EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002009/2024

Held in Aberdeen on 7 July 2025

Employment Judge J M Hendry

B Tait	**Claimant** **In Person**
Offshore Helicopter Services UK Limited	**Respondent** **Represented by:** **Ms L Usher,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal finds as follows:

1. **That the claimant has not demonstrated that she has a deemed disability under paragraph 6 of schedule 1 of the Equality Act 2010.**
2. **The case will now proceed to a preliminary hearing for case management purposes to list the case for a final hearing.**

REASONS

1. The claimant raised Employment Tribunal proceedings against her former employers. She had been employed as a security team superviser until termination of her employment in October 2024. She sought findings that she had been unfairly dismissed and discriminated against on the grounds of disability. The claimant argued that she has a diagnosis for 'Cancer' and accordingly had a deemed disability.

2. The respondents denied that the claimant had been unfairly dismissed contending that she had been dismissed for conduct reasons. They also disputed that the claimant was entitled to the protection of the Equality Act as a disabled person.

3. The issue for the Tribunal was whether or not the claimant was entitled to rely on the "deemed" disability status through a diagnosis of having skin cancer. The case proceeded to a preliminary hearing on this issue. The claimant was represented at the hearing by a friend, Mrs Stephanie Moir.

4. The Tribunal heard evidence from the claimant and considered documents contained in the Joint Bundle. The content of the documents and the factual history of how matters developed was not in dispute between the parties. The issue came down to whether or not the claimant had demonstrated that she was disabled by being entitled to rely on the Regulations providing for 'deemed'' disability.

The following facts were established or agreed.

5. The claimant latterly worked as a security team supervisor with the respondent, Offshore Helicopter Services UK Limited, at Aberdeen Airport East. She was employed from 6 May 2013 until 14 October 2024. The claimant was employed as a security team leader and was latterly in a supervisory capacity.

6. In September 2023 the claimant became concerned at a skin lesion she found on her left arm. She made an appointment to see her G.P. on 12 September. The lesion was photographed by a Nurse at her GP practice who commented that it looked cancerous. It was recorded as being a 14mm/8mm crater like, extended edges and necrotic matter in the middle with induration.

7. The claimant's GP thought that the lesion might be SCC (or Squamous cell carcinoma a type of skin cancer that develops in the squamous cells of the epidermis namely the outer layer of skin) or Keratoacanthoma (referred to as ''KA'') which is a small dome-shaped skin tumour. The claimant became anxious and upset at the thought of having cancer and what she thought was a diagnosis of cancer. Her understanding was that both SCC and KA were cancers but that KA did not spread.

8. From 13 September 2023 the claimant's G.P. referred the claimant for urgent care. The medical records record:

   "*Skin Lesion*
   Spoke to patient over the phone – ID confirmed
   A few lesions on her skin that starts base s small itchy lesions then gets bigger, as in the photo provided and not healing."

9. The notes also record:

   "*Two spots of seb kratoses in LT leg.*

The lesion photographed is 14m/8m crater like with extended edges and necrotic matter in the middle with induration - ? scc."

10. On 9 October 2023, the Claimant had an appointment with the Check4Cancer clinic. It was noted by Mr J A Walls (Consultant skin cancer specialist) that there was a lesion on the Claimant's forearm which was "suspicious" and required "further face to face assessment" (page 89).

11. The claimant was then seen by a consultant plastic surgeon, Mr Rahman, at the Albyn Hospital. He wrote to the claimant's GP on 20 October 2023 following his examination of her. His diagnosis was "*possible SCC or keratoacanthoma of left forearm.*" He wrote:

"*It is difficult to say whether this is a keratoacanthoma or a cutaneous scc and so it would be sensible to plan for this to be excised under local anaesthetic.*"

12. The claimant was admitted to the hospital on 24 November 2023. Her registration form was completed (JB94-95). The lesion was excised on 24 November under local anaesthetic. The operation was a success and the lesion was removed. The claimant had later difficulties with the wound healing.

13. A skin sample was examined at the Department of Pathology at Aberdeen Royal Infirmary and a report prepared on 17 December 2023 (JB128-129). It was recorded *''initially suspected keratoacanthoma however has not fully regressed therefore excised with 6mm margin and cuff of fat*." The author also wrote:

'' *The appearances raise a differential diagnosis between a regressed pre-existing lesion such as keratocanthoma or an area of nodular purigo. It is also not possible to exclude the possibility regression of the lesion might have induced secondary scratching resulting in reactive epidermal changes. In either way there is no evidence of dysplasia or malignancy..''*

''

14. Mr Rahman wrote to the claimant on 22 January (JB130):

"*I now have the pathology back from the lesion I removed from your left forearm. It does suggest that this was a potential keratoacanthoma which was the lesion I initially suspected this to be. There was no feature suggestive of cancer which was reassuring. No further treatment is therefore required."*

15. The claimant's G.P. was also provided with the same information (JB131).

16. The claimant's then solicitor on the 22 April 2024 wrote to her employers in relation to disciplinary matters that were ongoing. They wrote:

"*As you know our client has been experiencing significant health problems for an extended period of time, most notably been diagnosed with cancer and*

requiring surgery as a result. Her battle with cancer has also meant that she now has a weaker immune system.

Our client was admitted to hospital in Elgin with a suspected viral meningitis and had to undergo a lumber puncture……"

17. The respondent initially accepted that the claimant had deemed disability status. However, after seeking further information from the claimant she disclosed these medical records to them. The respondent came to the view that the letter from the claimant's surgeon which indicated that she did not have cancer meant that she was not protected by the Equality Act. The claimant attempted to obtain further information from her surgeon but was unable to do so despite contacting the hospital to do so.

18. The claimant then sought information from her G.P.'s practice, the Ellon Group Practice. She obtained correspondence from them (JB145). Her G.P. wrote:

"*I confirm that as this lady's G.P. that she was referred as an urgent suspected skin cancer referral in October 2023 with a lesion on her left forearm. The suspicion was that this may have been a keratoacanthoma or a squamous cell carcinoma. At the patient's request this was referred to Albyn Plastic Surgery (she would have been referred as an urgent suspected skin cancer route on the NHS). She was seen and had the lesion removed on 24 November 2023. She was reviewed by her plastic surgeon on 31 January 2024 and the pathology lesion was discussed. This was shown to be a 'regressed pre-existing lesion such as keratoacanthoma or a possible area of nodular purigo. Most reassuringly there was no evidence of dysplasia or malignancy in what was removed'. There was therefore no further treatment required although unfortunately Mrs Tait did continue to have recurring problems with the wound not healing which required many visits to and from her treatment room nurses.*

As you know she has an underlying anxiety disorder and the anxiety that was created around thinking she might have a skin cancer, significantly affected her mental well being during this time."

Witnesses

19. The claimant gave evidence on her own behalf. She was challenged that she was in effect trying to fool her employers that she had cancer despite knowing that she had been given the all clear. The claimant denied this. Her evidence was that she genuinely thought she had cancer and that keratoacanthoma although not malignant was a type of cancer.

20. I found the claimant to be generally a credible and reliable witness. Although clearly her anxiety coloured her perception of events and she found it very difficult to be objective about the condition she was diagnosed with having. It

was clear that she has other areas of her skin that might be affected in a similar way and she has a natural fear that some of these might turn out to be cancerous.

Submissions

21. After hearing evidence and particularly having regard to the fact that the claimant was a party litigant I ordered written submissions from parties which they then lodged.

Claimant's Submissions

22. The claimant submitted that she meets the statutory definition of a disabled person on either of the following two grounds:

a. Deemed disability, by virtue of being diagnosed with and treated for cancer,
pursuant to Schedule 1, Paragraph 6(1) of the Equality Act 2010;
b. Perceived disability, based on the respondent's own understanding and treatment of her condition as cancer. The claimant does not rely on any other impairments as standalone bases for protection. However, she submits that her wider health context, including a pre-existing sacral nerve implant and previously well-managed anxiety, is relevant to assessing the real-world impact of her condition, and the effects of her cancer diagnosis and treatment pathway.

23. ''Deemed'' disability is dealt with in Schedule 1, Paragraph 6(1) of the Equality Act 2010 and provides that a person who has cancer is to be treated as having a disability from the point of diagnosis. The protection is automatic and does not require any additional evidence of substantial or long-term adverse effect.

24. The submissions then say that the claimant was told by multiple clinicians that she had a skin cancer tumour. She was placed on an urgent cancer pathway, underwent surgical excision, and received post-operative care relating to the cancer diagnosis. Even if subsequent pathology results were inconclusive or described the lesion as having "no features suggestive of malignancy," the

claimant was never told by any clinician that she did not have cancer. At all times, she acted in good faith based on the clinical advice she received.

25. In the case **W v M** [2016] UKET 2412353/2015, the Tribunal held that a claimant who was placed on a cancer pathway and treated as having cancer was deemed disabled, even where the final pathology showed the tumour was benign. What mattered was the way in which the condition was understood and managed at the time. Despite trying to get additional evidence there is no definitive agreement about the precise nature of her skin lesion. The most likely diagnosis remains KA which is a condition subject to ongoing clinical debate. It must be accepted by both parties that the medical literature on KA is inconsistent. Reputable sources have described it variously as a benign lesion, a variant of squamous cell carcinoma (SCC-KA), or a lesion with malignant potential.

26. The claimant submits that the Tribunal must consider that:

a. Keratoacanthoma has been historically treated as a low-grade variant of SCC and, in some cases, shows malignant transformation;
b. Clinical references in evidence reflect a lack of global consensus and are frequently updated; c. Medical literature often uses cautious language to reflect evolving knowledge and avoid premature categorisation. The claimant maintains that the live clinical understanding of keratoacanthoma includes it within the SCC spectrum. She was advised that the lesion was a "skin cancer tumour," she underwent excision surgery on that basis, and was never advised that she did not have cancer. To require a definitive malignant pathology in such cases would result in a paradox: protection under Schedule 1, Paragraph 6(1) would only apply if a patient deferred treatment and waited for malignant transformation a medically unsafe and legally untenable position.

27. In the case **Mutombo-Mpania v Angard Staffing Solutions Ltd** [2021] UKET 3201618/2020, the Tribunal held that the protection of deemed disability applied from the commencement of treatment for suspected cancer, not from the point of confirmed diagnosis. In **Kapadia v London Borough of Lambeth** [2000] IRLR 699, the Tribunal confirmed that future effects of a condition must not be ignored simply because they are uncertain. The same

principle applies here: KA's classification remains under debate, and its potential effects must be considered.

28. In the case **López Ribalda v Spain** [2021] IRLR 729 (ECHR), the Court held that workers should not be penalised for trusting what their doctors tell them. The claimant trusted her clinicians, informed her employer, and acted throughout in good faith. She should not be penalised for retrospective medical uncertainty. The claimant experienced clear physical and emotional effects from the diagnosis and treatment, including fatigue, pain, burst stitches, sleep disturbance, cognitive difficulty, and a decline in emotional resilience. These effects should inform the Tribunal's assessment of her real-world experience. The intention behind deemed disability protection is to avoid legal debates over pathology for patients undergoing distressing, urgent treatment. Although deemed disability does not require evidence of substantial adverse effect, the claimant submits that the impact of her condition on her day-to-day functioning remains relevant context.
29. Before the cancer diagnosis, the claimant had a sacral nerve implant to manage bowel urgency and a history of anxiety both of which were stable and well-managed. Following her cancer treatment, these pre-existing conditions were significantly exacerbated. The cancer diagnosis and related workplace stress caused unpredictable bowel symptoms, low mood, disturbed sleep, fatigue, reduced concentration, and increased absences. She struggled to recover physically and emotionally, and this was visibly affecting her at work.
30. In the alternative, the claimant submits that she was perceived by the Respondent to be disabled. Her line manager referred to her condition as cancer. She was signed off work following excision surgery, and no clarification was ever sought from medical professionals by the respondent.
31. The claimant notes the Tribunal's request to address whether there is a link between disability and the alleged misconduct. It is submitted that the disciplinary process was directly influenced by Ms Tait's impaired physical and mental state at the time. She independently adjusted work responsibilities with her colleague due to the absence of managerial support and this background is important in understanding the disciplinary action.

Respondents' Submissions

32. Ms Usher made reference to paragraph 6 of Schedule 1 of the EqA 2010. If the claimant had been diagnosed with cancer, it is accepted that she would be deemed to be a disabled person from the point that she had cancer, not just from the date on which she was medically diagnosed (**Bennett v Mitac Europe Ltd** [2021] 10 WLUK 293). The respondent's position is, however, that the claimant was not ever diagnosed with cancer and, to the contrary, was advised that the lesion removed from her arm showed "no features suggestive of cancer" (page 130). The Tribunal is referred to NHS Inform (at page 230 of the bundle):

33. The respondent places considerable weight on the case of **Lofty v Hamis t/a First Café** UKEAT/0177/17. In this case the claimant became aware of a skin blemish on her left cheek. She was advised by her Consultant Dermatologist that this was consistent with lentigo maligna. Following a biopsy, the claimant was advised (in writing) that she had cancer by her GP and was also given a leaflet from the British Association of Dermatologists that: "Lentigo maligna is one type of the earliest stage of skin cancer called melanoma. Lentigo maligna is a type of melanoma called "in situ" melanoma. "In situ" melanoma means the cancer cells have not had the opportunity to spread anywhere else in the body. There are cancer cells in the top layer of the skin (the epidermis) but they are all contained in the area in which they began to develop."

34. In determining this matter, HHJ Eady held:

> *"When determining whether a condition satisfies the deeming provision of paragraph 6, there is no justification for the introduction of distinctions between different cancers or for an ET to disregard cancerous conditions because they have not reached a particular stage. I equally agree that it is undesirable that ETs determinations under Schedule 1 paragraph 6 should necessarily be required to be based on high-level medical expert evidence as to what is, or is not, cancer (not least as it is not impossible to conceive that this might be a matter of some specialist academic debate). Equally, however, Schedule 1, paragraph 6 does require that a complainant have one of the specific conditions; it is not sufficient that they might develop a relevant condition in the future and I am not*

persuaded that a purposive construction requires such a broad approach to be adopted. In the present case, the evidence before the ET and the Claimant had an in situ melanoma. That meant there were cancer cells in the top layer of her skin. It may be that a diagnosis of pre-cancerous cells might mean something different depending upon where the cells are to be found but, in terms of skin cancer, the evidence before the ET was that this meant that the Claimant had an in situ cancer. The evidence adduced by the Claimant to this effect took the form of her original diagnosis as explained to her by her treating Consultant, together with the further clarification provided by her,GP for the purposes of the ET hearing, along with the information leaflet from BAD."

35. If there was medical evidence in the present case that the claimant's lesion contained cancerous cells, then that may constitute a disability for the purposes of Schedule 1, paragraph 6 of the EqA 2010. However, there is no such evidence before the Tribunal. To the contrary, the medical evidence in this case is that there were "no features suggestive of cancer" in the lesion that was removed (page 130) and "no evidence of… malignancy in the sections examined" (page 128). There is, therefore, no evidence to suggest that there were cancerous cells in the claimant's skin or that she did have cancer.

36. The respondent's understanding (based on information published by the British Association of Dermatologists) is that: *"a KA is a relatively common, rapidly growing skin growth that usually develops on sun-exposed skin. A KA can look like a form of skin cancer called a SCC. However unlike an SCC, a keratoacanthoma is benign (not harmful)*" (page 223). In contrast, the claimant seeks to argue that a KA is a sub-type of SCC, and therefore cancerous.

37. A detailed analysis of the "KA" and "SCC" conditions is an academic (and ultimately pointless) exercise. The claimant's treating physician has advised that there were *"no features suggestive of cancer*" in the lesion that was removed from her arm (page 130). We would submit that it therefore would not matter if a KA was a sub-type of SCC because, in the claimant's particular case, there were *"no features suggestive of cancer"* (page 130). The Tribunal

cannot, in our submission, infer that the Claimant had cancer when her medical records show quite clearly that there has never been a cancer diagnosis.

Discussion and Decision

38. It was not in dispute that if the claimant had been diagnosed with Cancer then she would be protected by the deeming provisions (Schedule 1, Paragraph 6(1) of the Equality Act 2010). Parliament has not sought to distinguish between cancers. The Act provides for certain people to be deemed to meet the definition of disability without having to show that they have an impairment that has (or is likely to have) a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities. The onus is on the claimant to demonstrate that she comes within the protection of the section.

39. The principal issue between the parties came down to considering whether KA could be regarded as a cancer. The medical establishment has some disagreement about the condition KA and whether or not it is a sub group of SSC. What was concerning is that given the wide definition does it cover non malignant cancers. It sems that scientifically the consensus is that cancer is is a process that causes a tumour such as the claimant appears to have had caused by cells behaving abnormally. There appears to be no necessity for it to have the ability to spread.

40. A definition online from The Mayo Clinic (and there are numerous definitions) is *''Cancer refers to any one of a large number of diseases characterized by the development of abnormal cells that divide uncontrollably and have the ability to infiltrate and destroy normal body tissue. Cancer often has the ability to spread throughout your body''*. This does not say that the to be a cancer it must have the ability to spread. However the Oxford English Dictionary defines cancer thus: *''A malignant neoplasm (including both carcinoma and sarcoma) which arises from the abnormal and uncontrolled division of cells and which invades and destroys the surrounding tissues. The primary neoplasm has a tendency to spread (metastasize) to other parts of the body and establish secondary neoplasms''* The focus there is on malignancy and spread.

41. I would venture that the common understanding (and fear) of what cancer is includes at its core this ability to spread (metastasize). So when the claimant's Surgeon writes to her after the biopsy results and says '' *It does suggest that this was a potential keratoacanthoma which was the lesion I initially suspected this to be. There was no feature suggestive of cancer which was reassuring''* he is saying that she does not have cancer and in doing so I believe he is using the term as common shorthand for a non-invasive or spreading cancer. The claimant argues firstly that KA is in fact a type of cancer according to some authorities and it was capable of leading to a spreading form of cancer although it had not yet done so.

42. The first difficulty that the claimant has is that there was no completely clear diagnosis of what she was suffering from. The submission that she was on a cancer pathway is somewhat misleading in this case. The pathway led to excision and biopsy. She was not for example given chemo therapy on the basis of a diagnosis that was later found to be erroneous .

43. I accept that both her GP and Surgeon told her after the biopsy that it was probably KA. Before that report they could not say. However the Pathology Report is inconclusive suggesting that scratching the site might have caused the reactive changes. Even if I accepted that the condition was KA on the balance of probabilities , supported by Mr Rahman and her GP's assessment it is clear that there was no malignancy or cancer cells detected.

44. In **Lofty** the EAT overturned the Tribunal decision that the claimant was not able to have the protection of the provision on the simple basis that although there was no spread of cancer there had been cancerous cells detected in the tumour. That is not the situation in the present case.

45. I noted that Lady Eady said this at paragraph 47: *''When determining whether a condition satisfies the deeming provision of paragraph 6, there is no justification for the introduction of distinctions between different cancers or for an ET to disregard cancerous conditions because they have not reached a particular stage. I equally agree that it is undesirable that ETs' determinations under Schedule 1 paragraph 6 should necessarily be required to be based on*

high-level medical expert evidence as to what is, or is not, cancer (not least as it is not impossible to conceive that this might be a matter of some specialist academic debate). Equally, however, Schedule 1 paragraph 6 does require that a complainant have one of the specified conditions; it is not sufficient that they might develop a relevant condition in the future and I am not persuaded that a purposive construction requires such a broad approach to be adopted".

46. My view is that the claimant has not demonstrated that she comes within the protection of the section. She cannot point to a diagnosis and even if this is wrong the absence of any detectible cancer cells in a condition such as KA would, following the reasoning in **Lofty**, exclude such protection.

47. The claimant's representative has submitted that the claimant is entitled to rely on perceived disability. This is not her pled position and I see no earlier references to this argument. In any event it is misconceived. Perceived disability discrimination is properly applied to the situation where the employer believes someone is disabled (when they are not actually disabled) and discriminated against then because of that mistaken belief. I struggle to understand how that could apply in the present case.

48. I would observe that having considered the claimant's pleadings whether she has thought through the claims for disability discriminate recorded as being discrimination arising from disability and a failure to make reasonable adjustments I had some concerns about whether claims for disability discrimination had been properly set out. The allegations broadly seems to be a lack of support or understanding given to her by her employers during this difficult period when her pre-existing conditions were exacerbated by the stress or anxiety of undergoing the removal of a potentially cancerous lesion. This background of stress and anxiety and whether it impacted her work or disciplinary process could, if accepted, be considered by the Tribunal when looking at the fairness of any dismissal without the need for the claimant to be

disabled in terms of section 6 of the Equality Act.

Employment Judge: J M Hendry
Date of Judgment: 15 August 2025
Date Sent to Parties: 20 August 2025