



EMPLOYMENT TRIBUNALS

Claimant: Mr S Heeley

Respondent: Staff Management Limited

HELD in Leeds by CVP

**ON: 11 December 2025
20 February 2025
(Reserved)**

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Mr G Price, Counsel

RESERVED JUDGMENT

1. The claimant does not have a disability as defined in Section 6 of the Equality Act 2010 (EqA) at the time of the events which the claim is about, being July 2023 to 12 January 2024 (where the context so admits the relevant period).
2. As the claimant does not have a disability as defined the claimant's claims for direct discrimination – disability and failure to make reasonable adjustments are hereby dismissed.

REASONS

1. Claims

- 1.1. Direct discrimination – disability.
- 1.2. Failure to make reasonable adjustments.

2. Issues

The issues in this preliminary hearing relate to whether the claimant has or had a disability as defined in Section 6 EqA at the time the events the claim is about, namely, during the relevant period.

3. The Law

The Tribunal has to have regard to the following provisions of the law and/or the Guidance (hereinafter defined).

- 3.1. Section 6(1) EqA.

Section 6(1) EqA contains the definition of 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.”

In Section 6(1)(b) the word “substantial” is defined by Section 212(1) EqA as meaning “more than minor or trivial”. Whether the adverse effect is more than minor or trivial is a question in this case.

- 3.2. Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) - Guidance is to be considered and, in particular, by paragraph C4 “In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such on an individual, and any relevant factors specific to this individual, for example, general state of health or age”.
- 3.3. The Employment Appeal Tribunal case of **Elliott v Dorset County Council UK EAT/0197/20/LA (V)** (“**Elliott**”), although not referred to by the parties at the hearing offers useful guidance on cases involving day-to-day activities and what may be a substantial adverse effect. The Learned Judge, Judge Tayler, stressed, amongst other things, that Tribunals must consider the statutory definition of disability itself, identify sufficiently the day-to-day activities and analyse the medicals. The Tribunal has, therefore, had regard to the guidance in Elliott and accordingly takes into account the words in Section 6(1) EqA, highlighting the day-to-day activities, which are relevant in this case and analysing the medicals.

4. Facts

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it, finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed by the respondent as an HR advisor in the respondent's care in the home and case management settings. The claimant says the nature of his disability is back pain which causes difficulty, in getting dressed, cleaning, gardening and lifting. He sets out these in his witness statement.
- 4.2. The claimant says in his “impact statement” that his back pain is caused by muscle spasms, trapped nerves, sciatica “etc”. The claimant says he has flare ups and he struggles to stand up straight, sit comfortably, drive, bend or go to the toilet. The claimant says he first developed back pain in 2012 in his impact statement but says in his witness statement he says that the pain worsened in 2015. In his pre-employment medical questionnaire dated 17 October 2022 in answer to the question (1) “do you have any illness/impairment/disability (physical or psychological) that could affect your work” the claimant replied “no”. In answer to the

question (11) “have you ever had any of the following ... back trouble, lumbago, sciatica “slipped disc” the claimant replied “yes” and qualified the answer (14) as follows – “have had lower back aches **in the past** but now have many things in place to help prevent this and workstation is set up appropriately to help.” In his evidence the claimant accepted that at a meeting between him and the respondent in or about December 2023, following a period of sickness for flu-like illness at no point did the claimant refer to any particular condition including his alleged disability at a time when the respondent offered reasonable adjustments.

- 4.3. On 12 July 2024 there was a preliminary hearing in which Employment Judge Shepherd set out the question of disability as to the time of the events the claim is about, namely between July 2023 to January 2024 (the relevant period) (see Issue 2.1 of the case management record of the preliminary hearing dated 12 July 2024). In this hearing the claimant admitted that there was no evidence of his disability during the relevant period, but said he was self-managing himself. During the relevant period the claimant did not take prescription medication. Nor did he consult his or any GP between those dates, save that there was a telephone conversation in or about 4 January 2024 but there no GP notes of that consultation were produced. The result of it was that a fit note was issued on that date for post-viral fatigue for 31 days recommending working from home and no travelling until symptoms improved. No further or other fit note was produced to this hearing. The claimant said that he did not have any flare ups in the relevant period.
- 4.4. The claimant attended a chiropractor and evidence was produced from which it appears that the last visit to the chiropractor was 5 July 2022. This showed an 80 to 90% improvement, reporting that the claimant was standing more upright and had done a long drive in a car, that he was fine, just a bit stiff and his low back was a bit tight. B Gluteal area felt tight and legs did not feel heavy with no neurological symptoms, with next visit “as and when”. There was no evidence of a further visit.
- 4.5. The claimant’s previous visit to the chiropractor was on 28 June 2022 which recorded 50% better since the last time. When the claimant went to see the chiropractor on 23 June 2022 he had had a flare up that day. Because the reports from the chiropractor are outside the relevant period they do not really assist. Nevertheless it should be noted that at a visit on 14 June 2022 Dr Despina Rousou found that the prognosis was good.
- 4.6. Although outside the relevant period it is worth visiting some of the triage questions in the visit to the chiropractor on 9 June 2022. These described the claimant being in moderate to severe pain/discomfort scoring 7 out of 10 on the scale, 9 and 10 being the most pain/discomfort ever felt. The claimant’s pain was described as generalised. The claimant was hospitalised in December 2018 for appendix removal. He had no other record of hospitalisation. The box was not ticked for loss of sleep, despite the claimant maintaining that there was lack of sleep in his evidence to the Tribunal.
- 4.7. The only GP notes by way of medical evidence produced to the Tribunal was a GP referral form, also outside the relevant period, dated 13 June 2022 and nothing since. It was described as an urgent appointment when

the claimant was clearly in pain. X-rays were required but no results were produced to the Tribunal. Blood tests were taken but no results were produced to the Tribunal. The claimant was working at the time.

5. **Determination of the Issues**

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. The Tribunal has regard to the day-to-day activities which are referred to at paragraph 4.1 above.
- 5.2. The claimant maintains that flare ups are serious as far as he is concerned and whilst the Tribunal does not doubt it there were no flare ups in the relevant period.
- 5.3. The claimant's answer to his pre-employment medical questionnaire which the Tribunal finds shows no evidence that the claimant might then have been suffering from a s6 EqA disability gives no such indication.
- 5.4. The Guidance tells us to look at disability during the relevant period, as Employment Judge Shepherd found on 12 July 2024 and the claimant himself admitted that there was no evidence for the Tribunal of his disability during the relevant period. Indeed he said he was "self-managing" himself and if this was a substantial impairment having an adverse effect on his ability to carry out normal day-to-day activities the Tribunal has to consider whether he could do so without medical support and finds on that basis that his impairment was not substantial.
- 5.5. Between the relevant dates the claimant was not taking medical prescription, nor did he consult a GP, save for the telephone call on 4 January 2024. The description on the fit note of post-viral fatigue does not go to supporting the claimant's claim that he had a disability within the meaning of s6 EqA.
- 5.6. Visits to the chiropractor show improvement. No further visit was fixed after 5 July 2022. It is true that he had a flare up on 23 June 2022 but that was outside the relevant period, substantially so. Dr Rousou said the claimant's prognosis was good on 14 June 2022. The triage on 9 June 2022 does not in the view of the Tribunal support that he had a substantial impairment.
- 5.7. Having regard to Elliott we have considered the day-to-day activities and the statutory definition of disability. With regard to that definition we find that whilst there is a physical impairment and it does not have a substantial effect on the claimant's ability to carry out the normal day-to-day activities. It seems from the evidence the claimant is self-managing. There does not appear to be a long term issue.
- 5.8. Elliott also requires us to look at the medical evidence. We will accept the chiropractor's evidence as medical but it does not for the reasons given assist the claimant. The GP evidence produced to the Tribunal was outside the relevant period and there has been none since. It records the claimant as being in pain but the results of X-rays and blood tests are not available and apart from the telephone call there was no evidence of further GP contact.

- 5.9. In all the circumstances the Tribunal finds that the claimant does not have a disability as defined in Section 6 EqA at the time the events the claim is about which is during the relevant period. As both the claimant's claims are about disability his case falls and the claims of direct disability – disability and failure to make reasonable adjustments are hereby dismissed.

Employment Judge Shulman

Date: 20 February 2025