EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: B

Heard at: Croydon (via CVP) **On:** 6 and 7 May 2025

Before: Employment Judge Leith

Representation
Claimant: Ms Chan (Counsel)
Respondent: Miss Platt (Counsel)

JUDGMENT

1. The relevant time being the period from 1 December 2021 to 18 December 2023:
    a. The Claimant had a disability at all relevant times by reason of chronic migraines, and mixed anxiety and depressive disorder.
    b. The Claimant had a disability from 19 July 2023 onwards by reason of RSI/Carpal Tunnel Syndrome.

REASONS

1. This hearing was listed by EJ Fredericks-Bowyer to consider, among other points, the question of whether the Claimant had a disability within the meaning of the Equality Act 2010 at the relevant times.

2. Before considering the question of disability, I heard an amendment application from the Claimant. As a result of my decision on the amendment application, the relevant period in respect of which I had to consider disability was the period from 1 December 2021 to 18 December 2023.

3. The claimant initially relied upon 18 conditions as constituting disabilities within the meaning of the EqA 2010. By the time of this hearing, she had narrowed and consolidated the conditions she relied upon to nine. The respondent accepted six of the nine constituted disabilities for the relevant period during the course of the hearing. Therefore the decision I had to make was in respect of the remaining three:
    3.1. Chronic Migraines;
    3.2. Mixed anxiety and depressive disorder; and
    3.3. RSI/Carpal Tunnel syndrome

Procedure, documents and evidence heard

4. I heard evidence from the Claimant. She gave her evidence by way of a pre-prepared Impact Statement and a further document setting out her evidence in tabular form on a condition-by-condition basis. She was cross-examined on her evidence. We took regular breaks during the Claimant's evidence (and during the other parts of the hearing).

5. I also had before me a bundle of 267 pages, which contained various medical records. At the conclusion of the evidence, I had the benefit of helpful submissions from Miss Platt and Ms Chan.

Law

6. The starting point is s.6 of the Equality Act 2010:

> "(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.
>
> (2) A reference to a disabled person is a reference to a person who has a disability.
>
> (3) In relation to the protected characteristic of disability –
>
> a. A reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
> b. A reference to persons who share a protected characteristic is a reference to persons who have the same disability
>
> (4) This Act …applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly …
> a. a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability…
> b. a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability
>
> (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

7. The Government has issued guidance under section 6(5) of the EqA 2010, entitled 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) ("the Guidance"). The

Guidance does not impose any legal obligations in and of itself, but the tribunal must take account of it where it is considered to be relevant.

8. The Equality and Human Rights Commission (EHRC) has published a Code of Practice on Employment (2015) ("the Code"). The Code provides guidance on the meaning of 'disability' for the purposes of the EqA 2010. It does not impose legal obligations but must be taken into account where it appears relevant to any questions arising in proceedings.

9. In considering the question of whether a Claimant is disabled, the Tribunal must apply the four-stage approach approved by the Court of Appeal in *Sullivan v Bury Street Capital Limited* [2021] EWCA Civ 1694 (while remaining mindful of the need to look at the overall picture):
    a) Was there an impairment? (the 'impairment condition');
    b) What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');
    c) Were they more than minor or trivial? (the 'substantial condition');
    d) Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

10. It is usually not necessary to consider the "impairment" condition in detail (*J v DLA Piper UK LLP*). The same case provides that Tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances.

11. "Mental impairment" should be given its "natural and ordinary meaning" (*McNicol v Balfour Beatty Rail Maintenance Ltd* [2002] EWCA Civ 1074).

12. Section 212 of the EqA 2010 defines "substantial" as being more than minor or trivial.

13. Paragraph 5 of Schedule 1 provides as follows:

> "(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 correct it, and
>
> (b) but for that, it would be likely to have that effect.
>
> (2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid."

14. In considering whether an impairment has a substantial adverse effect on the ability to carry out normal day-to-day activities, it is necessary to take account not only evidence that 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 (Appendix 1 to the Code).

15. Schedule 1, para. 2 of the EqA 2010 defines "long-term" as follows:

> (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.

16. In that context, "likely" has been held to mean it is a "real possibility" and "could well happen" rather than something that is probable or more likely than not (*SCA Packaging Ltd v Boyle* [2009] ICR 1056).

17. The question of how long an impairment is likely to last must 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).

18. The burden of showing that she was disabled within the meaning of the EqA 2010 at the relevant time rests on the Claimant.

Findings and conclusions

19. I deal with each of the conditions in dispute separately.

Chronic migraines

20. The Claimant's evidence was that she has suffered from chronic migraines since 1997. Her evidence was that she suffers from:

> "Intense throbbing pounding headaches accompanied by nausea, being sick, visual problems and an increased sensitivity to light or sound, blurred vision, tingling sensations (pins and needles) and numbness in the face, lips and tongue, or in the arms and legs, speech problems such as slurred speech, dizziness and a stiff neck, poor concentration, feeling hot or cold, perspiration (sweating), abdominal pain and an increased need to pass urine."

21. Her evidence was that she suffers from migraines of varying intensities at least a few times a week. Her evidence was that the medication helps manage some effects, but it does not prevent the symptoms or flare ups, and has to be taken within a very small window of onset otherwise it is entirely unhelpful. Her evidence was that he attack episodes can last from several hours to days. Her evidence was that she may not be able to read, write or use screens during a flare-up.

22. The Claimant's GP records recorded "Migraine" as an ongoing condition on 28 June 2022.

23. There was in evidence before me a letter from the Headache Centre at Guys and St Thomas's NHS Foundation trust dated 25 September 2018, which diagnosed the Claimant with "Chronic migraine". The letter noted that the Claimant had an MRI which was normal. It referred to every day headaches. The Claimant was prescribed Propranolol initially 40mg increasing to 80mg twice daily, and Sumatriptan 50mg as needed [204].

24. The Claimant's evidence was that the Propranolol caused side effects, so she had to top taking it. She continued (and still continues) to take Sumatriptan when she feels the onset of a migraine, so a few times per week.

25. There was a further letter dated 26 May 2020 from the Pain Management and Neuromodulation Centre [208]. That again referred to Chronic Migraine and noted that the Claimant was continuing to have daily headaches with about half being mild to moderate and half being severe. The letter noted that the Claimant must stop using regular medication as otherwise she would continue getting chronic daily headaches. The letter noted that the Claimant would be referred for Single-pulse Transcranial Magnetic Stimulation ("sTMS"), although she would need to submit headache diaries.

26. There was a further letter dated 17 January 2021 from the Pain Management and Neuromodulation Centre [213]. That referred to the Claimant as having "chronic migraine without aura". It referred to the Claimant as describing daily headaches, mainly left sided, with photophobia and nausea. It recorded the severity as 7/10, occasionally reducing to 4 – 5 /10.

27. The Claimant was seen again by the Pain Management & Neuromodulation Centre on 14 February 2023 [241], at which point she commenced a three month trial of sTMS.

28. The Claimant's evidence was that she now has an sTMS device which she uses twice a day.

29. The Claimant's migraines were noted as a comorbidity on a number of clinic records relating to other conditions.

30. The Claimant's evidence, which I accept, was that during the relevant period she would have between 3 and 5 migraines per week, and there were no weeks when she did not have a migraine. Her evidence was that she had had time off work due to migraines, although it was not mentioned in any GP Fit notes for that period.

31. Taking the four steps set out in *Sullivan* in order:

Was there an impairment? (the 'impairment condition');

32. I am satisfied that the Claimant satisfies the impairment criteria. She has been diagnosed as suffering from chronic migraines.

What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');

33. I accept the Claimant's evidence that during the relevant time she suffered from up to five migraines per week, and that there were no weeks when she did not suffer with a single migraine. Her evidence was that some flare-ups were more significant than others. Her evidence regarding the effect that her migraines had on her ability to read and to use screens was unchallenged. I have no difficulty in accepting it. Reading and using screens are an entirely normal day-to-day activity.

34. I accept also that the Claimant cannot tolerate aural and visual stimuli during a migraine, as she suffers from photosensitivity and is affected by noise. That is consistent with the contemporaneous medical evidence. The presence of noise and light are inherent in a great many normal day-to-day activities. So I have no difficulty in concluding that the difficulties she suffers with aural and visual stimuli while suffering from a migraine do have an adverse effect on a range of normal day-to-day activities.

35. It follows that a migraine would necessarily also interfere with the Claimant's ability to work, so again I have no difficulty in accepting her evidence in that regard. Given the relatively short-lived nature of each individual migraine it is perhaps unsurprising that she did not have to be signed off work by her GP with a migraine; but I accept the Claimant's evidence that there were occasions when she was unable to work. And of course, I must be careful to consider the effect of the migraines without the Claimant taking Sumatriptan. There was no expert evidence before me regarding the effect of the Sumatriptan. But given that the Claimant takes Sumatriptan during the onset phase to lessen the impact of a migraine, I consider it is self-evident that the adverse effect of any individual migraine would be more likely to be greater if the Claimant did not take Sumatriptan.

36. Taking a step back, I conclude that the adverse effect condition satisfied.

Were they more than minor or trivial? (the 'substantial condition');

37. For much the same reasons I have already expressed, I am satisfied that the adverse effect on the Clamant was more than minor or trivial. The overall effect of the Claimant's migraines was that at some point in every week, and often more than once, she would be significantly restricted for a period of time in her ability to carry out a whole range of activities which came with visual and aural stimuli, including (but not limited to) reading and using screens.

Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

38. The Claimant was diagnosed with chronic migraines in 2018 (although on her evidence she had been suffering with them for over two decades prior to that). The 2018 letter referred to the Claimant suffering from migraines daily. It was not suggested to me that her migraines had either worsened or improved appreciably since 2018. I therefore conclude that by December 2021, the Claimant had been suffering from the migraines for considerably more than 12 months. She continued to do so throughout the relevant period. So the long-term condition is satisfied.

39. It follows then that I conclude that the Claimant had a disability at all relevant times by virtue of Chronic Migraines.

Mixed anxiety and depressive disorder

40. The Claimant's evidence was that her anxiety and depression onset in her teens, and that she was first diagnosed in 2003. Her evidence was that the symptoms are as follows:

> "Irritability, persistent sad, anxious, or "empty" mood, feelings of hopelessness or pessimism, feeling tense and restless, feeling demoralised, feelings of guilt, worthlessness, or helplessness, loss of interest or pleasure in hobbies and activities, sleep problems, trouble concentrating, and fatigue, feeling suicidal, worsens with weather, of worthlessness or guilt, fixating on past failures or self-blame, agitation or restlessness, panic and anxiety dealing with the external world, losing control outside of the safety of home, fear of being in situations where escape might be difficult or that help wouldn't be available if things go wrong. heightened anxiety and worries about things and many others that I find too distressing to write or discuss."

41. The Claimant described finding public transport difficult and overwhelming, and that being too close to people for a long period of time increases her anxiety. She described difficulty waiting or queuing, and finding unfamiliar spaces overwhelming.

42. The Claimant's GP records referred, under the heading "Problems" to both "Depressed mood" and "Mood disorder". The Claimant's evidence was that she had been prescribed Fluoxetine and Duloxetine, and that was borne out by her medical records (which showed a prescription of 20mg Fluoxetine in June 2021, and more recently a repeat prescription of Duloxetine which was in place by at least July 2022 and remain in place).

43. There was in evidence before me a letter from Tower Hamlets Talking Therapies to the Claimant's GP dated 28 February 2019 [205]. That letter said this:

> Thank you for referring the above patient to our service. Further to initial telephone Assessment I have seen [A] on two occasions. As you are aware she reported chronic pains, numerous medical conditions and low mood.
>
> [A] reported low mood and thoughts about being better off dead, which increase with worsening pain. She denied current intent, but I understand she made a previous attempt when she was 19. I discussed emergency planning with her and gave her a list of contacts.
>
> [A] is finding arranging regular appointments difficult because of work and pain. When I last saw her she told me she would contact me to arrange the next appointment. I have tried to contact her but have been unable to get through. I will be away from the office till 18th March. I have left a message suggesting an appointment on that day.
>
> In view of [A]'s low mood, suicidal thoughts, social isolation and chronic pain I am informing you, so that you can provide extra support should she ask for an appointment with her GP.

44. The Claimant's mental health was also referred to in a letter dated 6 March 2022 from the Pain Management & Neuromodulation Centre. That letter was co-signed by a Clinical Psychologist and a Specialist Physiotherapist.

45. Under the heading "Current mood and mental health history" it said this:

> [A] described her current mood as "awful", often experiencing periods of low mood. She said that she feels "disappointed and disgusted" at her own failings. She also described experiencing poor self-esteem; and frustration and annoyance with having to engage with so many health appointments and explain her health conditions multiple times to different hearth care professionals. Her sleep is also disrupted, leaving her feeling tired and fatigued. She often experiences brain fog. She did not report any active thoughts of suicide or self-harm, but reflected that she does not have anything to look forward to.
>
> In terms of mental health history, [A] reported struggling with her mental health for a long time. [redacted in the bundle]
>
> She can experience nightmares and feelings of panic in relation to this. She also said that she has three ongoing issues which were highlighted to her following an increasing Access to Psychological Therapies (IAPT) assessment: (1) eating difficulties (redacted) (2) low mood; (3) anxious and self-critical thoughts. On top of this, she recently lost her father to Covid (last year), which has understandably been an incredibly difficult time.

> She said that she had been seeking psychological support for a long time and has not been able to receive this to date. In 2018/19, she had three sessions via IAPT, however her therapist then left the service, meaning that she was put back on the waiting list. She said that she was never contacted by IAPT after this. Therefore, she self-referred to another IAPT service in Greenwich, which she said she has not heard back from to commence treatment despite waiting for a long time. Overall, she is understandably despondent about receiving psychological help, as she has not yet received treatment in spite of her efforts."

46. The Claimant was given an initial assessment by Greenwich Time to Talk on 31 August 2023. The outcome letter from that noted that the Claimant's main presenting problem was anxiety and low mood due to LTC (long term conditions), and LTC adjustment issues [264]. It described the claimant's risk as being "low", and that she had suicidal ideation without intention, and no self-harm reported. The last part of the letter was, however, not in evidence before me. The Claimant's evidence was that she received counselling following that assessment, but that it did not improve her mood or anxiety.

47. The Claimant accepted in evidence that she was able to continue working during the relevant period, and was never signed off work because of her mental health issues. Her evidence was that at times, that was only because she could work from home.

48. Taking, again, the four steps in *Sullivan* in order:

Was there an impairment? (the 'impairment condition');

49. I am satisfied that the Claimant had a mental impairment. There is of course no need for a formal diagnosis. The Claimant's medical records record that she was diagnosed with both depressed mood and a mood disorder. The Claimant's evidence was that the mood disorder was a reference to anxiety. That was also borne out by the other medical documents referred to above.

What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');

50. I accept the Claimant's evidence regarding the impact her mental health condition had on her. Her evidence in that regard was not challenged in cross-examination. She described, among other things, having difficulty with public transport, being too close to people, waiting, queuing, and being in unfamiliar spaces. All of those are normal day-to-day activities. That evidence was also consistent with the 2019 Talking Therapies letter, which talked about social isolation (as well as suicidal ideation). The August 2023 Time to Talk letter also talked about low mood and suicidal ideation. Given the nature of the effects the Claimant's mental health condition had upon her, I am satisfied that the adverse effect condition is made out.

Were they more than minor or trivial? (the 'substantial condition');

51. I consider that those adverse effects described above were self-evidently more than minor or trivial. They had a significant effect on the Claimant's life. I am therefore satisfied that the substantial condition is also made out.

Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

52. I accept the Claimant's evidence that she was first diagnosed in 2003. That is consistent with the medical evidence before me, which referred to a suicide attempt at the age of 19. I consider that, as at December 2021, the effects of the Claimant's mixed anxiety and depressive disorder had continued for more than 12 months (albeit that it had fluctuated). It continued throughout the relevant period. I am therefore satisfied therefore that the long term condition is made out.

53. It follows then that I conclude that the Claimant had a disability at all relevant times by virtue of mixed anxiety and depressive disorder.

<u>RSI encompassing Carpal Tunnel Syndrome</u>

54. The Claimant's evidence in her Impact Statement was that from the second half of 2022, she began to suffer from symptoms which appeared to be Carpal Tunnel Syndrome or Repetitive Strain Injury. She referred specifically to attempting to work from home without reasonable adjustments, equipment and aids.

55. Her evidence in the impact statement table, which was produced later, was that the onset of her RSI was in 2021 to 2022, and it was aggravated from November 2022 onwards.

56. The Claimant's evidence in her impact statement table described the following symptoms:

> Upper limb pain, numbness, tingling, aches, throbbing, stiffness, cramps, weakness, shoulders, temperature sensitivity arms, hands, wrists and fingers. Inflammation and swelling, tenderness, reduced movement in joints.
>
> This extends to the surrounding parts of the body, sleep disturbances.

57. Her evidence referred to pain, tingling and numbness in shoulders, neck, arms and hands, and progressively significant pain. She describes requiring help with daily activity such as bathing, dressing and preparing food.

58. In cross-examination, the Claimant's evidence was that she could not identify the date that the pain and other symptoms started. She confirmed

in cross-examination that at the point that her impact statement was produced, she did not have a formal diagnosis.

59. An entry in the Claimant's GP records for 11 November 2021 headed "multiple symptoms" included, among a number of other symptoms, "burning pain in hands and feet" [194]. Ms Chan suggested in submissions that that was a reference to the Claimant's RSI/Carpal Tunnel. The Claimant in her evidence cross-referenced a number of other parts of the medical records, but not that entry. I do not consider that that entry is a reference to what the Claimant described as the symptoms of her RSI/Carpal Tunnel. For one thing, in the GP entry she referred to hands and feet, whereas her evidence regarding the RSI/Carpal Tunnel Syndrome was focused on her upper limbs only. For another, the reference to "burning pain" is not consistent with the way the Claimant described the pains she attributed to RSI/Carpal Tunnel Syndrome. I consider that the reference in the GP notes from 11 November 2021 is not to symptoms of RSI/Carpal Tunnel Syndrome.

60. There was in evidence before me an email from the Claimant to her GP. Dr Cheung, dated 19 February 2023 [243]. That email said this:

> "I wanted to report the worsening of symptoms on my right side – neck/shoulder to arm to the wrist which I had reported during our last appointment. Unfortunately the left side has also got worse despite my precautions, heat/cold packs and existing pain medication etc. Mobility in my shoulder, arm, hand and fingers.. overall is significantly reduced.
>
> It has gone to a point that the pain, stiffness and numbness is affecting me severely particularly my ability to sleep, write, type… I can't seem to grip things or bend. I also experience cramps, tingling and loss of sensation within my hands.
>
> I am struggling massively and will reach out to you."

61. The Claimant's GP records showed that the last time she had spoken to Dr Cheung was on 3 February 2023 [170]. There was no mention in the notes of that consultation of pain in the neck/shoulder and wrist. It was, however, a wide-ranging appointment in which a number of matters were discussed. The Claimant's evidence, which I entirely accept, was that given the number of conditions she suffered from, she had to prioritise what she discussed in any given appointment.

62. On 28 February 2023 the Claimant saw her GP. The notes of that consultation said this [169]:

> "Issues re pain down RT arm and then sometimes LT arm
> Has been asked by work to look at work chair
> Needs to sources her own OT assessment and then buy a chair

> Chat re pain to both hands
> Struggles to use keyboard
> Saw physion and they only delay with on issue
> ?fibro
> ?related to hypermobility issues
> Confirmed have referred to gastro and also derm
>
> Suggest FC physio for advice and ? advice whether a splint will help
> Ref MSK and see"

63. On 4 May 2023, the Claimant was seen by Circle MSK. There was in evidence before me a letter headed "Outcome of Appointment", from an MSK Advanced Practice Physiotherapist [251]. Miss Platt made the point that the copy of the letter in the bundle was not on headed paper and was unsigned. There was, however, a footer to the letter which said this:

> "This MSK service is run by Circle Clinical Services Limited on behalf of the local Integrated Care Board. Circle Clinical Services Limited is part of the Circle Health Group. Registered number 07714059. Registered office: 30 Cannon St, London EC4M 6XH. Registered in England & Wales."

64. I do not draw any inference from the fact that the copy of the letter in evidence before me was not on headed paper and did not have a visible signature.

65. The letter referred to persistent multiple joint pain. It said this:

> "I suspect carpal tunnel syndrome bilaterally in the hands. However – due to bilateral pins and needs in the hands and the feet, combined with complex history, I will refer for an MRI of the spine to assess for treatment targets."

66. The letter described the Claimant's symptoms as including neck pain and pain in the arms, numbness and tingling in extremities several times a day, and severe wrist and hand pain especially when she had been typing for a long time.

67. There was a further letter from Circle MSK dated 19 July 2023 [258]. That letter described the Claimant's diagnosis as "Multiple Joint Pain" and "? Carpal tunnel syndrome". The letter referred to pain in the neck, shoulders arms and hands that got worse when sitting upright for some time. It noted that the Claimant's pain was impacting her ability to do her job.

68. The Claimant's GP records showed had a note from 22 November 2023 which said this [151]:

> "Emailed MSK – this lady was referred and seen in May 2023 with suspected bilateral carpal tunnel syndrome. Can you let me know where she is up to on the treatment pathway?
> Email response rom MSK 25.11.23 – I can see the patient was referred to Guy's and St Thomas's hospital for Pain Management on the 10th August and I can see on ERS the patient had an appointment with them on the 31st August."

69. Once again, I take the four steps in *Sullivan* in order.

Was there an impairment? (the 'impairment condition');

70. Although the Claimant had not received a formal diagnosis during the relevant period, she had received a provisional diagnosis from the MSK service, which was also referred to in her GP notes. Surveying the totality of the evidence, I am satisfied that the impairment condition is satisfied.

What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');

71. The Claimant's evidence regarding the effect of the impairment upon her was not challenged. Her evidence was that she required help with daily activities such as bathing, dressing and preparing food. Of course I do bear in mind that there was inevitably an overlap with her other conditions. And she was not specific in her evidence about the time period during which she required assistances with those activities. There was also significant reference, both in the Claimant's evidence and in the medical records, to difficulty with typing and with sitting upright for lengthy periods. Both of those are, it seems to me, entirely normal day-to-day activities. Working at a computer and typing are not a niche occupational requirement; they are an essential part of a great many jobs.

72. I am satisfied therefore that the impairment condition was met. What I am not satisfied, however, is that the impairment condition was met from the start of the relevant period.

73. There was an inconsistency in the Claimant's evidence regarding the onset of symptoms. Given the number of conditions with which she unfortunately suffers, and the time period in question, that is unsurprising. It is certainly no criticism of her that she could not recall, in granular detail, the progress of the RSI/Carpal Tunnel symptoms. It does mean, however, that I consider the best evidence regarding the development of the symptoms comes from the contemporaneous medical notes.

74. I have already indicated that I do not consider that the reference in the November 2021 GP notes was related to the RSI/Carpal Tunnel syndrome. The first reference thereafter was in the form of the email to the Claimant's GP in February 2023. The Claimant referred in that email to a previous

appointment, which had been earlier that month. She indicated that the symptoms had worsened in the interim.

75. I infer from that that the first time the symptoms were significant enough for her to have mentioned them to her GP were in early February 2023, and that they continued to worsen through that month.

76. I consider therefore on balance that while the symptoms most likely started in late 2022, they did not meet the impairment condition until February 2023.

c) Were they more than minor or trivial? (the 'substantial condition');

77. Doing the best I can with the evidence available, I consider that the symptoms did meet the substantial condition from late February 2023. By that time, the GP records note that the Claimant was struggling with keyboard work. That is, in my judgment, undoubtedly a substantial impairment on her ability to carry out ordinary day-to-day activities.

d) Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

78. In considering the long-term condition, I must be careful to look at what was known at the time of the events in question.

79. As of February 2023, the Claimant's GP had not made even a tentative diagnosis of RSI/Carpal Tunnel Syndrome. Nor do the GP notes say anything to suggest that the impairment the Claimant was suffering from at that time would be long-lived. In the absence of even a tentative diagnosis, that is unsurprising. Of course, any collection of undiagnosed symptoms could potentially last for twelve months or more. But what I must focus on is whether there was a real possibility that they would do so. When the Claimant discussed her symptoms with the GP in February 2023, I do not consider that it could be said that there was a real possibility that those symptoms would last for twelve months or more.

80. The Claimant was tentatively diagnosed with RSI/Carpal Tunnel Syndrome in May 2023, when she saw the MSK service. At that point the diagnosis was still a tentative one. She was referred for an MRI. The symptoms had, I have found, met the substantial condition for around 3 months. There was no advice regarding prognosis in the MSK letter. In the circumstances, I do not consider that it could be said at that stage that there was a real possibility that it would last for twelve months or more. There were simply too many uncertainties, and the Claimant's symptoms were still at a relatively early stage in terms of having a substantial impact on her ability to carry out ordinary day to day activities.

81. The Claimant was seen by the MSK Service again on 19 July 2023. Once again, no firm diagnosis was provided. By that point, however, the Claimant's symptoms had been causing a substantial impairment for some

7 months. I consider that at that point, the lack of a formal diagnosis ceased to be a factor that pointed away from the condition being long-term, and started to point towards it being long-term. After 7 months, the impairment could not in my judgment be characterised as short term or transient. The Claimant did not yet have a formal diagnosis. The effect of that was that, in essence, there was no end in sight. Seen through that lens, I consider that as of the date of the second MSK Service appointment, there was a real possibility that the Claimant's RSI/Carpal Tunnel Syndrome would last for twelve months or more (albeit that it had not been formally diagnosed).

82. It follows then that I conclude that the Claimant had a disability from 19 July 2023 onwards by virtue of RSI/Carpal Tunnel Syndrome.

_____
Employment Judge Leith
Date: 13 May 2025

Sent to the parties on
Date: 22 May 2025