



EMPLOYMENT TRIBUNALS

Claimant: Mohammed El Sadek
Respondent: On Running UK Ltd

Heard at: London Central (by CVP)
On: 16/9/2025
Before: Employment Judge Mr J S Burns

Representation

Claimant: In person
Respondent: Ms J Linford (Counsel)

JUDGMENT

The Claimant was disabled by tinnitus during the material time (27/1/24 to 27/2/24).

REASONS

1. I was referred to a bundle of 282 pages and the Respondent's skeleton argument. The Claimant sent in a number of extra documents including emails between him and the Respondent during the relevant period and up to his dismissal. The Claimant was cross-examined and I then received oral submissions.

Summary of Relevant law

2. Section 4 Equality Act 2010 (EA) provides that disability is a protected characteristic.
3. Per section 6, a person has a disability if he have a physical or mental impairment which has a substantial (which means "more than minor or trivial limitation going beyond the normal differences which may exist between people") and long-term adverse effect on his ability to carry out normal day to day activities.
4. Normal day to day activities are activities such as walking, driving, shopping, typing, forming social relationships but also working.
5. The effect is long term if it has lasted or is likely to last 12 months or for the rest of the person's life (Sch 1 para 2)
6. Where 1 year has not yet elapsed, the test that needs to be satisfied in terms of whether the impairment is likely to last at least 1 year or be lifelong is whether it "*could well happen*" (Nissa v Waverley Education Foundation Ltd (2019)) - a relatively low threshold. That test

should be applied as at the time of the discriminatory acts complained of, and not with the benefit of hindsight.

Findings of fact and conclusion.

7. It is not in dispute that the Claimant had tinnitus from no later than January 24.
8. The Claimant told his managers on 27/1/24 that he had tinnitus which he attributed to being exposed to noise (mainly loud music) having been played in the store where he had worked since 9/1/23.
9. On 30/1/24 he sent an email to a manager as follows *"Unfortunately, I have been experiencing symptoms of tinnitus for the past 6 days. I informed the managers on duty, Sylvester and Rui, last Saturday (the 25th of January) regarding this. I requested to work 'back of house', away from any music or loud noises, for the next 2 weeks until I have a medical check-up to determine the cause of this, and what further action is needed. It is very alarming to say the least, and on Sunday morning I went to the A&E department of St Thomas Hospital just to determine if it's something more serious. The doctor told me that my eardrums are intact, however, he is unable to determine the cause without further investigation. He said it might go away on its own within two weeks, yet if it doesn't I should book an appointment with my GP, and get a referral to an audiologist. On Tuesday morning I booked an appointment with my GP as the ringing sound in my ears had become more intense on Monday evening after work. I am now scheduled to see my GP on the 9th of February to request a referral..."*
10. As a consequence of his tinnitus, the Claimant was unable to work in the main store area (where he had been carrying out duties as a salesperson) and relocated in late January 24 to work in the stockrooms. Even there (in the outer stockroom) he was unable to tolerate the noise which he could still hear coming from the store, so he had to confine his activities to the inner stock-room. He was unable to operate the walkie-talkie system properly or wear earphones. He asked colleagues to switch off the TV and sound notifications which was playing there. His inter-personal relations with other colleagues was adversely affected.
11. He started to suffer acute anxiety and depression caused by worry that he would be permanently afflicted by the impairment, which in turn made it difficult for him to fall asleep at night. His symptoms were so severe that he sought expert medical assistance.
12. He saw his GP in early February and was referred to the Royal Free Hospital for an audiogram test.
13. On 6/2/24 the Claimant attended a meeting with a manager (Mr D Plummer). A minute was kept which includes the following stated by the Claimant: *"I have tinnitus and been to the doctors, went to the GP and they have said it may be temporary or permanent, would need to carry out a scan to determine as it is visible when a scan is done, they have referred me to an audiologist which will be in about 3 weeks. If no damage is found it is temporary and it may go away if I'm out of work or somewhere with no loud noises, will be seeing an*

audiologist in 3 weeks.....” and Mr Plummer stating “ I’d like to clarify on the environment we work in it does not facilitate the opportunity to avoid noise as to fulfil duties you need to have the ability to use a radio for communication, our basement level would still expose to levels of noise not dissimilar to that of the floor as music plays across the store, furthermore the screen plays sounds to notify the team of product requests being made, meaning you are not fit to work in the current environment of your normal duties and where we have already attempted to accommodate....”

14. I find that from 27/1/24 onwards the Claimant’s impairment had a substantial adverse effect on the ability to do day to day activities, which activities included working in the store, listening to music, using headphones and walkie-talkie radios and falling asleep.
15. As can be seen by the extract from the email and the minute quoted above, in late January/early February 2024 there was uncertainty as to whether or not the impairment and its effects would “go away on its own within two weeks” or whether it would be permanent.
16. Tinnitus is frequently a chronic condition for which there is no cure other than helping the sufferer to make a psychological adjustment.
17. As tinnitus, once it starts, frequently turns out to be a permanent condition and as the Claimant had tinnitus already causing a substantial adverse effect during the relevant period, I find that, the proper conclusion which should have been reached by a person considering the question at that point would have been that it “could well happen” that the adverse effects on the Claimant would last at least 12 months, (although by then they had not).
18. Hence the Claimant’s condition met the definition of disability under the Equality Act 2010.

J S Burns Employment Judge
London Central
16/09/2025

For Secretary of the Tribunals

Date sent to parties
24 September 2025
