



EMPLOYMENT TRIBUNALS

Claimant: Mr K Badham

Respondents: Jaguar Land Rover Ltd

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Birmingham (CVP)

On: 10 July 2024

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Mr Crow (Counsel)

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Public Preliminary Hearing:

1. The claimant has not made out that he suffered a mental impairment which meets the definition of a disability as defined in Section 6 of the Equality Act 2010 at the time of the event in March 2022. The Tribunal decided the supporting evidence did not support a mental impairment of stress and depression prior to March 2022 that impacted his day-to-day activities such as returning to work.

Preliminary Issues

- 1. The respondent by email on 9 February 2024 to the claimant and the Tribunal conceded that the claimant's IBS is a disability as per s.6 of the Equality Act 2010.**

WRITTEN REASONS

Claims and Issues

- The issues in this matter are as follows:
 - Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - Whether the Claimant had a physical or mental impairment, namely:
 - 1.1.1.1 Stress and depression
 - Whether this had a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?
 - If not:
 - 1.1.3.1 whether the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment;
 - 1.1.3.2 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - Were the effects of the impairment long-term? The Tribunal will decide:
 - 1.1.4.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 1.1.4.2 if not, were they likely to recur?

Background

- The Claimant contacted ACAS on 11 April 2023, a certificate was sent on 19 May 2022 and the claim presented on 21 May 2022.
- The Claimant ticked the box for disability discrimination. His claim form included a brief narrative:

I've been off with work related stress since July due to bullying, harassment and victimisation due to my disabilities-I therefore raised a separate case number 1309749/2020 and that hearing date is scheduled for this July 2022 During the last 12 months I have been receiving CBT counselling from the company's own Occupational Health Department Due to my stress

and depression brought on by the bullying, the CBT councillor recommended a further 16 sessions up to my hearing date this July 2022. During an absence review with the company doctor McDarmaid on the 7th March 2022 I was told that the counselling sessions as prescribed by the medical professional was turned down due to the fact that there was no likelihood of me returning to work -the reason why I was off is because the company failed to make reasonable adjustments by placing me in a different area to the one where the discrimination took place -only now May 2022 the company placed me in another area and therefore commenced work again with a phased return -the decision to deny further treatment was therefore discrimination due to my disabilities -in a previous meeting with Dr Macdarmaid I let her know that I was having suicidal thoughts due to the stress of the case -imagine my disgust that the company refused further CBT counselling due to me being absent waiting for the company to relocate me as suggested by a previous company doctor in 2020.

4. The Respondent entered a defense denying liability, including on the basis the decision to cancel CBT was made by a third party for which it was not vicariously liable.

The Hearing

5. An introduction was provided to the parties, in particular the claimant was asked to ask the tribunal to explain anything he did not understand and that it was our duty (the tribunal and the respondent's representative) to ensure he understood the hearing.
6. The claimant wanted to make an application to possibly adjourn the hearing.
7. The Tribunal heard the claimant's concerns over the late filing of the bundle, which includes 3 occupational health reports and the respondent's skeleton argument. The claimant felt prejudiced by the late filing of evidence as a litigant in person and someone who suffers from mental health problems. The claimant also stressed that to postpone the date of this preliminary hearing would also increase his stress.
8. The respondent conceded that the updated bundle with section 4 was sent the afternoon before the hearing but that the occupational reports were the claimant's reports and should be familiar to him. It was argued they are essential for this hearing, and it is not known why they were missed from the bundle. The respondent did suggest that they were happy to exclude the other occupational health reports save the one from 2022.
9. The Tribunal must balance the fairness of the late filing of evidence with the stress of any postponement would have on the claimant. In light of this the Tribunal agreed that the respondent can only rely on the 2022 occupational health report, it

is a very brief report, and the claimant will be afforded 30 minutes to consider the report and the skeleton argument.

10. The issues for this hearing were confirmed with both parties, prior to the brief adjournment and explained to the claimant. Whilst the claimant understood that the IBS had been conceded to be a disability, he said he would mention it as it was linked to his mental health. The Tribunal explained that it was for the claimant to present his case in a way he chooses but he must ensure it was focused on assisting the tribunal in deciding whether the stress and depression was a disability and not the IBS.
11. After a short adjournment the findings were read out to parties, the claimant was asked whether anything in the findings needed to be repeated or explained to him. The claimant asked if the tribunal had looked at the government capability website he had referred to in his submissions. The tribunal confirmed they had as part of the decision making but found that the claimant was not disabled with the mental impairment of stress and depression.
12. The respondent was also asked if the tribunal needed to repeat anything from the judgment.
13. Both parties confirmed they understood the judgment and what this meant, it was made clear to the claimant the matter would proceed to final hearing on the basis that the respondent has accepted the claimant was disabled at the time of the claimed acts due to his IBS.

Evidence

14. Mr Badham was called to give evidence he adopted his impact statement at page 151 dated 12 January 2024. Before adopting the statement, he wanted to clarify that at page 153, the GP notes, report 6 and 11, predate the decision to end the CBT.
15. The respondent's representative chose not to cross-examine the claimant on his impact statement.

Closing Submissions

16. The respondent agreed to commence their closing submissions first, which would assist the claimant in his own submissions as he is a litigant-in-person.
17. The respondent's submissions can be summarised as follows:

- The respondent relied upon their skeleton argument – the contents of which they would not repeat.
- Date of 7 March 2022 relevant – case law familiar to the tribunal but will explain to claimant as he is a litigant in person.
- Continuing act – an example would be such as wage decrease month by month that is different from an act at a particular time but has on going consequences. E.g. if there is a car accident and a pedestrian is hit that was on a particular date but there are continuous consequences such as injuries etc.
- The subject matter in this claim is the decision to end CBS, yes there are consequences, the but decision which took place on 7 March 2022 one off decision but on going consequences for the claimant.
- The tribunal needs to decide whether as at the date of act whether the claimant was disabled due to stress and anxiety. There is evidence this in previous years and subsequent years.
- Res judicata – means that which has already been decided – if tribunal judicial decision neither can go against that finding unless appeal. Relevant here as decision made on the claimant's mental health, previous decision is about fitness to work, but it is relevant as claimant saying unwell since 2019 and saying absence from work shows this. The adverse effect is the absence from work, nothing about adverse effect on anything else, the claimant has put all his eggs in one basket in terms of absence of work and nothing else.
- Absence from work – paragraph 7 skele – previous determination 55-59, fitness to work OH report, continuous absence was unwillingness to return to work until R resolved issues.
- Extended litigation – going to cause stress and flavour of reports is that claimant preoccupied with dispute with respondent so that is the reason why reluctance to return to work as opposed to his mental health. The tribunal found not disabled as effect not 12 months or expected to last more than 12 months – can't go behind this.
- Past disability in 2019 and 2020 as previous finding. So, what evidence provided to suggest situation deteriorated that as of 7 March 2022 that defined as a disability?
- Richmond Adult case – tribunal alive to this case, whether in March 2022 claimant's condition that he was disabled for 12 months and likely to be more than 12 months. Not appropriate to look ahead as claimant is attempting to rely upon reports from 2023, but what needs to be looked at is 2022 and what was available. It could not have been known to respondent that as at March 22 of how long his condition would last.
- The discharge page 143-47 showed the claimant had returned to work in October 2023. Even if he is disabled as of March 2022 there is nothing to show last for 12 months and likely to.
- Impact Statement – does not take us any further, OH reports quoted from, nothing to say day-to-day activities impacted in March 2022. Chosen not put evidence forward around that time which is a matter for him. Only quotations – nothing about adverse impact.

- There are two documents, the CBT referral from December 2021 and a GP letter at page 109 – but it is about current difficulties, third paragraph states the claimant is consumed by tribunal matters and this is causing him anxiety and stress. The effect – was this substantial day-to-day impact? This report does not help. Paragraph 4 says claimant reduced hobbies and activities to focus on litigation – not saying due to stress and depression. No indication of long-term adverse effect. Page 110 – limited progress due to litigation. Additional sessions to support claimant, IBS yes interlinking and can still raise at final hearing that stress and anxiety was caused, open to say that at the final hearing but does not change fact mental health as free standing disability but evidence does not support this.
- GP letter – closer in time to March 2022 but postdates it, all it says is that claimant signed off work for 3 years due to stress related problem. Limited as Tribunal already found most of his absence related to stress but not disability – s.6 definition not satisfied. Previous determination page 59 impact statement provided generic and lacked detail at page 60 there is no medical evidence that the GP referred to mental health specialist. If he did have mental health impairment impacted day to day activities. Was the impact Nov-Feb 2020 but this was not the relevant 12 months?
- The OH report 2022 pages 169 – 170 – said claimant perception of work issues rather than disabilities and mental health – this was case in previous determination. It said the return to work could happen if barriers overcome. No dispute suffering from mental health conditions the medical evidence is that there is no impact day-to-day impact and return to work – which is only thing the claimant relied upon. His absence from work, without more evidence, not due to his mental health. The only treatment the claimant had of his mental health was the CBS counselling which was determined not necessary to continue.
- There is a lack of adverse effect that would have lasted 12 months and likely to do so.

18. The claimant after hearing the respondent confirmed he was happy to commence his closing submissions without an adjournment to prepare. His closing submissions can be summarised as follows:

- The ET3 response at page 22, paragraph 7 confirmed the claimant attended 20 CBT sessions – had the sessions for a reason, have them as mentally not well. Not 20 all at once but prior to the date.
- However, Karl's at report page 108 as of October 2021 only 6 sessions authorised and recommended a further 15 session.
- The previous determination – appealed hearing for that on October 2024, not decided yet, judge does say disability for mental health for short period time.
- In March 2022 there was a diagnosis of stress and depression – requested information, came late, in Dr M report 2022, we discussed suicidal thoughts,

I have case notes for this now but she did not put in a formal report. (Did not submit in evidence as did not have time.) At page 109 Karl's report linked IBS with stress and depression with one you will get the other. At page 110 said the impact on IBS and increased symptoms recommended to have sessions to assist during that stressful time.

- 12 months or more – whether it is likely to return is question needs to be asked, as had it before, look at records, it is recorded by the tribunal that had mental health issues to that level. So respondent aware of mental health disability prior to the stopping of the counselling session. They should have known likely to reoccur. They should have known as there in the past records, like they forgot about it, but nothing came from that. Duty of care to support – only got 6 sessions but all cut short. A further 12 sessions was recommended by the respondent expert, a professional, CBT counsellor, but this was turned down by chief medical officer for respondent.
- Extra sessions due to litigation – this is not the case was actually off work as suicidal – that was the stressor. The litigation was part of it but not all of it - impact was on everyone in my life not just me.
- Day to day – page 127 of the statement – impact detailed there – assessed as having limited capability due to mental health in 2018 for 24 months. The symptoms were panic attacks, paranoia, impact shopping and eating, inability to complete tasks – did not want to go back to that environment, relocated, then returned to work.
- Evidence to support symptoms – signed off work, in report of Karl Wooley there were recommendations. All there what I was going through.
- There was a link with IBS and mental health.

19. The respondent did make some response points on the likelihood of the claimants mental health symptoms recurring, the cause of the claimant's stress and reference to page 127 on the claimant's day-to-day activities. The claimant responded by referring to the government capability website and the definition contained therein. Arguing that he met the definition in the past and can still meet that definition.

Fact Findings

20. The Tribunal found the following in relation to the issues:

- a. Did the claimant suffer a mental impairment of stress and anxiety at the time the claimed discrimination took place (loss of CBT counselling March 2022)?**

I accept the relevant date is March 2022, from the evidence it shows the claimant to have suffered from anxiety in December 2021, which is not immediately prior, but due to the medical history could say around March 2022 there was stress and anxiety.

b. Did this stress and anxiety have a substantial adverse effect on the claimant's ability to carry out his day-to-day activities?

The report at page 108 by Karl, the CBT therapist and the Occupational Health report from 2022 do not support that suffering from anxiety impacted the claimant's day-to-day activities. They both say the claimant can return to work which is main impact the claimant argues.

At page 127 the statement does state that the claimant cannot get out of bed, has paranoia etc, but none of this is recorded by his GP or other reports as the impact of the anxiety. They say that it is litigation induced stress and anxiety which impacts IBS and eating properly to support that condition. But if main day-to-day activity is working then not made out as reports all say can return once some of issues resolved by the respondent as they are viewed by the claimant to be issues.

Whilst there is a summary of impacts on the claimant, there is no indication of the years they apply to and most seem to be from 2018 such as the assessment from the DWP which says from 2018 for 24 months but that does not bring it to the March 2022 date.

The claimant failed to provide the 2022 Occupation Health notes for the report where suicide was discussed. Not clear why this was not provided for this preliminary hearing as that would support his condition being severe at the time. The claimant said he did not have time to provide this but if he is pursuing this matter then responsibility on him to provide key evidence he seeks to rely upon.

c. The effects of the stress and anxiety were likely to last at least 12 months or more from March 2022? Or likely to recur?

The 2021 report by Karl recommends 15 more sessions to assist the claimant in coping with litigation stress so he can manage things properly. Whilst the previous determination noted stress was bad for a period of time, I agree they would have considered recurrence in that decision – whether likely to occur again at that level within 12 month or more, but they did not find that it was likely to recur.

I find I cannot look at 2023 evidence of the severity of the claimant's mental health as it needs to be what the respondent reasonably should have foreseen at that time. The condition seemed manageable at that point in time and the claimant's day-to-day activities were not impacted so say that condition could be foreseen as lasting 12 months or more

Employment Judge Hena
14 January 2025