



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Giscombe

**Respondent:** Westminster Roman Catholic Diocesan Trust

**Heard at:** London Central Employment  
Tribunal (by CVP)

**On:** 23 June 2025

**Before:** Employment Judge Hopton

## REPRESENTATION:

**Claimant:** Represented herself

**Respondent:** Mr C McDevitt

**JUDGMENT** having been sent to the parties on 2 July 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

# REASONS

## Reconsideration

1. After the oral judgment had been given at the hearing, on the Tribunal's own initiative, under rule 71 of the Employment Tribunal Procedure Rules 2024, it reconsidered the question of whether the claimant was disabled by reason of tendonitis of the left wrist. The tribunal sought the parties views and received a response from the respondent but not the claimant. Having taken the respondent's views into account, and without a hearing, I have varied my conclusion as to whether the impairment of tendonitis caused a substantial adverse effect on the claimant's day to day activities, and having concluded that it did, I went on to consider whether that effect was long term. Having concluded that it was not long term, **the overall conclusion that the claimant was not disabled at the relevant time remains the same.**

## Introduction

2. This was a preliminary hearing to decide whether the claimant was disabled, within the meaning of the Equality Act 2010, during her employment with the respondent.

## **Evidence**

3. I had an agreed bundle of 247 pages and a chronology in relation to the claimant's medical conditions from the respondent. The bundle included an impact statement from the claimant dated 8 May 2025 and various medical records.
4. The claimant also gave oral evidence.

## **Issues**

5. The issues as set out at a preliminary hearing on 11 March 2025 were:
  - 5.1. 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:
    - 5.1.1. Did they have a physical or mental impairment of:
      - 5.1.1.1. prolapsed womb;
      - 5.1.1.2. Tendonitis of the left wrist and both ankles, mainly on the left; and
      - 5.1.1.3. Bursitis of the left shoulder?
  - 5.2. Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
  - 5.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
  - 5.4. Would the impairment have had a substantial adverse effect on their ability to carry out day-to day activities without the treatment or other measures?
  - 5.5. Were the effects of the impairment long-term? The Tribunal will decide:
    - 5.5.1. did they last at least 12 months, or were they likely to last at least 12 months?
    - 5.5.2. if not, were they likely to recur?

## **Facts**

### **Background**

6. The claimant worked for the respondent from 3 May 2023 to 24 January 2024 as a Senior DBS Administrator.
7. During this hearing, the claimant confirmed that she was no longer claiming that tendonitis in her ankles was a disability, so the conditions she relied on were:
  - 7.1. Prolapsed womb;
  - 7.2. Tendonitis of the left wrist; and

### 7.3. Bursitis of the left shoulder.

#### Prolapsed womb

8. The claimant says in her impact statement that she had pelvic pain from January 2023 although in an email dated 15 May 2025 to the respondent and tribunal, she notes it was from May 2023. The pain was mild when it started and built up over time. There is no medical evidence to show pelvic pain before 13 December 2023. The claimant said in her evidence that she was looking after her mother at the time and didn't want to make a "tiny pain a big thing". She attended A&E on 13 December 2023 as she was suffering with severe pain. I concluded that although the claimant may have had some mild pain earlier in 2023, she started to experience the severe symptoms from 13 December 2023.
9. She was still suffering pain on 3 January 2024 when she went to her GP. The notes from this appointment refer to a "possible uterine prolapse". She spoke to the GP again about her symptoms on 24 January 2024. She was dismissed on 24 January 2024. A prolapse was diagnosed on 26 January 2024. At that point she was referred to a specialist bladder and bowel clinic.
10. The claimant's symptoms included pain and toileting issues, which would sometimes delay her leaving the house and cause her to be late or cancel travel arrangements. She explained in her impact statement that these issues were happening at the same time that she was working for the respondent. I have concluded that this was the case from 13 December 2023 when she attended A&E as she would have gone to the doctor about these significant issues if they had occurred before then, even though she was caring for her mother. In her impact statement the claimant also outlined the impact the condition has on her ability to: do household tasks such as shopping and hoovering; exercise; look after grandchildren; eat regularly; participate in social activities; and walk longer distances. However, she did not indicate that these were issues during her employment and these difficulties are not mentioned in the medical notes up to January 2024. I therefore concluded that although the claimant may now experience these difficulties in her day-to-day life, she did not experience them while she was employed by the respondent.
11. The claimant's symptoms continued through June and August 2024. The last piece of medical evidence in the bundle about the condition was 30 October 2024 in the form of a letter from a specialist pelvic health physiotherapist, detailing the claimant's pelvic symptoms and proposing a treatment plan. There is no suggestion in the medical notes after December 2024 that the claimant's condition is improving, although the medical notes of 28 August say: "*at its worst [the pain] is severe and disabling*" which suggests it was not severe and disabling all the time, although the same notes say that "*[the symptoms] are experienced every day*".

#### Tendonitis of the left wrist

12. The claimant had issues with her hand that started in January 2020. These were initially diagnosed as DeQuervain's tenosynovitis. Although the claimant's impact statement refers to hand therapy in January to March 2023. It was put to her that this was perhaps 2020. The medical notes on 30 November 2023 say the claimant was "*Previously under MCAT/hand therapy with tendonitis left*

*hand/arm. Was [discharged] in March this year past few months worsening symptoms.*” Although the claimant did have a hand issue in January 2020, she also attended the hand clinic in March 2023 with tendonitis.

13. In her impact statement the claimant said that she started to feel the hand pain symptoms again from August 2023. She described the pain in November 2023 as “tingling arm pain and chest pain”. By 29 November 2023 this was severe. On 30 November she saw a doctor and her medical notes record the discussion as: *“tinging[sic]/numbness hand/forearm. Pain with gripping, carrying, typing. Pain lying on arm at night. No falls/trauma.”* The doctor recorded that there was: *“ganglion L wrist noted, no redness/swelling, good ROM [(Range Of Movement)] & power at wrist/hand/elbow/shoulder. N neck pain/cspine tenderness, good ROM [(Range Of Movement)]. Localised tenderness L forearm – mid radius”*. She was referred to hand therapy.
14. On 10 January 2024 the claimant again reported numbness and tingling. The notes record there is no issue with picking items. By 17 January 2024 the pain was described as “+++” and as *“severe and intolerable”*. The claimant was referred to the hand clinic again and attended an appointment there on 23 July 2024 (after her dismissal on 24 January 2024). From that point, the medical notes show that although at times the claimant had severe pain, she retained much of the movement in her hand and wrist. She sometimes took painkillers for her condition. It took a while for the doctors to establish the exact medical problem. The claimant confirmed today that she had been diagnosed with carpal tunnel, after some nerve tests.
15. In her impact statement the claimant has referred to some difficulties she has with chopping, shopping and hoovering and other household tasks. She said that she uses speech and auto type on devices. However, she provided no timeframe for when these difficulties occurred and no such difficulties are mentioned in her medical notes regarding the wrist issues between August 2023 and January 2024. The notes refer to pain and pins and needles. Pain may stop someone from doing certain activities. However, as there is insufficient evidence to show that the claimant was stopped from doing things because of her hand/wrist pain during her employment, I concluded that the claimant did not experience difficulties with chopping, shopping, hoovering and other household tasks during her employment. The relevant medical notes on 10 January 2024 refer to *“no issue with picking items”* and *“work involves typing”*.
16. The claimant was provided with a fit note dated 10 January 2024 which said she was not fit for work from 10 January to 14 January 2024 due to *“arm pain and numbness – under investigation”*. Although this was a result of the same appointment on 10 January, there is no suggestion in the medical notes generally that the hand/wrist issue caused pain in her arm. This fit note therefore relates to the arm and shoulder issue (below) rather than the hand condition.

#### Bursitis of the left shoulder

17. The claimant’s shoulder issues started on 10 January 2024. She was signed off work from 10 January 2024 to 14 January 2024, as described above, for *“arm pain and numbness – under investigation”*. There are no further medical notes on this until 12 June 2024 when she went to the GP with pain in her left

shoulder. This continued until 8 January 2025, which is the last piece of medical evidence on the condition, with the claimant being referred to an exercise clinic. The notes on 8 January 2025 refer to “1 year history of left intermittent trapezius and upper arm pain that started with gradual onset.”

#### In general

18. When challenged by the respondent, the claimant explained several times that when she had been referred to a clinic, she waited for that appointment. She explained that regardless of the severity of her symptoms, she did not revisit the GP as there would be no point because they had already referred her to a clinic.

#### The claimant's impact statement

19. The claimant's impact statement explains the considerable impact she feels her medical conditions have had on her day-to-day life. This includes having to move downstairs in her home, being unable to care for grandchildren, an impact on her diet, travel, social activities, household tasks and food preparation. She also refers to difficulties shopping, washing and using electronic devices. Generally, the impact statement does not explain when the claimant suffered from these effects and this was also unclear in her oral evidence. Where it has been possible to establish on the balance of probabilities that she did or did not experience the impact of her medical condition at the relevant time, I have made those findings

#### **Law**

##### **20. “Disability” is defined in s. 6 of the Equality Act 2010:**

*(1) A person (P) has a disability if—*

*(a) P has a physical or mental impairment, and*

*(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities...*

21. In *Goodwin v Patent Office* [1999] I.C.R. 302, the EAT held that in determining disability, the following four questions should be answered:

21.1. Did the claimant have a mental or physical impairment? (the ‘impairment condition’);

21.2. Did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the ‘adverse effect condition’);

21.3. Was that effect substantial? (the ‘substantial condition’);

21.4. Was that effect long term? (the ‘long-term condition’).

22. In *Cruickshank v VAW Motorcast Ltd* 2002 ICR 729, EAT, the EAT clarified that the point at which the tribunal should assess whether or not the definition of disability applied is the time of the discriminatory act.

#### Impairment

23. In *J v DLA Piper UK LLP 2010 ICR 1052*, EAT, the EAT suggested that it may sometimes be appropriate for a tribunal to look first at whether the claimant's ability to carry out normal day-to-day activities has been adversely affected on a long-term basis. If it has, it will in many or most cases follow as a matter of common sense inference that the Claimant is suffering from an impairment which has produced that adverse effect. If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve the difficult medical issues.

#### Day-to-day activities

24. Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability (EQA Guidance) provides the following examples of what is meant by "normal day to day activities" at D3:

*"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."*

#### Substantial

25. S. 212(1) of the Equality Act 2010 defines "substantial" as meaning *"more than minor or trivial."*
26. Appendix 1 to the EHRC Employment Code of Practice also provides guidance on the meaning of "substantial": *"Account should... be taken of where a person avoids doing things which... causes pain, fatigue or substantial social embarrassment..."*
27. In *Rayner v Turning Point [2010] 11 WLUK 156*, the EAT held that if the claimant had been medically advised to abstain from work, that is capable of being a substantial effect on day-to-day activities, although it is a matter of fact for the Employment Tribunal to determine.

#### Long term

28. Schedule 1, part 1, para. 1 of the Equality Act 2010 defines "long-term" (in relevant parts) as:
- "(1) The effect of an impairment is long-term if—(a) it has lasted for at least 12 months, (b) it is likely to last for at least 12 months."*
29. In *All Answers Ltd v W 2021 IRLR 612*, CA, the Court of Appeal held that the tribunal should consider whether, at the time of the alleged discrimination, the substantial adverse effect of the impairment was likely to last for at least 12 months. That decision should be explained by reference to the facts and circumstances the tribunal considered existed at the time of the discriminatory act.

30. The EQA Guidance states at para C3 that “likely” means “could well happen”.

31. In *Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening)* 2009 ICR 1056, HL, the House of Lords confirmed that “could well happen” means something that is a real possibility.

## Conclusions

### Prolapsed womb

32. **Impairment condition:** The claimant had the impairment of a prolapsed womb at the relevant time. Although it wasn’t diagnosed until 26 January 2024, and she left her employment two days earlier, it was suspected on 3 January 2024. It is therefore more likely than not that she did have the impairment of prolapsed womb from 3 January 2024. I have not seen sufficient evidence to suggest that the impairment started earlier than this. No evidence was provided from the claimant’s visit to A&E on 13 December 2023. Although the claimant had some pelvic pain from January or May 2023, there was no suggestion in her medical evidence that she may be suffering from a prolapsed womb until January 2024.

33. **Adverse effect condition:** The claimant’s symptoms meant that she had toileting issues (described in the 26 January appointment) and that this would delay her leaving the house and cause her to be late or cancel travel arrangements (impact statement). Having a good level of control over when to use toilet facilities, travelling and attending engagements on time are day-to-day activities.

34. **Substantial condition:** The toileting issues caused the claimant pain and inconvenience. They caused her to change her plans and stopped her doing things. The effect of the condition was therefore more than minor or trivial and her symptoms therefore caused a substantial adverse effect. I must consider whether the impairment would have had this effect if the claimant hadn’t been taking any medication and I conclude it would as the medical evidence shows these symptoms despite any medication she was taking. The claimant therefore had an impairment that had a substantial adverse effect on her ability to carry out day-to-day activities.

35. **Long-term condition:** I need to consider whether, at the time at which the discriminatory acts happened, it was likely that the adverse effects of the condition would last 12 months. In other words, I need to decide if, between 3 January and 24 January 2024, it was likely that the impact of the prolapsed womb (for example on toileting and travelling) would last a year. I cannot take into account the fact that the claimant’s condition and the difficult effects of the condition have actually lasted many more months. I can only look at what was likely between 3-24 January 2024. The burden of proof is on the claimant to show that at that time it was likely (that is, it could well happen) that the effects of the condition would last at least 12 months.

36. I cannot conclude that by 24 January 2024 it was likely that the effects of the condition would last 12 months. The evidence available to me shows that during that period the claimant was considered to have a small prolapse and that investigations were continuing. Until 13 December she had not experienced severe symptoms and had not attended a doctor’s appointment for pelvic symptoms. She was referred to the bladder and bowel clinic two days after her

employment finished and was waiting for an appointment. I accept what the claimant says about there being no point going back to the GP once you have been referred to a clinic, but the referrals happened after her termination of employment, so that does not assist with the question of the likelihood of the condition lasting 12 months by 24 January 2024.

37. I therefore conclude that at the relevant time, the claimant was not disabled by reason of womb prolapse because the effects of the impairment were not long-term at that time.

#### Tendonitis of the left wrist

38. **Impairment condition:** The claimant had a physical impairment of her wrist from August 2023, as referred to in her medical notes. Although it was not immediately diagnosed as tendonitis, I accept that she experienced the same medical condition from August 2023 which was at some stage diagnosed as tendonitis (although by the time of the tribunal hearing the diagnosis had been changed again to carpal tunnel. Regardless, it was the same impairment).

39. **Adverse effect condition:** I have considered the effect of the impairment ignoring the effect of painkillers or other medication. From 17 January 2024, the claimant was in considerable pain at times. From 30 November 2023 she experienced pain with gripping, carrying, typing and lying on her arm at night. There was therefore an adverse effect on her day-to-day activities.

40. **Substantial condition:** I must consider what the claimant could not do rather than what she could do at the relevant time. The pain the claimant experienced affected her ability to grip, carry, type and sleep comfortably. At times between November 2023 and January 2024 the pain was severe, at one stage described as "intolerable". The medical tests demonstrated she still had good range of movement in her hand and wrist. However, the claimant was experiencing severe pain that affected her ability to grip, carry, type and sleep comfortably. This effect was therefore more than minor or trivial.

41. **Long-term condition:** As I have now found that there was a substantial adverse effect on the claimant's day-to-day activities, I have gone on to consider if the substantial adverse effect was long term. The claimant experienced tendonitis symptoms from March 2023, although there was a gap at some point between March and August 2023. There was no evidence in the impact statement or the medical notes that the substantial adverse effect started before November 2023. By November 2023 the pain had become severe, and remained severe in January 2024 at which point she was referred to the hand clinic again. By January 2024 the substantial adverse effect had lasted two months. The claimant had not yet started treatment at the hand clinic (which started in July 2024). Although the symptoms had reoccurred before, the substantial adverse effect from them was new, having only started in November 2023. By the claimant's termination of employment on 24 January 2024, the substantial adverse effect had only lasted two months and the claimant still had a good range of movement in her hand and wrist. At that stage, it was not therefore a real possibility that the substantial effect would last twelve months. As the claimant's condition was not long term at the relevant time, the claimant was not disabled by reason of tendonitis of the left wrist.

#### Bursitis of the left shoulder



42. **Impairment condition:** The claimant reported “arm pain and numbness” to her doctor on 10 January 2024. This was diagnosed as bursitis of the shoulder on 21 August 2024.

43. **Substantial adverse effect:** I have noted that the claimant was off sick for four days from 10 January to 14 January 2024 as a result of the condition, and I bear in mind that the fact the condition was severe enough for the claimant to be off sick could, in itself, demonstrate that there was a substantial adverse effect on her ability to carry out day-to-day activities. However, the four days sick leave was a short and isolated period. There is no other medical evidence that the claimant was experiencing shoulder pain after 10 January 2024 until 12 June 2024, some five months later. Although the claimant’s shoulder condition has since been diagnosed and has worsened, by the termination of her employment on 24 January 2024, the issues she was having with her shoulder did not have a substantial adverse effect on her ability to carry out day to day activities. Even if they had, given that the symptoms had just started and were under investigation, it was not, at that date, likely that any adverse effects would last twelve months.

### **Conclusion on disability**

44. At the relevant time, the claimant was not a disabled person as defined by section 6 of the Equality Act 2010 because of a prolapsed womb, tendonitis of the left wrist or bursitis of the left shoulder.

45. The claim is therefore dismissed.

Approved by:

**Employment Judge Hopton**

**28 August 2025**

JUDGMENT SENT TO THE PARTIES ON

2 September 2025

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FOR THE TRIBUNAL OFFICE