



EMPLOYMENT TRIBUNALS

Claimant

Mr N Waite

Respondent

Darlington Borough Council

v

Heard at: Newcastle (CVP)

On: 7 April 2025

Before: Employment Judge S Moore

Appearances

For the Claimant: In person

For the Respondent: Mr J Anderson, counsel

JUDGMENT ON PRELIMINARY ISSUES

- (1) The Claimant was not a disabled person within the meaning of s.6 Equality Act 2010 at the time of his employment with the Respondent.
- (2) His claims of disability discrimination, which comprise his entire claim, are struck out.

REASONS

Introduction

1. The Claimant was employed by the Respondent as a Maintenance Surveyor at Darlington Borough Council from 1 August 2023 until 31 January 2024. His date of birth is 8 October 1962. He was dismissed within his six month probationary period for failing to meet the standards the Respondent required.
2. Early Conciliation took place between 5 February 2024 and 6 March 2024.

3. On 22 March 2024 the Claimant presented a claim in the Tribunal making complaints of disability discrimination. The disability he relied upon was Autism Spectrum Disorder (ASD).
4. At a Private Preliminary Hearing (PPH) on 22 August 2024 the Claimant described his disabilities as being ASD, low self-esteem, anxiety and irritable bowel syndrome (IBD). The claims were identified as being discrimination arising from disability pursuant to s.15 Equality Act 2010 (EqA) and failure to make reasonable adjustments pursuant to ss. 20 & 21 EqA. The Claimant's disabilities were recorded in the list of issues as being ASD, low self-esteem and anxiety, and IBD.
5. The Claimant was ordered to write to the Respondent by 8 November 2024 with information about each impairment, stating how long he had had it and the effects of each impairment on his ability to carry out day to day activities.
6. At a further PPH on 20 December 2024 this hearing was listed to determine whether the Claimant was a disabled person within the meaning of the EqA at the time of the events complained about. The Claimant was also given permission to amend his claim by adding further allegations in respect of his complaints under s.15 and ss. 20 & 21 EqA. The Claimant's disabilities were again recorded in as being ASD, low self-esteem and anxiety, and IBD. Notably, however, the Claimant's impact statement, which he had produced in compliance with the Tribunal's Order, referred to "ASD being a neurodevelopmental disorder which includes Dyspraxia (Developmental Coordination Disorder (DCD)) and Attention Deficit Disorder (ADD))"

The Hearing

Alleged impairments

7. As stated above, the disabilities the Claimant had pleaded and which had been identified in the list of issues were ASD, low self-esteem and anxiety, and IBD. Accordingly, it was pointed out that the Claimant had not relied on the conditions of dyspraxia or ADD in his pleaded case or at the previous PPHs. The Claimant said his understanding was that both these conditions fell within the umbrella of ASD, and that he was relying on them in that context rather than as stand-alone impairments.

The Claimant's evidence

8. In his oral evidence the Claimant said that after school he took a degree in nutrition and dietetics, although he had to repeat a year and the whole degree took him longer than 4 years to complete. He subsequently worked as a dietician but mainly pursuant to short-term contracts and positions where he could avoid working in a fast-paced workplace. Between 2007 and 2012 he retrained as a surveyor. In 2015, when he was 53 years old,

he was diagnosed with a specific learning disability by the Helen Arkell Centre in Farnham, Surrey.

9. He further said that he suffered from constant anxiety because he found life difficult, and every encounter was challenging. He used his knowledge as a dietician to mitigate his anxiety levels with diet and used coping strategies such as rehearsing conversations in advance. He also was very careful about getting enough sleep and took regular exercise, particularly with weights. However his self-esteem was very low, particularly because of the employment difficulties he had had over the years.
10. In his impact statement the Claimant described his ASD as being a neurodevelopmental disorder which he had had since birth, his anxiety as being "lifelong intermittent but increasing in occurrence and severity since 2022. The resulting side effects for me are irritable bowel syndrome (IBS) and low self-esteem. The IBS was exacerbated during 1 August 2023 and 31 January 2024 due to the treatment of myself by my managers at Darlington Borough Council".
11. As regards the effects of each impairment on his ability to do day-to day activities, the Claimant stated:

"Neurodevelopmental disorder including Dyspraxia (Developmental Coordination Disorder (DCD)) and Attention Deficit Disorder (ADD))

Organisational Skills – I use habits to help me overcome my organizational and planning difficulties such as: planning the clothes I will wear ahead of time, the food I eat is the same each day; I would complete the surveys in the same order each time. Regarding the administrative tasks of the role, I need to repeatedly perform the task or process until it becomes second nature. When concentrating or focusing on a task, my brain function slows down, leading to increased frustration and anxiety. However, once I have mastered the task it becomes second nature, allowing me to perform it effortlessly but this takes time which I was not given.

Fatigue – Easily becoming tired especially when concentrating on new tasks. When concentrating on new administration tasks it takes me time to process and this causes fatigue. Unfortunately, the act of focusing on a new task slows down my processing speed. This remains so until the administration task becomes second nature due to repetition. The more stressed I become the more my energy levels are drained and the less I am able to concentrate. Also, when reading emails I need to concentrate fully to understand the contents which again causes fatigue.

Social Challenges – Speaking to people causes fatigue due to the difficulty I have in knowing what to say. One strategy I use is to rehearse the conversation in my head before approaching the person. Otherwise, I can be misunderstood by what I say.

Anxiety

The more anxious I become, the worse the side effect of IBS symptoms are, with abdominal pain, bloating, diarrhea and constipation. Anxiety increased when I was told I wasn't hitting the targets set by managers. This led to constantly doubting my abilities and reducing my self-confidence. Low self-esteem led to the terror of making mistakes. This was exacerbated by being told repeatedly that I had missed items in the survey and failed to meet targets set."

Other Evidence

12. In the bundle is a report from the Helen Arkell Dyslexia Centre dated 22 January 2105, written by Janet Skinner, MA, PGCE, Diploma SpLD.
13. The context in which the report came to be written is set out in the section entitled "Background Information" and provides:

"Nigel felt that he might be dyslexic because of the difficulties he experiences with administration and paperwork and his inability to work quickly in the workplace. He currently works as a locum dietician. He finds it difficult to undertake several projects at once and complete the related paperwork and filing quickly. He has worked in a variety of different roles and experienced similar difficulties.

Nigel has devised effective strategies to overcome his difficulties to a certain extent eg his own form of note-taking but reports that he has always experienced some difficulties in the workplace. He reports that although he works very methodically, it often takes him longer than others to learn routine work processes. He considers that his organization and planning skills are quite weak.

Nigel did not experience any particular difficulty with study at school. However, he reported that he experienced considerable difficulty studying for his degree in Nutrition and Dietetics. He reported that he had to repeat a year. He found examinations particularly difficult. He later took a post-graduate degree in Surveying and experienced similar difficulties."

14. Having set the Claimant a number of tests, in the "Conclusions" section, Ms Skinner wrote:

"Taking all these factors into consideration it is my opinion that Nigel is experiencing specific learning difficulties. His responses to in-depth checklists indicated a significant number of weaknesses associated with dyspraxia. Additional weaknesses were present which could be attributed to Attention Deficit Disorder (ADD). However, an educational assessment of this kind is unable to reach

a definitive conclusion that ADD is present and Nigel might like to investigate this further with a suitably qualified health practitioner.”

15. The bundle also contained the Claimant’s GP notes and a medical report from Gastroscopy Report from Ramsey health care of 4 January 2024 which I refer to in my conclusions below.

Conclusions

16. Section 6 EqA provides:
 - (1) 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.
17. The first impairment relied upon is ASD. In this respect, the Claimant relies on Ms Skinner’s report and also his own understanding of what he perceives to be his shortcomings, which he says he recognizes as being similar to the attributes of persons with the condition of ASD whom he has met in his work as a dietician.
18. However, the report of Ms Skinner, that does not mention ASD. While she stated that in her opinion the Claimant experiences “specific learning difficulties”, that his responses indicated a “significant number of weaknesses associated with dyspraxia” and that “additional weaknesses were present which could be attributed to [ADD]... which [the Claimant] might like to investigate further with a suitably qualified health practitioner”, this does not amount to a diagnosis of ASD.
19. Further, there is no evidence before me that because an individual has specific learning difficulties and/or dyspraxia and/or ADD, they also have, or probably have, ASD; the conditions are not the same and a diagnosis of the former is not a diagnosis of the latter.
20. Accordingly the only evidence that the Claimant has ASD is his own self-diagnosis based on people he has met and lectures he has attended. This is not sufficient to prove the matter on a balance of probabilities, and I am therefore not satisfied that the Claimant has the mental impairment of ASD.
21. As regards the impairment of anxiety, it is necessary to consider the Claimant’s GP notes:
22. An entry on 31 March 2005 refers to the Claimant being under stress due to locum work as a dietician and being short of money.
23. An entry on 29 December 2009 refers to stress due to the Claimant losing his job and studying for surveying exams.

24. An entry on 27 May 2011 refers to stress, a new job and the Claimant failing an exam.
25. An entry on 30 August 2011 refers to stress due to work.
26. An entry on 19 December 2016 refers to stress at work due to a disciplinary matter.
27. An entry on 2 March 2018 refers to stress at work due to an accusation made against him.
28. An entry on 4 March 2021 refers to stress from over work.
29. An entry on 11 December 2023 refers to the Claimant saying he feels he is getting bullied at work and is stressed as a result, and to a fit note being issued.
30. Finally an entry on 8 January 2024 refers to the Claimant feeling stressed due to issues with his manager and thinking he needs to change jobs and to a fit note being issued.
31. While I do not doubt the honesty of the Claimant's evidence that he finds life difficult and is very careful with regard to his diet, sleep and exercise, the question before me is whether he suffered from a mental impairment of anxiety (and low self-esteem) during the period he was employed by the Respondent.
32. In this respect it is necessary to bear in mind the distinction between a normal stress reaction to adverse life circumstances, which, may produce symptoms of low mood and anxiety but is not a mental impairment for the purposes of the Equality Act 2010, and a mental impairment of anxiety and/or depression (which over time may be triggered or exacerbated by stress) (**J v DLA Piper UK LLP 2010 ICR 1052, EAT, Igweik v TSB Bank plc 2020 IRLR 267**).
33. Looking at the GP notes above, there is no medical evidence of the Claimant having anxiety as opposed to suffering from stress. Rather the evidence is of intermittent periodic episodes of stress over the years related to problems at work or with exams. Further, the Claimant has never been prescribed or taken medication for his stress, although he says he was referred by his church for about 8-10 sessions of counselling in 2004 which he did not find helpful. The evidence was also that the Claimant's coping strategies helped him manage his day to day feelings of anxiety and there was little or no evidence before me of normal day to day activities that he said he was unable to do because of anxiety.
34. I am therefore not satisfied the Claimant suffered from the mental impairment of anxiety during the period of his employment with the Respondent or that, if he did, the impairment had a substantial adverse effect on his ability to carry out normal day to day activities.

35. Turning to the alleged impairment of IBD, there is no reference in the Claimant's GP notes to IBD, although there are intermittent references to bowel issues.
36. An entry of 31 March 2005 refers to the Claimant having had diarrhoea for more than 3 weeks, being off food and passing bright red blood.
37. An entry of 2 March 2018 refers to the Claimant reporting "several years of GI symptoms, bloating loose stools, diarrhoea and constipation and being concerned about pancreatic insufficiency.
38. An entry of 11 December 2023 refers to the Claimant having epigastric pain which he managed through protein in his diet. The notes refer to the Claimant being advised to attend A & E if in severe abdominal pain and to him being referred for an "OGD" or Oesophago-Gastro Duodenoscopy.
39. The Claimant said in evidence that in fact he did not attend A & E over that period. However, following on from the doctor's appointment there is a Gastroscopy Report from Ramsey health care on 4 January 2024, which refers to the Claimant being discharged with no further action required.
40. The Claimant said in evidence that his IBD was a side effect of his anxiety. That when employed by the Respondent it had been at its worst in October to November 2023, however there had been no point going to the GP at that point because he was doing everything he could to manage his symptoms by his diet. He knew as a coping strategy where all the toilets in his vicinity were located in case he urgently needed the bathroom – which happened from time to time. He only went to the doctor in December 2023 because he experienced intense pain and since he had previously had a stomach ulcer he was concerned he might have another one.
41. On the basis of this limited evidence, while I accept that the Claimant suffers from bowel issues, and that these may well be related to the level of stress he is experiencing at any particular time, I am not satisfied that he has the physical impairment of IBD because there is simply no medical evidence to support such a diagnosis. In any event, even if the Claimant had the impairment of IBD, or another a bowel impairment, during the period he was employed by the Respondent, I am not satisfied that this had a substantial adverse effect on his ability to carry out day to day activities since again there is no evidence to support such a finding.
42. Finally, turning to the matter of the Claimant's alleged dyspraxia and/or ADD, as recorded above these matters were not pleaded as separate impairments.
43. Nevertheless for the sake of completeness I address them anyway.
44. First, I consider that Ms Skinner's observations in respect of ADD fall considerably short of any diagnosis that the Claimant has the condition of

ADD. There is no other evidence to suggest the Claimant has ADD and I am therefore not satisfied he has the mental impairment of ADD.

45. Secondly, as regards Ms Skinner's opinion that the Claimant is "experiencing specific learning difficulties" and that his results "indicated a significant number of weaknesses associated with dyspraxia", these conclusions appear to me somewhat at odds with her preceding analysis and the actual results of the Claimant's tests which are set out in an annex to the report.
46. In her preceding analysis Ms Skinner records the Claimant of being "above average overall ability". She refers to his compositional writing speed being "*slightly* below average [which] could affect his ability to complete written paperwork under time pressure" and to the Claimant having "a *slightly* reduced capacity to hold, process and manipulate information simultaneously" and to the tests pointing to a weakness with "phonological processing speed" with the result that the Claimant would be "likely to be slower to decode unfamiliar words when reading". She further stated that while the Claimant's decoding skills, spelling skills and reading comprehension skills were all above average, this masked a number of underlying *relative* weaknesses with information processing which could account for his difficulty completing written tasks under timed conditions (my italics).
47. Moreover, in the list of 18 tests recorded in the annex to the report, the Claimant's scores were not below average in any of them. Indeed, he scored "high average" in two tests, "well above average" in one test, "above average" in seven tests, "mid average" in six tests, "average" in one test and "low average" in only one test.
48. I am therefore not satisfied the Ms Skinner's report is reliable evidence that the Claimant has specific learning difficulties or dyspraxia.
49. In any event, even if I am wrong about that and the Claimant does have the mental impairment of learning difficulties and/or dyspraxia I am not satisfied that that impairment has a substantial adverse effect on his ability to carry out normal day to day activities.
50. The Claimant said in evidence that he was only able to score well in the tests because of the coping strategies in had developed throughout his life. However, paragraph B7 of the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability ("the Guidance") provides that in assessing substantial effect account should be taken of how far a person can reasonably be expected to modify he or her behaviour. I consider the evidence as regards the Claimant's coping strategies such as his own form of note taking, always completing his surveys in the same order, rehearsing conversations in his head, and taking care with his diet and exercise, fall within the scope of what it is reasonable to expect someone to do.

51. Further paragraph B1 provides:

“The requirement that an adverse effect on normal day to day activities should be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.”

52. Despite his low self-esteem the Claimant has achieved the status of obtaining two highly regarded professional qualifications in diverse fields and was found by Ms Skinner to be “above overall average ability”. Further, he described his difficulties to Ms Skinner as finding it “difficult to undertake several projects at once and complete the related paperwork and filing quickly”, it often taking him longer to learn routine work processes and said that he considered his organization and planning skills to be quite weak. In his impact statement the Claimant reiterated similar concerns and described needing to repeat tasks until they become second nature, needing to concentrate when reading emails and getting tired when focusing on new tasks. In my view these limitations do not go beyond the normal differences in ability and strengths and weaknesses which exist among people and do not amount to a substantial effect within the meaning of the EqA.

53. In the light of all the above, I am not satisfied the Claimant was a disabled person at the time he was employed by the Respondent. It therefore follows that the claim for disability discrimination must be struck out.

Employment Judge S Moore

Date: 8 April 2025