



# THE EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Miss C Franco

v

Healthcare Central London  
Limited

Heard at: London Central

On: 22 May 2024

Before: Employment Judge Glennie

## Representation:

Claimant: In person

Respondent: Mr K Wilson (Counsel)

## JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the Claimant was not at the material time a disabled person within the meaning of the Equality Act 2010.

## REASONS

1. This preliminary hearing was listed by Employment Judge Youngs at a hearing on 10 January 2024. The case management orders, which were sent to the parties on 11 January 2024, identified the issue to be determined as that of whether the Claimant was at the material time a disabled person within the meaning of the Equality Act 2010. EJ Youngs recorded that the Claimant relied on mobility issues and anxiety and depression, and that the relevant period was from October 2022, when she had been involved in a road traffic accident, to 28 July 2023, which was the effective date of termination of her employment. In the present hearing reference was also made to mobility issues dating back to an earlier accident in November 2021, and to stress from May 2021 onwards. I found that the periods to be considered should commence from those earlier dates, rather than October 2022.
2. There was an agreed bundle of documents for this hearing and page numbers that follow refer to that bundle.

3. The Claimant had provided a witness statement by the due date under the case management orders. This largely addressed the claim generally rather than the issues about disability. At the commencement of the present hearing the Claimant applied for permission to rely on an e-mail dated 19 May 2024 at pages 39 to 40. The Claimant stated that she had realised that she had not included details of how her symptoms had an impact on her daily living. She accepted that this was her error and said that she had become overwhelmed by the task of gathering the information in her witness statement.
4. Mr. Wilson submitted that the case management order was clear about what was needed (which it was) but ultimately and very fairly did not make a formal objection to the use of the e-mail. I took the Claimant's e-mail as her witness statement about the impact of her conditions, and she confirmed this and her original witness statement on oath. The Claimant gave oral evidence in cross-examination and re-examination.
5. In the email the Claimant stated that she had chosen not to take medication for her mental health problems as she had witnessed negative outcomes in other people. She said that she experienced episodes lasting from 2-3 days to 3-4 weeks and identified symptoms such as persistent low mood and feeling drained, mood swings, difficulty trusting others or asking for help, and withdrawal and avoidance behaviours. In cross-examination the Claimant agreed that the email said more about how she felt than about the effect of her conditions on her ability to carry out normal day to day activities, and I found this to be the case with regard to symptoms such as those just identified. The Claimant referred to matters such as poor sleep, loss of appetite and being perceived as shouting or speaking aggressively. These told me something about the effect of her condition, while not directly addressing normal day-to-day activities in terms.
6. Under the heading "Road Traffic Accident Injuries" the Claimant stated that she was involved in an accident on 3 October 2022 while travelling by bus. She referred to neck, shoulder and back pain affecting the following normal day-to-day activities:
  - 6.1 Carrying heavy loads, including her toddler.
  - 6.2 Limited walking ability and speed.
  - 6.3 Use of crutches as needed.
  - 6.4 In extreme cases, the Claimant's partner has to carry her due to inability to walk.
  - 6.5 Inability to sit for prolonged periods.
7. As I shall explain, I found the Claimant's email to be of little assistance with regard to the overall picture of the effects of her conditions on her ability to

carry out normal day-to-day activities. I found her oral evidence and the contents of the medical records to be of greater significance.

8. Mr Wilson continued his cross-examination by taking the Claimant through her medical records, in chronological order, first with regard to her mental health, and then with regard to her mobility issues. I will summarise here what I found to be the significant aspects of the evidence about these.
9. The GP records from May 2021 at page 83 recorded that the Claimant was off work, was experiencing stress arising from the relationship with her manager, as well as having a newborn child at the time, facing eviction, and her father being unwell. The Claimant agreed with the suggestion that she had “more than usual on her plate” at this time. She returned to work in September 2021 and did not attend her GP about mental health issues between then and April 2022. The Claimant said that during this time she was doing courses and trying to control the effects of stress herself.
10. On 7 April 2022 the Claimant was referred to the Respondent’s Occupational Health providers, “Health Assured” as she had expressed an interest in counselling. On that date a note was made at pages 210-211 recording various stressors that the Claimant was experiencing. These included having a baby; a friend had become strange with her; she was the subject of complaints and gossip; she had received an eviction notice; her home life and work life had become entangled; and a flexible working request had been rejected. On 8 April 2022 there was further contact with Health Assured in which the Claimant said that she was really low that week and that her manager was the problem.
11. The Claimant was signed off work with work related stress on 11 April 2022 (at page 75) and again on 6 June 2022 (page 74). On 7 June 2022 a medical report was prepared by a nurse in connection with the Claimant’s application for Universal Credit. This referred to anxiety and depression beginning in 2020 and musculo-skeletal problems. The report stated in relation to anxiety and depression that the Claimant had family and work issues, had received counselling but had not had medication. It said that she described daily low mood, anxiety, lack of concentration and poor sleep. With regard to the musculo-skeletal problems, the report identified pain in the knees and back.
12. At pages 143-144 the nurse recorded a “typical day” as described by the Claimant. This included not sleeping well due to anxiety and continuous thoughts, and then went through activities such as washing and dressing; looking after her daughter; cooking; housework; taking her daughter to nursery by bus and walking home with her (taking about 45 minutes); shopping; sitting for more than an hour at a time; travelling alone; and managing letters and appointments. When Mr Wilson asked the Claimant about this, she agreed that this all seemed “normal”. She added that this was how it was on that day, which was one of her better days, and that she told the nurse that it was not always like that, but that he did not record that. The Claimant said that there were days that were a lot worse than this.

13. The Claimant returned to work on 2 July 2022. She stated that she could not stay off any longer as her sick pay would run out. Her evidence was that she did not need to go to her GP about mental health issues again until 14 March 2023, having meanwhile some sessions with the Employee Assistance Programme and monthly meetings with an alternative manager about problems at work. The GP notes for 14 March 2023 at page 65 identified a recent flare up of mental health issues, there being issues at work and a need to move house. On 17 March 2023 the GP recorded that there was a potential risk of homelessness and that anxiety and depression concerns were worsening. It was stated that the Claimant was becoming suicidal due to overwhelming stress.
14. The Claimant's evidence was that during the period March to May 2023 she was having to force herself to do normal activities such as shopping and taking her daughter to nursery, as no one else was going to do them for her. She agreed that the main problems were with her housing and her workplace.
15. A record on pages 113-114 made by the IAPT (Improving Access to Psychological Therapies) Team on 30 May 2023 stated that the Claimant was feeling much better that week, and that being signed off work made her feel relieved and reduced symptoms. When asked about this in cross-examination, she said that once away from work stresses she felt much better; and she agreed that by July 2023 (when her employment was terminated) the particular episode had been going on for about 4 months.
16. Turning to mobility issues, the Claimant had an accident on an escalator in November 2021. She was taking medication for pain in her back, knees and right arm and shoulder as needed until July 2022, but had no problem with mobility. Both she and her GP believed that the symptoms would resolve with the passage of time.
17. As already noted, the Claimant had another accident on 3 October 2022. This appeared to be a minor accident, and two MRI scans revealed nothing sinister. The Claimant attended physiotherapy, and she was taken to a note of such an attendance on 2 March 2023 at page 183. The Claimant agreed that by this point she was getting better, that she could move around fine on some days, but that on other days she could only move slowly or needed to use crutches. The Claimant agreed that there was further improvement by 9 May 2023 (page 182) and that she had significantly improved by 8 June 2023 (page 180). She accepted that (as indicated on page 181) the physiotherapist's clinical impression was that there was no particular pathology and that the aches and pains she was feeling were mainly related to stress.
18. The GP's note for 14 August 2023 at page 52 recorded the Claimant requesting a fit note for Universal Credit purposes because of severe back / neck / shoulder pain due to a road traffic accident. The Claimant agreed that this did not indicate any further medical treatment and did not refer to a

limited ability to walk or to her partner needing to carry her. She said that these references in the email used as her evidence in chief described things at their worst. She said “that day was the severest”.

19. I now turn to my findings and conclusions. Section 6 of the Equality Act 2010 provides 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.*

20. By section 212(1) of the Equality Act, an effect is substantial if it is more than minor or trivial.

21. Paragraph 2(1) of Schedule 1 to the Act includes provisions that 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.

Paragraph 2(2) provides 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.

22. In **Boyle v SCA Packaging Limited [2009] ICR 1056** the House of Lords confirmed the Court of Appeal’s decision that “likely” in this context is used in the sense of “could well happen”.

23. I first considered the Claimant’s mobility issues. I have already noted that the Claimant said that the effects described in her email represented her mobility problems at their worst. The evidence in the medical records is of effects that are generally considerably less severe and of variable intensity.

24. I found that the injuries sustained in the accident in November 2021 did not give rise to a substantial and long-term adverse effect on the Claimant’s ability to carry out normal day-to-day activities. The evidence is that following this accident the Claimant suffered pain, but not that her ability to carry out normal day-to-day activities was impaired. I also found that such effects as there were had largely resolved by July 2022, when the Claimant ceased using medication, and that they did not therefore last for at least 12 months.

25. I found the position to be similar during the period following the accident in October 2022. The picture was one of an ongoing improvement during March – June 2023. I concluded that the Claimant’s evidence about how things were on “the severest day” (described in her email) could not reflect the position as at August or even June 2023, and must have related to an earlier date. The physiotherapist could not have thought that the situation was one of aches and pains related to stress as stated in June 2023 had the Claimant been describing her symptoms at their severest, nor in that case could the GP have offered no further treatment in August 2023.
26. I therefore found that for a period of some months following the accident in October 2022 there was a substantial adverse effect the Claimant’s ability to carry out normal day-to-day activities in relation to mobility. This did not, however, last for at least 12 months. There was no evidence that it was likely to recur.
27. My finding therefore is that the Claimant was not at the relevant time disabled by reason of mobility issues.
28. I then considered the condition or conditions of anxiety and depression. Mr Wilson argued that the evidence showed that the Claimant experienced episodes of mental health problems which amounted, not to an impairment with a long-term effect on her ability to carry out normal day-to-day activities, but to a number of individual reactions to adverse events or situations.
29. In paragraph 42 of the judgment of the Employment Appeal Tribunal in **J v DLA Piper UK LLP [2010] ICR 1052** Underhill P described this distinction as being:  
“..... between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness - or, if you prefer, a mental condition - which is conveniently referred to as clinical depression and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or - if the jargon may be forgiven – ‘adverse life events’.”
30. Underhill P commented that this may be a difficult distinction to apply in a particular case. A little earlier in the EAT’s judgment, at paragraph 40, however, Underhill P offered the following guidance:  
“.....in cases where there may be a dispute about the existence of an impairment it will make sense.....to start by making findings about whether the claimant’s ability to carry out normal day-to-day activities is adversely affected (on a long-term basis) and to consider the question of impairment in the light of those findings.”

31. I found that there was an episode of mental health problems during the period May to September 2021. There was no evidence of specific effects on the Claimant's ability to carry out normal day-to-day activities during this period, although the Claimant was signed off work. There was no evidence of such effects between September 2021 and April 2022.
32. There was a further period off work from April to July 2022. The report of 7 June 2022 described, as the Claimant accepted, a "normal" day's activity, save for disturbed sleep. Although I do not believe that the Claimant was attempting to be misleading in her evidence, I find it unlikely that she told the nurse how things were on that particular day; that it so happened that this had been a good day; that things were a lot worse on other days; and that she told the nurse this, but he did not record it. The section in the report is headed "Description of a typical day". I find as a matter of probability that this was what the nurse asked for and what the Claimant provided. I am strengthened in that conclusion by the fact that the Claimant returned to work on 2 July 2022. That is consistent with her description of a typical day, in which she was able to undertake a range of normal day-to-day activities, without significant difficulty.
33. I accept Mr Wilson's submission that there is no evidence of a substantial adverse effect during the period July 2022 to March 2023. The GP's note of 17 March 2023 recorded worsening anxiety and depression and suicidal thoughts. I accept the Claimant's evidence that at this stage she was having to force herself to carry out activities such as shopping and taking her daughter to nursery: that is consistent with the worsening of her condition that the GP noted. In my judgement, that amounts to a substantial adverse effect on the ability to carry out normal day-to-day activities at this particular time. The Claimant was able to carry out these activities, but with difficulty.
34. The Claimant's condition was improving by the end of May 2023 and, as she said in evidence, she felt much better when away from work. I find it probable that the substantial adverse effect that I have found was present in March – May 2023 had ceased to operate by the end of the latter month.
35. I also find it probable that the Claimant's account in her email about the effects of anxiety and depression reflect those effects when the condition was at its most serious, in a similar way to my finding about her account of the physical effects, when examined in the light of the medical records.
36. I then considered whether the substantial adverse effect was long-term, within the statutory definition. I have found that:
  - 36.1 The Claimant was signed off work because of stress in May – September 2021, but there was no evidence of a substantial adverse effect during this time.
  - 36.2 The Claimant was then at work between September 2021 and April 2022, with no evidence of a substantial adverse effect.

- 36.3 The Claimant was off work from April to July 2022. The report of 7 June 2022 referred to difficulty concentrating and problems sleeping, which might indicate a substantial adverse effect, although the recorded description of a typical day was contrary to this being so at the time of the report.
- 36.4 The Claimant returned to work in July 2022 and continued until March 2023, not needing to consult her GP about mental health matters during that time. I found that there was not a substantial adverse effect during this period.
- 36.5 As stated above, I have found that there was a substantial adverse effect during March – May 2023, but not thereafter.
37. Even assuming in the Claimant's favour that there was a substantial adverse effect for some time during April to June 2022 in addition to March to May 2023, these amount to two periods of up to around 3 months each, outside of which the substantial adverse effect ceased.
38. I then considered whether this indicated a substantial effect that was likely to recur within the meaning of paragraph 2(2) of Schedule 1 to the Act. I found the following example in the statutory Guidance on the definition of disability to be helpful in the present case:
- “.....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, 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.”*
39. In the present case there were two relevant episodes. At the time of the first, the Claimant was experiencing work and family issues. At the time of the second, she was facing the prospect of homelessness and work issues (the latter demonstrated by the fact that she felt much better away from work). Although there was no evidence of the earliest episode of mental health problems (May to September 2021) giving rise to a substantial adverse effect, this also occurred at a time when the Claimant was experiencing multiple issues regarding her work, family and accommodation.



40. I have concluded that the evidence shows that the Claimant experienced discrete, separate episodes of reactions to adverse circumstances, in the sense explained by Underhill P in J v DLA Piper and as identified in the example given in the statutory Guidance. I agree with Mr Wilson's submission that the pattern shown is one of the Claimant's symptoms resolving when the relevant stressful event is resolved. I find that there was not an underlying condition, the effects of which were likely to recur beyond the 12-month period.
41. This decision brings to an end the complaints under the Equality Act 2010. The hearing on 6-8 November 2024 will therefore determine the complaint of unfair dismissal and will take place before an Employment Judge alone.
42. The parties should agree on the necessary variations to the timetable of the remaining case management orders.

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Employment Judge Glennie

Dated: .....6 August 2024.....

Judgment sent to the parties on:

9 August 2024

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For the Tribunal Office