



EMPLOYMENT TRIBUNALS

Claimant: Ms S Wcislo
Respondent: Veolia ES (UK) Ltd

Heard at: London Central (by CVP)

On: 12/3/2025
Before: Employment Judge Mr J S Burns

Representation
Claimant: Mr M Kozik (Legal consultant)
Respondent: Mr T Perry (Counsel)

JUDGMENT

The Claimant was disabled by post-traumatic disorder, severe depression and anxiety at the material time (September 2023 to March 2024.).

REASONS

Introduction

1. Contrary to what had been directed by a previous CMO, the Tribunal failed to arrange a Polish/English interpreter for today's hearing. However, having taken instructions, Mr Perry confirmed that (i) the Respondent was content for him not to cross-examine the Claimant, (ii) he had had very few questions for her anyway, (iii) the Respondent would not be prejudiced by this as the main issue for today's purposes was whether in March 24 the Claimant's condition was likely to last 12 months, a matter which he could deal with satisfactorily by making submissions only; and (iv) the Respondent not in a position to seriously challenge the details of the Claimant's evidence as to her condition or its effects. In these circumstances, Mr Kozik agreed that the PPH could proceed without an interpreter.
2. I read a bundle of 150 pages plus 5 screenshots of GP notes and listened to oral submissions.

A summary of the relevant law

3. Per section 6 Equality Act 2010 a person has a disability if they have a physical or mental impairment which has a substantial (which means "more than minor or trivial" limitation going beyond the normal differences which may exist between people) and long-term adverse effect on his ability to carry out normal day to day activities. In assessing whether there is or would be a substantial effect, one disregards measures such as medical measures which are being used to treat it. Sch 1 para 5(1) and (2). A claimant does not

have to show why he has an impairment - but merely the fact that he does have one; The question is "Is there something wrong with Applicant?" The Applicant does not have to show underlying cause of impairment is physical (rather than mental). Normal day to day activities are activities such as walking, driving, typing and forming social relationships. The effect is long term if it has lasted or is likely to last 12 months or for the rest of the person's life (Sch 1 para 2). The question as to the likely duration of an effect which has which has not already lasted 12 months must be answered at the time of the events complained of and not retrospectively.

4. The 2011 Code on the definition of disability includes the following :

"In these contexts, 'likely', should be interpreted as meaning that it could well happen.

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 an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age)."

Findings of fact

5. The Respondent is a multinational supplier of a range of waste, water and energy management services to business and other organisations.
6. The Claimant who was born on 8/1/1992, was employed as a Driver/Operative by the Respondent from 7 August 2023 until her dismissal on grounds of capability on 14 March 2024.
7. On 25 September 2023 the Claimant sustained a head injury whilst at work. Following this the Claimant was absent from work from 25/9/23 and signed off from work by her GP due to "headaches and low mood". She remained on sick leave until her employment came to an end in March 2024.
8. On 9 October 2023 the Respondent obtained an OH report on the Claimant, which report includes the following; .

"As you are aware she has been absent from work since 25-09-2023 and her sick note is due to end on 14-10-2023. She reports that she sustained a head injury to the left side of her head whilst at work. She attended hospital and had a scan which showed no internal damage and she was diagnosed with concussion. She was discharged from hospital and prescribed appropriate pain relief.

She initially had some amnesia whilst in the hospital and she advises that this has continued intermittently. She experienced pain and swelling to the side of her head and this has reduced. For one week following the accident her legs felt heavy when mobilising and she was feeling dizzy. She informs me that she continues to have dizzy spells however if she sits for a few minutes, she is then able to stand and walk.

She is managing her personal care and household chores however tasks take much longer and she feels tired afterwards. She is unable to drive at present and she reports that if she goes out for a walk to the park she will take a card with her details written on it as she is worried she might forget them.

Following today's assessment and given the current medical information; it is my opinion that Miss Wcislo is unfit for work due to her ongoing physical symptoms associated with her head injury. I am unable to say when she will be fit to return to work as this type of injury varies from person to person and I can't predict when her recovery will be completed.

I would advise management to maintain close supportive contact to remain updated about her progress.

I would recommend a further referral to occupational health when her condition has improved and prior to her returning to work so we can reassess her fitness for her full role and advise on any potential adjustments needed.

Miss Wcislo reports suffering with concussion following a head injury at work. Recovery from this type of injury differs from person to person and I would anticipate that her symptoms should continue to improve over the next 4 weeks however there is no guarantee and some people suffer with ongoing symptoms for longer.

My interpretation of the relevant UK legislation is that Miss Sylwia Wcislo's condition (concussion) is unlikely to be considered a disability because it: - has not lasted longer than 12 months nor is likely to last longer than 12 months"

9. The Claimant had an MRI scan in December 2023 which showed no evidence of physical damage.
10. On 13/1/24 a neurologist who had examined the Claimant wrote that that she was reporting concentration problems, memory impairments, difficulties recognising faces, severe headaches, hypersensitivity to light and sounds...had become easily irritated, nervous and depressed and had impaired sleep with night terrors and flashbacks. She was diagnosed with PTSD and post-concussion syndrome and was prescribed tailored psychotherapy and medication.
11. The Claimant started private counselling with a psychologist and was in contact with a mental health support team.

12. On 19/2/24. the Respondent obtained further OH report which includes the following;

“Since the last OH assessment Miss Wcislo has been experiencing PTSD subsequent to a head injury, which has resulted in a variety of distressing symptoms...(including) nightmares, headaches, flashbacks, physical pain, heightened anxiety, constant fear, difficulty in verbal communication, neck tightness, challenges in social situation, and recurrent panic attacks. ...A psychological assessment conducted during the consultation using a validated tool indicates severe symptoms of anxiety and depression...on a scale of 0-10, with zero indicating no pain and 10 high pain, she has expressed her pain level to be 9.....Following today’s assessment and given the current medical information, it is my opinion that Miss Wcislo is unfit for work due to her ongoing physical symptoms associated with her head injury and mental health. I am unable to say when she will be fit to return to work as this type of injury varies from person to person and I can’t predict when her recovery will be completed...”

Ms Wcislo’s outlook is currently unclear as she continues to grapple with significant symptoms of PTSD following a head injury. Despite seeking medical and psychological support, the recovery period for this condition is uncertain and her ability to fully over-come these challenges remains to be determined.”

My interpretation of the relevant UK legislation is that Miss Sylwia Wcislo's condition (concussion) is unlikely to be considered a disability because it: - has not lasted longer than 12 months nor is likely to last longer than 12 months”

13. The Claimant attended an absence review meeting on 14 March 2024 at which she stated that she had had 5 sessions with her therapist, and during the second session the therapist had told her she was in a “bad condition” and her recovery would take a lot of time; and that she did not know how many sessions she would need before she would feel able to return to work. The Claimant’s partner stated that she was under a lot of stress, she was “progressing so slightly” and taking “small steps forward”.

14. Following this the Claimant was dismissed.

Conclusion

15. Both OH reports share phrases namely (i) *“I am unable to say when she will be fit to return to work as this type of injury varies from person to person and I can't predict when her recovery will be completed”*, and (ii) *“(the Claimant’s) condition (concussion) is unlikely to be considered a disability because it: - has not lasted longer than 12 months nor is likely to last longer than 12 months”*
16. The wording in shared phrase (ii) includes a mistaken formulation of the legal test (which is whether the condition is likely to last (at least) 12 months and not whether it is likely to last “longer than 12 months”).
17. Furthermore, in the second report the wording is plainly inadequate because it refers to the condition as “concussion” only, whereas elsewhere in the report it is recorded that by then the Claimant had been diagnosed with PTSD.

18. Shared phrase (ii) (about the Claimant's condition being unlikely to last "longer than 12 months") does not follow logically from shared phrase (i) which confirms that the authors could not predict how long the recovery would take.
19. Nor is there anything else in either OH report to suggest particular facts or circumstances which made an early recovery or a recovery at any specific time likely.
20. If, as stated in phrase (i), the OH specialists could not make any prediction as to duration, then there was there was no basis for them then predicting that the condition/s were likely not to last "for longer than 12 months".
21. The use of repeated stock phrases which contradict each other and the lack of internal reasoning or identified supporting evidence does not give me confidence in the conclusions recorded in either OH report on the disability issue.
22. The medical evidence shows that the Claimant's condition worsened from October 23 to February 24, despite her taking medication and receiving psychotherapy. By 19/2/24 her symptoms had become acute, she had been formally diagnosed with PTSD and was suffering severe pain and mental ill-health, and her prognosis was uncertain.
23. By the time of her dismissal, which was nearly 6 months after the accident, as the Claimant and her partner confirmed during the last meeting, very little or no recovery had been made, and the Claimant had been told recently by her therapist that she was in a "bad condition" and her recovery would "take a lot of time".
24. The Claimant's impact statement (which she confirmed during today's hearing that she had read and understood and was true, - and which the Respondent did not challenge) sets out details of the various ways in which the Claimant's impairments had a substantial adverse effect on her ability to do day-to-day activities. I accept this evidence which is consistent with the OH reports, the neurologist report and the GP records.
25. As the condition/s had already lasted many months and appeared to have worsened over that period and were causing acute symptoms, despite professional treatment, and as PTSD and severe depression are both significant impairments of uncertain and unpredictable duration, - looking at the matter in March 24, the reasonable conclusion which should have been reached by an informed observer with knowledge of the relevant facts and applying the correct legal test, was that "it could well happen" that the Claimant's condition and its substantial adverse effect on her ability to do day-to-day activities would last (at least) 12 months from when they had commenced.
26. Hence, she was disabled as claimed at the material time.

Employment Judge J S Burns
12/03/2025
For Secretary of the Tribunals

Date sent to parties
20 March 2025
