



EMPLOYMENT TRIBUNALS

Claimant: Ms Helen Jeffs

Respondent: Countrywide Surveyors Limited

Heard : by Cloud Video Platform **On:** 10 June 2025

Before: Employment Judge S Evans

Appearances

For the Claimant: In Person

For the Respondent: Mr. P. Kerfoot, Counsel

PRELIMINARY HEARING RESERVED JUDGMENT

The judgment of the Tribunal is that, at the time material to the Claimant's claim of disability discrimination, she was a disabled person within the meaning of section 6 and Schedule 1 of the Equality Act 2010.

REASONS

The Hearing

1. A remote hearing was held with no technical issues reported. The purpose of the Preliminary Hearing was to determine whether the Claimant was a disabled person, within the meaning of the Equality Act 2010, at the material time in relation to her claim.
2. At the outset of the hearing, the parties confirmed they did not require any adjustments to be made for this hearing.

3. The bundle before the Tribunal consisted of 164 pages. I considered only those pages to which I was specifically referred. Page references below are to pages in the bundle.
4. Oral evidence was taken from the Claimant which included supplementary detail to add to her impact statement.
5. The parties agree that the material time for determination of the issue of whether the Claimant can rely on the protected characteristic of disability is the period of her employment with the Respondent, from 1 April 2021 to 12 May 2023.
6. Oral submissions were made by the Respondent's representative at the conclusion of the oral evidence. The Claimant indicated she was fatigued and it was agreed she would make her closing submissions in writing. These were received, after the hearing, by the Tribunal and the Respondent's representative who indicated that they had nothing to add in reply. The Tribunal notes entries in the Claimant's submissions where she wrote "on my ability to carry out day to day activities due to muscle pain, brain fog, tiredness.[\[i\]](#)" and "ability to carry out day-to-day activities due to muscle pain, brain fog, tiredness.[\[ii\]](#)." There were no corresponding footnotes which provided an identifiable reference.
7. The Tribunal took account of all the evidence to which it was directed in reaching its decision. The Tribunal also carefully considered the oral submissions made by the Respondent's representative and the written submissions made by the Claimant to the extent that these addressed the issues relevant to this Preliminary Hearing.

The Issue

8. The issue for determination at this hearing is whether, at the material time, the Claimant was a disabled person. As set out in the Case Management Order of Employment Judge McCooey, dated 26 March 2025, the Tribunal has to decide:
 - 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:
Did she have the following a physical and/or mental impairments:
 - Chronic Fatigue Syndrome
 - Undiagnosed Sleep Disorder/ Sleep Disorder
 - Damage to lower disks in back/ Back Pain
 - Renal Tubular Acidosis
 - Minor Stroke
 - Did these impairments have a substantial adverse effect on her ability to carry out day-to-day activities?

- If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 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?
 - Were the effects of the impairment long-term? The Tribunal will decide: Did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?
9. The Respondent's representative indicated at the outset of the hearing that the issue of disability was not conceded.

Findings of Fact

10. I found the Claimant to be a credible and reliable witness. Where there were any inconsistencies in her evidence, I have addressed these below. The findings of fact I have made relate only to the issue of whether she meets the definition of a disabled person within the Equality Act 2010.
11. The Claimant has chronic fatigue syndrome, the effects of which began in 1991 after the Claimant had glandular fever. In April 2021, when the Claimant began her employment with the Respondent, this condition caused her to experience brain fog, memory issues, fatigue and food intolerances. This continued throughout her employment. There was conflicting evidence as to the extent of the impact of this condition on the Claimant in relation to brain fog and memory issues : in evidence she said that in April 2021 her brain fog was "from time to time" then later said it was on "a daily basis". The Claimant went on to describe the effect of memory issues, including taking more time to complete SCTs (surveyor comparison tool), needing to refer back to lender notes and inability to recall information to complete training modules. Outside work, she could not remember dates, such as vet or GP appointments and would forget sentences in mid-conversation. The Claimant had previously been able to manage multiple building projects but her memory became worse after her stroke in 2015. Taking her evidence as a whole, I find that the memory issues were more regular than "from time to time" and affected the Claimant on a regular basis through the relevant period. The fatigue meant she went to bed by 7:30 pm although she would sometimes work in bed and fall asleep doing so. Her partner did all the shopping and cooking as the Claimant was too fatigued to do so. She was able to go to work but the energies involved meant she was too fatigued to do anything outside of work. In work her energy levels fell through the day so her best performance was in the morning and writing up reports in the evening was more difficult because of her fatigue. To accommodate this, the Claimant worked every other day on a part-time basis to allow time for her fatigue to improve. On her days off, the Claimant did housework, walked her dog and managed her holiday let online. Her condition, resulting in food intolerances, meant she had to watch what she ate and her impaired immune system meant she avoided contact with friends if they had a cold. Throughout the period of her employment the Claimant took daily medication for her chronic fatigue syndrome, including

anti-depressants to manage anxiety and maintain her mood, a neuro blocker to manage pain and a narcolepsy drug treatment.

12. The Claimant has a sleep disorder which causes her to avoid being a passenger in a car with colleagues or friends in case she falls asleep. Her sleep is disturbed and her previous partner told her that when she is asleep, she lashes out. The Claimant was previously aware of this and it was a reason why she did not live in halls of residence or shared accommodation at university. The Claimant does not go out late at night and so her socialising is impacted. The effects of this condition have been in existence since before the Claimant was 18. The effects occur one or two nights a week sometimes and in other weeks, it is every night. When the Claimant began working for the Respondent in April 2021, the effects of her sleep disturbance were general tiredness but, after the first 8 – 9 months of working for the Respondent, the disturbances of sleep increased and the Claimant became more violent in her sleep. She believes this was due to increased stress levels. The medication the Claimant takes alleviates her tiredness but does not resolve the sleep disturbances or lashing out. The Claimant took the medication throughout the material time and is still doing so - without the medication she would not be able to do things like getting out of bed, dressing, driving, eating or communicating with others. The Claimant's friends have described her as being lethargic and like someone on drugs.
13. The Claimant has damage to the discs in her lower back and back pain. The effects began in November 2014 and were ongoing at the material time. The effects were improved by medication and by the Claimant managing and altering how she did things. The effects improved shortly after she stopped working for the Respondent as she was able to rest her back more. During her time of employment with the Respondent, the Claimant had difficulty standing for 5 minutes or more or queuing. It impacted her ability in work to carry equipment, lift drain covers and climb ladders and stairs. She bought a trolley to carry her equipment and in and outside of work, she had to climb stairs one step at a time. Her pain affected her driving and she could not use a trolley for supermarket shopping so had to have her shopping delivered. She could not lift weight – for example a 4 pint bottle of milk or a tea tray – away from her as her back would go into spasm. To reduce twisting of her back, the Claimant used a grab rail and seat in the shower. The Claimant was taking morphine to manage the pain on non-working days as the medication meant she could not drive. She also took anti-inflammatory medication and paracetamol.
14. The Claimant is diagnosed with Renal Tubular Acidosis. This causes her to have increased pain in her back, joints and neck, grumbling stomach pains and increased lethargy due to the toxins in her blood stream. These symptoms began in June 2015 and are on going. During the material time, the pain made driving and sitting at a computer uncomfortable for the Claimant who had to take regular breaks. When walking the Claimant had to stop to sit down and, because dehydration made her symptoms worse, her drinking caused frequent bathroom breaks. There were times when her stomach pain was better and she experienced stomach pain every couple of

weeks, although she would always feel under the weather. At its worst, the Claimant was in agony about once a month and clients would enquire if she was ok. It was a particular problem in the summer and when the Claimant was hot.

15. On 24 October 2015, the Claimant had a stroke which resulted in short-term memory loss, lack of co-ordination, damage to the optic nerve affecting her eyesight and headaches. During the material time, the Claimant's memory issues caused her to forget passwords and telephone numbers even though, before her stroke, the Claimant had a very good ability to recall such details. She would also forget the thread of a conversation part way through, causing embarrassment to the Claimant. During the material time, the impact on the Claimant's eye sight meant that her eyes did not focus and she could not read either on or off screen. The Claimant took blood thinner medication as well as medication to keep her blood pressure lower. In May 2023 the Claimant was told by her GP to take time off work as her blood pressure was high, increasing the risk of another stroke.
16. The Claimant's fatigue has caused her to miss major events such as weddings as she felt unwell.
17. Each of the five conditions was present at the material time and the effects of the conditions as set out above were present throughout the material time.

The Law

18. Under s.6 Equality Act 2010 ("EqA"), a person has a disability if they have a physical or mental impairment and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
19. Pursuant to s.6(5) EqA, the Secretary of State has published Guidance on the definition of disability (2011) ("Guidance"). As the Guidance states, it does not impose any legal obligations in itself, nor is it an authoritative statement of the law. However, Schedule 1, Paragraph 12 EqA requires the Tribunal to take into account any aspect of this guidance which appears to it to be relevant and the Tribunal confirms that it has done so.
20. Section 212 (1) EqA defines "substantial" as meaning "more than minor or trivial".
21. Schedule 1, paragraph 2 EqA states that the effect of an impairment is long term if it falls into one of the following provisions :
 - (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.

22. Schedule 1, Paragraph 5 (1) EqA provides that 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.

23. Normal day-to-day activities are not defined in EqA. Examples of such activities are given in the Guidance, which is illustrative and not definitive. Paragraph D3 states:

In general, day-to-day activities are things people do on a regular or daily basis, and examples include 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. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

24. I have taken into consideration the law set out above as well as the authorities to which I was referred by the parties. These were as follows: The Claimant referred me to the cases of *Goodwin v Patent Office* 1999 ICR 302, *Sullivan v Bury Street Capital Ltd* 2022 IRLR 159, *Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening)* 2009 ICR 1056, HL and the first instance case of *Tretis v DHL Services Ltd*. The citation was not provided by the Claimant but it is case 3312509/2021. Mr. Kerfoot referred me to the case of *Metroline Travel Ltd. v Stout* EAT 0302/14. I have reminded myself of the relevant legal principles, including that the focus must be on what the Claimant is unable to do, rather than what she can do. I am mindful that the burden lies with the Claimant to prove, on a balance of probabilities, that she was a disabled person, within the meaning of the Equality Act 2010, at the material time.

Conclusions

25. In her submissions the Claimant states that the definition of a disabled person under s.6 of the Equality Act 2010 “is almost identical to the government definition which is also the requirement for Personal Independence Payments.” This point was addressed at the oral hearing so the Claimant is aware that this Tribunal’s focus is only on the definition in s.6 and meeting definitions of disability for other purposes is not the issue.

26. I remind myself that the issue for determination at this hearing is a legal and not a medical one.

27. I find that the Claimant met the legal definition of disability at the material time. She had all five impairments throughout the course of her employment with the Respondent.

28. I have made findings of fact in relation to each impairment. The Respondent indicated in the closing submissions that where multiple conditions lead to similar effects they can be looked at cumulatively.

29. On the basis of the evidence I heard and the findings of fact I have made, I conclude that each of the five impairments had an adverse effect on the Claimant's ability to carry out normal day to day activities. Her fatigue (from chronic fatigue syndrome and sleep disorder) meant that her ability to carry out the following activities was adversely affected:

- Staying up and/or going out in the evening
- Socialising
- Shopping
- Cooking
- Writing up reports

The food intolerances and weakened immunity (from chronic fatigue syndrome) meant her ability to carry out the following activities was adversely affected:

- Eating certain foods
- Socialising with friends

The memory issues (from chronic fatigue syndrome, sleep disorder and the stroke) meant her ability to carry out the following activities was adversely affected:

- Conversing in professional and personal capacity
- Recalling passwords, dates and telephone numbers
- Completing reports and professional training
- Reading

The pain caused by the Claimant's damaged discs in her back meant her ability to carry out the following activities was adversely affected:

- Standing for 5 minutes or more or queuing
- Lifting and carrying items both in and out of work
- Climbing stairs
- Driving
- Shopping
- Showering

The Claimant's symptoms of Renal Tubular Acidosis meant her ability to carry out the following activities was adversely affected:

- Driving
- Sitting at a computer
- Walking

30. In relation to each of the activities I have identified, I am satisfied on a balance of probabilities that the adverse effects were substantial. Mr. Kerfoot submitted that because the Claimant was able to attend work, the effects of fatigue and

pain were not substantial and that the memory issues were minor. I disagree : the Claimant was focussed on attending work and in consequence of directing all her energies to that purpose, there was a substantial adverse effect on her ability to function in relation to the identified activities outside work because of her fatigue. This was demonstrated, for example, by the fact that she went to bed by 7:30 and that her partner took on household responsibilities as she was too tired to do so. In relation to fatigue and pain, Mr. Kerfoot submitted that it was an error for me to conclude what would have been the effect of the Claimant's impairments in the absence of medication without medical evidence. He was unable to offer an authority for this submission. His submission was also that the Claimant had modified her behaviour to reduce any adverse effect and that upon taking the avoiding steps, the effect was minor. I am not persuaded by the Respondent's submissions on the issue of adverse effect. My finding is that the Claimant was taking various medications throughout the relevant period to manage her conditions and their symptoms. Even with those medications, the Claimant was experiencing an adverse effect on her ability to carry out the day to day activities I have outlined. This adverse effect was more than minimal : the effects were experienced on a daily or a regular basis and had a significant impact on her professional and personal life. As highlighted in the issues above, because I find there was a substantial adverse effect even with medication there is no need for me to consider what the effect would be without medication but if it had been necessary for me to do so, I would remind myself that 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 measures are being taken to treat or correct it, and but for that, it would be likely to have that effect.

31. I find that the substantial adverse effect on the Claimant's ability to carry out normal day to day activities was long-term. The effects of each condition started between 1991 (chronic fatigue syndrome) and 2015 (stroke) so had each existed for more than 12 months before the beginning of the relevant period and were ongoing throughout that relevant period.
32. I find that the Claimant met the definition of a disabled person within the Equality Act 2010, at the material time, for the reasons stated above.

Employment Judge S Evans

6 July 2025

-

Sent to the parties on:
8 July 2025

.....
For the Tribunal Office:

.....