EMPLOYMENT TRIBUNALS

Claimant: Mrs A Naz

Respondent: The Wise Group Limited

Heard at: Manchester (by CVP) **On:** 17 February 2025

Before: Regional Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Ms C Fowlie, Solicitor

WRITTEN REASONS

1. These are the written reasons for the judgment given orally with oral reasons at the conclusion of the Preliminary Hearing on 17 February 2025, and sent out to the parties in writing on 7 March 2025.

Introduction

2. By a claim form presented on 28 September 2023 the claimant brought a number of complaints arising out of her employment by the respondent as a Finance Benefit and Debt Mentor between 1 August 2022 and 26 May 2023. She alleged that the termination of her employment amounted to disability discrimination because she had not been given the opportunity to transfer to another role.

3. The response form of 1 December 2023 confirmed that the claimant was responsible for providing financial wellbeing support to offenders, both in prison and on probation, and that she had been dismissed on grounds of capability with effect from 22 June 2023. The respondent denied that the claimant had been a disabled person, or that there had been any contravention of the Equality Act even if that were so.

4. Employment Judge Allen conducted a case management hearing on 25 April 2024. The disability discrimination complaints were clarified. A key issue was the amount of walking required when working with offenders in prison. The unfair

dismissal complaint, however, could not be pursued because the claimant had less than two years' continuous service, and that complaint was withdrawn and dismissed.

5. This meant that determining disability status might be a "knockout blow" for the vast majority of the claim and therefore it was appropriate to have a preliminary hearing on that point. He listed the case for a public preliminary hearing in September 2024 to determine whether the claimant had been a disabled person between 8 August 2022 and 22 June 2023.

6. Employment Judge Allen recorded that the claimant relied upon seven medical conditions. The claimant subsequently accepted that the mental health conditions were relevant to remedy, not to whether she was a disabled person, and therefore the five physical impairments on which she relied were as follows:-

(1) Sleep Apnoea

(2) Water retention

(3) L4 and L5 slipped disc in lower back

(4) Joint pain in lower body

(5) Asthma

7. An order was made for the claimant to provide a disability witness statement and medical information, but on receipt of that the respondent confirmed on 9 July 2024 that it still disputed that the claimant had been a disabled person.

8. The hearing in September 2024 was postponed because the parties were waiting for a report from the claimant's GP which the respondent had commissioned with her consent.

9. That report was eventually produced on 24 January 2025. There was a dispute by email between the parties about whether the claimant should provide a copy of it to the respondent. The claimant considered that it was the GP's responsibility to do so. However, she did provide a copy of that report on 4 February 2025, meaning that this hearing on 17 February could proceed.

The Hearing

10. For this hearing I had a bundle of documents which ran to 414 pages, and any reference in these reasons to a page number is a reference to that bundle unless otherwise indicated.

11. I also had a short supplementary bundle (eight pages) of documents which the claimant wanted to have included. That bundle included a witness statement from Simona Papaporfyriou, the claimant's sister-in-law, but the witness statement primarily related to the effect on the claimant of the termination of her employment. I took it into account but it was not necessary for that witness to give oral evidence.

12. I did, however, hear oral evidence from the claimant pursuant to her disability witness statement. She answered questions from Ms Fowlie and from me.

Relevant Legal Principles

Legislation

13. This claim is brought under the Equality Act 2010. Section 6 defines a disability as follows:

> **"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."**

14. The word "substantial" is defined in section 212(1) as meaning "more than minor or trivial".

15. There are some additional provisions about the meaning of disability in Schedule 1 to the Act. Paragraph 2 provides that the effect of an impairment is long-term if it has lasted for at least 12 months or is likely to last for at least 12 months, and that

> "**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."**

16. Paragraph 5 of Schedule 1 introduces a principle sometimes called the "deduced effect" since the Tribunal must deduce from the evidence what the effect on the claimant would be if the medication stopped:

> **"an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if**
>
> **(a) measures are being taken to treat or correct it, and**
>
> **(b) but for that, it would be likely to have that effect."**

Guidance

17. Section 6(5) of the Act empowers the Secretary of State to issue guidance on matters to be taken into account in decisions under section 6(1). The current version dates from 2011.

18. Section D of the guidance contains some provisions on what amount to normal day-to-day activities, and paragraph D3 confirms that walking is one of them.

19. As to the deduced effect and medication, paragraph C11 says that:

> **"However, if the treatment simply delays or prevents a recurrence, and a recurrence would be likely if the treatment stopped, as is the case with most medication, then the treatment is to be ignored and the effect is to be regarded as likely to recur."**

20. The guidance also includes an appendix which sets out an illustrative and non-exhaustive list of factors which, if experienced, it would be reasonable to regard as having a substantial adverse effect. Those factors include the following:

> **"…an ability to walk only a short distance without difficulty; for example, because of physical restrictions, pain or fatigue…"**

21. There are also examples of factors where it would not be reasonable to regard them as having the required effect. They include:

> **"Experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or a mile."**

Case Law on Deduced Effect

22. There was an issue in this case about the extent to which I could make findings about the position the claimant would be in if the effect of "measures", which includes medication, was ignored in accordance with paragraph 5 of Schedule 1 to the act.

23. This was considered by the Court of Appeal in **Woodrup -v- London Borough of Southwark [2002] EWCA Civ 1716**. In giving a concurring judgment, Clarke LJ said at paragraph 22:-

> **"…It can be seen that the evidence of the appellant as to what would have happened if the treatment were stopped is of no real value. That is because she could not possibly know what the answer to the question was. She could have no relevant experience upon which to base her answer. The position might have been different if the treatment had in fact stopped in the period since it began …, because she would then have had experience upon which to base an answer. Absent such experience, her statement in her particulars, repeated in substance in her statement to the Tribunal, that if medical treatment were to be stopped she "would deteriorate and her symptoms would return" was little more than speculation."**

24. The issue was also considered by the Employment Appeal Tribunal in **J -v- DLA Piper UK LLP [2010] ICR 1052**. In paragraph 57 the Tribunal considered the question of deduced effect, the point at issue being whether the Employment Tribunal had attached sufficient weight to a report from the GP, rather than a specialist. The Appeal Tribunal made the following comment:-

> **"…There is nothing particularly surprising in the proposition that a person diagnosed as suffering from depression who is taking a high dose of anti-depressants would suffer a serious effect on her ability to carry out normal day to day activities if treatment were stopped: the proposition could of course be challenged, but in the absence of such challenge – there being none in [*the medical report*] – it is unclear what elaboration was required".**

25. The application of the Equality Act definition of disability in cases of obesity was considered by the Employment Appeal Tribunal in **Walker -v- SITA Information Networking Computing Ltd UKEAT-0097-12**. The Employment Tribunal had concluded that because there was no physical or organic cause for the conditions apart from the claimant's obesity, and because the symptoms were exacerbated by functional overlay, that claimant was not disabled. The Appeal Tribunal found that it was wrong for the Tribunal to have regarded the absence of any diagnosed cause as

a legal problem as opposed to an evidential issue. On the question of obesity the Appeal Tribunal said the following in paragraph 18:-

> **"… Though I do not accept that obesity renders a person disabled of itself, it may make it more likely that someone is disabled. Therefore on an evidential basis it may permit a Tribunal more readily to conclude that the individual before them does indeed suffer from an impairment or, for that matter, a condition such as diabetes, if that diabetes is such as to have a substantial effect on normal day to day activities".**

Relevant Findings of Fact

26. This section of these reasons sets out the findings of fact relevant to the decision I made. It was clear that the focus of the complaints of discrimination arising from disability and of a failure to make reasonable adjustments related to the claimant's mobility. However, the extent to which the claimant was able to walk was challenged by Ms Fowlie, partly on the basis of credibility, and therefore I will resolve that issue in the discussion and conclusions section.

Background

27. The claimant was born in February 1985, and was aged 37 when she joined the respondent in August 2022.

28. On 27 June 2016 (page 302) there appeared an entry in the GP medical records recording a telephone call from the claimant in which it was said she "immediately got angry and said "bloody hell I'm sick of this"". The claimant wanted to know why she could not be seen the same day. The record of the call said that in the past she had accused staff in the practice of lying, and that she said she was "pissed off". It recorded that she was given a warning about how she spoke towards the reception staff.

Obesity

29. The records showed (page 208) that the claimant had been diagnosed with obesity in September 2018. The diagnosis of morbid obesity was confirmed by a Consultant in Liverpool in June 2021 (page 203). She remained obese throughout the period ending with the termination of her employment by the respondent.

30. An NHS information sheet about obesity (page 146) showed that the claimant's body mass index placed her in the "severely obese range". In the list of obesity-related problems there appeared breathlessness, snoring, and joint and back pain. Obesity was also said to increase the risk of developing more serious health conditions, including Asthma and Sleep Apnoea.

31. In a letter from the claimant's GP, Dr Motupalli dated 24 January 2025 (see below) the view was expressed that the water retention and swelling in her feet was probably a result of obesity, and that obesity could contribute to musculoskeletal pain in her back.

Water Retention

32. A build-up of fluid in the claimant's legs and feet led to a prescription of Furosemide in the middle of 2019. One tablet was taken each day. The claimant continued to take that right through until April 2024 (page 209).

33. The claimant reported swelling in her lower limbs at her Personal Independent Payment ("PIP") assessment in 2023 (page 136). The swelling was intermittent but the claimant experienced it more often in warmer weather.

Sleep Apnoea

34. According to the medical records at page 207, Sleep Apnoea was diagnosed in January 2019. That condition interferes with breathing and prevents restful sleep. The claimant was referred to a specialist sleep clinic in August 2022 (page 235).

35. She was prescribed a device to wear during the night known as the CPAP, which keeps airways open while the patient sleeps. The mask is fitted over the face and a tube connected to a machine which blows air through it. A GP entry from 22 March 2023 (page 225) recorded that the claimant had been using that machine but had woken that morning not able to breathe, which might be related to her anxiety.

36. In a report of 13 November 2023 (page 196), the sleep clinic reported that the claimant had not been able to use the CPAP, instead only trying a full face mask. Her sleepiness score was 6 out of 21, which was said not to constitute excessive day time sleepiness. CPAP was going to resume using a nasal mask rather than a full face mask.

37. There was a further report prepared in April 2024 (page 191), well after the period with which I was concerned. The claimant had not been able to use the CPAP mask properly because it was broken.

Asthma

38. The medical records at page 207 recorded Asthma as being an active problem from December 2018. In the period with which I was concerned the claimant was on a repeat prescription of two different inhalers. The primary inhaler was to be used twice a day, and when required a Salbutamol inhaler was to be taken four times a day.

Back and lower limb joint pain

39. It was convenient to take these two together as they both affected the claimant's lower back and limbs.

40. Acute mechanical low back pain dated back at least to February 2017, when the claimant attended a Physiotherapy Spinal drop-in Clinic. The report appeared at page 201.

41. A GP entry from 12 September 2018 (pages 283–4) recorded that the physiotherapy went on until July 2018 and the claimant was then discharged. She

was seeking a referral for further physiotherapy. An entry was made in the following terms:-

> **"Just can't move "at all", not physically fit for work, dizzy does where she just "falls over all of a sudden". States can't walk at all but entered room with normal gait".**

42. When the claimant provided her CV to the respondent in her job application (page 145) it recorded amongst her interests "mountain climbing". When cross examined the claimant said that that had been an activity in childhood in which she maintained an interest without being able to actually undertake it.

OH Report October 2022

43. The claimant's declaration of her health conditions in her application led to an occupational health report of 4 October 2022 from Dr Freer which appeared at page 155. The Sleep Apnoea and the joint pains were described as obesity-related, and the lower back pain attributed to slipped discs.

44. In relation to the joint and back pain the following appeared:-

> **"She has chronic joint and back pain that impacts on her mobility. She has a walking distance of around five to ten minutes before she has to stop and rest, she advised she can go up and down a flight of stairs but generally prefers to use a lift. … This condition is appropriately managed with pain killing medication. I would not be anticipating that her chronic pain symptoms will improve significantly in the future".**

45. After considering some of the other medical conditions Dr Freer offered the opinion that the claimant would be disabled under the Equality Act.

46. There were some points in the report which the claimant sought to query, and this resulted in an email from her manager, Ms Mackenzie, to the occupational health provider on 2 November 2022 at page 159. It included this sentence:-

> **"The report states that Asma can walk around five – ten minutes, Asma stated this is more like 20 - 30 minutes before needing a 1 - 2 minute breather".**

47. The reply from Dr Freer came on 3 November 2022 at page 160. Dr Freer confirmed that the clinical records of the consultation recorded the claimant saying that she could walk 5 to 10 minutes before she needed to take a break and then carry on.

Trip to Pakistan

48. In late 2022 the claimant planned to go to Pakistan to have back surgery there. This was not on the advice of her treating doctors in this country. She discussed it with her doctor in a telephone call on 25 October 2022 as recorded in a note at page 230. However, although the claimant travelled to Pakistan she became ill there and was unable to have the operation, as recorded by her GP here in a note at page 228. In cross examination the claimant said that the flight was over seven hours, and that she needed passenger assistance by way of a wheelchair at the airport and had to keep moving about during the flight. She had hoped to have an operation to make her pain free but this had not worked out.

April 2023 GP Report

49. Further advice from the GP was sought by the respondent in February 2023 (page 164). Details were given about what the job involved and that there was a concern whether the claimant was fit to stand or walk for long periods of time.

50. The response of 13 April 2023 from Dr Motupalli appeared at page 166. He confirmed the claimant was morbidly obese and referred to the pain management clinic for her back pain. The report said that she struggled with mobility and was required to take regular breaks when walking. It said she could carry out her duties in the community but "due to excess walking in the prisons, may find this difficult".

PIP Assessment May 2023

51. In May 2023, about a month before her employment ended, the claimant was assessed for a Personal Independence Payment.

52. The decision notice was issued on 31 August 2023 (page 132). She was awarded the standard rate for mobility needs for a three year period from August 2023.

53. The PIP assessment was that she could stand and move unaided more than twenty metres but no more than fifty metres (page 134). The symptoms of pain in the back and lower limbs, breathlessness and swelling were consistent with diagnosed conditions, and moderate pain relief was being taken.

54. The assessment included this passage:-

> **"You state your partner reminds you to take medications as you can sometimes forget, however you have no memory clinic input and during the assessment you were able to provide details of a complex medical history".**

After Dismissal

55. With the claimant's consent, the respondent asked Dr Motupalli for a report on certain matters relevant to this hearing.

56. His report of 24 January 2025 appeared at page 189. He confirmed Sleep Apnoea but said he had not observed the claimant have difficulties with planning activities at work or working in an environment that was over stimulating or chaotic. He had not diagnosed water retention but confirmed swollen feet in September 2021 which was probably a result of obesity. She had been on Furosemide since June 2019 but he did not believe her condition was worse in the summer.

57. In relation to back pain he said he was not sure why she needed back surgery, she had been seen for physiotherapy in 2017 and was not on any regular pain medication. Asthma had been diagnosed but did not have the effects which the respondent asked about.

58. The claimant was not happy with this report and she sent an email to the surgery on 28 January 2025 (page 184) saying the questions had not been answered fully, the answers were incorrect, and had been given without the doctor knowing all the facts. She confirmed that she had needed passenger assistance

when travelling to Pakistan and she said she was going to make a complaint to the Care Quality Commission.

Submissions

59. At the conclusion of the oral evidence each side made an oral submission.

Respondent's Submission

60. For the respondent Ms Fowlie took me through the legal framework and emphasised that the burden was on the claimant to prove on the balance of probabilities that she met the statutory test at the relevant time. She submitted that medical information after the period in question was of little assistance, and that based on the **Woodrup** decision it would not be proper to make findings about the deduced effect without medical evidence as to what it would be if the claimant stopped taking medication.

61. Ms Fowlie moved on to suggest that the claimant's credibility as a witness had been impaired such that those medical records and reports which recorded what she said could not be taken at face value. She relied on the observations in the medical records about the claimant having a normal gait and the comment about memory in the PIP assessment. She particularly emphasised the email sent to Dr Freer by her line manager Ms Mckenzie which appeared to show that the claimant was asserting that she could walk for twenty or thirty minutes, not the five to ten minutes recorded by Dr Freer. The fact the claimant had also been recorded as so angry with her practice in 2016, had threatened the practice in January 2025 with a CQC referral, and had also made similar threats to the respondent's lawyers were all said to show that she was manipulating the circumstances to get where she wanted to be. The fact she travelled to Pakistan in late 2022 and had mountain climbing as a hobby were also wholly inconsistent with what she was now saying about her medical position.

62. Turning to the substantive issues, Ms Fowlie submitted that ultimately the impairments in question were all associated with or exacerbated by obesity, which was not a disability. The lack of any separate clinical cause for those matters was relevant given the claimant's issues with credibility. It was submitted that there was insufficient medical evidence available and that the disability witness statement did not provide the account of day-to-day activities at the relevant time which would enable the claimant to discharge the burden of proof. Despite the opinion of Dr Freer in October 2022 it was for the Tribunal to reach its own conclusions.

63. As to the individual impairments, certain symptoms of Sleep Apnoea had not been noticed by the GP and she had stopped using the CPAP machine for six months. There was very little evidence for the water retention problems and the diagnosis of the GP was that any swelling was probably due to obesity. The disc and joint problems were said by the GP not to be symptomatic of backache and there was no detailed evidence about the impact on day-to-day activities. The evidence as to the affect of Asthma was vague and general and the GP did not believe it had the effects which the claimant had contended for. Wheezing and coughing after exercise was probably due to obesity not to Asthma.

64. Overall Ms Fowlie invited me to conclude that the claimant was not a disabled person at the relevant time, since none of the impairments individually or cumulatively reached the threshold.

Claimant's Submission

65. The claimant emphasised that any attack on her credibility was unwarranted. She said that there were some conflicts with the GP and with the solicitors but ultimately she had been honest and upfront about the medical position. She reminded me of her evidence about the Sleep Apnoea and that she had communicated the medical position to the respondent upon joining them. She urged me to accept the evidence in her witness statement and given orally in this hearing about how she was affected by the combination of the various conditions.

Discussion and Conclusions

66. In considering whether the claimant met the statutory test I reminded myself of the legal framework set out above, and that the burden of proof lay on the claimant to establish that she met the definition at the material time. Before making findings of fact and applying the law, however, I had to consider two preliminary points.

Deduced effect – medical evidence

67. Ms Fowlie submitted that without medical evidence as to how she would be if she stopped taking the medication, the claimant could not prove on the balance of probabilities what the deduced effect would be. That was based upon paragraph 22 of **Woodrup**. I noted, however, that that case was one of relatively unusual facts. The claimant in **Woodrup** had had a nervous breakdown in 1991 then sporadic treatment for that over seven or eight years. It was in that context that the comment was made by Clarke LJ about her evidence having no real value. In contrast in this case the claimant had had ongoing symptoms which had caused her to take medication and would therefore have had some experience of how those symptoms had been without that medication.

68. Secondly, it seemed to me that the proper approach to the importance of medical evidence was that set out by the Employment Appeal Tribunal in **J -v- DLA** at paragraph 57. The fact someone is prescribed medication for a prolonged period suggests that the medical position would be worse if that medication were to stop. That is a proposition which accords with common sense and which does not necessarily require medical evidence to support it.

69. I proceeded, therefore, on the basis that there was no absolute requirement for the claimant to have medical evidence about the deduced effect in order for her to prove her case on that point.

Credibility

70. Ms Fowlie based her submission that the claimant should not be regarded as a credible or reliable witness on a number of matters which were recorded in the documents.

71. There were many of those that I discounted as carrying no weight. The fact the claimant had travelled to Pakistan for surgery might seem surprising for someone with the back and lower limb condition that she claimed to have, but the claimant had explained in oral evidence how she had coped with the travel and the flight. The reference to mountain climbing on her CV was, I concluded, a reference to an interest and past activity, and was not an indication that she was actively engaged in mountain climbing.

72. The reference in the GP notes in 2016 to the claimant becoming angry at the inability to get an appointment immediately was not something which did the claimant any credit, but nor did it seem to me to undermine her credibility. Frustration with such matters is hardly unusual and may be particularly pronounced for those with a range of chronic medical conditions.

73. I also considered the September 2018 GP entry at page 283-4, which suggested that the claim that she "can't walk at all" was inconsistent with a normal gait observed on entering the doctor's office. It was understandable that Ms Fowlie emphasised this point, but of course the claimant's position had otherwise been that she could walk for 5 or 10 minutes before needing a break. That would not be evident on simply entering a room, and I concluded that that phrase "can't walk at all" was not intended by the claimant to be taken literally.

74. Further, the claimant's belief in January 2025 that it was for the GP to provide the report to the respondent's solicitors, because they had commissioned it, was a reasonable one and in any event she did eventually provide it. Nor did I draw any adverse inference from the claimant's references to making a complaint to the Care Quality Commission or referring the respondent's solicitors to their professional regulator.

75. Reliance was also placed on the PIP document at page 135 where what the claimant said about being reminded to take medication appeared to the assessor to be inconsistent with the fact she had not been referred to a memory clinic. However, I did not consider that an occasional need to be reminded about taking medication each day was something which would justify a referral to the memory clinic or be inconsistent with having a good recall of the medical position.

76. One point which did concern me, however, was the claimant's email about how far she could walk, which of course was an issue also at the heart of this case. I deal with that in the next section.

Finding of fact – walking

77. The claimant's witness statement for this hearing said that she could walk between twenty and fifty metres before becoming severely breathless and having to stop. That was broadly consistent with what she had told the occupational health doctor, according to his report in October 2022, which recorded her as having said she could walk for five or ten minutes before she had to stop and rest. She would struggle to walk longer than that.

78. A significant issue for the claimant, however, was the email from Ms McKenzie to Dr Freer at page 159 which recorded the claimant having queried that

report by saying that it was more like 20 to 30 minutes of walking before she would need a 1 or 2 minute break. When cross examined about this the claimant said there must have been a misunderstanding.

79. I noted that the reply from Dr Freer confirmed that the claimant said she could walk for five or ten minutes. It was clear that the claimant had said the same thing to the DWP assessor as recorded in the PIP assessment at page 136, mentioning a distance of twenty to fifty metres. Although at normal walking pace one might cover more than fifty metres when walking for ten minutes, the overall gist was that walking ability was limited.

80. The claimant denied having told Ms McKenzie to query that. It must have been discussed between them for it to have appeared in the email. However, I have heard no evidence from Ms McKenzie save the email itself. The claimant said it may be a misunderstanding because Dr Freer had asked her to say how long she could walk with reasonable adjustments, to which she said she could do twenty or thirty minutes at that stage. It is possible that the claimant was trying to impress upon Ms McKenzie that the restriction in walking was not as significant as Dr Freer made out if appropriate adjustments were in place.

81. Overall I concluded that this discrepancy did not undermine the credibility of the claimant's account to the extent for which Ms Fowlie contended, and I found as a fact that the claimant could not walk for more than ten minutes without having to stop for a break.

The Impairments

82. It was not in dispute that the claimant had the physical impairments she relied upon. The Sleep Apnoea had been diagnosed some years before the claimant was employed by the respondent. I noted that her score was described as six out of twenty one without any excessive daytime sleepiness (page 197) but the claimant did explain why she was unable to use the full CPAP machine for a six month period. In my view it was understandable that the GP had not observed the symptoms which the claimant said the Sleep Apnoea created, being difficulty in planning and avoiding an overstimulated environment. There is no way a GP could observe those symptoms without seeing the claimant in her workplace or elsewhere.

83. In relation to water retention, the claimant described what was recorded in the PIP assessment in August 2023, namely swelling in her legs which was intermittent but apparently triggered by heat. She was on medication for this from June 2019, three years before the period with which I was concerned. Even though there was no medical evidence specifically on this point, I inferred that the claimant's swelling symptoms in her legs would be worse if she came off that medication.

84. Turning to the disc problems and lower joint pain, it was unclear whether these were due to degeneration in the L4 and L5 discs or just an effect of obesity. I found as a fact, however, that the claimant did take pain killers daily and I inferred that she would be in more pain if she did not do so.

85. Finally, in relation to Asthma I noted that according to page 209 the claimant had been on medication on a daily basis for some time. The symptoms of wheezing

and coughing after exercise, and breathlessness after walking could have been due to the Asthma, but either they or the Asthma itself could have been in some way related to obesity.

Conclusion

86. Putting all those matters together I considered the cumulative effect of the physical impairments on which the claimant relied. I took into account that it seemed likely that these were related at least in part to her obesity. In accordance with **Walker -v- SITA** I ruled out obesity itself as a disability but I noted that it could result in impairments which did have a substantial adverse effect.

87. Obesity-related problems identified in the NHS information sheet included breathlessness, difficulty doing physical activity, feeing very tired, and joint and back pain. They also created a greater risk of Asthma and Sleep Apnoea. To that extent many of the symptoms the claimant described were consistent with her obesity as indeed the Occupational Health Doctor had recognised in the report in October 2022 at page 155.

88. Overall I was satisfied that without the Sleep Apnoea night treatment, the medication for fluid build-up, the daily painkillers and the daily Asthma inhalers, the claimant would have been in a position in the period between August 2022 and June 2023 where her mobility was limited to being able to walk for five or ten minutes without having to take a break due to pain, discomfort and breathlessness.

89. Applying the law and the guidance to that finding of fact, I was satisfied that this meant that the impairments did have an adverse effect on her day-to-day activity of walking.

90. Noting the examples given in the Secretary of State's guidance, I was also satisfied that this could not be described as a trivial effect. It was much closer to the example given of when it would be reasonable to regard the effect as substantial rather than to the example given of walking 1.5 kilometres before problems ensued. I was satisfied that the claimant's ability to walk only a short distance without difficulty meant that there had been a substantial adverse effect on that day-to-day activity.

91. I was also satisfied that between August 2022 and June 2023 that substantial adverse effect on her ability to walk had already lasted for longer than twelve months. The impairments which caused that effect were themselves not short-lived: obesity had been a long-standing condition, the additional fatigue resulting from Sleep Apnoea went back some years, and the lower back and joint pain was long-standing too. I accepted the claimant's evidence that she had had that limitation in her mobility for some years before being employed by the respondent.

92. I concluded that the opinion expressed by Dr Freer in October 2022 that the claimant was likely to be covered by the Equality Act was correct.

93. In my judgment the claimant was a disabled person whilst employed by the respondent by reason of a combination of impairments which had a substantial long term adverse effect on her ability to walk.

Approved by

Regional Employment Judge Franey

17 March 2025

REASONS SENT TO THE PARTIES ON

7 April 2025

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FOR THE TRIBUNAL OFFICE

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