



EMPLOYMENT TRIBUNALS

Claimant: Ms I Macaulay

Respondent: Saffery LLP

Heard at: London Central (in public; by CVP) On: 1 November 2024

Before: Employment Judge Adkin

Appearances

For the Claimant: Mr J Yetman, of Counsel

For the Respondent: Mr T Sheppard, of Counsel

REASONS

1. On 1 November 2024 in an oral decision, I found that from August 2023 onward the Claimant was a disabled person as defined by section 6 of the Equality Act 2010 by reason of anxiety and depression.
2. Written reasons have been requested.

Evidence

3. I have had the benefit of a bundle of documents of some 96 pages together with a couple of loose documents that were introduced by consent during the course of the hearing. Page references in these reasons are to pages in that agreed bundle.
4. That bundle of documents includes a disability impact statement which is the Claimant's witness statement relating to disability.
5. I have also had the benefit of hearing oral evidence from the Claimant who was questioned by both Counsel.

Findings of Fact

6. Findings of fact are made on the balance of probabilities and that has been by reference to GP records, the report of Caroline Adewole who is a Psychoanalytic Psychotherapist which appears in the bundle at page 77. There is also the content of documents in the Respondent's internal process where the Claimant has referred to health matters typically not contemporaneously but referring at the latter end of 2023 to events that took place in the most part earlier on in that year or just at the end of 2022.

History

7. By way of personal history the Claimant lost her mother unexpectedly at the age of 17 in 2011 and lost her father at the age of 23 in 2016. She says that at the time she did not truly mourn the death of her parents.
8. Her employment with the Respondent commenced on 21 February 2022. She was employed as a Crime Analyst and her title changed during the currency of her employment and she was employed there until 27 November 2023.
9. There was a discussion between the Claimant and her manager Daniel Pruchine about her mental health. It seems this happened either at the end of November or in December 2022. It is not in dispute that there was a discussion that led to a referral by the Claimant's manager to Paige Savill, an HR Advisor who title is given as People Operations Advisor. That in turn lead to a referral to the Employee Assistance Programme and also regular wellbeing checks with the Claimant.
10. As to the content of this discussion the Claimant said she specifically mentioned depression and anxiety, the Respondent says that the conversation was not in terms of a medical condition but rather in terms of having suffered a recent bereavement and that she was struggling with grief relating to the deaths of her parents.
11. The Claimant had requested that fees for her private therapy for mental health be met by the Respondent. The Respondent did not do this but they did through Ms Savill signpost her to the Employee Assistance Service that was apparently originally known as "Life Works" and then later known as "TELUS Health".
12. A referral was made by the Respondent. The Claimant as a result had 10 weekly therapy sessions. That is not disputed by the Respondent although the Respondent makes the point they do not know the content given client confidentiality. I accept what the Claimant says which is that these therapy sessions did take place.
13. In the Claimant's disability impact statement she said that she was experiencing at the time insomnia and found herself soothing through eating, which seems to be a theme which is repeated in later months.
14. On 10 February 2023 or thereabouts the Claimants title changed to Senior Analyst.
15. On 17 March 2023 the Claimant made contact with Caroline Adewole whose report I referred to earlier, initially looking for bereavement counselling.

16. In April 2023 the Respondent's funded therapy, i.e. the 10 weekly therapy sessions came to an end and the Claimant reverted to therapy sessions which she funded herself.
17. In May 2023 (according to what the Claimant said at a later stage in an appeal meeting in December 2023), she felt that she was being criticised in everything she was doing and she felt blindsided by negative criticism. It says in the grounds of complaint at paragraph 43 that she was diagnosed with anxiety and depression on 16 May 2023 although I have not been able to identify based on evidence where or whom that diagnosis came from so I have not relied on upon that in the decision that I have come to today.

Performance review & plan

18. In August 2023 there was a review at which the Claimant was told that she was under performing. The Claimant says that the result of that was that the therapy sessions that she was still attending now began to affect her focus on the effect of work on her rather than on bereavement which had hitherto been the primary focus on her therapy sessions.

PIP

19. Following on from that review there was a performance improvement plan review on 14 September 2023 and the Claimant said at around this time she started to experience what she describes as severe panic attacks, insomnia and a persuasive sense of dread regarding her job security. She said her reliance on food increased leading to weight gain and she says that her progress and her therapy had been set back by this.

Signed off with anxiety disorder

20. On 16 November 2023 the Claimant attended the GP she was provided with a fit note which said that she was not fit for work and it described her condition as "anxiety disorder" the sick note was for 10 days until 26 November 2023.
21. What we do not have is a copy of the actual certificate but we can see in the GP record that a fit note was issued and I note that the end date ties in with the day before the issuing of the next certificate which leads me to conclude that there must have been a fit note issued for this period, 16-26 November 2023.
22. There was a telephone consultation with someone at the general practitioner's practice, someone called Mrs Broughton unclear to me whether she is a doctor, is does not say she is a doctor but that is at a GP practice in Lewisham, what that telephone consultation says is:

spoke with patient
work related stress
feeling anxious due to bullying
tends to have a panic attack prior to going to work
good support network with friends and family

no suicidal thoughts/plans
sleep disturbed by internal thoughts
appetite normal

Dismissal 27 November 2023

23. There was a disciplinary meeting at the Respondent which took place on 27 November 2023 at which the Claimant was dismissed.

Appeal

24. The Claimant subsequently appealed.
25. There was a sick note also on 27 November 2023 which is for “work related stress and anxiety” that note said you are not fit for work and that was for a month until 27 December 2023.

Grievance

26. Also on 27 November the Claimant submitted a grievance.
27. That grievance document includes the following. The Claimant says on December 2022 she had an open conversation with her manager Daniel Pruchine where she candidly disclosed her on battle with depression and anxiety. She said despite my efforts to maintain a positive and outlook and continuing to perform her duties she wanted to emphasise that this had been an arduous personal journey for her.
28. Also, third bullet point on page 53 the Claimants says,
“to address my mental health I took pro active steps by seeking therapy which commenced in April 2023, I was then diagnosed with depression and anxiety the common side effects of depression which I have experienced include lack of attention to detail and memory loss which ultimately has impacted my work performance in recent months”.
29. She notes that a one to one meeting in June 2023 further exacerbated her anxiety and put her in a deep state of depression. She says that in the meeting in August 2023 she experienced an increase in overwhelming sense of helplessness. She mentions that on 10 November she spoke to Paige Savill the People Operations Advisor to express her concerns and anxieties about the ongoing PIP review, she says that she took sick leave due to her anxiety.

Alternative version of grievance document

30. There are two different versions of this grievance document, there is a version at page 53 which I will call the first version and a version at page 92 which I will call the second version. It is not in dispute that it was the first version that the parties both agree at page 53 that was submitted to the Respondent at the time but we are left with the somewhat curiosity of the second version at page 92.

31. The Respondent argues it is clearly a document that is different in some ways. This document was apparently provided as part of the disclosure process in the preparation for this hearing and I am invited by the Respondent to find this undermines a suggestion of the Claimant has been consistent and credible in her evidence.
32. There are various interpretations including perhaps that the later document was in fact a draft that was not sent. Ultimately I have come to the conclusion that I do not have cogent evidence to the required standard to allow me to conclude that the second version has been dishonestly created by the Claimant or anyone else. In this case because the parties both agree which document was submitted (i.e. the “first” version) at the time that is the crucial finding of fact which I make on the basis of that agreement.
33. Nothing in this finding precludes either party from relying on there being two versions of document final hearing should that be relevant.

Further information – 30 November 2023

34. On 30 November 2023 the Claimant also submitted some further information by letter directed to Donna.
35. There is a heading, “**Impact of my work performance due to mental health**”, under which the Claimant writes about previously communicating her ongoing battle with mental health and saying that the company’s actions directly impacted her wellbeing, worsening her anxiety and depression. She writes:

“... Despite regular attendance at therapy, both Management and HR treated me as if I did not have a disability, resulting the termination of my employment. I believe I should have been provided with reasonable adjustments due to my mental-health problems. With the necessary support, my employment could have been sustained. My termination occurred due to my disability being discriminated against me.”

Performance appeal meeting

36. There was a performance appeal meeting on 13 December 2023, which was to hear the Claimant’s appeal against the decision to dismiss her.
37. In that meeting the Claimant referred to some of the history of her mental health difficulties at page 60 towards the bottom of the page she said this

“in December 2022 I let Paige know I had been going through a depressive state and anxiety due to the grief and loss of my parents and spoke candidly about at the time”.
38. On page 61 she said:

“December 2022 was when my depression started to kick in, I let Dan (the Line Manager) know that I was having issues during the 1-2-1 and he put me in touch with Paige.

We then had a discussion about what support was available from the firm, I wanted to know if there was an opportunity to seek therapy through the firm. I spoke openly about this with Dan after this in April 2023 I let him know I started therapy and the sessions were ongoing.”

39. She then says later on that during the PIP meeting she mentioned that she had therapy every Tuesday. She was asked the question, do you feel any aspects of your condition impact on your capability to do her job, to which she responded:

I did feel that, but it is hard to communicate that without seeming like I cannot do my job.

I am doing therapy every Tuesday does bring up emotions.

40. At page 63 again part of that meeting she notes that she felt more depressed after the meeting in May.
41. At page 64 refers to going to a disciplinary and having insomnia and panic attacks and she said it exacerbated her illness so that she had to go off sick.
42. She said on page 65 that it made her anxiety worse.

Appeal outcome

43. The Respondent provided an outcome to the internal appeal at page 69 this is a letter dated 18 December written by Alexandra Britton-Davies a Partner and at page 70 contains the following, the decision not to uphold the Claimants appeal:

“You have been made aware of the support available to employees who are struggling with their mental health by Paige Savill after Daniel Pruchine suggested you spoke to her following your meeting in December 2022. It is my understanding from our meeting you utilised these services and this resulted in you attending therapy.”

44. I should say it seems to be slightly confused as to whether there was a meeting in November or December 2022 but the parties are not in dispute that a meeting did take place towards the end of 2022 so the precise date is not relevant for present purposes.

ET Claim

45. Early conciliation process took place between 13 December and 24 January.
46. The Claimant presented a claim to the Employment Tribunal on the 23 February 2024.

Post-termination employment

47. In mid-May 2024 the Claimant commenced working in a similar role for a different employer having begun the process of looking for a new role in November 2023 which is the time that she was going through the process that led to her dismissal.

Preliminary hearing

48. There was a preliminary hearing on 10 June 2024 at which Employment Judge Emery set up this present hearing, 1 November 2024.
49. Both parties agreed that there was a typographic error in 3.1.1 in the list of issues contained within the document produced by Employment Judge Emery that refers to the 14 September 2022 but it should read 14 September 2022.

Scope of allegations of discrimination

50. I should note there has been some dispute at today's hearing as to how far back the allegations of discrimination relating to disability go. In essence the Claimant says they go back to the end of 2022. The Respondent says that they go back as only as far as September 2023. I think it is quite clear that some clarity is needed but I am not going to make a decision about exactly when the claim is supposed to have gone back to and I do not need to make a decision on that today but I do agree that some clarity is needed.

GP record

51. On 17 June 2024 the Claimant requested that her GP produce a report showing that she had anxiety and depression. She says they gave her a print out of the GP record but declined to produce a letter to that effect.

Report of psychotherapist

52. On 26 June 2024 the report of Caroline Adewole which I have referred to before was produced. I note that she is a UK CP registered psychotherapist. This report seems to have been based on a clinical assessment on 11 April 2023 and then therapy which commenced on 2 May 2023 and was ongoing at the time that the report was produced, there having been by that stage 37 therapy sessions.
53. I note that the report contains a number of observations or comments on the actions of the respondent. It seems to me that it is not appropriate for me as part of this decision to express any view on that which can only be essentially hearsay on the part of Ms Adewole but I will quote from the following matters which seem to go to the question of disability.
54. On page 78 she says this under the heading "about Ms Macaulay":

Ms Macaulay said she referred to herself to my private practice making initial contact on March 17, 2023, saying she was looking for a therapist specialising in bereavement. After an initial phone conversation we arranged a date for her clinical assessment.

Assessment and Presenting issues

During the assessment consultation on 11 April Ms Macaulay reiterated that she wanted to start therapy because she was struggling severely in her everyday life because of what she deemed to be unresolved issues about the deaths of her parents.

55. Moving forward in the report to page 79:

Initial reflection to following the assessment

Some observations I made are here, Ms Macaulay's preoccupation with her parents' death, her being prone to crying, her low mood and her isolation following a lack of capacity to engage only to dissolve into conflict suggests that she was depressed. She seemed to use food to soothe anxiety and we could explore this later. She also did not seem to have had time to fully mourn the death of her parents. She had still taken her A-levels while big decisions that impacted her and her future immensely were being made. She seemed to be caught in a cycle in which her anxiety was raised when her depression became severe, and when her anxiety became intolerable, depression would set back in to get her out of it. She had some habits in place that would help sustain the cycle.

56. I note at the bottom of page 80 going on to page 81 Ms Adewole says this:

On 19 September Ms Macaulay mentioned that she was given a negative review at work, they said she does not reach out to the clients side enough, they noted the change in around April of the same year i.e. 2023 and will be monitoring her. We both noticed it was around the time she started therapy. Ms Macaulay said she felt blindsided by this development in happened right after the summer holidays, she was aware of the depressive part of herself again, she was not happy or living her life to its fullest.

57. I am going to move to page 83, it says this:

Conclusion

In my professional capacity I began treating Ms Macauley for symptoms of anxiety, depression and bereavement. Five months into her treatment an issue was raised by management at her work place regarding her performance, it became evident that her mental health had significantly affected by this seemingly hostile highly unsafe and anxiety provoking work environment and relationships which she experienced at work

58. I should reiterate that it seems to me I cannot put a great deal of store on comments about the working environment because that is almost certainly a question for a Tribunal at a different stage.

Submissions

Respondent's

59. The Respondent's submissions included the following:
- 59.1. that the symptoms of anxiety and depression are not contained within the category with the first page of the GP record which is significant past there are other conditions which are referred to then, period 93 to 2010;
- 59.2. The next point the Claimant's initial communication with the Respondent in November or December 2022 was in terms of a bereavement reaction rather than as the Claimant now says anxiety or depression;
- 59.3. The Claimant has never at any stage taken medication.
60. The Respondent does not concede that the Claimant has demonstrated a substantial adverse effect on the ability to carry out normal day to day activities. In particular it is emphasised on behalf of the Respondent that the Claimant continued to carry out her job; she was able to start looking for another job at the time that her employment came to an end, this was around November 2023. The Claimant now has found alternative employment and so in essence the Respondents case is that the Claimants situation does not at the material time correspond to a definition of disability.

Claimant's

61. The Claimant's submissions are essentially there is no dispute about the legal principles although Mr Yetman emphasises and draws to my attention the test of recurrence "could well happen" from the House of Lords authority dealing with that point (**SCA v Boyle**).
62. By contrast to the Respondent essentially the Claimant's position is that she does make the definition of disability and that is the dispute.

Law

Disability

63. The Equality Act 2010 contains the following provisions:

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.

Schedule 1

Long-term effects

2(1) The effect of an impairment is long-term if—

it has lasted for at least 12 months,

it is likely to last for at least 12 months, or

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.

64. Underhill J (President) sitting in the Employment Appeal Tribunal in the case of **J v DLA Piper UK LLP** 2010 ICR 1052 (UKEAT/0263/09/RN) gave some guidance on the question of disability:

40. Accordingly in our view the correct approach is as follows:

(1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in *Goodwin v Patent Office* [1999] ICR 302 .

(2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in para 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.

(3) These observations are not intended to, and we do not believe that they do, conflict with the terms of the Guidance or with the authorities referred to above. In particular, we do not regard the *Ripon College* and *McNicol* cases as having been undermined by the repeal of paragraph 1(1) of Schedule 1 , and they remain authoritative save in so far as they specifically refer to the repealed provisions.

65. In that case guidance was given on cases in which mental-health, particularly depression, is said to amount to a disability:

42. 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 unquestionably 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—it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case—and which should in principle be recognised for the purposes of the Act. We accept that 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) above, 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.

CONCLUSIONS

66. Turning to the list of issues that was identified by Employment Judge Emery at the hearing earlier in the year, the questions are these:

2.1.1 did the Claimant have mental impairment, anxiety and depression

67. My conclusion is that she did have a mental impairment of anxiety and depression based on her own evidence. The content of the GP record although I accept that that was comparatively limited and also the report of Ms Adewole as well as the matters that have been captured in internal documents as part of the Respondents

process. The comparatively brief reference in the GP record has made this somewhat more difficult but ultimately I have concluded the Claimant did have anxiety and depression.

2.1.2 did it have a substantial adverse effect on the Claimants ability to carry out day to day activities.

68. My conclusion is yes, I find that the Claimant was suffering insomnia, sometimes getting as little as four hours sleep a night. I also find that she was over eating.
69. I find that the insomnia did affect her ability to concentrate, which is dealt with in her witness statement. This led to what she describes as brain fog, which affected her ability to carry out her work, which I find is a day to day activity. It did also affect her ability to do things like reading and reviewing documents which required her to reread documents but also she was making silly mistakes. I find it did affect her memory.
70. I also find and I accept what she says in her witness statement that if she suffered from insomnia she would wake up later, she would not exercise and she also found that her ability to plan and do things was affected.
71. Additionally I find the Claimant was suffering from feelings of anxiety which meant that she was not able to attend work. She has characterised those as panic attacks. Whether they are best medically described as panic attacks or intense feelings of anxiety may not matter hugely for this decision but I accept that she was struggling with those sorts of symptoms amounting to an impairment in the period September to December 2023 which did affect her ability to attend work.
72. I find that the fact that the Claimant did not take medication is not determinative. I am looking at the impairment and I do not infer from lack of medication which may represent a deliberate decision by her not to take medication I do not read into that she did not suffer substantial symptoms.

2.1.3 if not did the Claimant have medical treatment including medication or take other measures to treat or correct the impairment.

73. I have been referred by the Claimant's Counsel to the statutory **Guidance on the Definition of Disability** and to section B of that document. I accept that therapy is a form of treatment and I accept that the Claimant has had substantial therapy during the whole course of 2023.

2.1.4 would the impairment have had a substantial adverse effect on the Claimants ability to carry out day to day activities without the treatment or other measures.

74. It is difficult for me to say precisely what benefits the treatment has provided.
75. I note that the Claimant has continued with therapy. I infer that she herself on the balance of probabilities felt that this was of some benefit and that the practitioners must have considered it was offering her some benefit.

76. To some extent this question is academic I find that even with therapy there was a substantial adverse effect on the Claimant's ability to carry out day to day activities.

2.1.5 were the effects of the impairment long term and the Tribunal will decide did they last at least 12 months or were they likely to last at least 12 months and if not were they likely to recur.

77. Looking at the timing it seems that the first conversation which I accept was described substantially in terms of bereavement rather than anxiety or depression happened in November or December 2022. The Claimant has not produced evidence suggesting that it had gone on for a substantial period earlier than this. I regard this as the period of onset of the substantial effect.
78. I rely on the Claimant's comments about depression "hitting in December 2022" as confirming my conclusion on that. I do not consider it matters hugely that this was described in terms of bereavement. Feelings of bereavement are feelings of sadness or feelings that might otherwise be described as depressive in nature. The Claimant is not herself a medical person and she was referring at that time to the deaths of her parents but it seems to me that there is a clear connection between this reaction and subsequent symptoms which Ms Adewole's identified in her report. Of course bereavement in many cases is an acute but transitory reaction. Not every person that suffers from a bereavement or feelings of grief is by virtue of that disabled person. It is noteworthy that in this case it was six and 11 years respectively since the deaths of her mother and father. In other words this was rather different to a grief reaction to a recent death.

Long term?

79. Was there a point at which it was likely to last at least 12 months?
80. The approach I have followed here is not with the benefit of hindsight, but looking at the evidence cumulatively from the end of 2022 onward. It is quite difficult to identify precisely when it is it could be said that it was likely to last at least 12 months.

Conclusion on timing of onset of disability

81. My conclusion is that by the time of the meeting in August 2023 when the Claimant was discussing performance and the point at which she said that her therapy was now no longer just about bereavement but also other life stress in particular the work place life stressors. It seems to me by this point marked something of a turning point. This therapeutic input was no longer simply about processing and dealing with the deaths of her parents, but dealing with a wider mental impairment.
82. It was also the case that by August 2023 her symptoms had been going on in the region of 8-9 months.
83. Bearing in mind the low threshold for likely to last at least 12 months that it could well happen, it seems to me that by **August 2023** it "could well happen" that the

symptoms would be going on for 12 months and so I find the Claimant did meet the definition of disability from that meeting onward.

Employment Judge Adkin

3 December 2024

Sent to the parties on:
10 December 2024

For the Tribunal Office: