



EMPLOYMENT TRIBUNALS

Claimant: George Owen Leach

Respondent: Lavoro Design Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Wales ET via CVP

On: 28/1/25

Before: Employment Judge Murdin

Appearances:

For the claimant: Ms Kaur (Solicitor)

For the respondent: Mr Simpson (MD)

JUDGMENT

1. For the purposes of section 6 of the Equality Act 2010, the Claimant was disabled. He was disabled by virtue of a mental impairment, namely depression and anxiety from 19 March 2023 until 18 September 2024.
2. The matter be relisted for a further CMH via CVP with a time estimate of 1 hour on the next available date to deal with any outstanding case management.

REASONS

Introduction

3. This Public Preliminary Hearing has been listed to determine whether the Claimant was disabled as defined in section 6 the Equality Act 2010 when the alleged discrimination happened? In particular, I have to consider the following:
 - (i) did the Claimant have a physical or mental impairment?
 - (ii) did the impairment have a substantial adverse effect on their ability to do normal day-to-day activities?
 - (iii) if not, would the impairment have had a substantial adverse effect on their ability to do normal day-to-day activities if they had not had medical treatment; and
 - (iv) had the substantial adverse effect already lasted 12 months or was it likely to?

Background

4. The Claimant was an employee of the Respondent from May 2022 to January 2024 as a Sales Executive.
5. The Claimant has brought a claim for disability discrimination in respect of conduct and procedures during his time in employment with the Respondent and the subsequent redundancy, on the basis that the grounds for redundancy were discriminatory. It is claimed by the Claimant that the disability discrimination that he experienced was both direct (Section 13 of the Equality Act 2010 'the Act') and indirect (Section 19 of the Act).
6. The disability relied upon is depression and anxiety, which the Claimant claims that he has suffered with, since his teenage years. He says however, that this was aggravated and made worse following the passing of his brother. It was following this that he was formally diagnosed with depression and anxiety and was put on medication to deal with the symptoms of his depression and anxiety. Further details regarding this information is provided in the Claimant's statement, which I have read.
7. The Respondent's resistance to this claim is set out in their Grounds of Resistance, which I have also read, together with the rest of the amended bundle. For the purposes of today, the Respondent denies that the Claimant was disabled. In the alternative, the Respondent further denies knowledge regarding the Claimant's disability and denies that the Respondent in any way discriminated against the Claimant on the basis of his disability.

The Evidence

8. The Claimant has provided a statement in which he summarises his account of his depression and anxiety and the impact that this had on him. He also gave evidence today. He was a credible and consistent witness, whose evidence I accepted. Although he has been through an extremely difficult period in his life, his memory was good, and his evidence of a high quality.
9. His evidence was supported by medical evidence that had been previously provided. This corroborated his evidence that he suffers from depression and anxiety, and was prescribed medication to help him deal with the effects of the impairment.
10. In terms of the long-term effect, the Claimant stated that he had suffered from depression and anxiety for many years; it had always been present, but its impact and severity had varied over the years. This corresponded with the account that he provided to Occupational Health.
11. During his time in employment, the Claimant alleges that his depression and anxiety and symptoms were particularly severe, especially following the passing of the Claimant's brother. It is said by the Claimant that his disability lasted for more than 12 months, a period which coincided with the period of alleged discrimination.
12. Within the Claimant's statement, he outlines the impact that his depression and anxiety had on his normal day-to-day activities. He highlights in particular, the effects on his sleep. He explains that he was unable to fall asleep at night, and when he did, he would have traumatic dreams. This lack of sleep in turn resulted in the Claimant suffering from severe fatigue and extremely low moods, and he was unable to attend work on time in the early mornings.
13. The Claimant relies on the fact that his sleep difficulties significantly affected the Claimant in a way that was more than merely trivial or minor. He was advised by GPs to take time off work, which was confirmed by Occupation Health.
14. The Respondent denies that the Claimant was disabled for the purposes of the Equality Act. They rely on the fact that he was undiagnosed at the material time, and that his counselling records make no reference to anxiety and/or panic attacks. In particular, they aver that the duration of Mr Leach's depression and anxiety did not meet the statutory threshold.
15. Mr Harry Brunt also gave evidence. He was the Claimant's line manager at the relevant time. Mr Brunt was aware that the death by suicide of Mr Leach's brother had a substantial impact upon the Claimant, but he felt that was for a short period of time. He stressed that he had agreed a phased return to work with Mr Leach to assist with his sleep difficulties, and once that period ended, he felt Mr Leach was back to normal.
16. Mr Brunt explained that Mr Leach was sometimes 2 or 3 minutes late to work, which Mr Brunt felt the need to speak to him about, although he stressed this was

only ever informal. He became more concerned when Mr Leach had 1 unexplained day of absence. He felt that Mr Leach had become much more like himself, and regained his healthy sense of camaraderie.

17. To my mind, whilst a pleasant and credible witness, Mr Brunt did not fully appreciate the depth of Mr Leach's illness, nor the extent to which it affected him. His evidence in that regard did not greatly assist the Tribunal, as Mr Brunt was only able to give evidence as to Mr Leach's outward presentation whilst at work. He was unaware of course as to how Mr Leach's depression and anxiety may have been affecting him inwardly, or when he was not at work.

The Legal Principles

Physical or mental impairment

18. The first limb of the statutory test requires the Claimant to have a 'physical or mental impairment', which was held by the Court of Appeal in *McNicol v Balfour Beatty [2002] IRLR 711* to be '*left to the good sense of the tribunal to make a decision in each case on whether the evidence available establishes that the applicant has a physical or mental impairment with the stated effects.*'
19. The guidance within the Equality Act itself states that there is no need for a Claimant to establish a medically diagnosed cause for their impairment. In *Walker v Sita Information Networking Computing Ltd UKEAT/0097/12* the EAT held that the tribunal should consider the effect of an impairment, not the cause. Furthermore, *J v DLA Piper UK LLP UKEAT/0263/09*, the EAT confirmed that in cases where the mental impairment is disputed, the tribunal should focus on the effects the impairment has on the employee's day-to-day activities.

Normal day-to-day activities

20. Pursuant to the guidance within the Equality Act itself, an impairment will only amount to a disability, if it causes a substantial adverse effect on the Claimant's ability to carry out 'normal day-to-day activities'.
21. This approach has been re-enforced in authorities: In *Chacon Navas*, it was confirmed that the effect on a person's abilities at work should be taken into account, and held that the assessment of disability should consider a '*limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life.*' The same was confirmed in *HK Danmark C-335/11*, which stated that the impairment '*may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.*'
22. Of note is the decision in *Rayner v Turning Point and others UKEAT/0397/10* where advice from a GP to abstain from work was held to be in itself '*evidence of a substantial effect on day-to-day activities...if he is medically advised to abstain and is certified as such so as to draw benefits and sick pay from his employer, that is capable of being a substantial effect on day-to-day activities.*'

Substantial adverse effect

23. Section 212 of the Equality Act states that 'substantial' means '*more than minor or trivial*', and Section B1 of the Act guidance explains that this '*reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people*'.
24. It is established that 'more than minor or trivial' is a relatively low standard. In *Leonard v South Derbyshire [2001] IRLR 19*, guidance was given that the tribunal should look at the whole picture, and should not attempt to balance what an employee can do against what they cannot and the fact that an employee can mitigate against the effects of an impairment does not prevent there being a disability.
25. An impairment is treated as having a substantial adverse effect on a person's ability to carry out normal day-to-day activities if there are measures being taken to treat it or correct it, and, but for those measures, the impairment would be likely to have that effect [Paragraph 5(1) Schedule 1 of the Act]. '*Measures*' expressly includes medical treatment.

Long-term effect

26. The effect of an impairment will be long-term only if it has lasted 12 months, the period for which it lasts is likely to be 12 months, or it is likely to last for the rest of the life of the person affected.
27. 'Likely' means that it '*could well happen*' pursuant to (*SCA Packaging Ltd v Boyle [2009] UKHL 37*), and that likelihood should be assessed from the time of the alleged discrimination taking place, and not at the time of the tribunal hearing.
28. Where a substantial adverse effect is deemed to exist because it is likely to recur, the tribunal will take into account the whole period in assessing whether it is long-term (*Grimley v Turner & Jarvis Co Ltd UKEAT/0967/03*).

Conclusion

29. By the conclusion of the hearing, and in his submissions, Mr Simpson on behalf of the Respondent sensibly conceded that Mr Leach had suffered with a physical or mental impairment, which had an adverse effect on him. He helpfully focussed his submissions on the duration of the Claimant's depression and anxiety, and argued that it did not meet the test for 'long-term'. He also sought to dispute whether the adverse effect was substantial.
30. In terms of whether the adverse effects of the depression and anxiety were substantial, I remind myself that 'substantial' means '*more than minor or trivial*', and furthermore, it is established that 'more than minor or trivial' is a relatively low standard. An impairment is treated as having a substantial adverse effect on a person's ability to carry out normal day-to-day activities if there are measures (treatment, medication) being taken to treat it or correct it, and, but for those measures, the impairment would be likely to have that effect.

31. Mr Leach required medication following his diagnosis of depression and anxiety and anxiety. His brother died by suicide on 19th March 2023, and thereafter he was prescribed Mirtazipine 15mg which was subsequently increased to 30mg. He took Mirtazipine from 21st August 2023 until 21st March 2024. He also attended formal counselling and received 16 sessions, as evidenced by the counselling notes, and attended Reflexology appointments to help with anxiety and trauma. His final session of counselling was 21st March 2024.
32. Given Mr Leach's account of how his depression and anxiety affected him, I conclude that it did have a substantial adverse effect on his ability to carry out normal day-to-day activities. In particular, his sleep was very significantly affected, which had a knock-on effect on his ability to work. He suffered severe fatigue and low moods. I also take into account his need for medication and counselling, without which no doubt, the adverse effect on Mr Leach would have greatly increased.
33. I find that, in terms of the period for which Mr Leach was disabled for the purposes of the statute, it begins with the tragic death of his brother on 19th March 2023. I disagree with the Defendant that it ends with the conclusion of the medication and counselling in March 2024. Whilst the evidence supports the fact that Mr Leach was making steady progress by that stage, Mr Leach told me that was due to a stronger support network, and the unpleasant side-effects of the medication.
34. Mr Leach told the Tribunal that the symptoms of his depression and anxiety continue. He is however able to control them through coping strategies that he learnt.
35. To my mind, given the good progress made by Mr Leach, he would have satisfied the statutory test until around September 2024. I have adopted the date of 18th September 2024 to give a period of disability of 18 months, but in reality, he would have continued to make a gradual recovery between the end of his counselling and September 2024, when I have determined that his symptoms would no longer have amounted to a substantial adverse effect on his ability to carry out normal day-to-day activities.
36. For those reasons, I conclude that Mr Leach satisfied the test within section 6 of the Equality Act 2010. He was disabled by virtue of a mental impairment, namely depression and anxiety from 19 March 2023 until 18 September 2024.

Case Number: 1600968/2024

EJ Murdin

5th March 2025

Sent to the parties on:

6 March 2025

For the Tribunal Office:

Kacey O'Brien