



EMPLOYMENT TRIBUNALS

Claimant: Mr I Lawal
Respondent: Mitie Ltd
Heard at: East London Employment Tribunal (by CVP)
On: 10 and 11 July 2024
Before: Employment Judge Park

Appearances:

Claimant: In person
Respondent: Ms S Chan (counsel)

JUDGMENT having been given orally at the hearing on 10 July 2024 and sent to the parties and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

Claims and issues

1. This hearing was held to determine whether or not the claimant was disabled at the material time within the meaning of section 6 Equality Act 2010.
2. To date the claimant has submitted five individual claims against the respondent. These claims have all been joined. The claimant is also a party in a separate group claim.
3. The claimant's first two claims were submitted in December 2022. One of these included claims for discrimination on the grounds of disability. The third and fourth claim were submitted in February 2023 and March 2023. These also included claims for disability discrimination. The claimant's employment with the respondent terminated on 25 August 2023. The fifth claim related to this and was submitted in November 2023. In this the claimant also included a disability discrimination claim.

4. A first preliminary hearing was held on 11 October 2023. This related to the first four claims. At this the claimant identified the following as disabilities that he relied on for his claims:
 - 4.1. anxiety;
 - 4.2. depression;
 - 4.3. insomnia;
 - 4.4. panic attacks; and
 - 4.5. back pain.
5. At that hearing the claimant's claims for discrimination arising from a disability and failure to make reasonable adjustments were clarified. The events that gave rise to these claims occurred between November 2022 and 9 February 2023.
6. A further preliminary hearing was held on 2 May 2024. At that hearing the claimant limited the impairments he relied on as being disabilities to:
 - 6.1. anxiety;
 - 6.2. depression;
 - 6.3. and back pain.
7. The issues in the claimant's fifth claim were identified. This did not include any further specific claims for disability discrimination that had arisen out of events that postdated the fourth claim. The consequence of this is that the only relevant time for the purposes of the disability discrimination claims is November 2022 until 9 February 2023.
8. This was the third preliminary hearing. One of the issues to be determined was whether the claimant was disabled at the relevant time due to anxiety, depression and back pain. The remainder of the hearing dealt with case management including the claimant's application to amend his claim and finalising the issues.
9. At the outset of this hearing the claimant said that he was still relying on insomnia as a disability in itself, rather than a symptom of the depression and/or anxiety.

Procedure, documents and evidence heard

10. The claimant was a litigant in person. The respondent was represented.
11. A bundle had been prepared by the respondent. This included documents relating to disability and case management, including the application to amend. The claimant had provided some additional medical documents

which were added to the end of the bundle. The evidence on disability included the following:

- 11.1. the claimant's GP notes;
 - 11.2. medical certificates;
 - 11.3. documents relating to counselling and physiotherapy the claimant had received; and
 - 11.4. documents relating to the claimant's PIP assessment from March 2024.
12. The claimant had prepared a disability impact statement. He was cross-examined on his evidence and I also asked him some questions.
 13. Both the claimant and respondent made submissions after the evidence was heard.
 14. During the submissions the claimant referred to an Occupational Health report. This document had not been included separately in the bundle but the claimant had sent it on another occasion to the Tribunal, embedded into other documents. This had been copied to the respondent at the time, but respondent's counsel for this hearing had not seen this document. The claimant had not previously asked that this document was included in the bundle. Respondent's counsel had an opportunity to read this document during the hearing and they were able to make submissions, after which they did not object to its inclusion.

The Law

15. Section 6 Equality Act 2010 provides:
 - (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.
16. The **Guidance on matters to be taken into account in determining questions relating to the definition of disability** states this at A3 in relation to the meaning of an impairment:

“The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long-term. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.”

17. At A5 the *Guidance* gives examples of impairments and these include “mental health conditions with symptoms such as anxiety, low mood, panic attacks” and “mental illnesses such as depression”.
18. In **J v DLA Piper UK LLP [2010] ICR 1052 EAT**, Underhill P (as he then was) set out the following principles in relation to the definition of “impairment”:

“The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at para 33(3) above, 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 undoubtedly 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”. We dare say that the value or validity of that distinction could be questioned at the level of deep theory, and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians...and which should in principle be recognised for the purposes of the Act. We accept it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most lay people, use such terms as “depression” (“clinical” or otherwise), “anxiety” and “stress”. Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para 40(2), a tribunal starts by considering the adverse effect issue and finds that the claimant’s ability to carry out normal day to day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering “clinical depression” rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long-lived.”

19. In **Herry v Dudley Metropolitan Council [2017] ICR 610**, HHJ Richardson, said this:

“56 Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of

themselves mental impairments; they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so much any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction, but in the end the question whether there is a mental impairment is one for the employment tribunal to assess."

20. A "substantial" adverse effect is one that is "more than minor or trivial" (s. 212(1) EqA 2010). In determining whether an effect on normal day to day activities is substantial, a Tribunal should have regard to the time taken to carry out the activity (**Guidance [B2]**) and the way in which the activity is carried out (**Guidance [B3]**).
21. "Normal day-to-day activities" are things that people do on a regular or daily basis (**Guidance [D2]**), such as shopping, reading, writing, having a conversation, 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. They do not include activities which are only normal for a particular person or a small group of people (**Guidance [D4]**). They do not include highly specialised work activities which are not normal day-to-day activities for most people (**Guidance [D8]**).
22. Schedule 1 to the Equality Act 2010 sets out further provisions relating to the determination of disability. Paragraph 2(1) of Schedule 1 provides that the effect of an impairment will be "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.
23. The question of whether an impairment is "likely" (in the sense of "it could well happen") to last for at least 12 months falls to be determined based only on evidence that was available, and on the circumstances prevailing at the relevant time. The Tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months; see **McDougall v Richmond Adult Community College [2008] ICR 431** at [23] – [24].
24. Paragraph 2(2) of Schedule 1 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 it is likely (again in the sense of "it could well happen") to recur. The likelihood of recurrence is again to be judged based on evidence available and circumstances prevailing at the relevant time (**McDougall** at [26]).

Discussion and conclusions

25. The claimant initially said that he was disabled due to anxiety, depression, panic attacks, insomnia and back pain. At the preliminary hearing on 2 May

2024 this was limited to anxiety, depression and back pain. At this hearing he clarified he was still relying on insomnia.

26. The claimant had included some evidence about his insomnia so it was also possible to determine whether the claimant was disabled due to this at the relevant time, as opposed to it just being considered as a symptom of anxiety and/or depression. I noted though that the condition of insomnia did not appear to be relevant for the purposes of the disability discrimination claims that had been identified within the list of issues.
27. The conditions of depression, anxiety and insomnia all relate to the claimant's mental health and the claimant broadly relied on the same evidence for all three conditions. Therefore, I considered these together when deciding if the claimant was disabled due to any of these conditions. The claimant's back pain was a distinct impairment so I have considered it separately.
28. Below I have set out my findings of fact in respect of the claimant's back pain and my conclusions about that. I have then set out my findings of fact on the claimant's depression, anxiety and insomnia and the conclusions on those conditions.

Back pain

29. The facts are as follows:
 - 29.1 In late November 2022 the claimant started to experience back pain. There was no evidence of the claimant having suffered from back pain before that date. The claimant did not suggest that he had any type of pre-existing or underlying condition of which the back pain was a symptom.
 - 29.2 Around about the 17 November 2022 the claimant informed the respondent that because of his back pain he could not do certain duties. As a result of this some of the claimant's shifts were cancelled. These are the events that ultimately lead to the claimant submitting his first ET1.
 - 29.3 The claimant was not signed off work due to his back pain at the time. At no point has the claimant been signed off work due to back pain. The claimant was signed off work from 19 Dec 2022, but this was due to anxiety.
 - 29.4 The claimant says that he continued to suffer from back pain at this time. He did not see his GP about the back pain in late 2022, even though he had a GP appointment on 19 December 2022 about his anxiety.
 - 29.5 The claimant first discussed his back pain with his GP on 15 March 2023. The GP notes indicate the claimant had said he had been suffering from back pain since October 2022, though the claimant

accepts it was actually from November 2022. The GP referred the claimant to physiotherapy.

- 29.6 I accept that by the time the claimant discussed his back pain with his GP it had been troubling him for a few months. That is consistent with the claimant reporting his back pain to the respondent in November 2022. However, I did not accept that it was particularly serious immediately. The GP records say there had been a '*gradual onset*', indicating that it had progressively been getting worse. This is also consistent with the fact the claimant saw his GP in December 2022 but did not mention the back pain then. The GP also says that it was possibly due to "*overload/cumulative stress at work*".
- 29.7 The claimant attended physiotherapy during March 2023. He was accidentally discharged. He saw his GP again in May and was re-referred. Later in 2023 the claimant was referred to a program called ESCAPE, which is pain management.
- 29.8 In evidence the claimant provided examples of how his back pain affected him. The examples given were quite general. The difficulties I particularly noted were with the movement the claimant would usually do when praying and picking up his baby, who at the time would have been under one. The claimant also described having back spasms that last for hours when doing household chores.
- 29.9 This evidence was lacking in some detail but was not challenged. I accepted that the claimant's back pain did impact him in the way he described. Given the findings about the '*gradual onset*' I have concluded that the extent to which the back pain affected the claimant also got worse over time. I concluded that initially in November and December 2022 it was probably not that serious, hence he did not speak to his GP about it then. It then worsened, to the extent that by March 2023 he discussed it with his GP and sought treatment.

30 My conclusions on the claimant's back pain being a disability are as follows:

- 30.1 Although the claimant's back problems started in November 2022 there is no medical evidence about his back pain until March 2023 onwards, so after the relevant time. I accepted that the claimant started to experience back pain in November 2022 but initially it was not that serious. Over time it became worse.
- 30.2 I accept that at some point the pain reached the point where it started to have a substantial adverse effect on his ability to carry out normal activities. The matters the claimant has referred to such as being able to pray, carry his very young child and household chores such as vacuuming, are normal day to day activities. The effects indicated by the claimant are more than minor or trivial, such as being incapacitated by back spasms for hours at times.

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- 30.3 I did not accept that the effects the claimant now describes were particularly significant immediately in November 2022. This is inconsistent with what he said to his GP in March 2023, that there had been a gradual onset. I find it likely that between November 2022 and March 2023 the symptoms worsened so by March 2023 it was impacting the claimant sufficiently that he decided to seek medical help.
- 30.4 By March 2023 the claimant's back pain had a substantial adverse effect on the claimant's ability to carry out normal day to day activities from March 2023. This continued until the claimant's employment ended in August 2023.
- 30.5 It was not completely clear when the claimant's condition reached the threshold of having a substantial adverse effect on the claimant's ability to carry out normal day to day activities. I concluded it was not that severe continually from November 2022 onwards, but at some point between then and March 2023 the impact crossed that threshold. Given the claimant did not mention it to his GP in December 2022 it was probably after that time, so during January or February 2023 at the earliest.
- 30.6 As the condition was new, at no point during the time relevant for this claim had it lasted 12 months or more. Therefore, in order to meet the "*long term*" threshold there would also have to be evidence showing that at the relevant time it was likely to last 12 months or more. This was the key question for me to determine.
- 30.7 At the time of the hearing the claimant's back condition was still ongoing. It is important not to look at the claimant's condition with the benefit of hindsight. The question is whether the claimant's back condition appeared likely to be long term based on the evidence from the time. To meet the requirement there must be evidence that showed that it could well happen that the back condition would last 12 months or more.
- 30.8 I concluded the evidence from the time did not indicate that the claimant's back condition was likely to be long term. The relevant time is November 2022 until February 2023. The claimant's back pain was a completely new condition in November 2022 and initially it was not sufficiently serious for the claimant to seek medical treatment. In November 2022 there was nothing to suggest that it may have been the start of a long-term condition. On the contrary, it appears the claimant sustained an injury that would resolve in due course.
- 30.9 The condition did worsen and at some point in early 2023 the pain reached the point that it had a substantial adverse effect on the claimant's ability to carry out his normal day to day activities. However, the medical evidence still indicates that it was likely to be transitory and resolve in time. The GP records suggests the pain

may be a reaction to overwork and could resolve with some exercises and physiotherapy. There is nothing to suggest at that point the impact was likely to last for 12 months or more.

- 31 In conclusion, I have found that at the relevant time the claimant's back pain was not a disability as it did not meet the definition of long term. It was a new condition and there was nothing to suggest it was likely to last 12 months or more. On the contrary at the relevant time the evidence indicated that it was more likely to be a short term condition that would resolve in time.

Anxiety/depression/insomnia

- 32 The evidence relating to these three conditions was essentially the same or had significant overlap.

- 33 The facts were as follows:

33.1 In 2019 the claimant says he had been having panic attacks. He went to see his GP about anxiety. In his evidence the claimant explained he had been experiencing difficulties at work. When he went to see his GP this had been going on for about 2 weeks. The claimant was not signed off work with anxiety or related conditions at that time.

33.2 The claimant did not receive any medical treatment for the anxiety in 2019. The claimant explained in evidence he chose to manage his anxiety in a way that he described as being holistic. There is no other evidence about the claimant's anxiety from 2019.

33.3 In September 2021 the claimant had an appointment with his GP because he was having difficulty sleeping when doing night shifts. The GP notes from the time make no reference to any other condition, just that the claimant is struggling to sleep when doing night shifts.

33.4 On 20 October 2021 the claimant obtained a statement of fitness to work signed by his GP. This related to the claimant's difficulty sleeping. The GP certified that the claimant may be fit to work with adjustments in place. The medical certificate states that the claimant needed altered hours because he was having difficulty sleeping due to night shifts. In the certificate the GP says "*lack of sleep is contributing to anxiety and stress*". The claimant was not signed off work at that time.

33.5 The next medical evidence relates is from 19 December 2022 when the claimant saw his GP. The records state he had recurrent anxiety and depression due to the situation at work. The claimant was signed off work at this time and the record says "*anxiety disorder*". The claimant was referred to counselling which he had in early 2023.

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- 33.6 The claimant returned to work at the end of January 2023, but then took some annual leave so his actual return date was 9 February 2023.
- 33.7 The claimant was seen by his GP again in March 2023. I've already referred to this appointment. The record indicates this appointment was just about the claimant's back problems, though there is reference to his sleep being disturbed due to anxiety and insomnia.
- 33.8 The claimant saw his GP again in May 2023. The main focus of this appointment was the back pain, although the notes include further comments about disturbed sleep due to anxiety and insomnia.
- 33.9 The claimant had started therapy in April 2023 with an organization called Time to Talk. This concluded in June 2023. Time to Talk provided a summary of the claimant's treatment. The claimant's mood and anxiety were scored at the beginning and end of treatment. At the outset the claimant's mood score was 19 but by the end it was 5, which was an improvement. His anxiety score was 9 at the outset and 10 at the end.
- 33.10 The claimant was seen by his GP on 29 August 2023. This was just after the claimant was dismissed. This appointment related to anxiety disorder. In the notes the GP states "*known to suffer with anxiety*".
- 33.11 The claimant provided further evidence relating to his claim for PIP benefits. The claimant was awarded some benefits due to his difficulty with day to day tasks because of his mental health. This document is from March 2024, so over six months after the claimant's employment with the respondent ended.
- 34 In his witness evidence the claimant provided some more detail about how the anxiety, depression and insomnia affected him and the general background to these conditions.
- 34.1 The claimant suggested that he generally suffers from anxiety and that he has done so since at least 2019. He does not take any medication but manages it using what he described as holistic methods. This includes going for walks or listening to religious recordings.
- 34.2 The claimant explained the impact of these conditions on him. For anxiety he said his sleep is impacted, also his ability to make decisions, time management, being able to motivate himself to do household chores and his social life is impacted.
- 34.3 The depression affects the claimant in similar ways. In addition, he struggles to concentrate and neglects his self-care. This leads to him not eating and losing weight.

- 34.4 The claimant's evidence on these matters was very general in nature. He provided a few examples of activities that were affected, such as paying bills, reading and watching television. There was no indication on the extent to which the claimant's ability to do such activities was affected. Neither was there any indication of when he was affected or for how long.
- 34.5 There was a point in December 2022 that the claimant's anxiety and depression was sufficiently severe that he was signed off work for around a month. There was also an earlier point, in 2019, when the claimant experienced anxiety that was sufficiently serious that he sought guidance from his GP, but he was not signed off work at that time.
- 34.6 Beyond this, the claimant provided very little in the way of evidence to enable me to gain a sufficiently clear understanding of how these conditions have affected him on a day to day basis at the relevant time or earlier.
- 34.7 There is then evidence from March 2024, in the PIP documents, showing a more substantial impact. These documents significantly post-date the relevant time, therefore cannot be taken into consideration when deciding if the claimant was disabled between November 2022 and February 2023, i.e. the relevant time.
- 35 Conditions such as anxiety and depression can be disabilities but this will not always be the case. The approach is the same as outlined in **J v DLA Piper UK LLP**. It is necessary to start by looking at the adverse effects and the impact on the claimant's ability to carry out normal day to day activities due to those symptoms. Then I need to consider whether any adverse effects are long term.
- 36 The conclusions I have reached about the claimant's anxiety and depression are as follows:
- 36.1 There was some evidence that the claimant has suffered from anxiety in the past. I accepted that the claimant experienced a period of anxiety in 2019. However, the claimant provided insufficient evidence from which I could conclude that in 2019 the anxiety had a substantial adverse effect on his day to day activities. The claimant was not signed off work at that time. The claimant did not provide any other evidence of how his anxiety impacted him at the time. Neither did he say how long it had lasted. The only evidence indicated that it had lasted for 2 weeks at the point he saw his GP.
- 36.2 I accepted that the claimant probably has a general tendency to feel anxious. He referred to this in evidence and it is consistent with some of the later medical notes, such as the reference in August 2023 to being known to suffer with anxiety. The medical notes from 2021 also refer to an increase in anxiety. Anxiety is something that most people experience from time to time. This will not in itself be a disability

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unless it has a substantial adverse effect on the individual's ability to carry out normal day to day activities.

- 36.3 Based on the claimant's evidence I was unable to conclude that this was more than a low-level tendency towards anxiety. The claimant has not required treatment and on earlier occasions was not signed off work. I accepted it was legitimate for the claimant to prefer to try and manage any anxiety he experienced through what he described as 'holistic' methods. However, this is also consistent with a level of anxiety that is within a relatively normal level, which is got worse in response to adverse life events.
- 36.4 The claimant had two periods of time where there was evidence that he suffered from a greater level of anxiety. This was in 2019, which was a short period in response to difficulties at work. Then there is some evidence that he suffered from anxiety in September 2021 as a result of having trouble sleeping due to night shifts. Again, this appears to have been a short period in response to a specific trigger. Both these occasions appeared to be transitory and in response to specific events. There was no other evidence of the claimant suffering from more serious anxiety on other earlier occasions.
- 36.5 I also note that there is no evidence of the claimant suffering from depression on these earlier occasions. The medical evidence only refers to anxiety and also insomnia in 2021.
- 36.6 The situation changed in December 2022 when the claimant was signed off work. The fact that the claimant was signed off work and sought treatment indicates that this was a more significant episode of anxiety and he also suffered from depression. The impact was more significant.
- 36.7 I accepted that this anxiety and depression continued throughout 2023 and is ongoing. The records from Time to Talk indicated the claimant was experiencing anxiety that was still ongoing into April 2023. The claimant may have improved at times, but he was still experiencing symptoms in August 2023 when he saw his GP.
- 36.8 I also accepted that from December 2022 the anxiety the claimant suffered started to have a substantial adverse effect on the claimant's ability to carry out normal day to day activities. The claimant provided some evidence of how his anxiety and depression affected him on a day to day basis. As I have noted above, this was evidence quite general and the claimant did not set in any detail when he experienced these effects. I concluded it was most likely how these conditions have affected him since December 2022, though not necessarily continuously.
- 37 As with the back pain, the question for me to determine is when did all these conditions (anxiety, depression and insomnia) become long term. This

means, at which point did it become likely that the claimant's depression and anxiety was likely to last 12 months or more.

- 38 First, considered whether the claimant's anxiety may be long term because the claimant had experienced previous periods of anxiety, so it was a recurrent condition. An impairment may be long term if it ceases to have a substantial adverse effect on the individual's ability to carry out normal day to day activities but that effect is likely to recur.
- 39 The claimant had a period of anxiety in 2019 and then a period of insomnia in September 2021 which lead to increased anxiety. I concluded that these earlier incidents did not indicate that the claimant had a recurrent condition that had been ongoing since either 2019 or 2021. My reasons for this are as follows:
- 39.1 I accepted that the claimant may have had some underlying tendency to feeling anxious. However, there was no medical evidence that the claimant had some underlying condition beyond the normal range of anxiety levels that most people experience from time to time.
- 39.2 There was also insufficient evidence from which I could conclude that the anxiety the claimant experienced in 2019 and 2021 was such that it had a substantial adverse effect on his ability to carry out normal day to day activities. Therefore, it did not meet the threshold of potentially being a disability at that time.
- 39.3 The evidence I had indicated those incidents were short term episodes where the claimant experienced an increase in anxiety in response to external events. In 2019 this was due to problems at work. In 2021 the claimant was sleeping badly and the lack of sleep lead to an increase in anxiety. There was no basis for concluding at that time that there was likely to be a recurrence of any anxiety.
- 40 There was a shift in the claimant's mental health in late 2022. He started to experience more severe anxiety and depression and was signed off work. This was the start of a longer period of poor mental health. The question though, again, is at what point did it become long term, i.e. at what point did it become likely that the more severe anxiety and depression was likely to last 12 months or more.
- 41 The claimant saw his GP on 19 December 2022. The medical notes from the time do not indicate that this had been ongoing for long. The notes state it was in response to difficulties at work along with other life events. The workplace problems started in the latter half of November 2022.
- 42 The claims the claimant is pursuing based on his anxiety and depression being disabilities are purely about incidents up to 9 February 2023. He must have been disabled for the purposes of the Equality Act before that date. For the claimant to be disabled due to his anxiety and depression there must be evidence from then or before that the anxiety and depression was likely to last 12 months or more, or likely to recur.

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- 43 I have concluded that at that point, i.e. during January and February 2023, the evidence does not indicate that the claimant's anxiety and depression was likely to last at least 12 months. The claimant had been signed off work but only for two weeks. He was due to return to work in January 2023, but did not do so immediately as he took some annual leave. However, the evidence still only shows at that time that the claimant had a short period of ill-health that lead to a period of absence, after which he was then well enough to return. This is indicative of a period of short-term illness, rather than a long-term condition.
- 44 The claimant at this hearing also included insomnia as a separate disability. The evidence I saw relating to this is that referred to above. There is no evidence that that the claimant has any separate condition of insomnia that would meet the definition of disability. The evidence showed that the claimant experiences insomnia from time to time and it is interwoven with the claimant's anxiety. On some occasion the insomnia exacerbates the anxiety, such as in 2019. On other occasions it is a symptom he experiences when suffering from anxiety. The only time that there was evidence of it being a significant problem in itself was in 2019, and that was in response to doing night shifts. It was a short term problem triggered by external circumstances that resolved when the circumstances changed.

Conclusion

- 45 I have concluded that the claimant was not disabled due to back pain, depression, anxiety or insomnia at the relevant time, which was November 2022 until February 2023. As the claimant was not disabled his claims for disability discrimination cannot succeed and they are struck out.

**Employment Judge Park
Dated: 10 October 2024**