its absence does not form a basis to conclude that the claimant is not disabled.
20. For these reasons, the claimant is found to have been a disabled person at all relevant times.
21. This finding should not be read as inferring that any specific individual behaviour of the claimant arose from his disability. In particular, whether falling asleep at work arose from the claimant's disability. Nor is it a finding that the respondent was either aware of these disabilities at the relevant time, or that the disability could cause any specific disadvantage to the claimant, in particular cause him to fall asleep at work. The claimant will need to prove these matters to the extent he intends to rely on them in support of the claims he makes.

Employment Judge Buzzard
31 July 2024

Judgment sent to the parties on:
6 August 2024
For the Tribunal:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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