



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant: Mr Slater

Respondent: The Sempere Group Limited

Heard at: Bristol (by CVP) **On:** 9 January 2025

Before: Employment Judge Halliday

Representation:

Claimant: In person

Respondent: Mr Large, counsel

RESERVED JUDGMENT

The judgment of the tribunal is that the claimant was not a disabled person under the Equality Act 2010 by reason of his depression and/or anxiety from 22 September 2023 to 30 November 2023 and the claimant's claim for disability discrimination cannot proceed and is therefore dismissed.

Claim and proceedings to date.

1. By a claim form dated 6 December 2023 the claimant brought complaints of discrimination on the grounds of disability. The claimant asserts that following a disclosure to the respondent that he was struggling with his mental health, he was provided with no support and was dismissed and the respondent failed to address the grievance he raised.
2. The respondent defends the claim on the basis that it does not accept that the claimant had a disability for the purposes of Section 6 of the Equality Act

2010 at the relevant time, that the duty to make reasonable adjustments was therefore not triggered, and that the claimant was dismissed due to his unsatisfactory performance. The respondent says in the alternative that if the claimant was disabled at the relevant time, that the respondent did not know and could not reasonably have been expected to know that this was the case.

3. The respondent asserts that a performance review meeting was held on 22 September 2023, and it was at this meeting that the claimant first informed his line manager that he had been diagnosed with depression days previously. Subsequently complaints were received about the claimant and on 12 October 2023 at a further meeting with his line manager, the claimant was informed that his employment would terminate on 30 November 2023 and that he would be on garden leave during his notice period. The respondent says the claimant's grievance was addressed as an appeal against the decision to dismiss.
4. By letter sent on 10 March 2024, the claimant was directed by Employment Judge Smail to provide a statement explaining the length of the disability, the nature of its effects upon day to day activities and any existing medical evidence relied on by 21 April 2024.
5. On 26 March 2024, the claimant sent comments on the respondent's ET3 and a copy of a letter dated 11 March 2024 from Lincolnshire Talking Therapies (Steps2change) to the Tribunal but did not copy the respondent in on this correspondence.
6. On 29 May 2024, the respondent made an application for the claim to be struck out. A case management hearing was held on 20 June 2024 before Employment Judge Gray. The claimant did not attend the hearing. A further preliminary hearing was listed for 8 October 2024 to hear the strike out application made by the respondent, agree the issues and if time allowed, to determine if the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010. Directions were made for preparing for the hearing. The direction in relation to provision of an impact statement and medical records by 15 August 2024 was made subject to an "Unless Order" i.e. the claimant was warned that if he failed to comply with the order his claim would be dismissed.
7. On 10 July 2024, the claimant sent an impact statement to the Tribunal setting out relevant details in relation to his depression. No further medical records or other medical evidence were provided.
8. On 8 October 2024, a preliminary hearing was held before Employment Judge Hay. Ground rules were agreed for participation in the hearing. Employment Judge Hay recorded that as the claimant had not provided medical records as ordered by Employment Judge Gray, he was in breach of

the Unless Order and his claim had therefore been struck out. Employment Judge Hay then granted an application by the claimant to set aside the decision to strike out the claimant's claim. The respondent's separate application to strike out the claim on the basis that the way in which it had been conducted was scandalous, unreasonable, or vexatious was refused.

9. In relation to proving disability, Employment Judge Hay records that the claimant repeatedly said that the respondent already had access to his medical records. After discussion Employment Judge Hay records that "by the end of the hearing Mr Slater understood that he needed to obtain and provide any medical evidence he wanted the Tribunal to consider when deciding the issue of disability".
10. Employment Judge Hay also recorded that the claimant had said he was depressed and therefore that he was disabled but that later he had said that he had anxiety" but that can never amount to a disability. Employment Judge Hay records that that she explained that depression (and anxiety) is "capable of" being a disability but that it affects people differently and not everyone who had depression or is depressed is so badly affected that their condition meets the statutory definition.
11. The matter was then listed for a further preliminary hearing to be held on 9 January 2025 to consider:
 - 11.1. Whether or not the claimant's condition amounted to a disability at the relevant time
 - 11.2. Whether the respondent knew that the claimant was disabled (this would be considered at the discretion of the Judge)
 - 11.3. Understanding the claimant's claim and producing a list of issues
 - 11.4. Case management orders to progress the claim to any final hearing.
12. The claimant was ordered to provide any further medical evidence on which he wished to rely and if he wished, a further statement explaining when and how the respondent knew he was disabled by 5 December 2024, The respondent had permission to serve evidence addressing their knowledge or otherwise of the claimant's asserted disability also by 5 December 2024.
13. On 4 December 2024, the claimant sent though extracts from his GP medical records covering the period from 26 July 2023 to 2 October 2023.

The Hearing and the Issues

14. This has been a remote hearing which has been consented to by the parties.
15. A number of preliminary matters were dealt with at the start of the hearing.

- 15.1. The claimant objected to the attendance at the hearing of two of the respondent's employees on the basis that confidential medical evidence would be disclosed and discussed. Employment Judge Halliday explained that the hearing was a public hearing and that having brought a claim that relied on disability the burden of proof fell on the claimant to demonstrate disability and that members of the public (including employees of the respondent) could not other than in exceptional circumstances be excluded. After an adjournment, the respondent voluntarily limited attendance at the hearing to Mr Greatrix who had submitted a witness statement and was giving evidence and the hearing continued.
- 15.2. The relevant time for determining disability was discussed and it was agreed that the alleged discriminatory treatment started on 22 September 2023 with the meeting between Mr Greatrix and the claimant and ended either on 12 October 2023 when the claimant was informed that his employment was being terminated, or at the latest on 30 November 2023 when the claimant's employment was terminated. For the purposes of considering if the claimant was disabled in this hearing, the relevant time was taken to be 22 September 2023 to 30 November 2023.
- 15.3. There was a further discussion about whether the issue of knowledge of disability could be addressed at the hearing. After hearing from both parties, and in particular from the claimant that there were a number of conversations about which he would wish to give evidence, the tribunal concluded that the question of knowledge was intertwined with the facts of the case and the respondent's conduct and therefore could not be determined without hearing all the evidence.
- 15.4. At this hearing, the tribunal was therefore only going to decide if the claimant was disabled at the relevant time as set out in section 6 of the Equality Act 2010. This requires the tribunal to determine:
 - 15.4.1. whether the claimant suffered from a [physical or] mental impairment
 - 15.4.2. which at that time (22 September 2023 to 30 November 2023) had a substantial adverse effect on his ability to undertake day to day activities
 - 15.4.3. and had lasted (at that time) or was likely to last over 12 months or recur
 - 15.4.4. had the claimant had medical treatment including medication or other treatment
 - 15.4.5. if so, what would the effects of that impairment be without that treatment.

- 15.5. The burden of proof is on the claimant to show he was disabled.
- 15.6. A bundle of 74 pages was prepared by the respondent. The claimant had also sent the tribunal a link to a short You Tube video showing the impact of treatment on an individual with Parkinson's disease which counsel for the respondent had not seen. After discussion it was agreed that counsel for the respondent adequately understood the point made by the claimant (that treatment might alleviate the symptoms, but that the underlying disability remained) without viewing the video.
- 15.7. Although initially the claimant confirmed he had an unmarked copy of the bundle, it became apparent at the start of the respondent's cross examination that he did not have a copy of the bundle to hand although he maintained that he was familiar with all the documents contained in the bundle. The hearing was nevertheless adjourned again so the bundle could be re-sent to him. Later in the hearing, it was identified that the respondent did not have a copy of the letter from Lincolnshire Talking Therapies (Steps2change) dated 11 March 2024, or the claimants' comments on the ET3 which the claimant had sent to the Tribunal (and not to the respondent) on 26 March 2024. These documents were sent to counsel for the respondent who was able to review them during a break in the course of the hearing.
16. The ground rules which had previously been applied with Employment Judge Hay were also applied during this hearing. The claimant raised a hand when he wished to speak and in the main did not interrupt and listened to Employment Judge Halliday when she was speaking. He did however become agitated during cross-examination and the hearing was adjourned twice to allow him to compose himself. His language to counsel for the respondent was also on occasion inappropriate and despite a further explanation from Employment Judge Halliday (repeating that given by Employment Judge Hay) that counsel was obliged to challenge evidence with which the respondent did not agree, he objected to counsel's questions on two occasions, accused Counsel of calling him a liar and used immoderate language including calling Counsel a "scum bag". He was reprimanded for so doing and warned that such behaviour was not appropriate and would not be allowed to continue. Counsel for the respondent asked for the claimant's behaviour and comment to be noted in case a further application for a strike out was made.
17. The claimant had not prepared a further witness statement but relied on his statement of 10 July 2024 and was cross-examined and answered questions in relation to this statement and the documents in the bundle. The respondent had also not prepared any further witness statements but relied on the statement of Mr Greatrix dated 2 October 2023 and Mr Greatrix was cross-examined and answered questions on this statement and the documents in

the bundle. The claimant was on a number of occasions reminded that the hearing was to consider the question of disability only and no findings on the wider issues would be made at this hearing.

18. Mr Greatrix gave consistent and clear answers to questions both from the claimant and the Tribunal and his evidence was credible and convincing. The claimant's evidence was not always consistent. He was not always clear on timelines, particularly in relation to what effect his condition had on him at the relevant time, and on occasion he contradicted himself. The tribunal took into account that the claimant appeared to find the tribunal hearing difficult, and was on occasion variously agitated, distressed, and angry. The tribunal also took into account both the general nature of some of the assertions made by the claimant and on occasion the inconsistencies (as identified below) in his evidence.
19. In support of his claim, the claimant has submitted the following medical evidence:
 - 19.1. Extracts from GP records showing appointments/calls on 26 July 2023, 16 August 2023, 19 September 2023 and 2 October 2023 (included in the bundle);
 - 19.2. Letter from Lincolnshire Talking Therapies (Steps2change) dated 11 March 2024 (not included in the bundle), which referred to a self-referral on 17 August 2023 and a diagnosis of depression, with attendance on a low mood course from 2 October 2023 to 23 October 2023, and a subsequent referral for CBT.
20. The tribunal also heard from and reviewed written submissions by counsel for the respondent and heard oral submissions from the claimant.
21. Having heard the oral and written evidence and reviewed the relevant documents, the tribunal found the following facts proven after considering all of the evidence and after listening to the factual and legal submissions made by and on behalf of the respondent and the claimant.

Facts/Chronology

22. The claimant started work with the respondent on 20 April 2023 as a Regional Sales Manager.
23. On 25 March 2023, shortly before he started his employment with the respondent, the claimant completed a pre-employment medical questionnaire. He confirmed that he had had no absence from work in the previous three years, that he had been prescribed sertraline but was not currently receiving treatment for any physical or mental condition and that he did not suffer from any injury, illness, medical condition or allergy that might

affect his ability to perform his duties. He confirmed that he did not consider himself to suffer from a disability.

24. Before the claimant started work, the disclosed prescription for sertraline was discussed between the claimant and Mr Greatrix, who was to be his line manager. The claimant confirmed to Mr Greatrix that this medication was an anti-depressant and related to a recent unfortunate investment in a coffee business/franchise that had not been successful due to COVID and had caused significant financial loss but that he was “weaning off these”. During the course of the hearing, the claimant, whilst disagreeing that he had lost all of his investment, confirmed that the business had not ultimately been successful, and although it had continued after the epidemic, said that he had had to close it down and had lost some of his investment. Although the claimant implied at one point in his evidence that this had been shortly after the pandemic, when he was confirming that the business had not failed completely, he referred to the fact that the business had continued for some unspecified but significant time after the pandemic and had failed more recently and the tribunal accepts this account and finds that the business failure was “recent”. The claimant has produced no medical evidence that he was in fact prescribed sertraline at that time, the first reference to a prescription in disclosed medical records being on 26 July 2023. However, given the agreed evidence that the prescription was disclosed on a pre-employment questionnaire, the tribunal finds that the claimant was as at 25 March 2023 taking sertraline.
25. No health issues were raised, and the claimant did not act in a way at work that would raise concerns as to his health from the start of his employment on 20 April 2023 until he met with his line manager Mr Greatrix on 22 September 2023.
26. The claimant made a call to his GP on 26 July 2023, and at that time was prescribed one tablet (50mg) of sertraline daily for anxiety/depression. No symptoms are described.
27. On 16 August 2023, the dosage was increased to one and half tablets (75 mg) daily still for anxiety/depression. A referral to Steps2change (Lincolnshire talking Therapies) was also discussed. The GP record states that the claimant’s anxiety was worsening and that he had become tearful three or four mornings a week and also records that the duration of the symptoms as that date was 5 months. No details of the earlier symptoms were given. In reliance on the reference to the duration of the symptoms being 5 months the tribunal concludes that some symptoms of anxiety/depression had therefore started on or around early/mid-March 2023.
28. The claimant made contact with Steps2change the next day on 17 August 2023. The claimant did not disclose any additional medical evidence about

the referral, such as questionnaires. There is therefore no medical evidence available to the tribunal about the severity of the claimant's symptoms at that time and the impact it was having on his ability to undertake day to day activities.

29. The claimant spoke to his GP practice again on 19 September 2023 to discuss a recommended change to his medication following his discussion with Steps2change.
30. On 22 September 2023, the claimant and Mr Greatrix met. The respondent asserts that the meeting had been arranged to discuss the claimant's performance which they believed was not at an acceptable level. The claimant asserts that the meeting was not within a formal capability or performance process. The tribunal does not need to determine the purpose of that meeting to reach a decision on disability at this hearing. However, the tribunal finds that the summary of the conversation set out in Mr Greatrix's email to the claimant of 29 September 2023 headed "Performance review 22/09/23" was a materially accurate summary of the conversation. This was confirmed by the claimant (in an email sent by the claimant the same day). One point not set out in Mr Greatrix's email, was that the claimant informed Mr Greatrix that "he was struggling with his mental health and had been diagnosed with depression" at the *start* of the meeting before the formal review was started. Mr Greatrix accepts that there had been an initial disclosure of a recent diagnosis of depression by the claimant at the start of the meeting when they were "chatting" and the tribunal finds that the claimant made the disclosure about his recent diagnosis of depression at the start of the review meeting, that Mr Greatrix then continued with the formal part of the meeting and then "circled back" to the claimant's disclosure at the end of the meeting and offered support via the respondent's private healthcare scheme which the claimant had had access to since 13 July 2023.
31. In relation to when the diagnosis of depression was made, the tribunal finds that the diagnosis of depression was "recent" as at 22 September 2023 and having listened to the claimant's evidence and reviewed the medical evidence submitted by the claimant concludes that the diagnosis was made between 17 August 2023 when the claimant contacted Steps2change (after he had spoken to his GP surgery on 16 August 2023) and 19 September 2023 when the claimant was again in touch with his GP surgery.
32. The note on the GP record of 2 October 2023 sets out a diagnosis of mixed anxiety and depressive disorder. As at 2 October 2023 the tribunal relies on the GP record and finds that the claimant was better with company, that he felt all was right with the world when his daughter who lived locally was with him, was happy to go the gym where he engaged with people, was ok at work and was "better when distracted". He became more anxious when alone.

33. On 2 October 2023, the claimant started attending a low mood course which ended on 23 October 2023.
34. On 12 October 2023, the claimant was notified of the termination of his employment with effect from 30 November 2023 and put on garden leave until this date.
35. The claimant's evidence as set out in his statement sent on 10 July 2024 is that he "has suffered symptoms of depression for a significant portion of his life, but probably without knowing". He relies on the fact that it is a life-long chronic condition with no definitive end date but contends that coping mechanisms help manage the symptoms. The claimant says he has been receiving treatment for anxiety "for a few years" including medication (dates not provided) and therapy (dates not provided). He asserts that the symptoms would be worse if he did not have treatment but has provided no medical evidence about the impact of his medication or details about the likely effects on his ability to function were he not to take it, other than in his statement that it is "likely" that his ability to function at work would deteriorate, that emotional strain "could" lead to social isolation, the lack of motivation "could" result in neglecting basic needs and hygiene and in a severe case the overwhelming depression "could" lead to suicidal ideation. These assertions were repeated in the hearing, but no corroborating evidence medical or otherwise, was submitted.
36. In relation to the impact on day to day activities the claimant says in general terms, that he suffers from anxiety and depression, which means that starting the day can be a struggle, basic tasks can seem insurmountable and can result in tearfulness and a lack of motivation, in ADHD type symptoms, and in feeling like a failure which can lead to procrastination and avoidance of responsibilities and social withdrawal. He refers to the fact that he does not wish to speak on the phone and book appointments or deal with negative colleagues.
37. The claimant did not identify in his evidence when he says the symptoms of his anxiety/depression disorder started or developed to the point that they impacted on his daily activities. When giving oral evidence he strayed into discussing current symptoms. His evidence that his condition can lead to social withdrawal and that he does not wish to speak on the phone contradicts the evidence of his behaviours demonstrated at the time leading up to the meeting on 22 September 2023 and following it. The tribunal finds that the claimant was good at speaking to people on the phone whilst he was employed, and the GP record of 2 October 2023 records that he is ok at work, is happy to go to the gym where he engages with people and is better with company. The tribunal does not therefore conclude that he became socially isolated at the relevant time.

Relevant Law

38. Having established the above facts, the tribunal now applies the law.

Disability

39. The claimant alleges discrimination because of his disabilities under the provisions of the Equality Act 2010 (“the EqA”). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA.
40. Section 6 and schedule 1 of the EqA which provides that a person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P’s ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial (section 212 EqA), and a long-term effect is one that has lasted or is likely to last for at least 12 months or is likely to last the rest of the life of the person.
41. Schedule 1 par 2(2) EqA 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 that effect is likely to recur*”.
42. Likely should be interpreted as meaning “it could well happen” rather than it is more probable than not that it will happen (*SCA Packaging Limited v Boyle (2009) ICR 1056*).
43. The burden of proof is on the claimant to show that he is a disabled person in accordance with that definition.
44. The tribunal is also mindful of the “*Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) (Guidance) and the Equality and Human Rights Commission (EHRC) Code of Practice on Employment (2015) and specifically Appendix 1(Code)*.”
45. The meaning of “*normal Day-to-day activities*” is not set out in statute but helpful guidance is included in both the Guidance and the Code. Paragraph D3 of the Guidance states that: In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or 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. Normal day-to-day activities can include general work-related activities,
46. The Code states that day to day activities include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating,

lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.

47. The material time for considering whether the impairment had (or was likely to have) a long term effect is the date of the alleged discriminatory act (*All Answers Ltd v W [2021] EWCA Civ 606, CA*) and events occurring after the date of the alleged discriminatory act should not be taken into account in considering if the effect of the impairment was long term.
48. Counsel for the respondent has also referred the tribunal to the case of *Ashton v Chief Constable of West Mercia Constabulary 2001 ICR 67, EAT* in support of the principle that an impact which arises from a situational event might not amount to a disability. The authorities in relation to knowledge cited by counsel are not relevant for the purposes of this hearing.
49. The cases referred to above are taken as guidance, and not in substitution for the provisions of the relevant statutes.
50. Applying the above principles, the tribunal has to consider whether the claimant's anxiety/depression satisfies the statutory test of a disability.

Respondent's submissions

51. The respondent accepts that the claimant suffered from a degree of depression/anxiety and that this developed into a diagnosed condition on or around August 2023. However, the respondent asserts that there is no medical evidence that this constituted a mental impairment which at the relevant time had lasted or could reasonably have been expected to last for over 12 months, nor is there any medical evidence of a previous episode nor was there an indication at that time that it was likely to recur. Rather, the respondent submits that there is evidence which suggests that the claimant did not have an impairment that satisfied the statutory test. The respondent relies on the claimant's medical questionnaire completed before he joined the respondent which did not disclose anxiety or depression, the explanation given by the claimant to Mr Greatrix that he was on sertraline as the consequence of losing money in a business venture which was a consequence of a one-off event and the reference to a "recent diagnosis" on 22 September 2023 which is supported by the claimant's GP records.
52. Counsel for the respondent asks the tribunal to infer that the reason there is limited disclosure of medical records is that either none exist prior to 26 July 2023 or that if there are some, they show as the claimant told Mr Greatrix, that he had suffered a situational reaction – a "blip" with an expectation that

this would pass. In either case there is no evidence that the condition had lasted, or it was expected it would last 12 months or recur.

53. Counsel for the respondent submits that the asserted impact on day to day activities described by the claimant is contradicted by the evidence related to the claimant's behaviours at the relevant time and invites the tribunal to conclude that there was no such impact.

Claimant's submissions

54. The claimant states that his depression(/anxiety) constitutes a disability and he relies on the fact in general terms depression is life-long condition so invites the tribunal to conclude that he must therefore have a disability even if he were not himself aware of it until recently. He asserts that his condition has an impact on his ability to "start the day" and reports tearfulness, a lack of focus and difficulty concentrating, low self-esteem and inability to cope with challenges, withdrawal from friends and colleagues and not wanting to speak on the phone and book appointments. He says that as depression is a chronic condition, the effects are ongoing, and medication (sertraline) and coping mechanisms help manage the symptoms.

Conclusion

55. The burden of proof of proving disability is on the claimant. The tribunal has to conclude on the balance of probabilities whether the statutory test for disability is met. The decision is one for the tribunal, but medical evidence is an important source of information for the tribunal and the expectation is that medical evidence will be provided to show when the condition first arose, how severely it impacted the claimant at the relevant time, when medication was prescribed, and for what condition, and what effect withdrawal of that medication would have on the claimant's ability to undertake day today activities. Without medical evidence the tribunal has only the claimant's uncorroborated statements to refer to in assessing whether the statutory test has been met.
56. The claimant has presented no medical evidence that supports his contention that he suffered from a mental impairment by reason of depression and/or anxiety prior to the diagnosis recorded on his GP record of 26 July 2023. He asserts that the prescription for sertraline disclosed on his pre-employment questionnaire proves that he suffered from anxiety and/or depression at that time. The tribunal has accepted that the claimant had been prescribed sertraline at that time (based on the contemporaneous reference in the pre-employment questionnaire) but does not accept that this is sufficient evidence on which to conclude that the claimant had an impairment by reason of depression/anxiety prior to 26 July 2023. The claimant has failed to submit any corroborating medical evidence supporting the fact that sertraline was

prescribed to him, identifying when the prescription started, explaining which condition had been diagnosed in order for the prescription to be made, or the severity of his impairment at that time, despite the claimant having been given a number of opportunities to provide medical evidence to the tribunal. In the course of the hearing the claimant asserted that his condition was a lifelong condition but that he had for most of his life been able to manage it. The tribunal requires some additional evidence to make it more likely than not that the claimant's assertion that this is the fact, is correct.

57. The claimant was first directed by Employment Judge Smail to submit medical evidence by letter dated 10 March 2024 and submitted one item, the letter from Lincolnshire Talking Therapies (Steps2change). Having failed to attend the case management hearing on 20 June 2024, he was given a further opportunity to provide medical evidence by Employment Judge Gray. The claimant did submit a statement setting out relevant information in relation to his disability on 10 July 2024 and in which he referred to medication he was prescribed and said he would submit further medical records, but did not do so at that time. Subsequently on 10 December 2024 the claimant submitted the extracts from the GP records referred to above. The tribunal is therefore satisfied that the claimant has had every opportunity to submit medical evidence in support of his claim.
58. In terms of the impairment relied on the claimant says it his depression. The medical records disclosed however, refer to anxiety/depression from 26 July 2023 and for the purposes of this decision, the tribunal has considered the impact of the claimant's anxiety and/or depression taken together. The tribunal has found that from on or around March 2023, the claimant started showing some symptoms of anxiety/depression for which he was taking sertraline and that these continued to develop during the claimant's employment until 2 October 2023. No medical evidence has been submitted for the period after 2 October 2023, but the tribunal concludes that the symptoms did continue. The tribunal therefore concludes that the claimant did have a mental impairment by reason of his anxiety/depression at the relevant time between 22 September 2023 and 30 November 2023.
59. The tribunal next considers whether the claimant's anxiety/depression had a substantial (meaning more than minor or trivial) adverse effect on his ability to undertake day to day activities prior to 30 November 2023 based on the evidence presented to the tribunal.
60. The claimant's impact statement does not consistently differentiate between current and historic symptoms and the evidence presented at the hearing suggested that the claimant's symptoms worsened significantly after he left the respondent's employment, but this is not to be taken into account by the tribunal in assessing the effect of the impairment at the relevant time. On a number of occasions when describing the impact of his condition and the

coping mechanisms the claimant has adopted, it was apparent that the claimant was talking about his current situation, whereas the tribunal is considering the impact at the time he was employed in 2023.

61. Looking first at the period before 20 April 2023, the claimant has presented no evidence (medical or otherwise) that his anxiety/depression impacted on his ability to undertake day today activities in the period before he started having symptoms of anxiety and/or depression and taking medication (in or around March 2023). On the contrary he records in his pre-employment questionnaire dated 25 March 2023, that he had not missed a day's work in three years, and did not have a condition that would impact on his ability to undertake the role or any other medical condition. The tribunal therefore concludes that there was no such impact before 25 March 2023.
62. The claimant has further submitted no evidence (medical or otherwise) that his anxiety/depression impacted on his ability to undertake day today activities in the period from when he completed the medical questionnaire on 25 March 2023 to his first recorded doctor's appointment on 26 July 2023 and the tribunal concludes that there was no such impact between 25 March 2023 and 25 July 2023.
63. The claimant's medical records show that his symptoms started to worsen from 26 July 2023 to 2 October 2023, but there is still no medical or other evidence, including any specific examples from the claimant, that during this time period his anxiety/depression impacted on his ability to undertake day to day activities. As found by this tribunal and evidenced by his GP records, he continued to attend work, engaged with colleagues, spoke to customers on the phone and socialised by going to the gym and seeing his daughter. A feeling of "low mood" does not in itself satisfy the statutory test without further impact being identified, even if the low mood resulted in increased tearfulness and/or made it difficult to get out of bed and/or increased procrastination to some extent and/or in ADHD type symptoms, and/or in feeling like a failure.
64. Throughout this period, the claimant on his own evidence used his own coping mechanisms and continued with his normal day to day activities.
65. The tribunal next considers any relevant medication/treatment and whether the situation would satisfy the statutory test without that medication or treatment. The tribunal has accepted that the claimant had been prescribed sertraline from in or around March 2023. However, the claimant did not provide details of specific symptoms or a medical report or other medical evidence of the symptoms he experienced before he started taking the medication and the tribunal have concluded that there were none that adversely effected his ability to undertake day to day activities at that time.

66. The claimant has also not provided any medical evidence on the effect that withdrawing the medication would have had. Other than the general coping mechanisms and family support referred to by the claimant in his evidence, which are ongoing, the only other treatment which took place in the relevant period was the low mood course in October 2023. The tribunal was presented with no evidence about how effective the course had been and what the claimant's ability to cope with day to day activities would have been without it. Bearing in mind that the burden of proof is on the claimant there is not sufficient evidence for the tribunal to conclude that without medication and/or the low mood course, the claimant's anxiety/depression would during the period from 22 September to 30 November 2023, have had a significant impact on his ability to undertake day to day activities.
67. Specifically, there is no evidence that the claimant would have had a tendency to social isolation or difficulty speaking on the phone if he were not on medication as he alleges, and the examples he gives in his impact statement have been identified by the tribunal as generic possibilities. The claimant says it is "likely" that his ability to function at work would deteriorate (not that it would); that emotional strain "could" lead to social isolation (which is contradicted by the medical evidence); the lack of motivation "could" result in neglecting basic needs and hygiene (with no other mention of this as an issue) and in a severe case the overwhelming depression "could" lead to suicidal ideation (not that it would in this instance).
68. The tribunal therefore concludes that the claimant has not adduced sufficient evidence to prove that there would have been a substantial adverse effect on his ability to undertake day to day activities at the relevant time if he had not been on medication and/or taken the low mood course.
69. In terms of the duration of the impairment, (and leaving aside that no impact on day to day activities has found) then the condition had not in any event lasted for 12 months as at 30 November 2023, the first symptoms had only arisen in March 2023. Further the tribunal concludes that at that time, it would not be likely to last for 12 months given the tribunal has found that the anxiety/depression was caused by a one-off event arising out of a recent business failure. On the same basis there was no evidence at that time that it would be likely to recur, (applying the test in *SCA Packaging* that this means "*it could well happen*") as it could reasonably be expected that once the circumstances surrounding the business failure had settled down, the anxiety/depression would resolve.
70. The tribunal therefore concludes that the claimant was not disabled at the relevant time and his claim for disability discrimination is dismissed.

Employment Judge Halliday
Dated 2 February 2025

Judgment sent to Parties on
19 February 2025

Jade Lobb
For the Tribunal Office