



EMPLOYMENT TRIBUNALS

Claimant: Mr K Badham

Respondents: Jaguar Land Rover Ltd

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Birmingham (CVP)

On: 10 July 2024

Before: Employment Judge Hena

Appearances

For the claimant: In Person

For the respondent: Mr Crow (Counsel)

JUDGMENT

The Tribunal makes the following decision in relation to the preliminary issues heard at the Public Preliminary Hearing:

1. The claimant has not made out that he suffered a mental impairment which meets the definition of a disability as defined in Section 6 of the Equality Act 2010 at the time of the event in March 2022. The Tribunal decided the supporting evidence did not support a mental impairment of stress and depression prior to March 2022 that impacted his day-to-day activities such as returning to work.

Preliminary Issues

1. The respondent by email on 9 February 2024 to the claimant and the Tribunal conceded that the claimant's IBS is a disability as per s.6 of the Equality Act 2010.

ISSUES

1. The issues in this matter are as follows:
 - 1.1. Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 1.1.1 Whether the Claimant had a physical or mental impairment, namely:
 - 1.1.1.1 Stress and depression
 - 1.1.2 Whether this had a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?
 - 1.1.3 If not:
 - 1.1.3.1 whether the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment;
 - 1.1.3.2 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - 1.1.4 Were the effects of the impairment long-term? The Tribunal will decide:
 - 1.1.4.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 1.1.4.2 if not, were they likely to recur?

Background

2. The Claimant contacted ACAS on 11 April 2023, a certificate was sent on 19 May 2022 and the claim presented on 21 May 2022.
3. The Claimant ticked the box for disability discrimination. His claim form included a brief narrative:

I've been off with work related stress since July due to bullying, harassment and victimisation due to my disabilities-I therefore raised a separate case number 1309749/2020 and that hearing date is scheduled for this July 2022 During the last 12 months I have been receiving CBT counselling from the company's own Occupational Health Department Due to my stress and depression brought on by the bullying, the CBT councillor recommended a further 16 sessions up to my hearing date this July 2022 During an absence

review with the company doctor McDarmid on the 7th March 2022 I was told that the counselling sessions as prescribed by the medical professional was turned down due to the fact that there was no likelihood of me returning to work -the reason why I was off is because the company failed to make reasonable adjustments by placing me in a different area to the one where the discrimination took place -only now May 2022 the company placed me in another area and therefore commenced work again with a phased return -the decision to deny further treatment was therefore discrimination due to my disabilities -in a previous meeting with Dr Macdarmid I let her know that I was having suicidal thoughts due to the stress of the case -imagine my disgust that the company refused further CBT counselling due to me being absent waiting for the company to relocate me as suggested by a previous company doctor in 2020.

4. The Respondent entered a defense denying liability, including on the basis the decision to cancel CBT was made by a third party for which it was not vicariously liable.

The Hearing

5. The Tribunal heard the claimant's concerns over the late filing of the bundle, which includes 3 occupational health reports and the respondent's skeleton argument. The claimant felt prejudiced by the late filing of evidence as a litigant in person and someone who suffers from mental health problems. The claimant also stressed to postpone the date of this preliminary hearing would also increase his stress.
6. The respondent conceded the updated bundle with section 4 was sent the afternoon before the hearing but that the occupational reports were the claimant's reports and should be familiar to him. It was argued they are essential for this hearing, and it is not known why they were missed. The respondent did suggest that they were happy to exclude the other occupational health reports save the one from 2022.
7. The Tribunal has to balance the fairness of the late filing of evidence with the stress of any postponement would have on the claimant. In light of this the Tribunal agreed that the respondent can only rely on the 2022 occupational health report, it is a very brief report, and the claimant will be afforded 30 minutes to consider the report and the skeleton argument.
8. The issues for this hearing were confirmed with both parties, prior to the brief adjournment and explained to the claimant. Whilst the claimant understood that the IBS had been conceded as a disability, he said he would mention it as it was linked to his mental health. The Tribunal explained that it was for the claimant to present his case in a way he chooses but he must ensure it was focused on assisting the tribunal in deciding whether the stress and depression was a disability and not the IBS.

Employment Judge Hena
11 July 2024