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**EMPLOYMENT TRIBUNALS (SCOTLAND)**  
**Case number: 8001059/2024**

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**Preliminary Hearing on the  
Cloud Video Platform on 25 March 2025**

**Employment Judge A Jones**

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**Ms S Maley**

**Claimant  
Represented by  
Mr Johnstone  
Lay representative**

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**GXO Logistics UK Ltd**

**Respondent  
Represented by  
Mr Willoughby, counsel**

**JUDGMENT**

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The claimant was not a disabled person at the material time in terms of section 6 Equality Act 2010 and the claim is dismissed.

**Introduction**

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1. A preliminary hearing had taken place in this case on 24 November 2024. The claimant has at all times been represented by Mr Johnstone, who is a lay representative. At that hearing the claimant's claims were clarified and various Orders were made. The claimant said that she has PTSD, insomnia, low self-esteem and syncopal episodes. Mr Johnstone is noted as having indicated that he was unable to say at the time of the hearing whether the claimant was relying on each of those conditions as a qualifying condition for the purpose of establishing disability status. The respondent did not accept that the claimant was a disabled person at the material time. The claimant had been employed

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by the respondent between 12 November and 9 July 2024. The various acts complained of were said to have occurred between April and July 2024.

2. The claimant was ordered to provide information in relation to each condition which she asserted amounted to a disability by 16 December 2024. In addition,  
5 the claimant was ordered to send to the respondent by 10 January 2025 “copies of the parts of her GP records and other medical records that are relevant to whether she had a disability in respect of each of her asserted qualifying disability or disabilities at the time of the events the claim is about.”
3. An email was received from the claimant’s representative dated 7 December  
10 which stated that the claimant “suffers from severe mental health issues, as documented in her medical records. She has been diagnosed with conditions that significantly impair her daily life activities. The attached medical summary provides detailed insights to her consultations, medications, and the adverse reactions she has experienced.” No such documents were attached. The  
15 claimant was reminded in a letter of 11 December that the information sought in relation to the Orders of the Tribunal should be provided and that this should be provided by 16 December. A letter was then sent on 18 December noting that no further correspondence had been received in relation to the Orders which had been made and the claimant was asked to consider what impairments she  
20 wished to rely on and provide the information sought in the Order in relation to each condition, no later than 3 January 2025.
4. The claimant’s representative wrote by email of 23 December stating “If making a disabled person’s claim difficult to achieve is the objective, then you are succeeding. If ensuring that a low-paid individual with disabilities cannot be  
25 represented with common sense and measured against the law is the goal, then again, you are succeeding.....If the objective is to deter individuals from making genuine claims, you are doing a great job. This is a travesty and a shocking indictment of the Glasgow Employment Tribunal”. While the email made reference to PTSD, the information sought in the Tribunal’s Orders was  
30 not provided.
5. The respondent wrote by email of 7 January requesting that the final hearing which had been listed be vacated and that one of the days be allocated to an

Open Preliminary Hearing on the question of disability status. Various other Orders were sought.

6. In response to a request to comment on the respondent's correspondence, the claimant's representative stated "Miss Maley has already provided substantial evidence demonstrating her disabilities, supported by medical records and extensive documentation shared with both the Tribunal and the Respondent." That statement was not an accurate reflection of the information provided by the claimant at that time. The email went on to state "It is unreasonable to require further submissions on conditions that are clearly documented in Miss Maley's medical records and meet the definition of a disability under section 6 of the Equality Act 2010." However, the email did not go on to provide the information which had been sought in the Orders in November 2024.
7. The claimant was then ordered by letter dated 29 January to comply in full with the Orders which had been made in paragraph 45 of the Note of the hearing of 26 November by 5 February. The possibility of a hearing on strike out was also raised.
8. The claimant's representative responded by email dated 29 January indicating that he was unclear there was any further information outstanding and that the respondent had all the claimant's medical records.
9. By letter dated 30 January the information which had been ordered to be provided was set out again by the Tribunal and the claimant was ordered to comply with this Order by 5 February.
10. The claimant's representative sent an email on 1 February, which stated "first, I categorically refute the characterisation of Miss Maley's disabilities as "alleged". All of her medical information has been provided in full, and her conditions – including post-traumatic stress disorder (PTSD), anxiety, depression and attention deficit hyperactivity disorder (ADHD) are clearly documented". The email did not comply with the Orders which had been made.
11. A further email was sent on 4 February, an attachment to which was said to provide answers to the questions which had been asked in the Orders.
12. The document did not set out the specific conditions relied upon, but made reference to "Insomnia, difficulty communicating, logical thinking, PTSD, Depression, low self esteem, poor concentration, cannot sit still, over

stimulated, trouble concentrating, panic attacks, anxiety, feeling of easily threatened.”

13. A letter was sent to the claimant’s representative on 5 February indicating that the Order had not been complied with.

5 14. A preliminary hearing was then listed to determine the question of disability status on 25 February. Parties were ordered to provide each other with copies of any documents they intended to rely on at that hearing by 18 February. A bundle was lodged on 20 February by the respondent who indicated that the claimant had failed to specify what documentation they intended to rely on at  
10 the hearing.

15. The hearing for 25 February was postponed after the claimant’s representative was unable to join the hearing. A further Order was made requiring parties to provide copies to each other of any documents on which they intended to rely at a rescheduled hearing within 7 days.

15 16. The claimant’s representative sent an email on 2 March, which included what was said to be a statement from the claimant. That ‘statement’ did not comply with the Orders which had been made requiring the claimant to specify the conditions on which she was relying.

17. The respondent sent an email on 12 March indicating that the question of  
20 disability status was not resolved as no further information had been provided by the claimant regarding her alleged disabilities.

18. The respondent lodged a bundle of documents on 21 March for today’s hearing. No documents were lodged by the claimant.

### **The hearing**

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19. Prior to the hearing commencing, Mr Johnstone sent an email to the clerk complaining that a member of the public and ‘an abuser’ of the claimant was present at the hearing and refusing to show his face. The email suggested that this individual had previously shared recordings of hearings with others. I  
30 addressed the concern as a preliminary matter. I identified that the individual who was causing concern was the respondent’s HR manager who was providing instructions to counsel who was appearing on their behalf. I clarified that the individual was not to give evidence at today’s hearing. Mr Johnstone

appeared to suggest that Mr Lines, had shared a recording of a previous hearing. I explained that recording proceedings was a criminal offence and asked Mr Johnstone to carefully consider what he was alleging. While initially he indicated he was alleging that a recording of a previous hearing had been made, he then appeared to suggest that Mr Lines had allowed someone else to be at his computer when he was taking part in a hearing. In any event, I indicated that counsel was entitled to have someone to instruct him, that it was also a public hearing, and that Mr Lines could remain.

20. I then indicated that I had received a bundle of documents from the respondent and sought to clarify if this was a joint bundle. Counsel explained that it was not as the claimant had not provided any additional documents. Mr Johnstone suggested that the respondent had refused to include documents provided by him. He said that he had proof of this and that he had provided medical documentation. I adjourned the proceedings for Mr Johnstone to send any emails supporting his allegation that he had provided documents to the respondent and that they had refused to include them, and to allow Mr Willoughby to clarify the matter.

21. During the adjournment, Mr Johnstone sent an email which stated that he had told the respondent's solicitors that they already had all the documents. An email which had been sent in August 2024 which appeared to contain a short half page extract from the claimant's GP records was also provided. Mr Willoughby indicated that the respondent had refused to include documents which related to training of managers as this was not relevant for the purposes of this hearing. No medical records had been provided. I was not satisfied that the respondent had failed to produce any relevant documentation provided on behalf of the claimant for this hearing.

22. I therefore indicated that I would proceed to hear evidence from the claimant. I emphasised on a number of occasions that it was for the claimant to adduce evidence, either orally or in documents to which reference was made and that it was for her to demonstrate that she was disabled. I indicated that I would allow the document which included an extract from the claimant's GP medical records to be lodged as a production. I also emphasised that I would only take

into account evidence led and documents to which reference was made in my determinations.

### **The claimant's evidence**

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23. The claimant then gave evidence. She was asked very few questions and was not referred to any documents. Her evidence was that she had PTSD, low self-esteem, insomnia, flashbacks and anxiety and had these conditions since 2016. She was asked if there were any medical records about that and she said there were. She said she had an appointment on Friday with a mental health team and that she was on medication, 45mg of mirtazapine, which had been increased from 15mg to 30mg and then to 45mg and that she takes one at night. She was asked how this affects her and she said she struggles to get out of bed, doesn't eat much and is stressed and that this (the Tribunal proceedings) are dragging on and on and that nothing is ever good enough.

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24. Mr Johnstone then said that he didn't want to put the claimant through this and did not want to be "dancing round the court". He declined to ask the claimant any further questions. I expressed concern to him that I had very little information to proceed to determine the matter and that if there was not sufficient evidence to demonstrate that the claimant was a disabled person at the material time the claimant's claim would be dismissed. Mr Johnstone did not ask the claimant any further questions. There was no cross examination.

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25. I invited parties to make submissions. Mr Johnstone said that they had reports and doctors' reports and that they could provide these. I reiterated that this hearing had been the opportunity to provide these.

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26. The respondent's position was that the claimant had four months in which to prepare evidence and had failed to do so. It was submitted that the claimant had not established that she was a disabled person for the purposes of the Equality Act 2010.

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**Discussion and decision**

27. The claimant had not complied with Orders to clarify what condition or conditions on which she was relying as amounting to a disability despite a number of opportunities to do so. She did not provide any evidence at the Tribunal which assisted in that regard. She had not provided any evidence about what effect any of the conditions she referred to impacted on her ability to perform normal day to day activities or which specific conditions she was relying upon.
28. It remained unclear which of the conditions the claimant referred to were being relied upon by her as amounting to a disability.
29. I accepted that the claimant was on medication as, while no reference was made in evidence to the GP record, there was reference to that medication in the document. However, there was no evidence, either oral or documentary to say when that medication had commenced, what exactly it was intended to treat, or how long the claimant was expected to take it. There was no evidence about how the claimant had been before she started taking the medication or how she thought she might be if she did not take it.
30. The approach of Mr Johnstone was not of assistance to the claimant's case. He appeared to be of the view that there should be no need for the claimant to adduce evidence in support of her case. In so far as any evidence might be necessary, he remained steadfast in his view that it was for the respondent to produce this evidence.
31. Section 6 (1) of the Equality Act 2010 provides that
- 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.
32. The burden is on the claimant to prove that she satisfies this definition. In the present case it was not clear what condition or impairment the claimant relied upon as amounting to a disability. There was no evidence regarding what impact any of the conditions she says she suffers from has on her ability to

perform normal day-to-day activities. There was simply no evidence at all which could allow the Tribunal to conclude that the claimant was a disabled person between April and July 2024. The claimant's claim therefore fails and falls to be dismissed.

**5 Employment Judge Jones**

**Date sent to parties: 27 March 2025**