



EMPLOYMENT TRIBUNALS

Claimant: K Hargreaves

Respondents: 1. Ian Ambrose
2. Dynamic Assistance Limited
3. Christopher Smith
4. First Legal Solicitors
5. Karl Swindlehurst

PRELIMINARY HEARING

Heard at: Manchester **On:** 21 and 22 March 2024

Before: Employment Judge Batten (sitting alone)

Representatives:

Claimant: In person

Respondents: T Hussain, litigation consultant

JUDGMENT having been sent to the parties on 2 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. On 26 September 2022, the claimant presented a claim comprising complaints of unfair dismissal and for a redundancy payment, notice pay, unpaid wages and holiday pay together with complaints about discrimination because of age, disability, sexual orientation, sex and also a complaint about whistle blowing. Certain of those complaints no longer proceed due to withdrawal.
2. This would have been the first day of the final hearing. However, the parties were not ready for a final hearing for a number of reasons. In the event, the

final hearing listing was converted to this preliminary hearing, by consent, to determine the issue of disability.

3. The claimant relies on the impairment of Post Traumatic Adjustment Disorder as her disability. The respondents' position is that they are unable to concede that at the relevant time, when the claimant worked for the respondents, she was a disabled person, although they do accept that the impairment named is a mental impairment.

Evidence

4. The Tribunal was provided with a bundle prepared by the claimant, which included the claimant's disability impact witness statement and a selection of the claimant's medical records.
5. The claimant gave oral evidence and was subject to cross examination by the respondents' representative. The respondents provided witness statements: from the first respondent, Ian Ambrose; and the third respondent, Chris Smith. The Tribunal did not hear oral evidence from these 2 individuals, largely because their evidence amounted to saying that they did not notice any difference with the claimant's work, at any time. The burden of proof is on the claimant in any event to show disability.
6. At the end of the evidence from the claimant, both parties made lengthy oral submissions.

Findings of fact relevant to the issue of disability

7. The Tribunal made the following findings of fact relevant to the disability issue.
8. The claimant is 47 years old. She was employed by the second and/or fourth respondents for just over 5 years, from 3 March 2017 to 23 May 2022. The other 3 named individual respondents were managers in the business.
9. In April 2021, the claimant suffered a traumatic event relating to her partner. The details were not provided to the Tribunal. At that the time, the claimant was on furlough and so not working. The respondents did not know about what happened and were not told of it.
10. In October 2021, the claimant returned to work from furlough. Upon her return to the office, the claimant told the first respondent that she had suffered a traumatic event some months before. The respondents' managers noticed no change in the claimant's behaviour or work/performance at any time. The claimant held down an important and pressured job for the respondents as their Head of Operations. She drove to and from work each day and there was no evidence to suggest that the claimant had become in any way unable to work effectively or that events in April 2021 had affected her performance or capacity to work.

11. The claimant took no time off work, sick, nor did she produce any sick notes. There was no evidence that the claimant went to her GP about her state of health or state of mind, save for in August 2021, when records show that the claimant rang a nurse practitioner who advised her to self-refer and gave her a list of a variety of mental health support services.
12. In evidence, the claimant described herself as a single mother of 3 children who has to “get on with things” in life and who is not fazed by much. Throughout the material time, the claimant accepted that she undertook the cooking, cleaning, washing and household chores for her 3 children.
13. In January 2022, the claimant was told that her job was at risk of redundancy and consultation commenced.
14. Subsequently, in February or March 2022, the claimant referred herself to a psychologist to talk about how she was then feeling. In late 2022, the claimant enquired about a referral through the NHS to mental health support services but there was a waiting list. The records describe the NHS referral as an “initial referral”. There was no evidence that the NHS referral was ever followed through.
15. The Tribunal was presented with little evidence of the claimant’s mental impairment in the selected medical records upon which the claimant relied, much of which do not relate to the material time of the claimant's employment with the respondents. The Tribunal was referred to only 2 short extracts from the claimant's GP records as disclosed. These comprised of a letter about the initial NHS mental health referral at the end of 2022, and a report from the specialist psychological service which the claimant attended in February and March 2022.
16. None of these documents show that the claimant had been suffering from the impairment she now relies upon nor any continuing ill health from April 2021 onwards or at all. The psychologist’s report merely confirms what the claimant had told them including about her own diagnosis of Post Traumatic Adjustment Disorder. The psychologist’s report goes only as far as to advise the claimant on what to do if she felt as she had described to them. There is no suggestion that the psychologist considered the claimant to have Post Traumatic Adjustment Disorder nor indeed any substantial impairment.
17. The Tribunal noted that the claimant had never formally referred herself for specialist assistance, despite her claims as to her state of mind and inability to do a number of things. In any event, the claimant’s evidence was itself contradictory as to what she said she could do, or not do, by way of day-to-day activities in the material time up until May 2022.

Applicable Law

18. The applicable law is contained in the Equality Act 2010 (“EqA”), section 6 and also in schedule 1 to that Act as follows:

Section 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.

(2) A reference to a disabled person is to a person who has a disability

...

(6) Schedule 1 (disability: supplementary provision) has effect

Schedule 1, Part 1, Determination of Disability

2. Long term effects

(1) The effect of an impairment is long-term if-

- (a) it has lasted for at least 12 months,
- (b) it is likely to last for at least 12 months, or
- (c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

19. The word "likely" in paragraph 2 of Schedule 1 EqA means "could well happen" rather than "probable" or "more likely than not": SCA Packaging Ltd v Equality and Human Rights Commission [2009] IRLR 746, and paragraph C3 of the 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' 2011 ("the 2011 Guidance") which is produced by the Equality and Human Rights Commission ("EHRC").

20. Guidance is given on the meaning of normal day-to-day activities in section D of the 2011 Guidance. Paragraph D3 says:

"In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern."

21. In submissions, the claimant referred the Tribunal to the following case law authorities:

Goodwin v Patent Office 1999

Adereme v London and Eastern Railway 2013

The Tribunal took these cases as guidance but not in substitution for the statutory provisions.

Conclusions

22. The Tribunal has applied its relevant findings of fact and the applicable law to determine the preliminary issue in the following way.
23. It is not in the Tribunal's view necessary to set out in forensic details the matters recorded in the claimant's medical records as disclosed. In submissions, the claimant took the Tribunal through the report and records. As a result of the paucity of medical evidence the Tribunal has concluded that the claimant has failed to demonstrate a disabling condition which affected her daily or in any significant aspects of her life, certainly not to the extent that fulfils the test of disability under EqA.
24. The Tribunal focussed on what the claimant might not be able to do in terms of day-to-day activities but found there was very little that she was unable to do at the material time. In oral evidence, the claimant often contradicted herself. Despite at one point telling the Tribunal that she had been unable to get out of bed or leave her bedroom, unable to attend to housework or socialise, the claimant accepted that she could do all of these things when challenged by the respondents. On the claimant's own admission, she had to get on with life and she did. In addition, the respondent's witnesses had noticed no changes in the claimant's behaviour or demeanour and the claimant took no time off work for illness.
25. The claimant's contentions as to a disability were entirely unsupported by the medical evidence before the Tribunal, nor was there any corroboration of her suggestions as to her state of mind or her demeanour or behaviour, for example from close family who lived with her and whom she said she was supporting, rather than them supporting her as might otherwise be expected.
26. In light of the above, the Tribunal considered that the claimant has not shown adverse effects nor any that were long-term so as to fulfil the statutory definition of disability.
27. The Tribunal accepted the respondents' representative's submissions, to the effect that the claimant's impairment could, at best, be said to be a reactive condition and not a continuing or every present disabling condition. There is a distinction to be made in law between recognised conditions and a reaction to adverse circumstances - the claimant accepted as much when questioned by the respondent about the contents of her psychologist's report (at page 180 in the bundle) which suggested that the claimant was experiencing an understandable reaction to a shocking and upsetting set of life events and, further, that the symptoms as described by the claimant appeared to be linked

to how those events had affected her confidence in the world in general, thereby reflecting what the claimant had told the psychologist.

28. The Tribunal also took account of the fact that the claimant has been acting as a litigant in person in these proceedings. Nevertheless, the Tribunal was satisfied that the claimant was at all times aware of the requirement to disclose all the medical evidence she relied on. From time to time, in the course of the hearing, when challenged, the claimant suggested that there was more evidence she could bring. However, the Tribunal can only determine matters on the basis of the evidence before it. In any event, in submissions, the claimant demonstrated that she had researched matters thoroughly, that she was well aware of the statutory test and, to that end, she quoted case law in submissions.
29. The burden of proof is on the claimant to show disability where such is disputed. In light of all the above, the Tribunal did not consider the claimant had discharged that burden and the Tribunal could not conclude that the claimant was a disabled person within the meaning of section 6 or schedule 1 EqA at the material time.
30. The claim of disability discrimination is therefore struck out.
31. As the complaint against the fifth respondent relates only to an allegation of disability discrimination, the fifth respondent is also removed from the proceedings.

Employment Judge Batten
Date: 4 October 2024

REASONS SENT TO THE PARTIES ON:

14 October 2024

FOR THE TRIBUNAL OFFICE

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