



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON CENTRAL
BEFORE: EMPLOYMENT JUDGE ELLIOTT
BETWEEN:

Mr D Salavei

Claimant

AND

- 1) Amazon Web Services EMEA SARL
- 2) Juan Enrique Gomez Perez
- 3) Andrew Michitson
- 4) Nils Beecken
- 5) Jessica Subramoney
- 6) Asia Kaisz
- 7) Ade Agunbiade
- 8) Joanna Levy

Respondents

ON: 13 August 2025

Appearances:

For the Claimant:

In person

For the Respondent:

Mr C Ludlow, counsel

REASONS

1. This decision was given orally on 13 August 2025. On 29 August 2025 the claimant made a written request for Reasons.
2. By a claim form presented on 15 May 2024 the claimant Mr Dennis Salavei brings claims of disability discrimination for direct and indirect discrimination, discrimination arising from disability and failure to make reasonable adjustments, victimisation, whistleblowing detriment and harassment related to race and disability.

3. The claims for unfair and wrongful dismissal were struck out 1 November 2024, the claimant not having been dismissed.
4. There was a preliminary hearing for case management on 11 October 2024. The full merits hearing is listed for 12 days commencing on 3 November 2025.

The issue for this hearing

5. There were delays in compliance with the order made on 11 October 2024 in terms of disclosure of medical records and the claimant's disability impact statement. As the respondent disputed that the claimant was a disabled person at the material time, the parties applied for a preliminary hearing to determine disability status.
6. The issue for this hearing was whether at the material time from 30 November 2021 to 15 May 2024 the claimant was a disabled person with all or any of the conditions of (i) severe depression, (ii) generalised anxiety disorder and (iii) chronic insomnia.
7. In a letter dated 17 April 2025 (page 184-187 respondent's bundle) the respondents concede disability from 12 February 2024 with the conditions of severe depression and anxiety.
8. The claimant made an application to amend to include the condition of ADHD with which he was diagnosed 7 weeks prior to this hearing, on 24 June 2025. This application was refused and is dealt with in a separate Case Management Order of today's date (13 August 2025).
9. The claimant's application for this hearing made reference to case law on constructive knowledge of disability. I explained to the claimant that the hearing today was not to determine knowledge of disability, but disability status itself. It will be a matter for the full merits hearing as to whether or not the respondents had knowledge of any proven disabilities.
10. I also explained to the claimant that this hearing would not deal with what caused his conditions. It was a hearing to determine whether or not he was disabled at the material times.
11. The claimant was aware, as explained to him at the last hearing on 11 October 2024, that the tribunal does not have free standing jurisdiction to hear personal injury claims and the cause of his conditions will only become relevant if he succeeds in a discrimination claim and can show that any proven discrimination caused the personal injury relied upon. The cause of his conditions may be a matter for a Remedy Hearing if he succeeds in whole or in part. Much of the claimant's disability impact statement dealt with his case on the causes of his mental health conditions and/or why he says his mental health deteriorated.

This remote hearing

12. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under Rule 46. The parties consented to the matter being heard by video
13. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserv.net. One member of the public attended.
14. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties of any substance.
15. The participants were told that it was an offence for them to record the proceedings.
16. Both the witnesses, who were in different locations, had access to the relevant materials. I was satisfied that neither of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

Witnesses and documents

17. There was a bundle of documents of 416 pages from the respondents and a bundle of 300 pages from the claimant.
18. The tribunal heard from the claimant and his ex-wife Ms Alesia Salavei.
19. It became clear just before she gave evidence that Ms Salavei was in Australia. As the full-merits hearing was listed to take place in person I noted that the Case Management Order did not deal with the issue of witnesses giving evidence by video from overseas. I checked the FCDO website which, as at 13 August 2025, said in relation to Australia:

Australia

Individuals in Australia can voluntarily give evidence from Australia by video link in UK civil, commercial and administrative tribunals (either as a witness or when appealing a case). If someone other than a judge or judicial official is to take the evidence, additional permission may be required from the authorities of the relevant state or territory.

20. I made the decision to admit Ms Salavei's evidence by video.
21. I had 10 pages of written submissions from the respondents to which counsel spoke and oral submissions from the claimant. All submissions and any authorities referred to were fully considered, whether or not expressly referred to below.

Redactions from medical records

22. The claimant had made a number of redactions to his GP medical records which were included in the bundle for this hearing from page 401 - 416. It was apparent that in many places he had redacted names and telephone numbers. In other places he said it was personal information not related to the issues for determination at this hearing.
23. The respondents noted that the claimant did not have leave to make these redactions, but they made no application at this stage for disclosure of an unredacted version to be considered by a Judge, to make a decision on the point.
24. The burden of proof on disability status lies with the claimant and in the light of their respective submissions, I decided to proceed with the medical records as redacted. This does not amount to a blanket permission, should those records need to be referred to at any later stage in these or other proceedings. That will be a matter for determination at that point.

The respondents' application to postpone this hearing on disability status

25. The claimant was dismissed from the first respondent's employment on 30 July 2025. The dismissal letter was at page 297 of the claimant's bundle. The claimant said he had already issued a claim for automatically unfair dismissal for whistleblowing and he had made an application for interim relief. He said he did this on 5 August 2025. The ET1 was not yet available.
26. The claimant said he planned to bring a claim for ordinary unfair dismissal and disability discrimination. He said he had completed Early Conciliation and was in the process of drafting Particulars of Claim.
27. The material time for the purposes of this current claim, is from 30 November 2021 to 15 May 2024. Mr Ludlow for the respondents said that if a second claim is presented, the Tribunal will need to determine disability status from 15 May 2024 to 30 July 2025 and this would duplicate the process. His application was that this disability status hearing should not go ahead today.
28. The claimant was keen that this hearing should go ahead today.
29. I had reservations about making decisions in relation to a claim that had not yet been presented, even though it appeared likely that it would be presented.
30. This present claim has been in the tribunal system since May 2024 and is now 15 months old. It has a full-merits hearing listed in just under 3 months commencing on 3 November 2025. If that hearing is to be postponed, it will not be possible to re-list it until at least March 2027.
31. I took the view that the interests of justice required this disability hearing to proceed today. Even if there had to be a further consideration of disability status from May 2024 onwards, the findings made by this tribunal today may be of assistance to the parties and a subsequent Tribunal. For those reasons I declined the respondents' application to postpone this disability hearing.

Findings on disability status

32. As stated above, much of the claimant's disability impact statement dealt with his case on the causes of his mental health impairments and his case that the respondents caused a worsening of his mental health. I explained to the claimant that the cause of his conditions was not a matter for determination at this hearing and neither was the question of the respondents' knowledge of disability.
33. Paragraph 24 of the claimant's witness statement, with four subparagraphs, dealt with the effect of his conditions on his ability to carry out normal day-to-day activities. This also referred to a psychiatric assessment on 15 May 2025 (at page 276 of the claimant's bundle). This did not assist the tribunal in determining whether the claimant was disabled at the material time, because it was an assessment as at 15 May 2025, although it made reference to some earlier matters.
34. In his witness statement, the claimant linked cognitive impairment with "*untreated ADHD*" which made it difficult for me to assess how the conditions he relied upon in these proceedings impacted on his ability to carry out normal day-to-day activities at the material time. He said that his ability to process information and prioritise tasks at work and at home, were compromised but he did not say when these effects began.
35. The claimant said that his struggle to manage his ADHD symptoms had an effect on his emotional regulation. The claimant did not say exactly what day-to-day activities this affected in his life or over what period.
36. The claimant referred to daily living and sleep. He said it was difficult to sleep which worsened his mood and cognitive function the following day and that it affected his ability to maintain household responsibilities and engage in family life. Once again it was not clear exactly what day-to-day activities this affected in his life, or over what period, or what household activities he had difficulty with. He also said that the strain on his mental health had been a significant factor in the breakdown of his marriage and had led to social isolation. He said it also had an effect on his ability to perform at work.
37. The claimant said that the cumulative impact of his impairments made it difficult for him to perform at work. He was off sick from 19 February 2024 until his dismissal on 30 July 2025.

Medical evidence

38. As stated above, the claimant had made significant redactions to his medical records without permission (page 401 onwards). The GP medical records displayed were for events between 1 August 2023 and 20 February 2025. The entries started on 27 September 2023 (page 416 respondents' bundle). The GP entry for that date stated: "*H/O: depression*" and "*New Episode*".

39. The claimant sought clarity from his GP practice as to the meaning of “H/O: depression”. There was an email from his GP practice dated 24 June 2025 (page 280 claimant’s bundle) saying that “H/O” stood for “*history of*” meaning history of depression. As the respondents pointed out, the email from the GP practice said: “*this is a note in your record rather than a diagnosis*”. I find based on this email that the first recorded note in the claimant’s GP records is not a clinical diagnosis of depression. The claimant is right that it not necessary for him to have a formal diagnosis for the tribunal to make a finding that he had a disability.
40. On 26 July 2022 the claimant consulted an online GP service named Babylon provided through the first respondent for its employees. A report of that consultation was at page 23 of the claimant’s bundle. The claimant consulted that service exhibiting symptoms consistent with low mood such as irritability, impatience and poor sleep.
41. The advice given to the claimant in July 2022 was for a CBT referral and for the claimant to book a GP appointment if he wanted to start on medication. He was told that if his symptoms worsened, he should book another appointment. There was no evidence of any further appointment being booked. The medical records did not show the claimant consulting his own GP until 27 September 2023, more than a year later.
42. I find that although the claimant experienced some symptoms of low mood, irritability, impatience and poor sleep in July 2022 it was not sufficiently serious for him to consult his GP, as he had been advised, or to book another appointment via Babylon. I find that his mental health did not have a substantial adverse effect on his ability to carry out normal day-to-day activities at that time, between June 2022 and September 2023.
43. On 28 August 2023 the claimant emailed HR about his next career steps (page 328 respondents’ bundle). It was put to him that although he mentioned “*divorce, burn-out, [and] midlife crisis*” he did not say that he was experiencing depression, anxiety or insomnia. The claimant said he did not wish to put everything in that email.
44. I saw an email from HR to the claimant dated 27 September 2023 (claimant’s bundle page 43) which said that he “*shared that [he was] experiencing medical concerns and personal circumstances*”. The detail was not provided in that email for confidentiality reasons. I find that the claimant did flag to HR on 27 September 2023 that he was experiencing mental health difficulties when he shared his health concerns.
45. In relation to severe depression and generalised anxiety disorder I saw a referral document for an appointment on 27 September 2023. This gave the claimant’s presenting complaint as “*low mood and depression*” (page 335) although I find that this was not a diagnosis; it was the reason why the claimant made the appointment. At page 336 it said: “*No past history of mental health issues*”. It said that the claimant “*still enjoys workouts and*

spending time outdoors” and that he was “*very active*” although “*energy levels fluctuate*”. Under the heading Past Medical History, the report says “*Nil*”.

The claimant’s activities

46. On his own evidence the claimant engaged in running, swimming and working with free weights every work-day, early in the morning. He said he got up at 5am, the gym opened at 6am and he would be in the gym from 6am to 8am, for a couple of hours every week-day. After work and at weekends he spent time outdoors with the family in the park. He went running 2 to 3 times a week.
47. The claimant said that the reference in the report of 27 September 2023 to: “*No past history of mental health issues*” was error on the part of the health professional. At no time prior to today has the claimant said that the content of that report was wrong. I find that what is in the report is correct and that it was based on what the claimant told the doctor in the consultation meeting on 27 September 2023. I find on a balance of probabilities, that if the doctor had made mistakes in that report, the claimant would have raised it prior to this hearing.
48. The claimant confirmed and I find, that as at September 2023 he was not on any prescribed medication. On his own evidence he was using over-the-counter supplements and treatments.
49. The doctor’s report of 27 September 2023 said that the “*suspected diagnosis*” was “*Depression, Anxiety*” and also said that exercise could improve symptoms and help with sleep.
50. The claimant and his ex-wife divorced in July 2024. She relocated to Australia in September 2024. Ms Salavei gave evidence as to her observations on the claimant particularly from September 2023. Ms Salavei was asked whether in September 2023 the claimant was going about his day-to-day activities normally. She said he was not and that he was not the same person that she knew before. She said he became less active and there was an impact on their family. Ms Salavei said that whereas previously they had dinner together at the end of the day, from September 2023 the claimant no longer communicated with the family. This tied in with the claimant’s own evidence on the breakdown of his marriage and experiencing social isolation.
51. On 27 November 2023 the claimant sent an email to his manager (page 384 respondent’s bundle) saying that he was getting better, his sleep had improved and that he would be returning to work “*in full*” the next day. This was following a period of 2 weeks signed off sick for anxiety and depression (Fit note page 380 respondents’ bundle). The claimant said that this was a return to more than 8-9 hours of work per day because he was then on a Performance Improvement Plan. The claimant said at this time he was spending less time with his family and on his activities, because he was concentrating on the Performance Improvement Plan.

52. The claimant accepted that from his own GP records there was “*no mention of chronic insomnia*” as such.
53. As stated above the respondents concede disability from 12 February 2024 with the conditions of severe depression and anxiety. They made this concession based on a report from Dr T Drew, a Clinical Psychologist with a company named PsychHealth, dated 12 February 2024 (page 391) which detailed a PHQ-9 score that said that the claimant suffered with moderately severe depression and a GAD-7 score that indicated that the claimant suffered with anxiety. The claimant went off sick from work on 19 February 2024 and remained off sick until his dismissal in July 2025.
54. Given the respondents’ concession in relation to depression and anxiety, it is not necessary for me to make any findings about those conditions after 12 February 2024. This means that any redactions from medical records about those conditions after that date were immaterial for the purposes of this hearing.
55. The material time for consideration of disability status was from 30 November 2021 to 15 May 2024 (see Case Management Order, List of Issues paragraph 2, respondent’ bundle page 146).
56. In closing submissions, the claimant said that his depression began “*from at least July 2022*”. In the light of that submission I find that the claimant was not disabled with severe depression in the period from 30 November 2021 to July 2022. I further find that he was not disabled with anxiety or chronic insomnia in the period from 30 November 2021 to July 2022 because the evidence was not there to support it.
57. In relation to the condition of chronic insomnia I saw that the PsychHealth report of 12 February 2024 said (at page 392 respondent’s bundle), that one of the claimant’s symptoms was acute insomnia. The report said that the claimant “*articulated a profound impact of his mental health struggles on various facets of his life, underscoring the urgent need for intervention*”. The claimant accepted in oral evidence that his medical records disclosed no diagnosis of insomnia and I find that at the material time he had no such diagnosis and no such impairment.
58. Based on the above, I find that in July 2022 the claimant consulted an online GP service because he was having difficulty with his mental health. One of the recommendations he was given in July 2022 was to make an appointment with his own GP and to contact them again if his symptoms worsened. There was no evidence before me that he contacted Babylon again to make a further appointment so I find that he did not. I also find based on his GP records that he did not consult a GP until over a year later on 27 September 2023.
59. I find that it was on 27 September 2023 that the claimant first contacted his GP about his mental health difficulties. Although there was a note stating “*history of depression*” I find based on the email from the GP practice that this was not a diagnosis.

60. I find that it was in late September 2023 that the claimant's condition affected him sufficiently to prompt him to make a GP appointment, as had first been suggested to him in July 2022. For the claimant's benefit, I make the observation that just because a person has mental health difficulties, does not mean that it amounts to a disability under section 6 Equality Act 2010. I accept that the claimant had some mental health difficulties in July 2022 but the evidence does not support a finding that this had a substantial adverse effect on his ability to carry out normal day-to-day activities from July 2022.
61. There is little evidence from the claimant about what he could not do and how his day-to-day activities were adversely affected. The evidence was of an active person who, prior to 19 February 2024 worked long hours, 8 or 9 hours per day on top of 2 hours in the gym on a workday, swimming, running and going to the park with his family.
62. I find on the evidence of the claimant and his ex-wife that his condition deteriorated in late September 2023 and this prompted him to see his GP. Both the claimant and his ex-wife said that he became socially isolated and I find on his ex-wife's evidence that this was from September 2023.
63. The Equality and Human Rights Commission Code of Practice on Employment (2011) says that "*Normal day to day activities include taking part in normal social interaction or forming social relationships*" – Appendix 1, paragraph 15 on the Meaning of Disability. I find that from September 2023 the claimant's conditions of depression and anxiety had a substantial adverse effect on his ability to carry out normal social interactions and on his social relationships.
64. This leads me to find that from 27 September 2023 the claimant was a disabled person with the conditions of severe depression and generalised anxiety.
65. I find that the claimant was not a disabled person at any point during the material time with the condition of chronic insomnia. He had poor sleep arising from his depression and anxiety as set out in the PsychHealth report of 12 February 2024. He was not disabled with the condition of chronic insomnia.

The relevant law on disability status

66. Section 6 of the Equality Act provides that a person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
67. The burden of proof is on the claimant to show that he is disabled in relation to each impairment relied upon.

68. Under section 212(1) of the Equality Act 2010 “substantial” means more than minor or trivial.

69. Under Schedule 1 paragraph 2(2) Equality Act, says that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur. The word “*likely*” does not mean “*probable*”; it means “*could well happen*” – **SCA Packaging Ltd v Boyle 2009 IRLR 746 (HL)**.

70. Under Schedule 1 paragraph 5, an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to treat or correct it, and but for that, it would be likely to have that effect - **Kapadia v London Borough of Lambeth 2000 IRLR 699**.

71. In **Goodwin v The Patent Office 1999 IRLR 4** the EAT set out four questions to be considered:

- a) did the claimant have a mental and/or physical impairment?
- b) did the impairment affect the claimant's ability to carry out normal day-to-day activities?
- c) was the adverse condition substantial?
- d) was the adverse condition long term?

72. Section 15(4)(b) Equality Act 2006 provides that a Code of Practice issued under section 14 of that Act “*shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant*”. The Equality and Human Rights Commission Code of Practice on Employment (2011) is such a Code and Appendix 1 to that Code deals with “The meaning of disability”.

73. In relation to normal day to day activities, at paragraph 15 it says:

Day-to-day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.

Conclusions on disability status

74. Based on the findings made above, I find that the claimant was a disabled person with the conditions of anxiety and depression as from 27 September 2023 but no earlier. Insomnia was a symptom of his other conditions and not a separate condition in its own right. The claimant accepted that he has no diagnosis of chronic insomnia and I have found above that he did not have that impairment at the material time.

75. The decision of the tribunal is that from 27 September 2023 to 15 May 2024 the claimant was a disabled person with the conditions of severe depression and generalised anxiety but he was not a disabled person at the material time with the condition of chronic insomnia.

Employment Judge Elliott

Date: 5 September 2025

Judgment sent to the parties and entered in the Register on: 10 September 2025

_____ for the Tribunal