



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000484/2023**

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**Held in Glasgow via Cloud Video Platform (CVP) on 18 March 2025**

**Employment Judge L Wiseman**

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**Ms K Raszewska**

**Claimant  
In Person**

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**Rokpa Trust**

**Respondent  
Represented by:  
Mr J Treston -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The judgment of the Tribunal is that the claimant is a disabled person in terms of section 6 of the Equality Act because of the impairments of Cancer (tongue tumour) and Interstitial Cystitis and was so at the relevant time.

### **REASONS**

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1. The claimant presented a claim to the Employment Tribunal on 24 September 2023 alleging she had been discriminated against because of the protected characteristic of disability, subjected to detriment and/or dismissal because of having made a protected disclosure and unfair constructive dismissal.
  2. The claimant listed a large number of impairments but this recently was focussed on two conditions said to be a disability for the purposes of the Equality Act and which caused the alleged discrimination. The conditions  
30 relied on by the claimant were a mouth tumour/cancer and interstitial cystitis.
  3. This hearing was to determine whether the claimant was a disabled person in terms of section 6 of the Equality Act in respect of those conditions individually or collectively.

4. There has been an ongoing issue regarding the production of documents in this case. The claimant was ordered to provide her medical records in respect of the impairments she relied upon as disabilities in this case. The claimant did produce some documentation but this was in a format which neither the respondent nor the Tribunal could access. The respondent also subsequently noted that some documents appeared to have been cut and paste, and they required to see the actual document.
5. The Tribunal acknowledged the claimant had taken steps to provide documents, and still endeavours to do so, but for reasons which are not apparent, there is a lack of clarity about what she has provided and what the respondent has received. The Tribunal, in determining the issue before it at this hearing, accordingly focussed on the oral evidence of the claimant and the documents which the respondent confirmed they had.
6. The Tribunal heard evidence from the claimant and made the following material findings of fact.

### Findings of fact

7. The claimant had a mouth tumour diagnosed in mid-2022. The tumour was identified by the claimant's dentist and an emergency referral was made to the Maxillofacial unit of St John's Hospital. The claimant had surgery on the 13 June 2022 to remove the tumour, which involved the removal of part of the claimant's tongue. The letter sent by the Consultant to the claimant's GP stated there had been a "suspicion" of cancer and that "malignancy" was likely.
8. The claimant subsequently had regular biopsies and scans to check if the tumour/cancer had spread, but it had not.
9. The claimant experienced a swollen tongue and mouth following the surgery and this was treated with antibiotics and anti-inflammatories. There are still parts of the claimant's tongue which are swollen and painful, and she is to have further scans.

10. The claimant described that her control of her tongue is very different and it hurts to eat, as a result of which she has lost weight. The claimant also has a dry mouth and her speech can be impacted by this. The claimant has to regularly stop speaking in order to take a drink to relieve the dryness in her mouth. The claimant is impacted by fatigue.
11. The claimant has significant pain from nerve damage caused by the operation. The claimant had neuralgia prior to the operation and although this had calmed, the operation triggered it and this is ongoing.
12. The claimant was diagnosed with Interstitial Cystitis at the age of 25. This is a lifelong condition where the lining of the bladder has thickened and impacts on the flow of urine. The claimant is in constant pain because of this condition and feels like she wants to go to the toilet but can't. The claimant is incontinent.
13. The claimant is prescribed medication for this condition: Tamsulosin, which relaxes muscles and allows a flow of urine; Hydroxyzine, which is an antihistamine which reduces mast cell production and calms the bladder and Propanalol which is a beta-blocker for the heart (required due to long term use of Tamsulosin).
14. The claimant cannot sit for long periods of time and cannot sit on a normal chair without pain. The claimant finds driving very difficult. The claimant has to eat bland food and cannot lift anything of weight.
15. The claimant's ability to sleep is also impacted by the pain.

### **Claimant's submissions**

16. Ms Raszewska submitted she was referred on an urgent basis by her dentist because of the suspicion of cancer and the Consultant told the GP that the tumour was "likely to be malignant".
17. The Interstitial Cystitis was a lifelong progressive condition.

**Respondent's submissions**

18. Mr Treston noted, with regards to the urinary condition, that there were no medical documents regarding this following December 2020.

- 5 19. Mr Treston, based on the claimant's evidence, submitted it appeared the tumour had successfully been removed in June 2022. He noted this had not caused the claimant to take any time off and there were no long term effects. The claimant had not produced any written evidence of cancer.

**Discussion and Decision**

- 10 20. The Tribunal had regard to the terms of section 6 of the Equality Act which sets out the definition of disability. The section provides that a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long term adverse effect on that person's ability to carry out normal day to day activities.

- 15 21. The Tribunal noted that in terms of Schedule 1, paragraph 6, of the Equality Act, certain medical conditions are deemed to be a disability, and one of those conditions is cancer.

22. The Tribunal also had regard to the Guidance on Matters to be Taken Into Account in Determining Questions Relating to the Definition of Disability.

- 20 23. The Tribunal next had regard to the fact the claimant had a mouth tumour which was suspected, or likely to be cancer. The claimant was unable to answer whether the tumour had been tested once removed to ascertain whether it was malignant. She could only confirm that the Consultant, in the letter to her GP, referred to "malignancy" as being likely.

- 25 24. The Tribunal accepted the tumour had been successfully removed in June 2022, but we further accepted the effects of that operation continued and are ongoing. The claimant suffers from ongoing pain from her tongue and from nerve damage (neuralgia). The level of pain is at a significant level and causes

fatigue. The claimant has had to limit her day to day activities because of this pain and fatigue.

- 5 25. The claimant is sometimes unable to eat because of the pain and the sensation in her tongue, together with her dry mouth, impact on the claimant's ability to converse. The claimant has to take regular breaks for a drink.
- 10 26. The Tribunal concluded the claimant was a disabled person because of cancer. The tribunal further concluded that even if the tumour was not cancerous, the substantial adverse effect of the removal of the tongue tumour on the claimant's ability to carry out some day to day activities, was sufficient to decide this impairment was a disability in terms of the Equality Act.
- 15 27. The Tribunal next had regard to the impairment of Interstitial Cystitis. The Tribunal noted this is a long term progressive condition. The tribunal was satisfied, having had regard to the claimant's evidence, that this impairment has a substantial adverse effect on the claimant's ability to carry out normal day to day activities. The tribunal reached that conclusion because the claimant cannot sit for long periods of time due to pain and discomfort and this, together with anxiety regarding bladder issues, means the claimant avoids doing many things which involve leaving the house. The claimant finds driving very difficult and could not travel on public transport due to issues of incontinence.
- 20 28. The claimant finds shopping very difficult because of travelling to the shops, lifting anything of weight and the anxiety regarding incontinence/access to toilets.
- 25 29. The pain caused by this impairment impacts on the claimant's ability to sleep well, and this causes fatigue.
30. The Tribunal was satisfied that the bladder issues and pain have a substantial adverse effect on the claimant's ability to carry out almost every aspect of normal day to day activities. The Tribunal decided the claimant was a disabled person because of the impairment of Interstitial Cystitis.

31. The Tribunal, for the reasons set out above, concluded the claimant was a disabled person for the purposes of section 6 of the Equality Act, because of the impairments of Cancer (tongue tumour) and Interstitial Cystitis, and that she was so disabled at the relevant time of the alleged discrimination.

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### **Case Management**

32. The Employment Judge took the opportunity of both parties being present, to deal with some case management issues.

### **Final Hearing**

- 10 33. The claimant is unlikely to call any witnesses. The respondent will call five witnesses. It was agreed 7 days should be allocated for the final hearing, and after discussion it was agreed to list the case for hearing on **15, 16, 17, 18, 22, 23 and 24 July 2025.**
- 15 34. The claimant has a period of 7 days to confirm her views regarding the composition of the Tribunal (Employment Judge sitting alone, or with members).
35. The format of the hearing will a hybrid hearing with the claimant attending remotely. (The claimant, if she feels able, may attend in person at the hearing, but there is no requirement for her to do so).
- 20 36. The respondent has a period of 7 days to confirm whether a hearing in Glasgow or Edinburgh would be preferable.
37. Witness statements will not be used.

### **Documents**

- 25 38. There have been ongoing issues with production of documents by the claimant in this case, with the claimant believing she has produced documents, and the respondent stating they either have not received the documents or they have been sent in a format which cannot be accessed.

The Employment Judge, in order to try to address these issues, gave the following directions:

- 5 (i) The claimant and the respondent are, by 18 April 2025, to each produce a list of the documents they intend to rely upon at the hearing, and to exchange those lists (with a copy to the Tribunal);
  - (ii) The respondent is, by 2 May 2025, to confirm to the claimant, which documents they require her to copy and send to them;
  - (iii) The claimant is, by 16 May 2025, to copy to the respondent the documents they have requested;
  - 10 (iv) The respondent will collate all documents in a folder, which is paginated with an Index;
  - (v) The respondent is, by 6 June 2025, to send to the claimant a copy of the complete folder containing all of the documents which both parties intend to rely upon at the hearing and
  - 15 (vi) The respondent will require to produce paper copies of the folder of documents for the Tribunal.
39. The claimant should understand that if the above time-scales are not met, it will impact on the date she receives the final folder of documents for the hearing. Parties are therefore encouraged to ensure the time-scales are met.
- 20 40. The parties should also ensure that only documents helpful to their case are produced.