EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001055/2024 Preliminary Hearing (Hybrid) at Edinburgh on 11 and 17 June 2025

Employment Judge: M A Macleod

F George	**Claimant** **In Person**
PriceWaterhouseCooper Services Limited	**Respondent** **Represented by** **Ms C Millns** **Barrister**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant is and was at the material time a disabled person within the meaning of section 6 of the Equality Act 2010 in relation to the condition of Other Specified Trauma- and Stressor-Related Disorder, but only from 23 February 2022 onwards; and that he is not and was not at the material time a disabled person within the meaning of section 6 of the Equality Act 2010 in relation to the condition of Burnout.

REASONS

1. A Preliminary Hearing was listed to take place on 11 June 2025 in order to determine whether the claimant is and was at the material time a disabled person within the meaning of section 6 of the Equality Act 2010, in relation to two particular asserted conditions.

2. The claimant appeared on his own behalf, attending in person at the Employment Tribunal, Edinburgh. Ms Millns, Barrister, appeared for the respondent, by Cloud Video Platform.

3. The respondent presented a bundle of productions containing the documents which had been agreed between the parties. In addition, the claimant produced 2 folders of documents running to more than 1600 pages, to which occasional reference was made in the Hearing. Where this Judgment refers to documents produced by either respondent or claimant, the prefix “R” or “C” will appear.

4. The claimant gave evidence on his own behalf, by way of a witness statement and by answering questions in cross-examination which had been provided in advance by the respondent, in line with the directions issued by the Tribunal in its Note following Preliminary Hearing dated 7 April 2025 (at R79ff). In addition, with the permission of the Tribunal, counsel for the respondent asked a number of supplementary questions, which the claimant was able to answer orally.

5. The claimant also called two witnesses to give evidence on his behalf: Dr Sian Armstrong, Practitioner Psychologist, and Dr Christopher Gordon Salt, a hospital physician and a friend of the claimant.

6. As a result of the complexity of the evidence and the detail provided, the Hearing did not conclude on 11 June 2025 as scheduled, but an additional day was found to be available and suitable to the parties on 17 June 2025, and accordingly the Hearing concluded then.

7. The issue before the Tribunal was whether or not the claimant is and was at the material time a person disabled within the meaning of section 6 of the Equality Act 2010. The respondent has already conceded that the claimant was disabled at the material time in relation to his conditions of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD) by email dated 30 April 2025. However, the claimant also asserts that he was disabled by reason of two further conditions, namely Burnout and Other Specified Trauma- and Stressor-Related Disorder.

8. It is these conditions which are the subject of the Tribunal’s scrutiny in this Hearing.

9. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

10. The claimant, whose date of birth is 25 June 1988, has worked for the respondent since 17 September 2012, and continues in employment with them to the date of this Hearing.

11. The material time was accepted by the claimant at the outset of the Hearing to be from 1 August 2020 onwards. This will henceforth be referred to as "the material time".

12. The claimant has been diagnosed with ASD and ADHD. This is not disputed by the respondent.

13. The claimant produced a report from Dr Armstrong dated 8 March 2025 to the Tribunal (R628ff). Dr Armstrong had been instructed by Messrs McGrade & Co, a firm of solicitors which the claimant had consulted for advice in relation to these proceedings. The letter of instruction was not produced to the Tribunal, but it is apparent from the terms of the report that Dr Armstrong carried out assessments of the claimant on 3 February, 10 February and 7 March 2025.

14. In the Summary of her conclusions, Dr Armstrong stated (R629):

"Mr George is an individual with the neurodiverse conditions of Autism Spectrum Disorder (ASD) and Attention deficit hyperactivity disorder (ADHD). It is my opinion that as a result of a lack of implemented adjustments for Mr George's conditions in the workplace, combined with inadequate communication and actions that hindered his ability to manage his ADHD effectively, Mr George has developed both Other Specified Trauma- and Stressor-Related Disorder and eventual burnout".

15. When questioned about this final statement, Dr Armstrong accepted in evidence that burnout is not a separate impairment or condition, but a symptom. She said that it is "not labelable as per the DSM IV".

16. She described Other Specified Trauma- and Stressor-Related Disorder as a "catch-all condition, but very similar in DSM IV to PTSD [Post-Traumatic Stress Disorder]". She went on to say that DSM IV is very specific as to the diagnosis of PTSD, where there needs to have been a specific life trauma; however, this does not fit the situation in which the claimant finds himself. The symptoms, she said, are very similar – re-experiencing events, avoiding emails and colleagues, experiencing a sense of hyper-arousal relating to events (characterised as "fight or flight") – and cause difficulties with concentration or sleep, and with social functioning.

17. Dr Armstrong confirmed that she had not diagnosed the claimant with depression or anxiety.

18. For the purposes of the Hearing, and for this Judgment, with the agreement of the parties, Other Specified Trauma- and Stressor-Related Disorder was, and shall be, referred to as "Trauma Disorder", for the sake of brevity.

19. Trauma Disorder is, in the view of Dr Armstrong, a condition arising from the mental health of the claimant, unlike ASD or ADHD, which are neurodivergent conditions.

20. It is therefore relevant to consider the information available demonstrating that the claimant has suffered from mental health difficulties in the material time, derived from his GP medical records and Occupational Health (OH) records, as well as the claimant's own evidence set out in his disability impact statement (R655ff) and the report by Dr Armstrong.

21. It is important, in addition, to ensure that the Tribunal focuses upon the two conditions relied upon in this Hearing, rather than reviewing the information relating to the two conditions (ASD and ADHD) already conceded by the respondent.

22. The claimant stated in his Impact Statement (R672) that his mental health started to decline in summer 2019, and in his witness statement at paragraph 333 that his mental health underwent an entirely downward trend since 2019, having (paragraph 379) taken a "downward plunge in summer 2019". However, he did also say that his mental health improved to some degree from March to May 2024 (paragraph 333), after having submitted his grievance to the respondent.

23. The claimant did not refer to mental health, nor to Burnout nor Trauma Disorder, as a condition or disability in his ET1, presented in July 2024.

24. In his Impact Statement, at paragraph 267c (R693), the claimant said that 18 December 2020 was the "single-biggest turning point in the state of my health and my ability to function. The situation went from bad to unbearable. I was overwhelmed by intense mental and physical exhaustion, and my day-to-day function dropped to no more than 10% of my baseline function. This was triggered by the Performance Improvement Plan results meeting held on this date in which I felt that the Respondent betrayed me, forever changing our relationship."

25. The claimant was at work, and able to function, until he became absent on 12 September 2021 due to work-related stress. He went off on long-term sickness absence on 15 November 2021, and has not returned to

work with the respondent since then. He accepted that he did not take any time off due to mental health difficulties prior to November 2021.

26. The claimant, during 2021, was able to attend work, and to go to work on time, despite suffering from sleep deprivation. However, he accepted in cross-examination that the problem of over-sleeping, which he describes as one of the symptoms of his condition, arose after he commenced long-term sickness absence.

27. The claimant did not seek medical support in relation to his mental health difficulties prior to being signed off ill in September 2021.

28. He considered, however, that the year of 2021 was overwhelmingly dominated by his dispute with the respondent, and that his mental and physical health was very poor in that time. He stated (paragraph 311 of his Impact Statement)(R699) that he spent most of 2021 in a state of dissociation, and of extreme hyperarousal and agitation.

29. The claimant's GP medical records show entries in 2020 and 2021, none of which specifically refer to Burnout or Trauma Disorder. Regular reference was made to his ADHD. On 14 September 2021, a consultation made reference to his father's passing 18 months before (R617), and that he was working very long days to the detriment of his personal life.

30. On 15 November 2021, it was noted that: "Feels struggling with mental wellbeing and adaptations at work…Feels would benefit from external person to look at his situation and make suggestions about how to manage things moving forwards, sounds like would like ?psychoanalysis. Had psychology earlier this year, feels this was not useful. Has psychiatry follow up early next year. Unclear exactly what looking for and discussed that perhaps what he seems to be describing doesn't fit particularly with any services I'm aware of. Suggest could attend Mental Health Information Station where he could receive information about which services are options and see whether any of these appeal. Keen for time off work as feels work will worsen mental wellbeing at present…"

31. On 11 January 2022, the claimant was seen again by his GP, who noted that he was "Feeling low in mood, poor sleep particularly getting to sleep, feeling flat and emotionless, poor energy levels and motivation. Can find it difficult to get up in the morning. Felt like this since September but worse last month or so. No thoughts of harming himself, not suicidal." It went on to note that he was keen to have therapy, and that he was waiting for a psychological appointment. He was also said to feel that he may have autism.

32. The claimant's OH records were produced at R92ff. The respondent's OH provider was HCA Healthcare.

33. The OH Physician, Dr Swales, provided reports in the form of letters. On 18 August 2019, Dr Swales' report (R139) focused upon the claimant's ADHD and the effect of his work upon him in that context.

34. On 21 January 2020, (R141) she noted that the claimant remained under review for ADHD and was receiving medication. She also observed that he had had a significant reported increase in workload, resulting in increased symptoms of anxiety and fatigue. Dr Swales said that the claimant was fit for work and that ongoing adjustments would assist him.

35. On 27 February 2020, (R144), Dr Swales reported that the claimant had attended a 9 week NHS course on practical measures for managing ADHD, following 1 to 1 sessions, and that he had had a psychiatric review. She said that associated with his ADHD the claimant experienced occasional anxiety and low mood.

36. In June 2020 (R146), Dr Swales reported that the claimant was finding that his mental health symptoms were much more settled in his current role.

37. In August 2020, (R148), Dr Swales noted that the claimant described improved psychological health with the change of position.

38. In October 2020 (R150), Dr Swales stated that he continued on medication for his ADHD, which assisted with the claimant's concentration and improved his sleep.

39. In December 2020 (R153), Dr Swales noted that he was fit to carry out his duties, but that the nature of his duties was less conducive to his condition of ADHD. Later that month a further letter (R155) noted that he was experiencing effects from his ADHD on his function for his duties.

40. On 26 January 2021 (R160), the claimant emailed Dr Swales in response to her most recent report. In it, he said that he wanted to be clear that "my level of frustration and distress is incredibly high". He attributed this to the constant refusal to acknowledge his disability, that he could not try any harder, and that he needed a solution which focused on embracing his differences.

41. In February 2021 (R158), Dr Swales continued to emphasize that the claimant was fit for work but with adjustments related to his ADHD.

42. In June 2021, (R170) Dr Swales noted that the claimant was experiencing much less anxiety on the new project based work, with much improved

function. He was found to be fit for work, though further discussion was required in terms of making adjustments and support.

43. In July 2021 (R173), Dr Swales confirmed that "There is no change to his health and function. The medication for ADHD continues. His psychological health remains stable and he has a positive mood and good function in relation to his present work project."

44. On 6 January 2022 (R180), Dr Swales said that in terms of health and function, he continued with his ADHD medication, and though he had had to cope with the sudden bereavement of his father in July 2021, his home life was otherwise stable and supportive.

45. On 6 February 2022 (R182), Dr Swales reported that the claimant "..is affected by symptoms particularly of low mood at present with effects on his daytime function. This is a new symptom which would suggest some depression. This particularly is affecting his sleep and therefore resulting in effects on his daytime function and fatigue."

46. Further, on 3 March 2022, Dr Swales advised that the claimant was affected by ADHD and potentially autism too, and that he had depression which was affecting his function and further absence was required. He had just started treatment for depression and time was needed for the medication to have an effect.

47. On 17 October 2022 (R192) Dr Swales reported that "He is feeling exhausted physically and demotivated in relation to this but is feeling that his emotional health is more settled."

48. With regard to his GP records, it is noted that the claimant commenced a prescription of Fluoxetine, an anti-anxiety medication, on 23 February 2022 (620), and subsequently received Citalopram and Sertraline, both anti-depressant medications, in May 2022 onwards and November 2022 onwards, respectively.

49. The claimant was assessed by a Consultant Psychiatrist, Dr Sheila Gilfillan, on 27 January 2021 by telephone. Her report (R555) dated 16 February 2021 described the claimant as disheartened by the attempts made by his employer to put in place reasonable adjustments, and overwhelmed, with considerable difficulties sleeping. She reported that "He describes his mood as being somewhat lower over the last few months, but this appeared in relation to his circumstances, compounded by Covid restrictions."

50. The claimant's position was that he never described himself as anxious to his GP until a letter in July 2022 (C157).

51. In his Impact Statement (R674), the claimant states that he has alexithymia, which is "an emotional processing style common in autistic people". Primarily, the claimant emphasized that he struggles to identify and express his emotional state. He believed (paragraph 106) that his alexithymia has reduced his ability to identify just how poor his mental health is. He said that he can see retrospectively that his mental health and functional abilities "were in a terrible state" from 18 December 2020 onwards, and that he was unfit for work from that point.

52. The claimant's position in evidence was that he was prevented, by alexithymia, from explaining the difficulties which he had with his mental health when speaking to his GP, or Dr Swales. He did not accept that the absence of references in the GP records or OH reports to his mental health was inconsistent with his assertions, now, that he was suffering from serious anxiety and depression over a period of time from late 2020 onwards.

53. The report produced by Dr Armstrong included a review of the claimant's medical records (R639ff), in which she noted that his medical records (that is, his GP records: Dr Armstrong did not see the claimant's OH records) first mentioned poor mental health symptoms in 2021, "consistent with his report". She noted that "Following time off work, Mr George's records show that he presented to the GP with low affect, low motivation and anxiety. He was found not to have depression at that stage on a self-report psychometric for depression (PHQ-9). However, this is likely to have been found to be negative due to difficulty engaging with questions pertaining to low mood, likely as a result of alexithymia."

54. She also noted that he continued to suffer distressing symptoms of hypervigilance, physical anxiety and anxiety-related avoidance, burnout, stress, poor sleep and poor concentration…He also described that he did not seek psychological help for this mental health injury, as he perceived it could be solved with the support of his employer."

55. In summary, Dr Armstrong said "Overall, Mr George recognises that these psychological symptoms and the impact on his functioning have been all-consuming and impacted much of his day-to-day functioning since 2019. He perceives that the thoughts, actions and feelings in response to the workplace dispute have only worsened with time and continue to be perpetually disabling, more so than Mr George's pre-existing disabilities of ADHD and autism."

56. The claimant placed considerable emphasis on the importance of his email dated 15 November 2021 (C142) to Allan McGrath and Sarah Kirby.

57. He questioned what the underlying problem was, and answered his own question: "There have been numerous events over the past two years (24 Oct 2019 is a key starting point) where I have foreseen problems or issues that may affect me more than others. I have raised my concerns, but people have not done the right things in response. Often this is because they just assume my needs rather than actually listening to me. The results have been traumatic, and I do not use that word lightly. I have discussed specifics with Laura, Abigail and Sarah, but I can provide details to you. Allan – it just will take me a considerable amount of time and energy to do so."

58. Later, he asked what the impact on him had been: "I feel powerless. I feel like I have no agency. I feel like I have no control. I feel burnt out. I feel like I don't know what is expected of me. I feel that I can't effectively communicate. I feel like I have exhausted all options. I feel like there is no way left to make things better. It makes me feel so hollow. I literally don't know what to do…On the day-to-day level, this state affects my work, I just can't think clearly. I already have a limited processing capacity, but now 95-100% of my bandwidth is taken up with processing all of the noise coming from the issues referenced above. I find myself overthinking nearly everything because I have been so destablised by the cognitive chaos, and I just don't know what to expect. I'm finding myself in a near-constant state of hyper-vigilance and unable to focus. I more and more often am finding my train into a protective mode and just shut down. So much of my time and energy is devoted to avoiding trauma and trying to escape the feedback loop. This all has been growing progressively worse over the past two years, and it's now at a stage where it is a big problem."

Submissions

59. For the respondent, Ms Millns presented a written submission, to which she spoke. What follows is a short summary of her submissions, but both her written and oral submissions were fully considered by the Tribunal in reaching its conclusions.

60. She said that the claimant's reference to alexithymia is a "red herring" because the claimant's position is understood to be that he finds it difficult to describe his mood, but he does not find it difficult to explain the effects of his conditions upon him on a day-to-day basis, such as his sleep. The claimant is not prevented from describing the impact of his mental health issues upon him.

61. She submitted that the claimant has not provided any evidence that he is disabled except in relation to the existing conditions of ASD and ADHD; however, if the Tribunal disagreed with that submission, her position was

that the required elements were not at play in August and November 2021, but only at a much later stage towards the end of 2022.

62. The evidence of Dr Armstrong should be approached with caution, in her submission. The report was not produced on the Tribunal's direction but as a result of an instruction by the claimant's solicitor. Dr Armstrong erred by expressing her view as to whether or not the claimant was disabled in terms of the Act. She accepted that the majority of factors arose from the claimant's self-reporting. Further, it is not a contemporaneous document – Dr Armstrong looked back as far as 6 years to make her assessment.

63. Ms Millns observed that Dr Armstrong concluded that the claimant developed mental health problems due to the respondent's failure to make reasonable adjustments, but that she should not have done so as she had only heard one side of the story and has accepted the claimant's narrative without further question. She is unable to make any findings as to the merits of the claimant's case.

64. Dr Armstrong erred by asserting that the claimant had been disabled due to mental health difficulties since 2019, but then said that it was difficult to ascertain when they tipped over into the legal definition. The evidence, Ms Millns submitted, does not support her conclusions. The GP records do not show symptoms of mental health through the whole of 2019 and 2020. Dr Armstrong did not have access to the OH records, and one can only speculate on the impact that such contemporaneous and important records would have had upon her conclusions.

65. The best evidence, she argued, is that of the contemporaneous medical records, in determining whether or not the claimant met the statutory definition of disability at the material time.

66. With regard to the condition of Burnout, she submitted that Dr Armstrong confirmed that she does not consider this to be a separate condition, and that it does not appear in the DSM IV criteria. Burnout is a symptom: the condition relied upon is Trauma Disorder.

67. She said that the Tribunal should take careful note of the OH records. The key date is when the claimant went off sick, in September and then November 2021. She accepted that there was a day-to-day impact from November since he required to be absent from work on the grounds of ill health.

68. The claimant's position, she said, is that the OH records do not refer to mental health because he was not being asked about that. However, she said, the OH records belie that, and show that there were many discussions about the claimant's mental health, and about his sleep.

Despite his alexithymia, he was able to describe the impact on his life of his mental wellbeing.

69. Ms Millns referred to the OH report of 8 February 2022 as having significance as it confirmed that the claimant's low mood, which suggested depression, was a new symptom. The claimant was, as ever, copied in to this correspondence and did not take issue with its terms.

70. The claimant, she submitted, was able to put forward clear descriptions of the impact of his conditions upon him, and the impact is what is important, rather than the label attached to them. This report is consistent with the GP records (R559), which note a referral at about the same time to adult psychiatric services. He had felt particularly low since September 2021, which fits in with the point when he went off sick from work.

71. There is nothing in Dr Armstrong's report to address the impact of the claimant's mental health upon him. The claimant is asking the Tribunal to find that he was a disabled person (in relation to mental health) despite being capable of attending work until November 2021. There is no evidence that there was a substantial adverse impact upon his ability to carry out normal day-to-day activities. If the claimant had a Trauma Disorder, it is very difficult to say when it arose.

72. Dr Salt's evidence was, she said, of little assistance, particularly in relation to the definition of disability, and in any event, his evidence concentrated on the effects of neurodivergence upon the claimant.

73. Ms Millns argued that the claimant's evidence was unreliable. He changed the material time relied upon from the ET1; he has looked back at all these events through the lens of Dr Armstrong's report. She also pointed out that he said in this Hearing that his level of function went up and down, but that his underlying impairments got worse, something he had never said either in his witness statement or his disability impact statement. All his evidence was of a decline in his condition, whereas the OH records demonstrate that there were periods of improvement.

74. She asked the Tribunal to find that if there had been a serious impact upon him at an earlier stage the claimant would have sought assistance from his GP. It is not until near the end of 2022 that the claimant is more likely to satisfy the definition of a separate impairment.

75. The claimant presented an oral response, having been given some additional time over lunchtime to consider his submissions.

76. The claimant started by pointing out that the issue of whether or not he had been discriminated against on the grounds of disability was not

before the Tribunal in this Hearing, nor was that of the respondent's knowledge, or constructive knowledge, of the disability.

77. With regard to Burnout, the claimant observed that Dr Armstrong's diagnosis had been challenged as not being a distinct condition. He posed the question: have I been adversely affected by Burnout as a set of symptoms, and if so, does that amount to an impairment?

78. The claimant pointed out that for approximately 2 and a half years, he should have been off work, was trying to stay at work for as long as possible. He suggested that he was too resilient for his own good, and that he should have alerted his GP to his mental health difficulties at a much earlier stage.

79. He disputed the respondent's characterisation of his absence from work as being caused merely by a dispute at work; it was a much deeper issue than that. He was never diagnosed with anxiety or depression.

80. He maintained that Dr Armstrong's report should not be subjected to the criticisms made of it by the respondent. She did not see the OH records, but those records were not withheld by him.

81. The claimant said it was worth considering why there was an absence of evidence in the GP and OH records. An absence of evidence is not good enough to show that there is no disability; it is necessary to look at what is said. Just because he did not report all the adverse effects all the time does not mean that they did not exist. He drew a comparison with the fact that he was diagnosed with ASD and ADHD at a late stage in his life despite having experienced these conditions for many years before.

82. His mental health conditions only came about approximately a year after he had disclosed his neurodivergence. His neurodivergence greatly affects how he experiences everything and how he reports it. If he does not feel low mood or depression, he does not know how to identify, process or report it.

83. Alexithymia is a very important context to keep in mind, he said. The respondent expects him to provide information which he is unable to do. He said that he does not speak the language of emotions and feelings, of neurotypical people.

84. He sought to draw a distinction between the symptoms which he experienced as a result of his mental health, and the impact which those symptoms had upon him. There were a number of issues falling on the borderline between mental health and neurodivergence. The combined effects were such that he went from being functional to non-functional.

85. The claimant referred to his email of 15 November 2021 as being crucial in these deliberations (C142) in describing how the challenges of the previous 2 years had affected him. He recognised that he cannot simply attribute it all to his mental health. This was his self-reporting.

86. He accepted that the decision as to whether or not he was disabled in relation to these conditions is not a binary one, in that the start date of his mental health condition may be different to that which he has relied upon. That is a matter for the Tribunal based on the evidence.

The Relevant Law

87. The definition of disability is set out as follows in section 6(1) of the 2010 Act:

> *"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."*

88. Schedule 1 to the 2010 Act provides further clarification of the definition of disability, together with the Equality Act 2010 (Disability) Regulations 2010 ("the 2010 Regulations"). In addition, reference is made to the Equality and Human Rights Commission Code of Practice on Employment (2015) ("the Code").

89. Schedule to the 2010 Act provides, in clause 2, that the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

90. The Code provides, at paragraph 2.8 to 2.20, guidance as to the determination of an individual's condition as a disability. At paragraph 2.15, it is provided that "Substantial means more than minor or trivial."

91. Parties referred to a number of authorities, including:

- **Goodwin v Patent Office [1999] IRLR EAT 4;**
- **Cruickshank v VAW Motorcast Ltd [2002] ICR 729;**
- **McNicol v Balfour Beatty [2002] IRLR 711;**
- **J v DLA Piper UK LLP UKEAT/0263/09;**
- **Igweike v TSB Bank Plc [2020] IRLR 267, EAT;**

- **Primaz v Carl Room Restaurants Ltd (t/a McDonald's Restaurants Ltd) [2021] 7 WLUK 749;**
- **Tesco Stores Ltd v Tennant UKEAT/01617/19;**
- **Seccombe v Reed in Partnership Ltd EA-2019-000478**
- **McDougall v Richmond Adult Community College [2008] IRLR 227;**
- **All Answers Ltd v Mr W [2021] EWCA Civ 606;**
- **Herry v Dudley Metropolitan Council UKEAT/0100/16 and Herry v Dudley Metropolitan Council and Governing Body of Hillcrest School UKEAT/0101/16;**
- **De Keyser v Wilson [2001] IRLR 34;**
- **Vicary v British Telecommunications Plc [1999] IRLR 680 (EAT);**
- **Abadeh v British Telecommunications Plc [2001] IRLR 23**

Discussion and Decision

92. The issue before this Tribunal in this Hearing was whether or not the claimant was at the material time a disabled person within the meaning of section 6 of the 2010 Act, in relation to two conditions, namely:

    - Burnout
    - Other Specified Trauma- and Stressor-Related Disorder

93. I deal firstly with Burnout. There is no doubt that there is mention of burnout in the claimant's medical and OH records, but its most significant appearance is in Dr Armstrong's report.

94. Burnout, as it is generally understood, is usually referred to when an individual suffers from stress or exhaustion to the point where it has a detrimental impact upon them. Dr Armstrong confirmed in her evidence that burnout is not a separate condition, but a symptom which the claimant displayed after a period of time.

95. In my judgment, Burnout is not a condition or an impairment, but a consequence of a series of events or experiences, or a symptom of an impairment. I do not consider it to be a condition in itself which is therefore capable of amounting to a disability within the meaning of section 6.

96. Secondly, and more significantly, it is necessary to consider whether the claimant has suffered, at the material time, from a Trauma Disorder (namely "Other Specified Trauma- and Stressor-Related Disorder")

97. It is crucial to consider what the material time was in this instance. The claimant asserts that he suffered from a mental impairment in the nature of Trauma Disorder from 1 August 2020. This differs from the terms of his ET1 Particulars of Claim dated 19 July 2024 (R17), in which he stated that in addition to ASD and ADHD, "The Respondent's improper actions resulted in my poor mental health. This resulted in a level of impairment that became a disability in December 2020, and it has caused me significant problems ever since that point. I have been signed off as unfit for work continuously since 15 November 2021."

98. The particular phrase (Other Specified Trauma- and Stressor-Related Disorder) was not mentioned until the claimant received the report of Dr Armstrong dated 8 March 2025, but it is understood that the claimant relies upon this condition as an illness relating to his mental health, and it is in those terms that the claimant's condition was considered by both parties in this Hearing.

99. A large amount of evidence was presented to the Tribunal in the form of documentation, though in the end, a limited number of the documents were referred to directly by the parties.

100. The claimant's position is that he was suffering from difficulties with his mental health throughout the material time from August 2020. Interestingly, he observed that he has not been diagnosed with anxiety or depression, and does not appear to rely upon either term as a description of his condition.

101. He accepts that he did not expressly state to his GP or to the OH doctor, Dr Swales, that he was suffering from low mood in such a way as to generate either a diagnosis or opinion that he was depressed until February 2022. Dr Swales had been seeing the claimant consistently since 20 December 2018, with the first report generated dated 4 January 2019 (132).

102. On 8 February 2022, Dr Swales stated: "He is affected by symptoms particularly of low mood at present with effects on his daytime function. This is a **new symptom which would suggest some depression"**. [Tribunal's emphasis].

103. In addition, he was seen by his GP on 15 November 2021, and reference was made to his mental wellbeing, following which he commenced the ongoing long-term sickness absence; and on 11 January 2022, he is

noted to be “low in mood”, which is consistent with the point at which he began to explain this to his OH doctor.

104. Thereafter, the claimant received treatment by way of medication for anxiety and depression.

105. I also noted that the letter by Dr Sheila Gilfillan, Consultant Psychiatrist, dated 16 February 2021 (R555) said that the claimant had described his mood “as being somewhat lower over the last few months but this appeared in relation to this circumstances.” No diagnosis of depression or anxiety, or of Trauma Disorder, is referred to by Dr Gilfillan at that time, and she only discusses his ADHD medication without any indication that there was a different medication or treatment he should receive at that time.

106. The claimant’s position is that he was, as a matter of fact, suffering from Trauma Disorder for approximately 18 months before this reference in his OH notes, but that due to his neurodivergence, and in particular to the condition of alexithymia, he did not have the language to express himself so as to make clear that he was low in mood or suffering from other symptoms which would lead to a diagnosis such as Trauma Disorder.

107. The difficulty for the Tribunal in relation to this is threefold: firstly, there is very little evidence to the effect that the claimant suffers from alexithymia, other than a mention of it in Dr Armstrong’s report; secondly, it is not at all clear to me what alexithymia is, nor how it would affect the claimant; it appears to be a consequence of neurodivergence but the extent to which the claimant experiences it is not explained; and thirdly, the claimant’s own evidence is inconsistent with the written contemporaneous records of his treating medical professionals.

108. Leaving aside the reference to alexithymia, which the respondent referred to as a “red herring”, but which it is perhaps best to regard as an aspect of the claimant’s ASD or ADHD, it seems to me legitimate to interpret the claimant’s position as being that since he has those conditions, he experiences thought processes in a different way to neurotypical individuals. Essentially, what he said was that since he did not know he was suffering from low mood, or anxiety and depression, he could not tell his GP or Dr Swales that he was feeling like that. His position is that his resilient nature causes him to press on through circumstances where he is not dealing well with his situation.

109. However, it is plain that the claimant was able to express to both his GP and Dr Swales that he was experiencing low moods, in January and February 2022, though not before that. There is no clear explanation in

the medical records for this, nor is there any assistance for the Tribunal in Dr Armstrong's report.

110. The respondent's submission was that the claimant has reviewed the period of time under consideration following receipt of Dr Armstrong's report, and has recast these events in his mind so as to believe now that he was in fact suffering from mental health issues for longer than he was.

111. In my judgment, this is a fair analysis of the claimant's evidence. I do not suggest that the claimant was seeking in any way to misrepresent the position, but I am not persuaded that his evidence was entirely reliable in relation to the state of his mental health before January or February 2022. The GP and OH records, completed by experienced professionals at the material time, may be taken, in my view, to be accurate in their assessments of the claimant's mental health throughout this period. There is no basis in their records, nor in the reports which OH was sending to the respondent (and which the claimant saw and did not challenge) to find that the claimant was suffering from a disability in relation to his mental health, and by extension the Trauma Disorder now cited by Dr Armstrong, before February 2022.

112. The claimant's submission concluded by accepting that the Tribunal may not accept that he was suffering from this condition from the date he asserted, but that it may be correct to attribute the start of the material time to a later date.

113. It is relevant, in making this assessment, to comment upon Dr Armstrong's contribution to this Hearing. Without in any way deprecating the professional experience and credentials of Dr Armstrong, I was not persuaded that her evidence could be entirely relied upon.

114. Her report was generated by an instruction from the claimant's then legal adviser, and the terms of the instruction were not available to the Tribunal; accordingly, it is not clear precisely what questions were asked for her. In her report, she expressed a number of opinions which appeared to me to be partial, both in the sense that she had not heard from both sides and therefore incomplete, and also that she was taking the claimant's self-reporting as the truth upon which to base her conclusions. The difficulty in that is that she appeared to express a view on the merits of this case, by suggesting that the actions of the respondent caused the claimant's mental health difficulties. In my judgment, Dr Armstrong strayed outwith the proper scope of her report by accepting the claimant's clearly negative view of the actions of the respondent.

115. Further, Dr Armstrong demonstrated considerably less certainty when pressed under what I considered to be highly skilled cross-examination, and sought to minimise the importance of the OH records, to which she had not had access.

116. All of this leads me to the conclusion that any opinion offered by Dr Armstrong as to when the claimant's mental health difficulties commenced must be treated with considerable reserve, particularly given that she had not seen the OH records. Her reference to alexithymia was not clearly explained, and struck me as speculative to a degree.

117. It is necessary for the Tribunal to be persuaded by the evidence, on the balance of probabilities, that the claimant was at the material time a disabled person within the meaning of the 2010 Act, and in my judgment, it cannot be found on the evidence that the claimant suffered from a Trauma Disorder from August 2020 until February 2022.

118. The question which then remains is whether the claimant's condition of Trauma Disorder was one which was justified by the evidence thereafter, and met the terms of section 6 as a disability, from February 2022 onwards.

119. Reviewing the claimant's GP records, it is apparent that the first occasion upon which he was prescribed Fluoxetine was on 23 February 2022 (R620). He had mentioned feeling low in mood in his consultation with his GP on 11 January 2022 (R616), and also described feeling flat and emotionless, with poor energy levels and motivation.

120. It is apparent that the claimant's mental health began to deteriorate to a notable degree at this time, to the extent that he was able to identify it to his doctor as an issue which required to be addressed. Thereafter, he continued to see his GP on a regular basis. On 20 April 2022, he had a telephone call with his GP for a "mood review", and it was noted that "Says he is doing fine" (R616). By this point, of course, he was receiving medication, and on 17 May 2022, he told his GP that the Fluoxetine had initially helped with his sleep, but "mood much the same".

121. His mood fluctuated over this period. On 6 July 2022, it was said that his mood was better, and that he had previously run regularly but had stopped due to "depressive illness". He continued to receive medication to treat his low mood and depressive illness (albeit that he himself does not characterise himself as being depressed) in the form of Citalopram and then Sertraline. The last note of his having received a prescription of Setraline 50mg tablets (28 at that time) was on 17 March 2023.

122. The claimant's own evidence remains that he continued to feel symptoms of distress and low mood through 2024, particularly relating to the manner in which he felt the respondent was continuing to deal with his grievance.

123. In my judgment, there is sufficient evidence available to me to conclude that the claimant has suffered from low mood and has required to be prescribed medication since February 2022.

124. The question, then, is whether this condition, which has been identified as Trauma Disorder, affects the claimant such that it is a mental impairment which has a substantial adverse long-term impact on the claimant's ability to carry out normal day-to-day activities.

125. In my judgment, the condition described as Trauma Disorder, which manifests itself as low mood, disrupted sleep and low energy, is a mental impairment which has a more than trivial adverse impact on the claimant's ability to carry out normal day-to-day activities. The impact has been long-term, in that it has clearly lasted for more than 1 year.

126. I accept that there may be some cross-over between the impact of the claimant's existing disabilities of ASD and ADHD, but it is clear that the claimant has suffered from a mental illness, which has prevented him from sleeping, has reduced his energy levels significantly and has caused his mood to be lowered on a regular basis. While this has been described as a Trauma Disorder, it should be noted that I do not make any finding which could be interpreted as establishing that the claimant's illness was caused by the respondent's actions: that is a matter to be established following a full evidentiary hearing on the merits of the claim.

127. It is therefore my conclusion that the claimant is disabled by way of Other Specified Trauma- and Stressor-Related Disorder from 23 February 2022, in terms of section 6 of the Equality Act 2010.

128. The proceedings remain sisted.

Date sent to parties 11 August 2025