



EMPLOYMENT TRIBUNALS

Claimant: Ms K Samudzimu

Respondent: Lealands High School

Heard at: Watford Tribunal **On:** 24 January 2025

Before: Employment Judge Cowen

Representation

Claimant: Mr Magara (solicitor)

Respondent: Mr MacPhail (counsel)

RESERVED JUDGMENT

1. The Claimant was a disabled person between November 2019 and April 2024.

REASONS

1. A public preliminary hearing was held to determine whether the Claimant had a disability under s.6 Equality Act 2010 during the period of November 2019 and April 2024, when she was dismissed.
2. The Claimant had provided an impact statement (amended) and some GP records between February 2020 and April 2024. The Claimant gave evidence via CVP in relation to her disability and was cross examined.
3. Unfortunately there was insufficient time to deliberate and hand down judgment at the time of the hearing and therefore this judgment is a reserved judgment.

Relevant Facts

4. The Tribunal sets out here the relevant facts to the issue of disability status.
5. The Claimant first experienced gastrointestinal problems in November 2019. It

took some time and many tests to rule out a number of different conditions before the Claimant was diagnosed with H pylori. The Claimant did not provide medical records of all the various tests. But the GP records show multiple blood and stool tests from 2020 onwards.

6. The Claimant attended her GP in February 2020 with gastrointestinal symptoms and was signed off work. The test results were abnormal in some respect and therefore further tests were undertaken, including thyroid testing which was normal. Blood tests in February 2020 included kidney tests which were normal.
7. In March 2020 further tests were taken and an ultrasound was requested. There is no record of the outcome of these tests as the GP records miss the period 6 March 2020 to 8 July 2021. The Claimant had 6 occasions of absence in the academic year 2020/21, equalling 8 days in total. Two of those days were for gastric related issues, two for stress and two for migraine.
8. Further tests were carried out in October 2021 (no results recorded) and in May 2022 a further thyroid test was requested (no results). In December 2022 further tests were requested after anaemia was detected. These test returned a normal result. In the academic year 2021/22 the Claimant was absent for eleven days in relation to gastric issues.
9. In March 2023 the Claimant attended again due to gastro symptoms. The GP noted that it was “ initially thought to be IBS flare up”, thus indicating that the Claimant had previously been diagnosed with IBS. The GP notes on 4 April 2023 indicate that Heliobacter pylori had been found and was treated with eradication treatment and antibiotics. By 28 April 2023 this was being recorded as gastroenteritis. In the academic year 2022/23, the Claimant was absent for three days for gastric issues.
10. In July 2023 the GP requested the Claimant to return for more tests (no results recorded). But by 2 October 2023 the Claimant returned again to the GP to discuss her recurring symptoms and tests showed that H Pylori was present once again. Another dose of antibiotics was prescribed and the GP followed up with the Claimant on 27 October 2023 when she indicated symptoms were ongoing.
11. Further tests in December 2023 indicated that the Claimant had a chronic reactive condition such as an allergy or autoimmune or rheumatological disease. A further ultrasound was requested.
12. In August 2024, hyperthyroidism was eliminated.
13. The Claimant's amended impact statement, although inaccurate about some of the dates as recorded by the medical evidence, outlined that the Claimant had suffered from bouts of gastric symptoms since November 2019.

14. When these bouts of symptoms occurred, the Claimant had stomach pain, bloating, nausea, diarrhoea and vomiting. She had to use the toilet with little warning, which disrupted her ability to travel or to undertake teaching in classes (as she may have to leave at short notice). She also had fatigue which affected her concentration and disturbed sleep due to the stomach issues.
15. The uncertainty over her condition and the need for medical treatment have caused stress and the Claimant is anxious about symptom flare-ups. This has led to the Claimant suffering symptoms of depression.
16. The Claimant's social interaction has also been restricted as a result of these symptoms as she cannot travel long distances, nor eat out.

The Law

17. S.6 Equality Act 2010 sets out the definition of disability as:
 - (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.
18. The Tribunal therefore must consider each of the four requirements;
 - a. The Claimant had a mental/physical impairment
 - b. Whether the impairment affected the Claimant's ability to carry out normal day to day activities
 - c. Was the adverse condition substantial
 - d. Was the adverse condition long term
19. The case of *Igweike v TSB Bank plc* [2020] IRLR 267, EAT, set out that all the criteria must be considered, and that medical evidence was not necessarily required to prove the impairment, but that it may affect the outcome as the individual's own evidence may not be sufficient to satisfy the tribunal of the existence of the impairment.
20. The Guidance on matters to be taken into account in determining questions relating to the definition of disability, states at A3, that the cause of the impairment does not have to be established, nor does the impairment have to be the result of an illness.
21. The Guidance goes on to say that "whether a person is disabled or not for the purposes of the Act is generally determined by reference to the effect that an impairment has on that person's ability to carry out normal day-to-day activities"
(A4)
22. Schedule 2(1) Equality Act 2010-
 - (1) The effect of an impairment is long-term if—
 - (a) it has lasted for at least 12 months,

- (b) it is likely to last for at least 12 months, or
- (c) 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.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

23. In considering whether the effect is 'likely to recur', the Tribunal can consider whether it 'could well happen'. *Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening)* 2009 ICR 1056, HL
24. The time at which the Tribunal is to consider the disability is the date of the alleged act of discrimination. This is also the relevant date when considering whether any impact is long term. *All Answers Ltd v W* 2021 IRLR 612, CA, set out that the Tribunal must look at the facts and circumstances existing at the date of the discrimination and not to events which occurred subsequently.
25. The Tribunal must take into account the Guidance which stresses that it is important to consider the things that a person cannot do, or can only do with difficulty (B9). This is not offset by things that the person can do: *Aderemi v London and South Eastern Railway Ltd* 2013 ICR 391. Day to day activities are things people do on a regular or daily basis such as shopping, reading, watching TV, getting washed and dressed, preparing food, walking, travelling and social activities. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc (Guidance D2 – D7)
26. In *Paterson v Commissioner of Police of the Metropolis* [2007] IRLR 763, Elias J said: "... when assessing the effect, the comparison is not with the population at large. As paragraphs A2 and A3 [of the then Guidance] make clear, what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired."
27. The burden of proving disability lies with the Claimant who must provide evidence of circumstances which fall within s.6 Equality Act 2010. Each disability must be considered independently.

Decision

28. The Claimant first experienced stomach problems towards the end of 2019. The Tribunal has seen no record of medical investigations in November 2019. It took some time to diagnose her problem, during which time she continued to intermittently suffer the symptoms. The Tribunal accept that various possibilities were discussed and many discounted before a final diagnosis of H pylori was settled on in April 2023.

However, a diagnosis is not required in order to prove a disability. The Tribunal must look to the effect of the impairment, not the cause, or indeed identification of it.

29. The first symptoms were experienced in November 2019. The Claimant's description of the stomach pains, diarrhoea and vomiting have an adverse effect on her ability to do day to day activities such as leaving the house, eating out and mean that she will have to use the toilet at short notice. The Tribunal was satisfied that these effects are substantial and adverse when they occur. However, the Claimant's evidence did not specify how often the bouts occurred, nor how long they each lasted.
30. The Tribunal accepted that the Claimant suffered from debilitating symptoms of stomach pains, diarrhoea and vomiting from time to time, starting in November 2019. The Tribunal also accepted that these symptoms also lead to tiredness and disrupted sleep. The Tribunal further accept that between March 2020 and March 2023 the only direct evidence of any recurrence of symptoms came from the sickness absence record, which showed both IBS and stomach upset as reasons for absence in all three academic years. There was no evidence of any medication or other ongoing treatment at that time which could have been masking any symptoms.
31. The Tribunal concluded that the evidence showed that in March 2023, the Claimant suffered a further bout of diarrhoea and abdominal pain. Tests at that time led to the diagnosis of H Pylori.
32. The Tribunal were satisfied that in March 2023 the Claimant was experiencing symptoms which had a substantial effect on her day to day activities. She was struggling to go out due to the pain and discomfort of needing the toilet at short notice and was unable to eat normally.
33. However, the Tribunal considered whether the effects of the Claimant's symptoms were long term – i.e. that they did last or were likely to last more than 12 months. The Tribunal must consider this at the time the alleged discrimination took place. The Tribunal considered this could be anywhere between June 2021 and April 2024, based on the Particulars of Claim.
34. The Tribunal therefore concluded that as the Claimant experienced effects which satisfied the test for disability starting from November 2019, although these symptoms did not persist throughout, it would amount to a period of more than 12 months as the symptoms emerged intermittently and certainly once again in March 2023. Given that the symptoms were very similar and that there was ongoing testing to identify the type of disorder which led to these symptoms, it is reasonable to conclude that these symptoms were part of an underlying condition.
35. The Claimant therefore must be treated as having a disability from November 2019, as it was likely that her symptoms would recur. The Tribunal did consider the evidence that H pylori is an infection which is treated with antibiotics, but noted that even having previously had this treatment, the symptoms (and infection) recurred.

Approved by:

Employment Judge Cowen

10 March 2025

JUDGMENT SENT TO THE PARTIES ON

14/03/2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

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