



EMPLOYMENT TRIBUNALS

Claimant: Ms Arora

Respondent: Hanover Communications International Ltd

Heard at: London South (by video)

On: 10 April 2025

Before: Employment Judge Evans (sitting alone)

Representation

Claimant: Ms Miller, counsel

Respondent: Mrs Winstone, counsel

JUDGMENT

During the relevant period the claimant was not a disabled person as defined by section 6 of the Equality Act 2010. Her claim therefore fails and is dismissed.

REASONS

Preamble

1. These are my reasons for my reserved decision in relation to the issue of whether the claimant had a disability at the relevant time because she had depression, anxiety and/or ADHD.
2. The above issue and others came before the Tribunal on 10 April 2025. The parties had agreed a bundle of 163 pages prior to the Hearing. All references to page numbers are to the pagination of the bundle.
3. The claimant gave oral evidence in relation to the question of disability by reference to an impact statement (page 49).

4. I asked Ms Miller at the beginning of the Hearing whether any particular adjustments needed to be made in order to enable the claimant to participate fully. She said breaks would be required if her oral evidence lasted more than 30 minutes. That was agreed and the claimant had several breaks during her oral evidence.

The Law

5. Section 6 of the Equality Act 2010 (“the 2010 Act”) 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.

Mental impairments

6. There is no definition of ‘mental impairment’ in the 2010 Act, but Appendix 1 to the EHRC Code states: “The term ‘mental impairment’ is intended to cover a wider range of impairments relating to mental functioning, including what are often known as learning disabilities”.
7. In Morgan v Staffordshire University 2002 [ICR] 475, the EAT noted that Tribunals are unlikely to be satisfied of the existence of a mental impairment in the absence of suitable expert evidence, although in many cases evidence from the claimant’s GP may be sufficient. However, there is of course no longer a requirement that a mental illness be a clinically well-recognised illness in order to amount to a mental impairment.

Anxiety

8. Anxiety can be a mental impairment. It is a feeling of unease, such as worry or fear, that can be mild or severe. Experiencing anxiety is a normal part of life. However, people with anxiety disorders have intense, excessive and persistent worry and fear about everyday situations. Various mental conditions fall under the umbrella term “anxiety disorders”. These include obsessive-compulsive disorder, panic disorder, social anxiety disorder and post-traumatic stress disorder, and generalised anxiety disorder.
9. The severity of symptoms for any of these anxiety disorders can vary greatly, and the main questions in assessing disability for the purposes of the 2010 Act will be whether the impairment has substantial and long-term adverse effects.

Depression

10. Depression can affect a person’s physical state, mood and thought processes and is an illness that requires treatment. It can take many forms.
11. Depression may not always amount to a mental impairment. In J v DLA Piper UK LLP [2010] ICR 1052 the EAT said that, when considering the question of

impairment in cases of alleged depression, Tribunals should be aware of a distinction between clinical depression and a reaction to adverse circumstances.

12. In Igweike v TSB Bank plc [2020] IRLR 267, the EAT referred to J v DLA Piper and made it clear that a distinction needs to be drawn between depression of a kind amounting to a disability under the 2010 Act and an adverse reaction to life events (such as stress brought on by allegations of misconduct or stress/depression triggered by a close family bereavement). His Honour Judge Auerbach observed:

It seems to me that on a fair reading of the [employment tribunal's] decision as a whole, the [employment judge] was doing no more than... [applying] this valid general conceptual distinction to a case in which the adverse life event was bereavement through the loss of a loved one. In some cases, bereavement may lead to ordinary symptoms of grief which do not bespeak any impairment. In others, they may lead to something more profound which is, or develops into, an impairment over time. A clinician using the word "depression" may be regarded as one form of evidence that this indeed is what has happened in a given case; but, to repeat, the matter is one for the appreciation of the tribunal, drawing on the totality of the evidence, and the application of a clinical label is neither necessary nor, if it has been applied, conclusive.

13. Returning to the wording of section 6, an effect is "substantial" if it is "more than minor or trivial" (section 212 of the 2010 Act).
14. There are supplementary provisions in part 1 of Schedule 1 to the 2010 Act which deals with matters including the following:

2 Long-term effects

(1) The effect of an impairment is long-term if—

(a) it has lasted for at least 12 months,

(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.

(2) 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.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

(4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

5. Effect of medical treatment

(1) *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.*

15. The meaning of “likely to” in these circumstances is “could well happen” (SCA Packaging Ltd v Boyle [2009] UKHL 37. The question of how long the effect is likely to last should be determined at the date of the alleged discriminatory act, not at the date of the Tribunal hearing (McDougall v Richmond Adult Community College [2008] ICR 431).

16. “Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)” (“the Guidance”) was issued by the Secretary of State pursuant to section 6(5) of the 2010 Act. The Guidance does not impose any legal obligations in itself and is not an authoritative statement of the law. However, the Tribunal must take into account any aspect of the Guidance which appears to it to be relevant.

17. The burden is on the Claimant to show that she had a disability at the material time(s). The material time(s) is the date of the alleged discriminatory act(s). (Cruickshank v VAW Motorcast Ltd [2002] ICR 729. Further, this is the material time for establishing whether the impairment had a long-term effect.

18. The question of whether the Claimant had a disability at the material time is a matter for the Tribunal rather than for any medical expert.

19. In the relatively recent case of Sullivan v Bury Street Capital Limited [2021] EWCA Civ 1694 the Court of Appeal approved the four stage approach set out in Goodwin v Patent Office [1999] I.C.R. 302:

19.1. **The impairment condition:** Does the claimant have an impairment which is either mental or physical?

19.2. **The adverse effect condition:** Does the impairment affect the applicant's ability to carry out normal day-to-day activities ..., and does it have an adverse effect?

19.3. **The substantial condition:** Is the adverse effect (upon the claimant's ability) substantial?

19.4. **The long-term condition:** Is the adverse effect (upon the claimant's ability) long-term?

Submissions

20. The submissions of both representatives were brief and, rather disappointingly, did not in either case attempt a structured analysis of the disability issue of the kind envisaged by Sullivan.
21. The respondent's submissions may reasonably be summarised as follows. The claimant had, in answer to questions I had asked, said that substantial adverse effects had only really begun somewhere between 8 and 11 May 2023. The claimant's medical records and her own evidence reflected the fact that some of her symptoms, including headaches, got worse after she had been dismissed as a result of events in her personal life which were unrelated to her employment. Further the evidence in her disability impact statement was contradicted by the evidence in the GP's letter of 4 February 2025 ("the GP Letter"). In addition, she had stopped taking sertraline after her employment ended and only at that point considered that perhaps she was neurodiverse.
22. The claimant's evidence had been self-serving and exaggerated. This was seen in the conflict between it and the GP Letter and the fact that generally her witness evidence was not backed up by medical records. Further, it was of note that although issues arose in relation to an eating disorder, she had ignored this in her evidence. Her contention that she had ADHD should be disregarded: she was pulling something out of thin air to explain her poor performance at work.
23. Finally, her evidence in relation to substantial adverse effect was poor. She had changed her evidence twice. It was confused and insufficient to show that any impairment had an adverse and long-term effect during the relevant period.
24. The claimant's submissions may be reasonably summarised as follows. The claimant's anxiety and depression "met the test of long term" because they had first been diagnosed in 2020 according to her medical records. Indeed, according to the claimant, they had been diagnosed as long ago as 2012. Her medical records were littered with references to anxiety and depression and low mood.
25. Further, her medical records were consistent with her case. At page 77 the entry for 16 December 2022 refers to the increased dose of sertraline "working well". The entry for 8 November 2022 refers to her having "mixed anxiety and depressive order". The entry for 1 June 2023 at page 75 was also consistent with what she was arguing. It was clear that her anxiety remained high in September 2023 and at that point she had restarted her medication.
26. The claimant had not been inconsistent and had not changed her account. She had clarified it. The adverse effects of her anxiety and depression had been bad during her employment and her coping mechanisms had failed. It was clear that she suffered from a disability and that in respect of at least anxiety and depression her medical records supported that. So far as the GP Letter was concerned, the respondent's representative had made too much of alleged inconsistencies, given that the letter was dated 4 February 2025. It was also

helpful in that it described the claimant's anxiety and depression as a chronic condition.

Findings of fact

27. The impairments relied on are anxiety, depression and ADHD. The relevant period was agreed to be the whole of the claimant's employment, which ran from 27 April 2023 to a date between 25 May 2023 and 2 June 2023 (the parties could not agree during the Hearing on the end date and I make no finding in relation to that issue). I refer to the whole period of her employment below as the "relevant period".

Findings in relation to the impairment condition

28. I find that during the relevant period the claimant had the mental impairments of anxiety and depression. I so find for the following reasons:

28.1. The GP Letter refers to the claimant as being diagnosed with anxiety and depression since 4 October 2020 and refers to this as a "chronic condition".

28.2. The GP records record the claimant as having "mixed anxiety and depressive disorder" on 21 October 2021;

28.3. The GP records record the claimant as having "mixed anxiety and depressive disorder" on 8 November 2022.

29. However, I also find that the claimant has failed to prove on the balance of probabilities that during the relevant period she had ADHD. She has received no ADHD diagnosis. Rather she has had a pre-assessment (page 76) and is awaiting specialist assessment and care. There is no significant suggestion by anyone that she has ADHD prior to the termination of her employment (she raised it with her GP on 1 June 2023 (page 75). Realistically, her referral for specialist assessment and care has resulted to a considerable extent from her belief, following her dismissal by the respondent, that perhaps she might have bipolar disorder, have ADHD or ASD.

The adverse effect condition and the substantial condition

30. I turn now to whether the mental impairment(s) of anxiety and depression had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities during the relevant period.

31. Unfortunately, the claimant's disability impact statement ("the statement") is a brief document containing scant details of how the claimant's anxiety and depression affected her ability to carry out normal day-to-day activities during the relevant period. It is written in the present tense and dated February 2025. It focuses more on her symptoms than on the effects of the claimant's anxiety and depression on her ability to carry out normal day-to-day activities. In paragraph

10 it very briefly explains (again in the present tense) that her depressive symptoms include: poor appetite or over-eating (which are relevant to the day-to-day activity of eating); disrupted or no sleep (which are relevant to the day-to-day activity of sleeping); lack of interest in self-care (which is relevant to the day-to-day activity of taking a shower and doing house work in order to maintain a clean environment); lack of interest in engaging with family and friends (which is relevant to the day-to-day activity of socialising); cognitive restlessness (which the claimant says affects her ability to prioritise and manage time so affecting her ability to deal with a flow of emails, chats and phone messages. I find that in the modern world managing a flow of messages of this kind is a day-to-day activity).

32. In addition to containing scant details of the effect of her anxiety and depression on her ability to carry out normal day-to-day activities, the statement makes little effort to quantify the effects, although it does refer to at least the possibility of “no” sleep.
33. The claimant added slightly to her witness statement in her oral evidence. Her answers tended to focus again on symptoms and, when they commented on effect, not to quantify it. However, she referred to “disturbed sleep patterns” with “little or no sleep” and an inability to keep to a proper routine with periods of not eating at work being followed by bingeing when at home. She referred to problems processing information.
34. The respondent made submissions to the effect that the claimant was not a credible witness and I make the following findings relevant to my assessment of that issue:
 - 34.1. The claimant’s witness evidence in relation to when she was first diagnosed with anxiety and depression is inconsistent with the medical records she has produced. She gives the date as 2012 in her witness statement (paragraphs 4 and 5), but the GP Letter suggests 2020 and the GP records suggest that the diagnosis in 2012 was Low Mood. There is therefore a degree of exaggeration.
 - 34.2. The claimant’s witness evidence changed during her oral evidence about when the mental impairments had stopped having substantial adverse effects on her ability to carry out normal day-to-day activities. She first of all said that this had been in August 2023 when she had moved out of the home she shared with her husband and so she was “able to focus on looking after myself properly”. She then corrected herself and said that the substantial adverse effects continue until the present day but her coping strategies worked better. She also qualified her initially clear evidence about when the substantial adverse effects had begun: initially she said on 8 or 9 May 2023 but then said that that was when things had got worse. I do not find that she gave different and inconsistent answers, as the respondent submitted, but her evidence was not at all clear in these respects. I find that this reflected very limited recollections on her part about exactly how the impairments affected her and when and, also, a desire to give what she thought were the “right” answers.

35. The claimant did not have a doctor's appointment during her employment in relation to her anxiety and depression or the question of whether she had ADHD (until 1 June 2023, if that was just before the end of her employment rather than just after it). Her GP records show no relevant appointments between 16 December 2022 and 1 June 2023. However, the appointment on 1 June 2023 (page 75) shows her telling the GP that her health had in various ways got worse over the last 2 months with the clear suggestion that the problems explained were due to how she had been treated at work. She refers to binge eating and purging. She refers to "almost daily" difficulty sleeping in the "last month or 2". In relation to depression and anxiety she is recorded as saying "Ongoing longterm condition normally managed with medication and guided therapy (CBT). Exacerbation definitely occurring with new symptoms. I seek psychiatric evaluation for please [sic]". She goes on to refer to her dismissal and says "I recognise this has traumatised me but also I feel it may have brought to my awareness that I may have bipolar disorder, ADHD or even ASD".
36. Although the claimant did not have a doctor's appointment during her employment, she did have days off sick and there are screenshots of messages she sent to the respondent in this regard at page 17. However, they refer to the claimant being ill with a "fever" and "body aches" rather than any of the symptoms the claimant attributes to anxiety and depression.
37. Overall, the claimant's evidence in relation to the adverse effect that the impairments of anxiety and depression had on her during the relevant period is vague and imprecise both in terms of timings and in terms of quantification of the extent of the impairments on her ability to carry out normal day-to-day activities. I attach only very limited weight to it. However, taking the evidence in the round, I nevertheless find in light of her witness evidence, and more particularly what she wrote on 1 June 2023 to her GP about the previous several months, that the impairments of anxiety and depression did during the relevant period have a substantial adverse effect on her ability to carry out the normal day-to-day activities of sleeping and eating. Of course, in finding that the adverse effect was "substantial", I have considered whether the adverse effect was more than minor or trivial as required by section 212 of the 2010 Act.

The long-term condition

38. There are various possible factual routes to the claimant showing that the effects of the impairments were long-term (and of course the question is whether the *effects of the impairment* were long-term which is relevant not, as Ms Miller suggested in her submissions, whether the impairment itself was long-term.)
39. The first route is for her to show that the substantial adverse effects had lasted for at least 12 months by the relevant period. I find that quite clearly they had not lasted for at least 12 months by the end of the relevant period. In light of the claimant's own evidence, I find that the adverse effects only became substantial *during* the relevant period and as a result of the claimant's experience at work. She was struggling at work, her anxiety and depression worsened and the adverse effects identified above became "substantial".

40. The second route is for her to show that, once the adverse effects became substantial during the relevant period, they were likely to last for at least 12 months or the rest of the claimant's life. "Likely" in this context means "could well happen". In light of McDougall, the point in time at which this question should be assessed is the end of the relevant period. The evidence available at that date does not, I find, show that the adverse effects were likely to last for at least 12 months or the rest of the claimant's life. This is because the best evidence available from this time is what the claimant wrote to her GP on 1 June 2023 when she knew her employment had been (or was about to be) terminated. In what she wrote she strongly suggested that the substantial adverse effects stemmed from her experiences during her employment with the respondent. As such, what was likely was that the substantial adverse effects would end within a limited period of her employment ending – certainly before she had reached 12 months.
41. The third route is for her to show that the impairment should be treated as continuing to have a substantial adverse effect if the effect is likely to recur. The Guidance states that effects are to be treated as long term if they are likely to recur beyond 12 months after the first occurrence. I have no specialist medical evidence in relation to the question of how likely it was that the substantial adverse effects experienced by the claimant during the relevant period as identified above would recur beyond 12 months. The claimant herself has not dealt specifically with this issue in her evidence. The later GP records refer primarily to difficulties she has experienced as a result of a breakdown in a very close and important personal relationship. Taking the evidence in the round, I find that, taking the first occurrence of the substantial adverse effects to be during the relevant period, the claimant has not shown that it was likely that they would recur or, indeed, that they did recur beyond 12 months after the first occurrence. I have not considered this question on the basis that the substantial adverse effects began early than the relevant period because, in light of her witness evidence, I find that she has not proved that they did. This is also not how she advanced her case.
42. I have considered whether my findings in relation to the question of whether the substantial adverse effects were long-term should be different taking into account the deduced effect provisions set out at [14] above. Again, this is an issue in relation to which I have very little relevant evidence indeed, despite the contents of the orders made in relation to the contents of the disability impact statement (pages 32 and 33) and the opportunity I gave the claimant to adduce additional oral evidence in chief. In light of this, I find that the claimant has not proved that the impairments of anxiety and depression are to be treated as having a substantial adverse effect on the ability of the claimant to carry out normal day-to-day activities in any particular period on the basis that, but for the measures being taken to treat or correct the impairments, they would have been likely to have such effect.
43. I have not considered whether the claimant was disabled during the relevant period by virtue of the provisions on past disabilities contained in the 2010 Act. However, given the available evidence, the claimant would not have succeeded in proving that she was a disabled person on this basis.

Conclusions

44. The conclusions which inevitably flow from the findings as set out above are as follows.
45. **The impairment condition:** The claimant did have the mental impairment(s) of anxiety and depression during the relevant period.
46. **The adverse effect condition(s):** The mental impairments did have adverse effects on the claimant's ability to carry out normal day-to-day activities during the relevant period.
47. **The substantial condition:** The adverse effects were substantial during the relevant period.
48. **The long-term condition:** The adverse effects were not long-term.
49. In light of these conclusions above, the claimant has not proved that she had a disability at any point during the relevant period. Her claim of disability discrimination therefore fails and is dismissed because the claimant was not a person with a disability during the relevant period.

Employment Judge Evans

Approved: 11 April 2025

Notes

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