Neutral Citation Number: [2024] EAT 155

Case No: EA-2022-000529-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 9 July 2024

Before:

HIS HONOUR JUDGE JAMES TAYLER

- -

Between:

MR D BANGURA

Appellant

- and –

OCS UK&I LTD

Respondent

- -
- -

Esther Godwins, Solicitor **(Broad Street Solicitors)** for the **Appellant**
Mr Anthony Sendall (instructed by **OCS UK&I Limited (in-house Legal))** for the **Respondent**

HEARING DATE: 9 July 2024

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JUDGMENT

SUMMARY:

Disability Discrimination

The Employment Tribunal did not err in law in concluding that the claimant had not established that he was disabled.

HIS HONOUR JUDGE JAMES TAYLER:

1. This is an appeal against the decision of an Employment Tribunal, after a hearing at London Central, by video, on 16 to 18 February 2022, Employment Judge Klimov, sitting with lay members. The judgment was sent to the parties on 21 March 2022. So far as is relevant to the appeal, the claimant brought a complaint that the respondent had failed to make reasonable adjustments.

2. The claimant submitted a claim form on 12 October 2020. There was a first Preliminary Hearing on 5 February 2021, before Employment Judge Hildebrand. Because of issues in respect of documentation there was a further case management hearing before Employment Judge Goodman on 26 February 2021. The issues still required clarification. There was a final case management hearing on 19 August 2021 before Employment Judge Clark, at which the issues were defined. The claimant was ordered to provide, by 7 October 2021, a medical report/letter from his GP or consultant neurologist explaining the nature of the claimant's condition, which he asserted causes dizziness and inability to stand or be on his feet for long periods, when it first presented, and how long it was likely to last. The claimant did not provide a report in response to that Order dealing specifically with the questions that the Employment Tribunal wished to be considered, but, on the first day of the full hearing, provided a letter, dated 22 November 2021, from a Neurology Consultant to his GP, to which I will refer subsequently in this decision.

3. The Employment Tribunal made detailed findings of fact. So far as is relevant, the Employment Tribunal found that the claimant was employed by the respondent as a train cleaner at Charing Cross railway station. On 3 June 2019, he fell and sustained some injury. He continued to work that day and finished his shift.

4. On 6 June 2019, the claimant attended A&E and was signed off work with concussion from 6 June to 12 June 2019. He continued to be signed off work on a number of occasions

until 16 September 2019, when he was certified as fit to attend work with amended duties. Similar certificates were provided on 15 and 25 October 2019.

5. On 19 September 2019, the claimant attended a first welfare meeting at which he stated he felt much better, but said he still had some dizziness. At that meeting, he stated that bending and stretching caused him dizziness. He did not say that prolonged standing or moving about caused dizziness.

6. On 14 October 2019, the claimant attended an occupational health assessment. The consultant concluded that the claimant was fit to return to work with amended duties. He should avoid bending and heavy lifting. The adjustments were stated to be required to avoid aggravating a hernia. The adjustments were not said to relate to the fall or head injury.

7. On 21 October 2019, the claimant attended a second welfare meeting. Possible adjustments were discussed and provision was made for a return to work with regular assessment of duties to ensure that his needs were taken account of.

8. On 1 November 2019, the claimant submitted a fit note, dated 25 October 2019, stating he was fit to return on light duties, without bending or stretching until 25 December 2019.

9. On 14 November 2019, it was agreed that the claimant would return to work on 18 November 2019 with amended duties. The claimant came in that day but refused to start work. He requested a transfer to be a security guard. There were no available security guard vacancies at the time.

10. The claimant attended work again on 20 November 2019. A phased return was agreed.

11. On 27 November 2019, the claimant sent a note stating that there was an agreement from the Department of Work and Pensions to assist him financially in obtaining an SIA security licence and a CSCS card. These are documents that would assist a person who wished to work as a security guard.

12. On 28 November 2019, the claimant was involved in a minor car accident. He was

signed off as unfit for work because of neck and shoulder pain, until 5 December 2019. In early December 2019, the claimant came back to work. He was redeployed to Cannon Street station because he said that he was suffering flashbacks from his accident and did not want to return to Charing Cross.

13. On 18 December 2019, the claimant stated that he wished to reduce his hours. On 8 January 2020, the claimant was signed off by his GP as unfit for work because of dizziness symptoms. He continued to be signed off as unfit for work with that condition until his employment ended.

14. The claimant attended a third welfare meeting on 21 August 2020. There were discussions about the basis upon which he could return to work. He subsequently issued a grievance on 6 September 2020. There were delays in dealing with the grievance.

15. On 28 October 2020, the claimant sent an email resigning with immediate effect. He contended that the respondent had failed to deal with his grievance.

16. On 28 October 2020, the respondent wrote to the claimant explaining the circumstances in which there had been a delay in dealing with his grievance and seeking to persuade him to withdraw his resignation. He did not do so.

17. The Employment Tribunal carefully directed itself as to the relevant law. The claimant does not contend there was any error of law in that direction. The Employment Tribunal directed itself to the definition of disability in section 6 of the **Equality Act 2010** ("**EQA**"):

> (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.
>
> (2) A reference to a disabled person is a reference to a person who has a disability.
>
> (3) In relation to the protected characteristics of disability—
>
> (a) reference to a person who has a particular protected characteristic

> is a reference to a person who has a particular disability;
>
> (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
>
> (4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
>
> (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
>
> (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
>
> (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purpose of subsection (1).
>
> (6) Schedule 1 (disability: supplementary provision) has effect.

18. The Employment Tribunal reminded itself that the definition of disability is supplemented by the provisions of schedule 1 of the **Equality Act 2010** and also, specifically, directed itself as to the guidance on the meaning of disability.

19. The Employment Tribunal directed itself, by reference to **Rugamer v Sony Music Entertainment UK Ltd** [2001] IRLR 664 as to the meaning of "impairment". The Employment Tribunal relied on **McNicol v Balfour Beatty Rail Maintenance Ltd** [2002] ICR 1498 for the proposition that the word "impairment" bears its ordinary and natural meaning. The Employment Tribunal noted that **Goodwin v Patent Office** [1999] ICR 302 suggests that it is often helpful to ask the questions of whether the claimant had a mental or physical impairment, whether the impairment affected ability to carry out normal day-to-day activities, whether the adverse condition was substantial and, finally, whether that condition was long term.

20. The Employment Tribunal noted that Underhill J, as he then was, when President of the Employment Appeal Tribunal, in **J v DLA Piper LLP**, [2010] ICR 1052 suggested that it might be easier, and was legitimate, for the Employment Tribunal to ask first whether the claimant's ability to carry out normal day-to-day activities has been adversely affected on a

long-term basis; because, if such a finding is made, it is rare for it to be found that there is no impairment that has caused that consequence.

21. The Employment Tribunal noted that the EHRC Code of Practice on employment at paragraph 7 of the appendix succinctly states, "What is important to consider is the effect of the impairment, not the cause". The Employment Tribunal stated that, while it is not necessary to prove the cause of an impairment, that does not mean that an inability to do so is of no significance because it may have an evidential relevance in concluding whether there genuinely is a substantial adverse effect on day-to-day activities: see **Walker v SITA Information Networking Computing Ltd** [2013] UKEAT 097/12. The Employment Tribunal reminded itself that the term "substantial" is defined by section 212(1) **EQA** as "more than minor or trivial".

22. The Employment Tribunal then went on to analyse whether the claimant was disabled:

> 107. Applying the legal principles and relevant guidance as set out in paragraphs 70-92 above, we approached the analysis of the disability question by first considering whether the claimant's ability to undertake normal day-to-day activities, that is standing for long periods and moving around, was substantially affected on a long-term basis and, if so, whether it was caused by a physical or mental impairment.
>
> 108. We reminded ourselves that the burden of proof was on the claimant to show on the balance of probabilities that he suffered from an impairment that had such substantial and long-term effect.
>
> 109. The claimant claims that he suffers from "dizziness and headaches" that prevent him from standing on his feet for long periods and moving around. He referred the tribunal to his neurologist consultant report of 22 November 2020 in support of his contention. He further submits that the long- time nature of dizziness symptoms causes him anxiety and stress, which is a mental impairment. He relies on the frequency of his complaints to his GP about dizziness and referrals to neurology specialists. He claims that the condition started from the moment of the accident at work and progressively worsened.
>
> 110. The respondent disputes disability and submits that evidence presented by the claimant are insufficient for the tribunal to conclude objectively that the claimant has an impairment that causes such substantial and long-term effect.

111. The respondent submits that all medical evidence presented by the claimant simply record anecdotical evidence of what the claimant told his GP and consultants, but there is no independent medical diagnosis (including the most recent report of 22 November 2021) based on observations, examinations or tests. The results of the claimant's MRI scans do not support the contention that the claimant has an physical impairment. None of the documents the claimant has produced set out the nature of the disability, the likely diagnosis or prognosis.

112. The respondent points out that at the preliminary hearing on 19 August 2021, the Claimant was ordered to provide by 7 October 2021 "A medical report/letter from his GP or Consultant Neurologist explaining the nature of the Claimant's claimed disability (which causes dizziness and an inability to stand or be on his feet for long periods), when it first presented and how long it is likely to last.". The claimant has failed to provide such a report/letter.

113. Further, the respondent draws the tribunal's attention to the fact that the claimant's Disability Impact Statement refers to "memory lapses" and "residual brain fog", but neither of these are supported by the medical records he has produced.

114. The respondent also points out to various inconsistencies between the claimant's evidence on the extent of his dizziness and its causes and the medical records and what the claimant reported to the OH consultant, including with respect to frequency of episodes of dizziness, when first symptoms manifested themselves, and what causes dizziness.

115. We accept that the claimant was signed off work for a very long period of time by his GP because of dizziness symptoms. We also accept that GP advising the claimant to refrain from work by itself serves as evidence of substantial effect on day-to-day activities.

116. However, taking other evidence into account, we find that the GP signing the claimant off work with dizziness is insufficient to establish adverse effect, in so far as it relates to the claimant's ability to stand on his feet for long periods and move around. We conclude that because, looking at the claimant's GP records it appears that the GP has been signing him off work simply on the basis of the claimant's reporting his symptoms to GP (often via a telephone, during the pandemic) and without any supporting medical examination or tests.

117. The claimant did not mention dizziness and its effect on his ability to stand for long periods or move around at his OH assessment, which was arranged specifically to assess the claimant's fitness for work.

118. The claimant reported that dizziness was caused by bending and stretching and agreed with the respondent's recommendations on adjustments that would not have required the claimant to do bending, stretching or heavy lifting. He did not say at the 2nd Welfare Meeting that

standing for long periods or moving around caused dizziness.

119. Further, the claimant expressed interest in a security guard role, which, most likely, would have required him to stand and move around. He also requested to be moved to a role of auditing and inspecting the cleaning of the trains, which would have also required him to stand for long periods and move around. He said in his evidence that he had withdrawn that suggestion but was unable to point out to a document in the bundle recording his withdrawal or otherwise provide clear evidence on how he did that. We do not accept that he withdrew his request.

120. The claimant also claims that his dizziness made it unsafe for him to be at a train station because of the risk falling. However, if his dizziness symptoms were indeed at a such grave level, making the risk of a fall real, it is surprising that he did not mention that to the OH or during his three Welfare Meetings with Mr Simpson. His GP records also do not support that assertion. On 30 July 2020 it is recorded "No falls", albeit the claimant telling GP that at times he feels like he is going to fall over. He did not report that his dizziness puts him at risk of falling over to any neurologist consultants. We also observe that the claimant felt safe to drive his car in November 2019.

121. The claimant gave evidence that dizziness symptoms started with his accident on 3 June 2019. However, his GP records show that he complained about experiencing some dizziness over two weeks in January 2019. The most recent consultant report of 22 November 2021 states a belief based upon the Claimant's account of his dizziness that its causes are "multifactorial", however the consultant does not express any grave concerns. The latest MRI scan does not appear to have revealed any major issues, and the consultant states that "it is difficult to provide [the claimant] an exact prognosis regarding the outcome of his symptoms".

122. The OH report states that the only area where there might be disability is in respect of the claimant's hernia. The claimant reported to the OH consultant that his headaches were on rising from a bending position and not on standing or moving around.

123. Neurologist letters of March 2021 and June 2021 describe the claimant as "relatively well in himself', which is an unlikely description of someone who suffers of dizziness symptoms to such an extent that the person is at risk of falling over.

124. Therefore, we conclude that the claimant has failed to prove that his underlying condition which causes dizziness and headaches has a substantial and long-term adverse effect on his ability to stand on his feet for long periods or move around.

125. That means that the claimant does not have a disability within the meaning of s.6 EqA, and his claim for failure to make reasonable adjustment fails.

23. The Employment Tribunal identified, at paragraph 109, the claimant's contention that dizziness and headaches prevented him from standing on his feet for long periods and moving around. The Employment Tribunal noted the claimant's suggestion that the condition had started at the point of the accident and then progressively worsened. The Employment Tribunal noted that, despite being ordered to provide a medical report answering specific questions, the claimant had not done so. At paragraph 115, the Employment Tribunal referred to the fact that the claimant had been signed off for a long period of time because of dizziness symptoms. The Employment Tribunal specifically recognised that the provision of such fit notes, advising the claimant to refrain from work, could, of itself, constitute evidence of a substantial adverse effect on day-to-day activities.

24. The claimant takes particular issue with paragraph 116 of the judgment, in which the Employment Tribunal stated that it appeared that the claimant had been signed off work essentially on the basis of what he had reported to his GP, often via telephone, during the pandemic, without there being supporting medical evidence or tests. I can see no error of law in the Employment Tribunal having regard to that factor.

25. The Employment Tribunal took into account that the claimant had not mentioned dizziness and its effect on his ability to stand for long periods or move around during his occupational health assessment, that he had asserted that dizziness was caused by bending and stretching at the second welfare meeting, and that he had wished to be considered for a security guard role, which would have been likely to require him to stand and move around.

26. The Employment Tribunal referred to the fact that there was some reference to dizziness symptoms before the claimant's accident. The Employment Tribunal noted that the occupational health report referred only to the possibility of disability as a result of the claimant's hernia. The Employment Tribunal specifically referred to the neurologist's letter,

including the letter that was provided on 22 November 2021, which was the most complete of any references to dizziness.

27. I was taken to extracts from the claimant's GP records, which included, on 22 March 2021, reference for review of the claimant on the basis of dizziness. On 8 January 2020, a diagnosis of dizziness. On 13 February 2020, there is a reference to a referral to a neurologist for MRI. On 13 March 2020, there is a reference to dizziness symptoms and unfitness for work. On 28 April 2020, there is reference to the claimant currently being under the neurologist. On 13 June 2020, there are references to dizziness symptoms and the claimant being under the neurologist, awaiting a follow-up appointment. On 30 July 2020, there is a further reference to dizziness symptoms. On 30 September 2020, it is stated that the claimant has had a fall. On 8 October 2020, there is a reference to attendance at the GP because of feeling dizzy and pain from the fall. On 22 March 2022, there is a reference to dizziness.

28. There are also letters from the neurologist on 30 February 2020, noting an MRI due to falls and an episode of dizziness and headaches, and a reference to the possibility of small vessel ischemic vasculopathy. There is another letter of 13 March 2021, again referring to dizziness. On 30 April 2021, it was suggested that vascular risk factors be followed up. On 6 May 2021, there was reference to the claimant presenting with headaches, dizziness, stress and anxiety. On 17 June 2021, the claimant was referred to presenting as being relatively well in himself and review of an MRI. In the additional bundle, at page 36, there is the letter of 22 November 2021:

> I was pleased to see this gentleman. He came for a face-to-face appointment.
>
> He has a history with dizziness and persistent headaches. This started in 2019. He tells me they can almost be on daily basis.
>
> He underwent a head MRI and it was reported with microvascular ischaemic changes. He had a fall in 2019 which affected his symptoms and he is also under the care of haematology due to an IG kappa paraprotein MGUS diagnosed in 2017.

> He tried Amitriptyline 10 mg. Unfortunately he could not tolerate. Another option would be Nortriptyline. Regarding his dizziness you might trial him on Prochlorperazine. In case his symptoms are persistent a referral to the ENT might be helpful.
>
> At this stage I believe his dizziness is multifactorial. He is also under the care of the urology. He tells me his symptoms affect his quality of life and his capacity to do his daily activities and I think it would be reasonable for his job plan to be amended accordingly and please feel free to contact me if there are any further queries.
>
> At this stage it is difficult to provide him an exact prognosis regarding the outcome of his symptoms and please feel free to contact me if there are any further queries.

29. The appeal seeks to challenge the determination of the Employment Tribunal on four interlinked grounds, all of which, at heart, assert perversity. In considering the appeal, I have had regard to the longstanding authorities as to the approach that the Employment Appeal Tribunal takes to such appeals, as summarised in **DPP Law Ltd v Greenberg** [2021] EWCA Civ 672, [2021] IRLR 1016, paragraphs 57 and 58:

> 57. The following principles, which I take to be well established by the authorities, govern the approach of an appellate tribunal or court to the reasons given by an employment tribunal.
>
> (1) The decision of an employment tribunal must be read fairly and as a whole, without focusing merely on individual phrases or passages in isolation, and without being hypercritical. In *Brent v Fuller* [2011] ICR 806, Mummery LJ said at p.813:
>
> > 'The reading of an employment tribunal decision must not, however, be so fussy that it produces pernickety critiques. Over-analysis of the reasoning process; being hypercritical of the way in which a decision is written; focussing too much on particular passages or turns of phrase to the neglect of the decision read in the round: those are all appellate weaknesses to avoid.'
>
> This reflects a similar approach to arbitration awards under challenge: see the cases summarised by Teare J in *Pace Shipping Co Ltd v Churchgate Nigeria Ltd (The 'PACE')* [2010] 1 Lloyds' Reports 183 at paragraph 15, including the oft-cited dictum of Bingham J in *Zermalt Holdings SA v Nu-Life Upholstery repairs Ltd* [1985] 2 EGLR 14 that the courts do not approach awards 'with a meticulous legal eye endeavouring to pick holes, inconsistencies and

faults in awards with the object of upsetting or frustrating the process of arbitration'. This approach has been referred to as the benevolent reading of awards, and applies equally to the benevolent reading of employment tribunal decisions.

(2) A tribunal is not required to identify all the evidence relied on in reaching its conclusions of fact. To impose such a requirement would put an intolerable burden on any fact finder. Nor is it required to express every step of its reasoning in any greater degree of detail than that necessary to be *Meek* compliant (*Meek v Birmingham City Council* [1987] IRLR 250). Expression of the findings and reasoning in terms which are as simple, clear and concise as possible is to be encouraged. In *Meek*, Bingham LJ quoted with approval what Donaldson LJ had said in *UCATT v Brain* [1981] I.C.R. 542 at 551:

> 'Industrial tribunals' reasons are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law… their purpose remains what it has always been, which is to tell the parties in broad terms why they lose or, as the case may be, win. I think it would be a thousand pities if these reasons began to be subjected to a detailed analysis and appeals were to be brought based upon any such analysis. This, to my mind, is to misuse the purpose for which the reasons are given.'

(3) It follows from (2) that it is not legitimate for an appellate court or tribunal to reason that a failure by an Employment Tribunalto refer to evidence means that it did not exist, or that a failure to refer to it means that it was not taken into account in reaching the conclusions expressed in the decision. What is out of sight in the language of the decision is not to be presumed to be non-existent or out of mind. As Waite J expressed it in *RSPB v Croucher* [1984] ICR 604 at 609-160:

> 'We have to remind ourselves also of the important principle that decisions are not to be scrutinised closely word by word, line by line, and that for clarity's and brevity's sake industrial tribunals are not to be expected to set out every factor and every piece of evidence that has weighed with them before reaching their decision; and it is for us to recall that what is out of sight in the language of a decision is not to be presumed necessarily to have been out of mind. It is our duty to assume in an industrial tribunal's favour that all the relevant evidence and all the relevant factors were in their minds, whether express reference to that appears in their final decision or not; and that has been well-established by the decisions of the Court of Appeal in *Retarded Children's Aid Society Ltd v*

> *Day* [1978] I.C.R. 437 and in the recent decision in *Varndell v Kearney & Trecker Marwin Ltd* [1983] I.C.R. 683.'

> 58. Moreover, where a tribunal has correctly stated the legal principles to be applied, an appellate tribunal or court should, in my view, be slow to conclude that it has not applied those principles, and should generally do so only where it is clear from the language used that a different principle has been applied to the facts found. Tribunals sometimes make errors, having stated the principles correctly but slipping up in their application, as the case law demonstrates; but if the correct principles were in the tribunal's mind, as demonstrated by their being identified in the express terms of the decision, the tribunal can be expected to have been seeking faithfully to apply them, and to have done so unless the contrary is clear from the language of its decision. This presumption ought to be all the stronger where, as in the present case, the decision is by an experienced specialist tribunal applying very familiar principles whose application forms a significant part of its day-to-day judicial workload."

30. The Employment Tribunal faced a somewhat difficult task in determining the issue of disability, largely because the claimant had not complied with the direction to provide a medical letter or report that could properly assist in determining whether there was an impairment that had a long-term and substantial adverse impact on the claimant's ability to undertake normal day-to-day activities; the activities relied on being standing for a prolonged period and moving about. The Employment Tribunal was required to do the best it could on the basis of the evidence before it.

31. The first ground is split into three components. First, it is alleged that the Employment Tribunal erred in law in determining disability. The claimant relies particularly on paragraph 116 in suggesting that it was perverse for the Employment Tribunal to conclude that the claimant was signed off work by his GP without supporting medical examination or tests. I consider that the appeal seeks to take that paragraph out of context from the rest of the Employment Tribunal's discussion. It is clear that the tribunal was well aware of the neurological evidence, the high point of which was the letter of 22 November 2021. That was

specifically referred to at paragraph 109. What appears not to have been in dispute was that the claimant had some symptoms of dizziness and had headaches. What neither the GP records nor the consultant letters established was that the claimant's dizziness and/or headaches caused a substantial adverse effect, in the sense of being more than minor or trivial, on his ability to stand for long periods or to move about. I consider that, on a fair reading of the judgment overall, the Employment Tribunal concluded that the effect on day-to-day activities was not substantial. That is the context in which paragraph 116 should be read. I do not consider that the claimant is able to establish the high threshold of showing that the Employment Tribunal's decision was perverse, in being one that no reasonable tribunal could have reached on the basis of the evidence before it.

32. Next it is asserted that the Employment Tribunal failed properly to consider the combined effects of headaches and dizziness. The tribunal clearly was well aware that the claimant contended that he suffered headaches as well as dizziness. It is clear that their view was that there was insufficient evidence to establish that headaches and/or dizziness resulted in a substantial adverse effect on the claimant's ability to undertake day-to-day activities by standing or moving around. Again, I consider that was a decision that was open to the Employment Tribunal on the evidence before it.

33. Third, it is alleged that the Employment Tribunal erred in law in its consideration of the time at which it should assess disability. While it is correct that there was some suggestion that the claimant's condition worsened over time, on a fair reading of the judgment, it is clear that the Employment Tribunal concluded that there was no relevant stage at which the claimant fulfilled the definition of being a disabled person.

34. The second ground contends that the tribunal erred in finding that dizziness did not have an effect on prolonged standing and, therefore, that there was no duty to make reasonable adjustments. As set out above, I conclude that the tribunal was entitled to conclude, on the

evidence before it, that the claimant had not established that there was a substantial adverse effect on his ability to stand or move around (the day-to-day activities he relied on). Therefore, he was not disabled with the consequence that there was no requirement upon the respondent to make reasonable adjustments.

35. The appeal, in effect, asserts that because the claimant had referred to dizziness on a number of occasions, because he had been signed off work as a result, and the existence of dizziness and headaches was supported by the medical evidence, that the only option for the Employment Tribunal was to conclude that there was an impairment that had a substantial adverse effect on the claimant's ability to undertake day-to-day activities in the form of standing and moving around. When put in those terms, it is immediately apparent that that ignores the evidence that pointed in the opposite direction. The Employment Tribunal was entitled to take account of what the claimant had said to occupational health, to inconsistencies in his evidence (see paragraph 114 of the judgment), what was said at the second welfare meeting, the fact that the claimant himself was seeking a role as a security guard that would be bound to involve standing and moving about and the fact that the medical evidence was extremely limited in circumstances in which the claimant had been ordered to provide a medical report to assist in considering the issue of disability.

36. The Employment Tribunal had to weigh up evidence that pointed in different directions. There was evidence that supported the existence of a disability and there was evidence that suggested otherwise. Weighing up competing evidence is fundamentally a matter for the Employment Tribunal. That assessment can only be interfered with if the Employment Tribunal has reached a perverse decision. I do not consider that can be said to be the case.

37. Accordingly, the appeal fails and is dismissed.