



EMPLOYMENT TRIBUNALS

Claimant: Dr G Jones

Respondent: Development Bank of Wales

HELD AT: Wrexham (by CVP) **on:** 10TH June 2025
(in Chambers 06.08.25)

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Mr G Pollitt, Counsel

Respondent: Mr D Beemah

Reserved Preliminary Hearing JUDGMENT

The judgment of the Tribunal is that the Claimant was a disabled person, by reason of pain in his left leg, at the material time.

REASONS

Introduction

1. Whilst technically the resumption of a part heard case, it was agreed by the parties that today's hearing would amount to a wholly new start. An earlier hearing was aborted, and the matter was re-listed.
2. At the hearing I had the benefit of a hearing bundle of 124 pages with a supplementary bundle of 35 pages, together with witness statements from the Claimant and Mr M Bowman, both of whom gave evidence at the hearing.
3. Because time did not permit of oral submissions at the conclusion of witness evidence, it was agreed that the parties would exchange submissions and have an opportunity to present their replies respectively; case management orders were made accordingly. The parties have complied with the case management orders. For today's "in chambers" deliberations I have had the benefit of reading respective

submissions and replies. I have also re-read my notes of the hearing and refreshed my memory of the documents that were available to me at the hearing.

The Law

4. I am satisfied that respective Counsel have adequately summarised the legal principles guiding this Judgment. They do not disagree with each other significantly, and principally only in respect of how I should address “deduced effect”.
5. I have to decide whether the Claimant was a disabled person at the material time, namely between 3rd January 2023 and 29th November 2023 when he was employed by the Respondent and when he alleges that there was discrimination in relation to disability.
6. The definition that I must consider is set out at section 6 Equality Act 2010. I have to answer the following questions:
 - 6.1. did the Claimant have an impairment at the material time? In this regard I need to concentrate on the effect of any impairment as opposed to its cause or diagnosis.
 - 6.2. Did the impairment adversely affect the Claimant in relation to his day-to-day activities, where those activities could include circumstances arising at work?
 - 6.3. Was the effect substantial, meaning more than trivial or minor?
 - 6.4. Was the adverse effect long term or likely to be long term, where long term is 12 months and “likely” means that it could well happen?
7. My focus ought to be on what the Claimant could not do, rather than what he could do at the time of the alleged discrimination, not balancing what can or cannot be done with difficulty (or at all) but rather considering the whole picture.
8. I am familiar with the statutory Guidance on the Definition of Disability.
9. In circumstances where the Claimant was undergoing treatment, such as taking medication, I have to consider how the Claimant would conduct his day-to-day activities without the benefit of treatment or medication, the deduced effect. The Respondent, in Counsel’s written submissions, urges caution in considering deduced effect without expert medical evidence. He commented orally during the hearing that I would be required to “speculate”, although I accept he has refined his position in the written submission. Counsel for the Claimant says that some things are “a matter of common sense” and submits that expert medical opinion is not required where as a matter of common sense I can decide the deduced effect. To a limited extent I prefer the Claimants submission on this point. I would not consider it appropriate to speculate greatly on what may or may not happen to a person without the benefit of treatment/medication, but in a case where it appears obvious what was intended by the medication then I think common sense dictates, such as if person is in pain and takes a painkiller, common sense dictates that not taking the painkiller, while a causative physical impairment subsists, will result in

resumed pain. I would not go on to speculate any other symptomology or sequelae but limit myself to what would appear to be obvious.

10. The burden of proof rests on the Claimant. I have to consider whether the Claimant has discharged that burden on the balance of probabilities.
11. As I have read, considered, and digested their respective submissions I will not recite further the case law relied upon, but I can reassure both parties that I am familiar with the authorities cited and have relied on them as appropriate.

The Facts

12. The Claimant was employed by the Respondent from 3rd January 2023 to the 29th of November 2023, effectively 11 months.
13. His role was largely desk based. Not only would he carry out routine work at a desk but also attend meetings, on a regular basis remotely by video/audio, sitting at a desk. His job also involved travelling by car or train throughout Wales and around England. He was a frequent traveller. It follows that his role required him to sit, stand, and walk for potentially extensive periods of time; during the normal course of his work and travel he could potentially be sitting for a long time and if he needed to mobilise then that would involve standing and walking around, but again for limited times.
14. The Claimant was managed by Mr Bowman.
15. The Claimant's medical records (commencing at page 34 of the main hearing bundle) set out details of the Claimant's visits to his GP. He visited his GP on 27th July 18th, 18 August, 21st of August, and 25th of October 2023, during his employment. Each of his visits was related to pain in his left calf, including that experienced while sitting at a computer. Initially there was speculation about muscular pain rather than deep vein thrombosis (DVT) however DVT was later diagnosed and treated. The Claimant was prescribed blood thinners and painkillers, at times supplementing his requirements with over-the-counter painkilling medication. Details of the medication over time is set out in the medical records.
16. From July/August 2023 to the end of November 2023 (and beyond the material time, to date) the Claimant has experienced leg pain that at least on occasions he describes as "horrendous". It is not constant; it is frequent. It is therefore intermittent, but when it strikes it can be so severe as to make the Claimant describe it as "horrendous". As early as the first medical attendance on 27th of July it was noted that the Claimant was taking painkillers which had ameliorated the pain. Throughout the material time of employment the Claimant was taking painkillers.
17. The Claimant suffered symptoms of pain when sitting at his desk, walking anything other than short distances, and standing for lengthy periods. This resulted in him having to mobilise rather than remain seated but limited his mobilising by walking or standing. Because of his requirement to move about he preferred to attend remote meetings with the video function turned off, as this gave him more freedom.

18. The Claimant found seated travelling gave rise to painful symptoms and so he would have to mobilise when sitting on the train, and if driving he would have to stop periodically. On at least one occasion, a business trip to Nottingham, he felt he had to stay overnight rather than complete the return journey in one day because of pain and discomfort and prolonged travelling; he would normally have completed that return trip in one day.
19. The Claimant is recorded as having had only one day's absence from work and that is documented in the hearing bundle at page 113. He was officially absent as a result of DVT on 23 October 2023. That said, there was a conversation between the Claimant and Mr Bowman on 25th October 2023 where the Respondent's, or particularly Mr Bowman's, attitude to sick leave was discussed with the Claimant. Mr Bowman elaborated in evidence. In the conversation Mr Bowman asked the Claimant whether he was still "technically" absent from work, implying by sick leave. Mr Bowman did not consider it appropriate to record every absence as sick leave and he drew a distinction between absences due to ill-health incapacity, absences that involved medical appointments (which he considered to be "essential absences"), and times when, despite an employee not being 100% fit, an employee would carry out some work; he considered the latter circumstances not to be sick leave.
20. It follows from the above, and I accept, that the Claimant was in fact absent from work or worked reduced hours at various times because of ongoing symptoms of pain caused by DVT or as a sequelae to DVT, and leg pain.
21. Subsequently, a diagnosis of post thrombosis syndrome has been raised and treated, and latterly there has been a diagnosis of superficial thrombophlebitis.
22. I am not qualified to specify a diagnosis causing leg pain prior to any DVT (whether for example muscular issues), or of DVT, PTS, or thrombophlebitis. I am unable to say the dates on which any of those diagnoses became relevant, even if they do. I find however that from July 2023 and throughout the period of the Claimant's 11 month employment to the 29th of November 2023, he suffered leg pain that was at times ameliorated by medication.
23. The Claimant's medication included blood thinning tablets and painkillers. The Claimant's treating medics considered it appropriate to diagnose such medication and at various times to treat the Claimant for DVT. The initial assessment discounted that diagnosis; the Claimant was subsequently referred to a specialist clinic and underwent a scan. He was discharged initially on 22nd August 2023, but the discharge note refers to persistent throbbing of left distal leg where the cause was still being queried and a DVT assessment was required; commencement of medication was noted. That discharge note was not the end of the story with regard to DVT. It was not the end of the story with regard to leg pain having the effects described above.

Application of law to facts

24. the Respondent's case appears to me to turn mostly on the paucity of medical evidence and a challenge to the Claimant's credibility, where he is accused of exaggeration and building a case. The Respondent is suspicious of the Claimant,

not least because of covert recordings of conversations with Mr Bowman, including a late disclosed recording of a conversation on 25th October 2023. I'm confining this Judgement to questions of disability and not admissibility.

25. With regard to the covert recording of the conversation of the 25th of October 2023 however, I found the Claimant's explanation to be weak when he said that he did not know that he had the recording, or he had misplaced it, and he found it recently. I accept that the recording was of a telephone call that he was not expecting to receive from Mr Bowman, as the Claimant described it, "on the fly"; The Claimant's point was that he could not have premeditated the recording. Whether premeditated or not, he knew he had recorded it, and he has made other recordings also. As far as today's consideration goes however the contents of the conversation are relevant to show that the Claimant was still complaining of severe pain and still explaining the effect upon him of that pain late into October 2023. It is also relevant in undermining the significance of there being only one recorded day's absence on sick leave.
26. I do not find that the Claimant is exaggerating his description of symptoms albeit he was certainly not underplaying them or being stoical about them, and this played into his combative and challenging approach to cross examination. His answers were at times evasive and at other times quite aggressive; Mr Bheemah may reasonably have considered that he was discourteous. That said of course, Mr Bheemah was challenging the Claimant's credibility throughout and therefore the feeling was probably mutual.
27. I find that the Claimant was truthful in saying that he had an impairment, namely persistent throbbing pain in his left leg, from July 2023 throughout his employment, and that it persists.
28. As was commented on by both parties, and indeed Mr Bowman in evidence, pain is a subjective matter. I have in mind a quotation: "pain is what the patient says it is, and it is as bad as the patient says it is".
29. When the Claimant was suffering persistent throbbing pain in his left leg he was unable to sit or stand or walk for many minutes at a time, causing him to have to change his posture and activity (sometimes with urgency). Even such changes of posture and activity merely relieved pain, making matters more comfortable until the pain subsided. This impacted on his work life for sure, because of his desk based role. It also impacted on his work-related travel as described above, including necessitating him staying away from home when he could not face a return journey on the same day. These activities in his personal or social life would be affected to similar extent, although there was not a great deal of evidence on that or specifically covering those activities. It is however a matter of common sense that if one cannot sit for long at a desk then one could not sit for long watching television or a sporting event and the like. If one cannot travel far by car or train without suffering symptoms of pain, then it matters not whether the purpose of the journey is business or pleasure.
30. The persistent throbbing pain experienced by the Claimant had a substantial adverse effect on his day-to-day activities in my judgement.

31. Where one has pain and takes pain relief one would expect the pain to resume if the condition causing it remains, when the pain relief wears off or if it is not taken. That is a simple deduced effect. Similarly in relation to blood thinners, one would expect blood thickening without such medication. Medication for pain relief and for blood thinning, to quote a cliché do “what it says on the tin”. Where the condition giving rise to persistent throbbing pain subsists and if that is in relation to circulation then one could expect at very least the deduced effect of not taking such medication would be for pain and clotting. I would not go any further in speculating any deduced effect, but that much is a matter of common sense.
32. Based on the evidence before me, what I have read and heard, I accept that the Claimant has effectively suffered damage in July or August 2023 when there was a DVT, and whether or not there was an active DVT beyond the summer of 2023, the damage having been done, pain and discomfort continued and was likely to continue for beyond 12 months. I say this in at least in part because it is clear that the Claimants symptoms did not end in July or August 2023 and that the likely effect of the continuation of such symptoms is that they would develop into post thrombotic syndrome or something similar. If a patient has a DVT and it clears up immediately on treatment that may be the end of the matter. In Dr Jones's case the immediate treatment was clearly not the end of the matter. It appears to me that because the symptoms subsisted for as long as they did during the course of employment it was likely that they would continue despite the treatment which was only partially effective in any event.
33. Taking into account the authorities cited by respective Counsel (and their submissions generally), the Guidance on the definition of disability, and the evidence before me, I am satisfied that the Claimant has proved, on the balance of probability, that he is a disabled person as defined by section 6 Equality Act 2010.

Approved by Employment Judge T V Ryan

Date: 06.08.25

JUDGMENT SENT TO THE PARTIES ON

01 September 2025

Katie Dickson

FOR THE TRIBUNAL OFFICE