



EMPLOYMENT TRIBUNALS

Claimant: SP

Respondent: (1) RAD Group Limited
(2) Mr Andrew Cochrane
(3) Ms Karen McCarthy-Woods

Heard at: Reading Employment Tribunal (by video)

On: 28 January 2025 and 13 March 2025

Before: Employment Judge Annand

Representation

Claimant: In person, assisted by her mother, DN

Respondent: Mrs Kaur-Singh (Solicitor) on 28 January 2025
Ms Hussain (Representative) on 13 March 2025

REASONS

An oral judgment and reasons, regarding disability, having been given to the parties at the hearing on 13 March 2025, and written reasons having been requested by the Respondent on 20 March 2025 in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

Introduction

1. A preliminary hearing was listed for 28 January 2025 to determine two issues. The first related to whether it would be just and equitable to extend time to allow the Claimant to proceed with her claims of direct disability discrimination and discrimination arising from disability despite the fact that the complaints were brought out of time. The second was to decide if the Claimant was disabled within the definition set out in section 6 of the Equality Act 2010 over the relevant period of her claim.
2. At a case management preliminary hearing held by Employment Judge Talbot-Ponsonby on 5 July 2024, a final hearing was listed for 6 to 9 May 2025 at Reading Employment Tribunal. Employment Judge Talbot-Ponsonby included a Case Summary and a List of Issues in his Case Management Order. It is clear from the List of Issues that the Claimant is

bringing complaints about matters which occurred between August 2022 and February 2023.

3. At the preliminary hearing on 28 January 2025, I was provided with a witness statement by the Claimant and a witness statement from her mother. I was provided with an agreed bundle of documents. The Claimant was cross examined by Mrs Kaur-Singh for the Respondent in relation to the issue of whether it would be just and equitable to extend time. The parties then made submissions. I considered by decision and decided it would be just and equitable to extend time. Oral reasons were given at the preliminary hearing for that decision.
4. The Claimant then gave evidence again and was cross examined by Mrs Kaur-Singh for the Respondent in relation to the issue of whether the Claimant was disabled, under the definition set out in section 6 of the Equality Act 2010, over the relevant period of her claim. There was not time for me to deliberate and give a further oral decision on the day of the hearing, and I reserved my decision.
5. On 4 March 2025, I asked that this matter be listed for a further preliminary hearing to give an oral judgment to the parties on disability. This was because as I was writing up the reserved judgment, it became apparent that the Claimant's evidence contained some highly personal medical information, and as the Claimant is not represented she may not have been aware of the fact that judgments are public and are published online and she is unlikely to have been aware of Rule 49 of the Employment Tribunal Rule which allows the Tribunal to make an order with a view to preventing or restricting the public disclosure of any aspect of proceedings. A further preliminary hearing was listed for 13 March 2025, so that I could give an oral judgment and also so that a discussion could be had about whether it was necessary to make any Orders until Rule 49. I am grateful to the parties for making themselves available at short notice.
6. Following the hearing on 13 March 2025, the Claimant applied for an anonymisation order, which I granted on the basis that the Claimant's medical information, as set out below, contains some personal and potentially embarrassing details of a highly sensitive nature. No objection was received from the Respondents, and therefore I considered it was in the interests of justice to make an anonymisation order in this case.
7. On 20 March 2025, the Respondent requested written reasons for the Tribunal's decision regarding disability.

Findings of fact

8. It is the Claimant's position that she is disabled by virtue of suffering from depression, anxiety and colitis.
9. In the Claimant's oral evidence, she said that in 2018 she started to experience symptoms of depression. This was depression that she suffered after the birth of her child. The Claimant's medical records show that in September 2019, the Claimant was diagnosed with anxiety with depression by her GP (p128) and in December 2019 she was diagnosed with

depression by her GP (p122). The Claimant only had a full print out of her GP records from September 2020 to 31 March 2023 but the fact that she was diagnosed with anxiety and depression in 2019 is recorded in other medical records which refer to these diagnoses in the history of significant events.

10. In 2019, the Claimant was prescribed medication, Sertraline, and talking therapies. The Claimant tried Sertraline but stopped taking it because it did not work well for her. She recovered sufficiently after a period of receiving treatment.
11. The Claimant was employed by the First Respondent on 7 December 2021. She was employed as an Administrative Assistant. The Claimant's Line Manager was the Third Respondent.
12. In June 2022, the Claimant started to experience symptoms of stress and anxiety. The Claimant's case is that this was related to working for the Respondent.
13. The Claimant explained that when she experienced symptoms of anxiety, she would have a racing heartbeat and feel constantly on edge. She experienced chest pains and feelings of breathlessness. She explained she would find herself ruminating, shaking, and suffering with panic attacks. When she had a panic attack she would start sweating, feel very tense, and start crying or sobbing.
14. In the same month, June 2022, the Claimant started to experience feelings of low mood, poor sleep, poor concentration and feelings of helplessness, which were the same as the symptoms of depression she had suffered previously.
15. The Claimant says on 29 June 2022, she telephoned the First Respondent's Director, the Second Respondent. The Claimant says that she told him that she had to go off work sick and explained there were times when she felt paralysed by the anxiety. She said she could not sleep or eat properly.
16. On 12 July 2022, the Claimant says she emailed the Second Respondent again stating that she recently she had felt so low she was barely functioning, felt paralysed by anxiety, and could not eat or sleep properly.
17. In the Claimant's disability impact statement, she set out that she was assigned and treated by a Mental Health Nurse from the Wokingham Medical Centre, who kept in close contact with her in July, August and September 2022. Over this period, the Claimant had regular phone calls and face to face assessments with the Mental Health Nurse. The Claimant was offered medication again, but did not want to try it again having had a negative experience with Sertraline previously.
18. On 25 July 2022, the Claimant raised a grievance.
19. The Claimant says in August 2022 she was asked to attend meetings in the office in person, but she says she was not able to this because she felt extremely anxious when she thought about going into the office. The

Claimant says she emailed the Third Respondent to explain she could not attend as it would be detrimental to her mental health.

20. On 22 August 2022, the Claimant went off work sick. The Claimant says she asked for counselling and Occupational Health support on 23 August 2022.
21. On 24 August 2022, the Claimant says she was sent an email inviting her to a disciplinary hearing because she had not attended a sales meeting. The Claimant's evidence is that she was so distressed, she called her Mental Health Nurse who insisted upon seeing her and signed her off for a week. The Respondents accept that when the Claimant was asked to attend sales meetings in the second half of August 2022, she refused on the basis it would be detrimental to her mental health. It is recorded in the Claimant's GP records that the Claimant reported to the Mental Health Nurse that she was suffering from panic attacks (p89).
22. The Claimant says on 25 August 2022, she emailed the Second Respondent stating her mental health had seriously declined.
23. On 4 September 2022, the Claimant was signed off work by her GP with a stress related problem.
24. On 12 September 2022, the Claimant was signed off work by her GP with a stress related problem.
25. The Claimant's evidence to the Tribunal was that she felt very low, anxious, and upset every day from June to September 2022, but that from September 2022, she also began to suffer significant physical symptoms related to her digestive system.
26. On 9 September 2022, the Claimant spoke to her GP surgery because she was suffering with diarrhoea, vomiting and panic attacks.
27. On 12 September 2022, the Claimant spoke to her GP surgery again because she was still suffering with severe diarrhoea, vomiting, abdominal pain and blood in her urine.
28. On 21 September 2022, the Claimant was advised by her GP to go straight to hospital. She had been suffering with severe vomiting and diarrhoea for two weeks. The Claimant was signed off by her GP for two weeks on the basis that she was "awaiting investigation".
29. At the hospital, the Claimant was diagnosed with gastroenteritis, but she was told it was also acute colitis, which is inflammation of the bowel. The Claimant was suffering with severe pain, severe vomiting, diarrhoea, and rectal bleeding. She was prescribed a range of medications including different antibiotics, anti-sickness tablets and metronidazole. She was given a CT scan and placed on a drip for dehydration.
30. Since the episode which resulted in the Claimant going to hospital in September 2022, the Claimant has suffered with recurring episodes of vomiting, diarrhoea, and stomach pain. The Claimant's evidence is that these episodes can be triggered by anxiety. These episodes have not been

as acute as the episode in September 2022. The symptoms will start with her feeling ill, then shaky, then having stomach pains, then she will experience diarrhoea and/or vomiting. It will usually take a few days to fully resolve. The Claimant says that at times, this can happen every week, or there could be a gap of two weeks to two and half weeks, but then she would suffer another episode.

31. After September 2022, the Claimant had three further appointments for her anxiety and two counselling sessions.
32. On 3 October 2022, the Claimant was signed off work by her GP with abdominal pain.
33. On 28 October 2022, the Claimant was signed off work by her GP with rectal bleeding.
34. In November 2022, the Claimant was sent an emailing asking her to attend a welfare meeting. The Claimant attended by Teams but no one from the Respondent attended.
35. On 25 November 2022, the Claimant was signed off work by her GP with rectal bleeding.
36. On 12 December 2022, the Claimant was signed off work by her GP with abdominal pain and vomiting.
37. From September 2022 to January 2023, the Claimant's anxiety was such that she found it very difficult to leave her flat. If she had to go out, she would use the back door and would suffer from a racing heart. Over this period, the Claimant's parents started looking after the Claimant's son a significant amount. They would come to her flat in the morning to get him dressed, take him to pre-school, collect him, make him dinner and either put him to bed or have him to stay with them.
38. In terms of the impact on the Claimant's ability to carry out day to day activities, as a result of suffering from anxiety, the Claimant would suffer with disrupted sleep, which would leave her feeling exhausted. The Claimant would feel nausea, often three or four times per day. When she is experiencing nausea, she cannot eat and can only have sips of water. She stopped attending the gym or seeing friends. The Claimant suffered from panic attacks, and when one started, she had to leave the situation or place where she was as quickly as possible.
39. In addition, when the Claimant is suffering from severe vomiting, which can occur multiple times in one day, and/or diarrhoea, the Claimant is very unwell and cannot work, or look after her child, or cook for herself. When she is suffering an episode, she cannot socialise and needs to be by a bathroom until the vomiting or diarrhoea has passed. As a result of the symptoms of anxiety, depression and colitis, she does not like going to new places or trying new experiences. She wishes to remain in places that are familiar to her.

40. On 3 January 2023, the Claimant was notified by email that she had been dismissed.
41. On 5 January 2023, the Claimant was signed off work by her GP with abdominal pain.
42. On 22 January 2023, the Claimant sent an email noting she was confused and asking if she had been sacked. She noted she had been sending in her sick notes. She said she had a Mental Health Nurse overseeing her health. She said she wanted to return to work but needed some support.
43. On 27 January 2023, the Claimant attended an appeal meeting with Paul Griffiths. The Claimant expressed her desire for a slow return to work. The Claimant understood that after the meeting Mr Griffiths was considering this option.
44. On 30 January 2023, the Claimant was signed off work until 10 February 2023 by her GP with abdominal pain, stress and anxiety.
45. On 17 March 2023, the Claimant was diagnosed with depression again. She was continuing to experience the feelings of low mood, poor sleep, poor concentration and feelings of helplessness that had started in June 2022.
46. On 20 March 2023, the Claimant was signed off work by her GP with a mixed anxiety and depressive disorder.
47. On 28 March 2023, the Claimant had a Work Capability Assessment. She was found to have “limited ability to work”.
48. On 10 May 2023, the Claimant contacted the Second Respondent. She noted she had not received any further information following her meeting with Mr Griffiths in January 2023. She did not receive a response so sent a further email on 28 May 2023. At this time, the Second Respondent replied stating that her employment had terminated on 3 January 2023.
49. In October 2023, the Claimant started receiving assistance from Talking Therapies.
50. In March 2024, the Claimant started seeing an NHS therapist regularly. From March to May 2024, the Claimant suffered a severe recurrence of her depressive symptoms. Her mother had to visit her each day after work to look after the Claimant’s son, put him to bed, and cook the Claimant dinner. She felt on the brink of tears constantly. At the weekends, the Claimant and her son would stay with her mother.
51. In June 2024, the Claimant was prescribed Sertraline again. She tried it again but again she found it had an adverse effect on her.

The relevant law

The definition of disability - Section 6 of the Equality Act

52. Under section 6(1) of the Equality Act 2010 a person has a disability if that person has 'a physical or mental impairment' which has a 'substantial and long-term adverse effect on [the person's] ability to carry out normal day-to-day activities'. The burden of proof is on a claimant to show that he or she satisfies this definition.
53. In *Goodwin v Patent Office* [1999] I.C.R. 302 the EAT stated that tribunals should look at the evidence by reference to four different questions: 1) Did the claimant have a mental and/or physical impairment? 2) Did the impairment affect the claimant's ability to carry out normal day-to-day activities? 3) Was the adverse condition substantial? 4) Was the adverse condition long term?
54. In *Wigginton v Cowie and ors t/a Baxter International (A Partnership)* EAT 0322/09 the EAT confirmed that these four questions should be posed sequentially and not together, although in *Sullivan v Bury Street Capital Ltd* [2022] IRLR 159, the Court of Appeal stressed that it does not amount to an error of law for a tribunal to omit to set out in its judgment the four conditions identified in *Goodwin* and deal with each methodically in turn, so long as, in substance, all relevant matters are addressed when determining whether the particular claimant was disabled within the terms of section 6(1).
55. Appendix 1 to the EHRC Employment Code states that "there is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause" — para 7.
56. Under paragraph 2 of Schedule 1 to the Equality Act 2010, the effect of an impairment is long-term if: (a) it has lasted for at least 12 months, or (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. 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. Likely to recur means that 'it could well happen' (para C3 of the Government's "Guidance on matters to be taken into account in determining questions relating to the definition of disability" ("The Guidance")).
57. The Guidance states that the effects are to be treated as long term if they are likely to recur beyond 12 months after the first occurrence (see para C6). This is to ensure that the total period during which a person has an impairment with recurring effects is at least 12 months.
58. In the case of *Cruickshank v VAW Motorcast Ltd* [2002] ICR 729, the EAT confirmed that the time at which to assess the disability, and whether there is an impairment that has a substantial adverse effect on normal day-to-day activities, is the date of the alleged discriminatory act or acts. This is also the material time when determining whether the impairment has a long-term effect - *Tesco Stores Limited v Tennant* (UKEAT/0167/19/OO).
59. In *All Answers Ltd v W* [2021] IRLR 612, CA, the Court of Appeal held that the key question is whether, as at the time of the alleged discrimination, the effect of an impairment has lasted or is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at

that date and so a tribunal is not entitled to have regard to events occurring subsequently.

60. 'Substantial' is defined in section 212(1) of the Equality Act as meaning "more than minor or trivial". In *Goodwin v Patent Office*, the EAT held: "What the Act is concerned with is an impairment on the person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook, but only with the greatest difficulty." Appendix 1 to the Equality and Human Rights Commission (EHRC) Code of Practice on Employment (2011) states that account should be taken not only of evidence that a person is performing a particular activity less well but also of evidence that 'a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation'— para 9.
61. Appendix 1 to the Equality and Human Rights Commission's Code of Practice on Employment ('the EHRC Employment Code') states that 'normal day-to-day activities' are activities that are carried out by most men or women on a fairly regular and frequent basis, and gives examples such as walking, driving, typing and forming social relationships. The Guidance states that it is not possible to provide an exhaustive list of day-to-day activities. However, in general, day-to-day activities are things people do on a regular or daily basis. The examples given are shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.
62. In determining whether a person's impairment has a substantial effect on that person's ability to carry out normal day-to-day activities, the effects of measures such as medical treatment or corrective aids on the impairment should be ignored. If an impairment would be likely to have a substantial adverse effect but for the fact that measures are being taken to treat or correct it, it is to be treated as having that effect — paragraph 5(1), Schedule 1, Equality Act 2010.

The Tribunal's findings

63. As noted above, the allegations of discrimination relate to the period between 19 August 2022 to mid-February 2023. This is therefore the relevant period for the purposes of the Claimant's claim.

Did the Claimant have a physical or mental impairment?

64. Over the relevant period, the Claimant had a mental impairment. The Claimant first experience symptoms of depression in 2018. She was first diagnosed with anxiety with depression in September 2019. She was diagnosed with depression by her GP in December 2019. She recovered from this episode. The symptoms of depression and anxiety returned in June 2022 and continued up to and beyond the date of her dismissal.

65. From September 2022, the Claimant also had a physical impairment. She was diagnosed with gastroenteritis in September 2022 but was told at the hospital that it was also colitis, which is inflammation of the bowel. Since then the Claimant has experienced on-going issues arising from inflammation of the bowel, which occur intermittently but frequently, and the Claimant says the symptoms can be brought on by anxiety and stress.

Did the impairment affect the claimant's ability to carry out normal day-to-day activities? Was the adverse condition substantial?

66. The Claimant's ability to carry out normal day-to-day activities was impaired by her mental impairment, namely anxiety and depression.
67. In 2018 and 2019, the Claimant experienced low mood, poor sleep, poor concentration and feelings of helplessness. The Claimant also experienced symptoms of anxiety. She experienced a racing heartbeat and felt constantly on edge. She experienced chest pains and feelings of breathlessness. She explained she would find herself ruminating, shaking, and suffering with panic attacks. When she had a panic attack she would start sweating, feel very tense, and start crying or sobbing. She suffered these same symptoms, of depression and anxiety, starting in June 2022 and they continued until after the relevant period (August 2022 to February 2023).
68. The impact on the Claimant's ability to carry out day to day activities was substantial. She did not sleep well. She struggled to get out of bed, lost interest in maintaining her personal hygiene, and would often not brush her teeth or shower. She found it difficult to concentrate. From August 2022, she was unable to continue working. She found it difficult to leave the house. Her ability to care for her child was impacted, such that she was very dependent on her parents to assist her. She stopped socialising and lost interest in watching television or pursuing any hobbies. She would experience panic attacks which would require her to stop what she was doing or leave where she was right away. She did not want to travel to new places and wanted to stay close to home. Overall, the Claimant's mental impairment had a substantial adverse effect on her ability to carry out normal day-to-day activities.
69. The Claimant's ability to carry out normal day-to-day activities was impaired by her physical impairment, namely colitis.
70. When the Claimant experiences episodes of vomiting or diarrhoea, which can often occur multiple times in one day, the Claimant is very unwell and cannot work, look after her child, or cook for herself. She needs to be by a bathroom, cannot leave the house, and so she cannot go out shopping, attend appointments, socialise or attend the gym, until the vomiting or diarrhoea has passed. When the Claimant is suffering from an episode it has a substantial adverse effect on her ability to carry out normal day-to-day activities.

Was the adverse condition long term?

71. The Claimant started experiencing symptoms of anxiety and depression in

2018 after the birth of her son. She was diagnosed with anxiety with depression in September 2019 and depression in December 2019. I was not presented with evidence as to whether the Claimant experienced the symptoms of depression and anxiety constantly from 2018 to December 2019 or on a fluctuating basis. Therefore, I did not feel able to conclude that by December 2019, the Claimant's mental impairments had had a substantial and adverse effect on the Claimant's ability to carry out normal day-to-day activities, for a 12 month period. Nor was I able to conclude that in December 2019, the Claimant's anxiety and depression was likely to reoccur. I was not presented with evidence from December 2019 which suggested the Claimant's mental impairments were likely to reoccur.

72. However, once the Claimant suffered a re-occurrence of both conditions in June 2022, such that she described being paralysed with anxiety, and such that by August 2022, she felt unable to work, I did conclude that the effects of the Claimant's impairments were long term. From the end of July 2022, once the Claimant had suffered a further two months of severe anxiety and depression, it was then likely that her conditions would be reoccurring conditions. In reaching this decision I have not taken into account what happened in terms of the Claimant's anxiety and depression after the relevant period, but have focused on what had occurred in 2018, 2019 and June and July 2022. Further, by the end of July 2022, it was also likely that the adverse effects would last for a period of over 12 months in aggregate (taking into account the periods in 2018, 2019 and starting in June 2022).

73. I have therefore found that the Claimant was disabled under section 6 of the Equality Act 2010 by virtue of suffering from anxiety and depression from the end of July 2022 onwards.

74. In terms of colitis, the Claimant started experiencing gastroenteritis and colitis in early September 2022. The acute phase lasted for several months after which the Claimant has continued to suffer from frequent shorter episodes of vomiting and or diarrhoea. While I accept that the Claimant is now disabled by virtue of having colitis, I do not find that the Claimant was disabled by virtue of having colitis over the relevant period. The relevant period started in August 2022 and ended in mid-February 2023. By mid-February 2023, the Claimant had been suffering adverse effect on her ability to carry out day to day activities by virtue of having colitis for 6 and half months. Therefore, the adverse effect had not lasted for 12 months by that point. While it has transpired that the Claimant's condition has lasted for longer than 12 months and is reoccurring, I have to assess the position as it was in mid-February 2023. I have not been presented with evidence that suggested that by mid-February 2023 it was apparent the Claimant's condition would be likely to reoccur, as opposed to be being an acute episode of inflammation which was taken several months to fully resolve. Nor have been presented with evidence which suggested that in mid-February 2023, it was likely that the adverse effects would continue for 12 months. Therefore, I have continued that by September 2023, the Claimant met the definition of disabled by virtue of having colitis but that she did not over the relevant period of her claim.

75. Finally, I heard evidence from the Claimant that some of the Claimant's episodes of vomiting and/or diarrhoea have been triggered by stress or

anxiety. However, as I have not been asked to reach a conclusion on whether issue of whether the Claimant's episodes of vomiting and/or diarrhoea are something that arise in consequence of her disability, depression and anxiety, I have not reached a conclusion on that point. That will be a matter for the Tribunal who hears the final case to decide if necessary.

Approved by

Employment Judge Annand

6 April 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

07/4/2025

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FOR EMPLOYMENT TRIBUNALS

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