



EMPLOYMENT TRIBUNALS

OPEN PRELIMINARY HEARING

Claimant Miss D Gnapi

Represented by In person

Respondent Orveon Global Ltd

Represented by Ms R Senior of Counsel

Employment Judge **Ms A Stewart (sitting alone)**

Held at: London Central by CVP **on:** 17 October 2024

JUDGEMENT

The Claimant has failed to show, on a balance of probabilities, that she was disabled within the meaning of section 6 Equality Act 2010 at the material time because the substantial adverse effects of her gastritis on her ability to carry out normal day to day activities were not long-term.

Reasons

Introduction:

1 The Claimant was employed by the Respondent from 1 August 2023 until 2 February 2024 for some 20 hours a week as a make-up artist in a department store. She worked for three shifts during that time and was off sick for the remainder of that period. She brings complaints of disability discrimination under sections 13, 15 and 20/21 of the Equality Act 2010 citing 2 incidents; a probation-extension meeting on 19 January 2024 and her dismissal on 2 February 2024. She names her disability as gastritis, a condition of stomach inflammation. She states that it started severely in January 2023 and is ongoing.

2 The Respondent contends that the Claimant's gastritis did not last beyond November 2023, when it was cured by the correct medication and that

the Claimant was in any event exaggerating its adverse effects on her ability to carry out normal day to day activities. It is contended in particular, that she was not disabled at the crucial material time of the acts of discrimination of which she complains (January/February 2024) and/or that any disability which she may have had was not long-term as required by **section 6 Equality Act 2010**.

3 The Tribunal heard evidence on oath from the Claimant, based on her Impact Statement, and had before it her medical records from January 2023 to February 2024 and some NHS general information about gastritis, which was produced by the Respondent.

The Facts

4 In January 2023 the Claimant began to experience severe abdominal pain, nausea, vomiting, inability to eat, bloating, sleep disturbance etc. She attended A & E on three occasions: 8 February, 30 May and 4 August 2023. She was diagnosed with gastritis on 31 August 2023, following an endoscopy. She was prescribed medication, the first 2 kinds having adverse side effects. There was a very long wait under the NHS to see a gastritis specialist and the Claimant therefore went to France (of which she is a citizen and where her mother had been taken ill at that time) in September 2023, in order to obtain a more prompt specialist appointment. The French doctor prescribed a different medication which was more effective and without the previous side effects. The Claimant told the Respondent on 13 October 2023 that she was improved in the last 2 weeks. She also told her UK GP in November 2023 that the new drug from France had improved her symptoms. She stated in Tribunal that in October she was feeling better and tried to return to work but was then off sick with something else, not gastritis, although she still felt unwell with gastritis symptoms between December 2023 and February 2024. She states that since February 2024 she is better but still has bad days.

5 It was clear from the Claimant's medical records that she was suffering from other medical conditions in addition to gastritis at various times during the material period. These were redacted out as being irrelevant to this claim.

6 Her last prescription for gastritis medication in the UK was in November 2023 for a period of 28 days, to be taken as and when necessary. She says that she also brought medication back from France. She showed the Tribunal several packs which she still has for use when required.

7 Her GP appointment records from December 2023 through February 2024 do not show her reporting any symptoms of gastritis. Her last sick note, for the period 16 January to 18 February 2024, states 'gastritis and fatigue'. It is common ground that the Claimant was also being prescribed iron tablets for fatigue at the time.

8 She had an assessment for disability support for universal credit on 30 January 2024 and was paid this from February 2024. The Tribunal did not have sight of a report or any details of this assessment.

The Law:

9.1 **Section 6 Equality Act 2010** provides that a person is disabled if they suffer from a physical or mental impairment which has “a substantial and long-term adverse effect” on their ability to carry out normal day to day activities. Long-term means has lasted for over 12 months, or is likely to do so, or to recur. Likely, in this context, means could well happen.

9.2 The burden of showing disability at the material time lies on the Claimant. It is not up to the Respondent to disprove it.

9.3 Guidance on matters to be taken into account in determining questions relating to the definition of disability was issued in 2011. This includes paragraph B16 which says that it is necessary to consider whether, as a consequence of treatment, the impairment would cease to have a substantial adverse effect.

9.4 ‘Substantial adverse effect’ simply means more than trivial or minor. The Tribunal is mindful that it is a relatively low threshold.

9.5 The time for assessing the adverse effect and the potential long-term or otherwise nature of the condition is the ‘material time’, meaning the time of the alleged acts of discrimination and not before or after.

Conclusions

10 On all the evidence before it, the Tribunal concluded that the Claimant’s gastritis constituted a physical impairment which, starting sometime in January 2023 had a substantial adverse effect on her ability to carry out normal day to day activities including eating, shopping, socialising, self-care etc. Her attendance at A & E, her GP and hospital medical records and prescription records, and her own evidence all support this conclusion.

11 However, after the Claimant’s medical appointment with the specialist in France in September 2023, with the new medication prescribed there, the picture changes, although she said that she was still struggling with the side effects of previous medication in autumn and clearly the new medication needed some time to establish the improvement in her symptoms. By mid-October and into November 2023, she was reporting improvement to both the Respondent and to her GP and there is no further record of her raising gastritis symptoms during her ongoing GP appointments for other matters, from November 2023 onwards and covering the period to February 2024. There were no further prescriptions of medication for gastritis after November, which was given to her to take in case of need. She still has (in October 2024) supplies of this medication which she has clearly not needed to use up. It was not clear how much medication she brought back with her from France, but the Claimant surely would not have sought a prescription from her UK GP in November if she still had large supplies in her possession from France.

12 Although the condition of gastritis is 'patient dependant', the NHS material on gastritis which was before the Tribunal indicates that it is caused by a bacteria and/or by the taking of certain medications/smoking/excessive alcohol consumption and that it can be resolved by medication and/or the requisite lifestyle changes, after which the stomach returns to its normal condition.

13 The Tribunal concluded, on all the evidence before it, that by mid-October/November 2023 the Claimant's gastritis had been very largely resolved by the French medication, even though she may still occasionally have had some symptoms and has kept some medication available just in case. By this date her gastritis no longer had the substantial adverse effect which it had previously had on her ability to carry out normal day to day activities. The continuing fit note citing gastritis and fatigue, which was issued on 16 January 2024, does not constitute sufficient evidence of a continuing 'substantial adverse effect' for the purposes of **section 6**, in the wider context of the lack of reporting to her GP of any symptoms of gastritis, the reported improvements after the change in medication in autumn 2023 and her iron deficiency being stated as causing her fatigue.

14 Further, there was no evidence before the Tribunal, either general to the condition of gastritis, nor specific to the Claimant's own case, that the severity of symptoms bringing her within the 'substantial adverse effect' ambit of **section 6** was likely to recur.

15 The Claimant has therefore failed to satisfy the Tribunal that she was disabled within the provisions of section **6 Equality Act 2010**, because the 'substantial adverse effects' of her gastritis, on all the evidence, lasted from its onset in January 2023 until October 2023, a period of some 9 to 10 months. This falls short of the requirement that it be shown to be 'long-term' within the meaning of the Act, that is for a period of 12 months or longer, and there is no evidence that it is likely to recur.

16 Accordingly, the 2 hour PH for further case management which was provisionally listed for 28 November 2024 is vacated.

Employment Judge Stewart

Date 21 October 2024

Judgment sent to the parties on

29 October 2024

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FOR THE TRIBUNAL OFFICE