



EMPLOYMENT TRIBUNALS

Claimant: Miss S Lawson

Respondent: Medimmune UK Ltd

Heard at: Liverpool (CVP)

On: 27 August 2024

Before: Employment Judge Ainscough

REPRESENTATION:

Claimant: in person

Respondent: Mr Grundy (Counsel)

JUDGMENT having been sent to the parties on **3 September 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. This was a preliminary hearing to decide whether the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 between November 2022 and July 2023.
2. The claimant produced an impact statement and gave evidence during the hearing. I also considered a file of documents which consisted of 252 pages.

Relevant Legal Principles

3. Section 6 of the Equality Act 2010 provides:

“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”

4. I also considered Schedule 1 of the Equality Act 2010 - the further supplementary provisions on the definition of disability, and the Statutory Guidance on matters to be taken into account in determining questions relating to the definition of disability 2011.

Relevant findings of fact

Nerve impingement condition

5. The claimant was employed as a Quality Control analyst from March 2019 until July 2023.

6. The claimant has a nerve impingement condition in her neck that affects the use of her right hand.

7. The claimant presented to a GP in June 2022 with wrist pain which she complained had been exacerbated by work. The claimant also complained that she felt pain when she performed domestic tasks. The GP records provided went up until January 2023 and revealed that the claimant had pain due to nerve root irritation in C6 and C7 of the claimant's spine. The claimant was referred for an MRI scan in January 2023, but this never took place.

8. The claimant did have an MRI scan in September 2022. The consultant diagnosed changes at C6 and C7 of the claimant's spine and a "mild impingement". The report is incomplete. There is no prognosis within that report. The consultant did not attribute the changes to the stiffness that the claimant was suffering in her hand. The consultant recommended a course of physiotherapy.

9. In November 2022 an occupational health physiotherapist advised the claimant to have physiotherapy and that there be temporary adjustments in the workplace for one month to accommodate the claimant's condition. The physiotherapist recorded that the claimant was having pain when she performed domestic tasks but was of the view that the claimant's condition would resolve over a 12 month period.

10. The claimant was advised by AXA private health insurance to have ten sessions with a chiropractor. The claimant gave evidence that she attended physiotherapy and one session with a chiropractor. I was not provided with the records from the physiotherapist or the chiropractor.

11. In January 2023 the claimant was signed off sick and did not return to work prior to the termination of her employment.

12. In January 2023 Dr Shackleton, an occupational health specialist, recommended temporary adjustments in the workplace for a further month, but advised that the claimant's condition would resolve within a 12 month period.

13. In May 2023 an occupational health nurse recommended long-term adjustments in the workplace but concluded that the claimant was able to perform normal day-to-day activities. The nurse recorded that the claimant had nerve impingement which continued to cause pain and could have an impact on the

claimant's physical ability. It was the nurse's view that the claimant's condition would last longer than 12 months.

Anxiety condition

14. The claimant was signed off with stress in November 2022 when the nerve impingement condition flared up.

15. In January 2023 the GP recorded that the claimant was tearful and was still talking about pain and upset because of her nerve impingement condition. The claimant was signed off with stress until the termination of her employment. The GP records stop in January 2023, but the claimant gave evidence that she was subsequently prescribed anti-depressant medication.

16. The claimant was referred for counselling in April 2023 and she attended the majority of those sessions which ended in July 2023. The claimant did not attend the last session on 19 July 2023 and the discharge report is missing from the records. I was therefore unable to consider any evidence about the prognosis of the claimant's anxiety condition.

Submissions

Respondent's submission

17. The respondent submitted that the claimant had been unable to provide any medical evidence to support her contention that her conditions had a substantial and long term adverse effect on her normal day to day activities.

18. The respondent submitted that the medical evidence provided concluded that the claimant was able to perform normal day to day activities even with her conditions.

Claimant's submission

19. The claimant submitted that the occupational health reports recommended treatment in excess of a 12 month period.

20. The claimant also relied on the occupational health reports which recorded that she endured pain when performing domestic tasks and that the pain affected her physical ability.

Discussion and conclusion

21. The issue of whether a person meets the definition of a disabled person within the meaning of the Equality Act 2010 is a legal question. The relevant period for the purposes of answering this question is November 2022 until July 2023.

22. I have looked at the evidence provided about that period of time. The Guidance is clear that anything that follows that period of time is not relevant to the decision I have to make about whether the claimant is a disabled person.

Impairment

23. The claimant's nerve impingement condition is a physical impairment. The claimant's anxiety condition is a mental impairment.

Substantial and long term adverse effect on normal day to day activities

24. Long term means lasted at least 12 months, likely to be at least 12 months or likely to be for the rest of a person's life. Likely is defined as "could well happen".

25. The occupational health nurse advised the claimant that she would meet the legal definition under the Equality Act 2010 because her nerve impingement condition would last for longer than 12 months.

26. However, notwithstanding that a medical condition can last for longer than 12 months, the legal question is whether that condition has a substantial and long-term adverse effect on normal day-to-day activities for that period.

27. It is recorded that the pain experienced by the claimant had an impact on her physical ability and the performance of domestic tasks. The claimant gave evidence about flare-ups and described her condition as intermittent.

28. An impairment can meet the definition of long term even if it is a recurring condition. However, it has to be the recurrence of the substantial and adverse effect on the normal day-to-day activities, and not just that the recurrence of the condition to satisfy the legal test.

29. I have determined that the claimant's nerve impingement condition did not have a substantial and long term adverse effect on her normal day to day activities at the relevant time.

30. The claimant provided evidence of a partial report from her consultant in September 2022 with no evidence of a prognosis. The claimant also only provided partial GP records that do not disclose consultations with the claimant after January 2023. I have not seen reports from the physiotherapist or chiropractor.

31. The Occupational Health reports provided from November 2022 and January 2023 suggest that the claimant would recover from this condition within a 12 month period. By May 2023 the Occupational Health nurse reported that the claimant was able to perform normal day-to-day activities. Therefore, the prognoses given by the occupational health specialists were correct.

32. I have determined, on the balance of probabilities, that at the relevant time the claimant's nerve impingement was not likely to recur to the extent that she suffered between November 2022 until January 2023 as by May 2023 she was much improved and performing normal day to day activities in line with occupational health expectations.

33. The claimant's nerve impingement condition is therefore not a disability within the meaning of section 6 of the Equality Act 2010.

34. The claimant's anxiety condition was diagnosed in November 2022 when she was signed off with stress. However, the claimant did not provide a discharge report from her counsellor and did not provide GP records after January 2023, so I did not have evidence of the prognosis of the claimant's anxiety condition or the duration of any substantial and adverse effect on normal day to day activities.

35. The claimant gave evidence that after 11 July 2023 she did not go back for any further treatment or arrange any alternative treatment. I have therefore determined, on the balance of probabilities, that the claimant's anxiety condition was no longer having a substantial and adverse effect on her normal day-to-day activities such that she was able to stop treatment.

36. I have also therefore determined that at the relevant time, the claimant's anxiety condition was not a disability within the meaning of section 6 of the Equality Act 2010.

Employment Judge Ainscough

Date: 25 November 2024

REASONS SENT TO THE PARTIES ON

Date: 2 December 2024

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