



EMPLOYMENT TRIBUNALS

Claimant: Ms Z Sedjukevica

Respondents: Monolith (UK) Ltd

Heard at: Cambridge (in private) **On:** 27 and 28 November 2025

Before: Employment Judge Tynan (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms Patch, Solicitor

Interpreter: Ms T Zakladnaya-Wallis, Russian speaking

PRELIMINARY HEARING IN PUBLIC JUDGMENT

1. The Claimant has failed to establish, on the balance of probabilities that she and/or her son were disabled within the meaning of section 6 of the Equality Act 2010 at the time of the events about which complaint is made.
2. The Claimant's complaints of disability discrimination are struck out pursuant to Rules 38(1)(a) of the Employment Tribunal Procedure Rules 2024 on the grounds that they have no reasonable prospect of success.

REASONS

1. At a preliminary hearing for case management in July this year I directed that should be a public preliminary hearing to determine, amongst other things, whether the Claimant and/or her son were disabled at the material time: in the case of the Claimant, by reason of cervical spondylosis, thoracic radiculopathy, chronic musculoskeletal pain, persistent headaches, anxiety and panic attacks; and in the case of the Claimant's son, by reason of type 2 diabetes mellitus. The material time with which I am concerned is the period June 2023 to May 2024, namely from when she was issued with a written warning by the Respondent through to the determination of her appeal against dismissal. As I explained to the Claimant in the course of this hearing, this does not mean that I have disregarded the evidence from outside that time period. On the contrary,

evidence from before June 2023 might for example point to the Claimant already having one or more of the claimed conditions/impairments; likewise, a later formal diagnosis might explain symptoms reported during the material time. The question in each case is whether the effects of the relevant condition or impairment had already become disabling by June 2023 or, if not, at the latest by May 2024.

2. The Claimant first indicated that she might be pursuing a claim of disability discrimination in section 8.1 of her second claim form which was presented to the tribunals on 4 June 2024 following her dismissal. Whilst she did not tick any of the relevant discrimination boxes in section 8.1 to clearly signify that she was complaining of discrimination, she went on to state in the final box in section 8.1 that she wished to pursue a claim for “Medical Discrimination & Harassment”. In section 8.2 of the form, she stated that she was filing a claim for “unfair dismissal on medical discrimination grounds”. She claimed that her health issues had worsened during her employment with the Respondent, particularly from autumn 2022 and were exacerbated by work related stress and anxiety throughout 2023. She also stated that the situation had been made more challenging by her son’s diagnosis with type 2 diabetes in January 2023. In section 14, she made various complaints about the way she had been treated by the Respondent, including “discriminatory behaviour”, though did not elaborate as to what she meant. The section concluded with a statement that she was seeking compensation for unfair dismissal.
3. At my direction, the Tribunal wrote to the Claimant on 9 December 2024 and asked her to clarify whether she was claiming to be disabled and, if so, pursuing a claim of disability discrimination. By coincidence, the Respondent’s solicitors wrote to the Claimant the same day requesting further information from her, including confirmation of whether she was claiming to be disabled. They posed a series of questions in a form commonly used by tribunals to elicit information on the issue of whether a person is disabled within the meaning of the Equality Act 2010. Amongst other things, they asked the Claimant to describe the effects of any impairments on her and her son’s ability to carry out normal day to day activities. They went on to say that any examples in this regard should be from the time of the events the claim is about. I made the same point to the Claimant in the course of the hearing in July this year and again in the written record of the hearing, in which I also reminded the Claimant that she might find it helpful to consider the provisions of the 2011 Guidance on matters to be taken into account in determining questions relating to the definition of disability. She seems to have failed to take these comments on board. I do not intend this as a criticism; she is representing herself, disability discrimination claims typically give rise to a range of complex legal issues, and English is not the Claimant’s first language. She also reports ongoing health issues which she says are affecting her concentration. I accept that she has endeavoured to comply with the Tribunal’s various orders and has made available her medical records in support of her claim to be disabled. However, she has focused unduly on the question of whether she and her son have the relevant conditions/impairments, at the expense of the related, but potentially more important question of their effect, at the material time, upon their respective ability to undertake normal day to day activities. In the case of the Claimant, she has described the effects in February 2025 rather than at the material time,

and as regards her son she has described how she has been affected by his diagnosis rather than how he was affected day to day at the material time.

4. The Claimant's position is set out in what is effectively a disability impact statement dated 25 February 2025 (pages 295 to 298 of today's 1083-page hearing bundle) which she adopted as her evidence at Tribunal. The Respondent disputes that the Claimant and/or her son meet the relevant statutory definition within the Equality Act 2010. Its position is set out in its solicitors' letter to the Tribunal dated 11 March 2025 (pages 493 to 499 of today's hearing bundle). As I shall come back to, the Claimant responded to its letter on 17 March 2025 (pages 377 and 378 of today's hearing bundle).

THE LAW

5. Section 6 of the Equality Act 2010, provides as follows:

Disability

- (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.

6. Section 212 of the Equality Act 2010, clarifies that:

- (1) In this Act-
...
'Substantial' means more than minor or trivial.

7. There are supplementary provisions in relation to disability in Schedule 1 of the 2010 Act.

8. Guidance has been issued by the Secretary of State regarding matters to be taken into account by Employment Tribunals in determining questions relating to the definition of disability. I am required to take into account any aspect of the Guidance which appears to be relevant. Paragraph A2 of the Guidance contains a helpful analysis of Section 6 of the Equality Act 2010:

Main elements of the definition of disability-

A1 ...

A2 This means that, in general:

- the person must have an impairment that is either physical or mental;
- the impairment must have adverse effects which are substantial;

- the substantial adverse effects must be long term; and
- the long term substantial adverse effects must be effects on normal day to day activities.

All of the factors above must be considered when determining whether a person is disabled.

9. Paragraph 2 of Part 1 of Schedule 1 to the Equality Act 2010, clarifies:

Long term effects-

- (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; or
 - (c) it is likely to last for the rest of the life of the person affected.
- (2) 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.

10. In this context, paragraph C3 of the Guidance (which reflects the the House of Lords' decision in Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) 2009 ICR 1056, HL) confirms that 'likely' should be interpreted as meaning that it could well happen, something that is a real possibility but not necessarily 'more probable than not'.

11. The issue of how long an impairment is likely to last and/or whether it is likely to recur should be determined at the date of the alleged discriminatory act(s) and not the date of the tribunal hearing — McDougall v Richmond Adult Community College 2008 ICR 431, CA and All Answers Ltd. v Mr W and Ms R [2021] EWCA Civ 606 – so that a Tribunal will fall into error if it has regard to subsequent events when reaching a decision as to what was likely at the relevant time. Accordingly, in deciding whether the effects of any impairments which the Claimant had during the period June 2023 to May 2024 were either likely to last at least 12 months or likely to recur, I must restrict myself to the evidence that was available at that time.

12. Someone who has suffered from a combination of impairments with different effects and to different extents over a period of time, which may have overlapped, can still be regarded as disabled. I note in this regard the section of the Guidance dealing with the cumulative effect of impairments, beginning at paragraph B4. Paragraph B6 states that a person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day to day activities. The given example is a minor impairment which affects physical co-ordination and an irreversible minor leg injury which affects mobility, that taken

together might have a substantial effect on a person's ability to carry out certain normal day to day activities. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long term.

13. It is well established that the onus of proving a disability is on the Claimant, on the balance of probabilities (Morgan v Staffordshire University [2002] IRLR 190).
14. As I observed during the hearing, I am familiar with the Employment Appeal Tribunal's decision in J v DLA Piper UK LLP UKEAT0263/09/RN, where Underhill J, as he then was, drew a distinction between the symptoms of low mood and anxiety caused by clinical depression, which was a situation likely to meet the definition of disability, and those derived from a reaction to adverse circumstances such as problems at work, or adverse life events, which was not. The Employment Appeal Tribunal acknowledged there is a borderline between those two state of affairs which might be blurred, but Underhill J gave guidance as follows:

“We accept that it may be a difficult distinction to apply in a particular case and the difficulty can be exacerbated by the looseness of which some medical professionals and some lay people use such terms as depression, clinical or otherwise, anxiety and stress. Fortunately, however, we would not expect those difficulties often to cause a real problem in context of a claim under the Act. This is because of the long term effect requirement. If as we recommend at paragraph 42 above, the Tribunal starts by considering the adverse effects issue and finds that the Claimant's ability to carry out normal day to day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering clinical depression, rather than simply a reaction to adverse circumstances. It is a common sense observation that such reactions are not normally long lived.”

15. Royal Bank of Scotland plc v Morris UKEAT_0436_10, Dunham v Ashford Windows [2005] IRLR 608 and Herry v Dudley Metropolitan Council and another [2017] ICR 610 each refer to the potential importance of expert medical evidence in disability discrimination cases. In Morris, Underhill J, then President of the EAT said:

[55] The burden of proving disability lies on the Claimant. There is no rule of law that that burden can only be discharged by adducing first-hand expert evidence, but difficult questions frequently arise in relation to mental impairment, and in Morgan v Staffordshire University[2002] IRLR 190, [2002] ICR 475 this tribunal, Lindsay P presiding, observed that “the existence or not of a mental impairment is very much a matter for qualified and informed medical opinion” (see para 20(5), at p 485A-B); and it was held in that case that reference to the Applicant's GP notes was insufficient to establish that she was suffering from a disabling depression (see in particular paras 18-20, at pp 482-4). (We should acknowledge that at the

time that Morgan was decided para 1 of Sch 1 contained a provision relevant to mental impairment which has since been repealed; but it does not seem to us that Lindsay P's observations were specifically related to that point.) ...”

16. The primary issue under consideration in Dunham was whether evidence should be accepted from a psychologist rather than a doctor, but the EAT reiterated, “*that in the case of mental illness medical evidence as to the nature of that illness is likely to be expected*”.
17. Finally, in Herry, Judge David Richardson sitting in the EAT returned to Underhill J’s guidance in DLA Piper UK LLP. He said:

“56 Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of themselves mental impairments: they may simply reflect a person’s character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee’s satisfaction; but in the end the question whether there is a mental impairment is one for the employment tribunal to assess.”

FINDINGS AND CONCLUSION

18. As I have noted already, the Claimant has focused unduly on the question of whether she and her son have the relevant conditions/impairments. She seems to believe that she and her son are disabled for the purposes of the Equality Act 2010 if their conditions/impairments have been present for 12 months or more. In fact, as s.6(1)(b) and paragraph 2 of Part 1 of Schedule 1 to the Act and paragraph A2 of the Guidance make clear, it is the effects which must be found to be substantial and long term in order for a person to meet the statutory test of disability.
19. The Claimant’s available GP records, which date back to 2009, indicate increasingly regular consultations over the years in respect of a variety of issues. The notes of the consultations suggest that the Claimant is prone to worry about her health and, at times, to perhaps assume the worst. I have reflected as to whether and, if so, to what extent the issues reported by her to her GP are psychosomatic or involve some element of functional overlay. Certainly, and as I shall come back to, the Claimant’s perception and

description of the pain she says she has experienced is not always objectively supported by her contemporaneous medical records. However, it is not possible for me to come to an informed conclusion in the matter in the absence of a report from her GP or other relevant health professional. Her medical records do not evidence, for example that she has completed the GAD-7 anxiety test questionnaire or that she has been diagnosed with an anxiety disorder or that she has experienced panic attacks. I simply note the following: in April 2022 she was observed to have a full range of movement and was advised to do some very simple shoulder exercises and stretches, notwithstanding she now claims to have had chronic musculoskeletal pain at that time; in September 2022 she sought antibiotics to treat a common dry eye condition, blepharitis even though her GP noted there was “minimal” swelling of her upper eyelid; on 10 May 2023 the Claimant questioned whether leg pains she was then experiencing might indicate varicose veins; and in February 2024 she underwent a full body MRI scan at her own expense. However, I do not consider that she has deliberately exaggerated her symptoms or, worse, that she has been dishonest. Her medical records are extensive and sufficiently detailed to evidence to me that they capture the Claimant’s perception of her health issues.

20. Turning firstly to what, for convenience, I shall refer to as the musculoskeletal issues, namely the cervical spondylosis, thoracic radiculopathy, chronic musculoskeletal pain and persistent headaches, whilst there is some record of back, shoulder, hip and knee pain and headaches between 2010 and 2012, linked it seems to a job which then involved heavy lifting, and which was aggravated in 2011 by a road traffic accident, the Claimant’s GP records indicate no further issues until April 2020 when the Claimant reported chronic upper scapula muscular pain which she said had been present for a few months. However, she only next consulted her GP about musculoskeletal issues two years later in April 2022, when she reported that she had been experiencing back pain for a week leading up to the appointment. As I have noted already, she had a full range of movement and was recommended to do some simple shoulder exercises. The notes do not indicate any impact upon her ability to carry out normal day to day activities.
21. It was a further year before the Claimant returned to her GP with musculoskeletal issues. In the meantime, on 10 February 2023 she reported having had headaches for six days. The pros and cons of antidepressant medication was discussed, and the Claimant was advised to self-certify for 7 days with stress and anxiety. She was seen again on 30 March 2023 in connection with reported back and neck pain and anxiety related symptoms, though once again was observed to have a full range of movement. However, she was seen by her GP at various points over the following two months and signed off work, though by 1 June 2023 was reporting some improvement in her symptoms. It suggests to me the type of situation described by Underhill J in J v DLA Piper UK LLP, namely a reaction to perceived problems at work. Thereafter, the Claimant did not contact her GP again in relation to musculoskeletal issues until 16 October 2023, but even then only following a workplace accident which had triggered pain in the back of her neck. She was observed to have reasonable movement in her neck and shoulders. The Claimant’s run of misfortune continued when she had a fall at home on 30

October 2023, badly bruising her toes. She went back to see her GP on 8 November 2023 when she reported pain in her right shoulder blade which she attributed to the fall, but returned for a further appointment two days later on 10 November 2023 when she reported neck and back pain which she attributed to the earlier workplace accident.

22. The Claimant saw her GP on 2 January 2024 who noted “multiple problems” including headaches and ongoing right shoulder pain as a result of the workplace accident (she had previously attributed this to the fall at home). She reported the same issues at a further appointment on 16 January 2024. On 1 February 2024 she paid privately to have a full body MRI scan abroad. At her GP’s request, she provided an English translation of the results of the scan. I believe this is the document at pages 547 to 552 of today’s hearing bundle. It refers to cervical spondylitis but provides no further detail as to the extent of any degeneration or the likely effect upon the Claimant’s day to day activities. The condition is noted in an entry in the Claimant’s GP records dated 11 March 2024, along with cervicogenic headache and some early-stage lumbar spine degeneration. Again, there is no further narrative to enable me to understand how any of these conditions may have been impacting the Claimant’s daily activities at that time. Thoracic radiculopathy has never been diagnosed, this would seem to be the Claimant’s own evaluation.

23. The Claimant reported ongoing neck and back pain and headaches on 5 April 2024, and that stress at work was affecting her sleep. Thereafter, I cannot identify any further discussion of these issues until the very end of the year. Instead, the principal issues of concern were abdominal in nature, the Claimant having experienced such issues over quite a number of years. The Claimant was seen by a doctor for 45 minutes on 17 January 2025, in the course of which appointment she seems to have described an escalation in her musculoskeletal symptoms, including wrist pain and pins and needles. However, two weeks later she was reporting “significant improvement” and when asked, she scored the symptoms as 1 out of 10, something she now denies. Her medical records are exceptionally detailed; I am satisfied that they accurately capture what she told her GP on that occasion. Although this was some 9 months after the end of the period with which I am concerned, I have noted this interaction in the context of the Claimant’s disability impact statement just a few weeks later in which she describes various significant impacts in terms of her ability to carry out normal day to day activities. None of the impacts she describes are referred to anywhere in her GP records, and they sit a little uncomfortably with the doctor’s note that she arrived in surgery on 30 January 2023 in good spirits, that her neck symptoms had significantly eased, with no pain in her upper extremity. This contrasts with the statements in her disability impact statement that she was experiencing difficulty getting out of bed, getting dressed and washing her hair, that holding even a plate or cup “feels impossible”, that she was prone to drop heavy objects, and had difficulty doing even modest domestic chores. Her claim that she struggled to sleep through the night due to pain and that she woke multiple times during the night, is at odds with the fact she told her doctor on 30 January 2025 that her sleep had improved.

24. Be that as it may, the fundamental issue is that the Claimant has not set out what she says were the effects of the conditions/impairments on her day to day activities at the time of the events about which she makes complaint. It is clear from her disability impact statement that she is describing the position as at February 2025, particularly as she refers to the effect upon her work for her new employer. However, my focus is the period June 2023 to May 2024; I am not deciding whether she was disabled in February 2025. Whilst the Respondent and I have endeavoured to point the Claimant in the right direction on this issue, it is not for me to make her case for her otherwise I would be stepping into the arena. It is the Claimant's burden to prove that she and her son were disabled at the material time, but she has failed to discharge it. She did not address this significant gap in her evidence when she responded to the Respondent's solicitors' letter of 11 March 2025 notwithstanding that letter had commenced with the following observation:

“As a general problematic issue, in terms of the Claimant's stated impact of the impairments, the present tense is used throughout her statement of 25.2.25, thereby focussing on the Claimant's current experience rather than her condition at the time of her dismissal or any alleged discriminatory treatment prior to her dismissal.”

25. Instead, the Claimant asserted, albeit without providing any further details, that her impairments “had already substantially impacted my ability to work and perform daily activities prior to my dismissal”. She also claimed that two occupational health reports described the impact upon her functionality, something I shall come back to in a moment.
26. Sometimes, a claimant's medical records will include details of the ways in which they are impacted by their health issues. With the exception of a single reference on 5 April 2024 to the Claimant's sleep being impacted by stress at work, I can discern no other reference in her medical records to the impact of any health conditions of hers upon her ability to undertake normal day to day activities. In other words, in the absence of evidence in her disability impact statement, the necessary evidence is not supplied by her detailed GP records.
27. There are two occupational health assessments in the hearing bundle (pages 542 to 546 and 553 to 558). The first, dated 27 July 2023 concludes with the Occupational Health Physician, Dr Pickering, offering his view that the Claimant was not disabled within the meaning of the Equality Act 2010 as the identified impairment at that time, cervicgia (pain in or around the spine below the skull), would not be expected to last for a year or longer, but also because he believed it would not significantly impact her normal daily activities, He did not in fact indicate what activities were impacted, even to a minor degree. After the Claimant was seen again on 16 February 2024, Dr Pickering wrote,

“Since returning to work Ms. Sedjukevica has continued to have variable degrees of neck pain and headaches, but these have been manageable and have not impacted on her ability to complete her contracted role. Symptoms do not get worse as the working day or week progress.”

“She was able to sit comfortably for an hour and her posture was good. Her walking gait and movement of her limbs was normal, there was no difficulty getting up from her chair at the end of the consultation.”

He went on to say,

“It is my opinion that she would be afforded protection by the Act when considering degeneration in the neck and back because it is a long-term condition which has the potential to have a significant impact on her normal daily activities.”

28. Dr Pickering did not identify the daily activities in question or why he considered any impact to be more than minor and of a long-term nature. His stated opinion in the matter is seemingly at odds with his other statement above that any neck pain and headaches were manageable and that the Claimant was able to do her contracted role. If, as I understand him to be saying, there was no substantial adverse effect on the Claimant’s normal daily work activities, it is unclear to me what other activities he may have had in mind, if at all. Indeed, I think he may well have fallen into error in February 2024 in so far as he focused on the long-term nature of the recently identified degeneration in the Claimant’s neck and back rather than, as the 2010 Act requires, the long-term nature of any effects of that degeneration. His report does not identify whether the degeneration was affecting the Claimant in terms of her ability to do normal day to day activities and, if so, what those activities were and whether the impact could be said to be more than minor or trivial. In so far as he recommended that when driving the Claimant should ensure she stopped every 45-60 minutes so she could stretch and walk for a few minutes to avoid her muscles tightening (see page 556), I regard that as a minor, even trivial impact on her normal daily activities.

29. As regards any stress and anxiety, Dr Pickering wrote,

“Ms. Sedjukevica reports she has been struggling with anxiety and stress, she feels a significant cause of her symptoms are work-related; she informs me that she has discussed her concerns with you and is going through a grievance process at the moment. She also has some stressors in her personal life as well which are impacting on her wellbeing.”

Again, he was describing a reaction to adverse circumstances at work and in the Claimant’s personal life rather than an obviously disabling mental health condition.

30. In my judgement, the Claimant has failed to discharge the burden upon her to establish that she was disabled at the material time. As regards her son, I have not been referred to any relevant medical evidence in today’s hearing bundle. That said, the Respondent does not dispute that the Claimant’s son has been diagnosed with type 2 diabetes. However, there is no evidence as to the effect upon his ability to do normal day to day activities. As I have said already, the Claimant has described the effect which the diagnosis has had upon her, namely that it has significantly impacted her ability to function in daily life and at

work, making even basic activities difficult or impossible on bad days. She states that her son's diabetes needs to be monitored and his diet managed, but she offers no further information as to what that entails to enable me to come to a view as to whether the impact upon her son is more than minor. The Respondent has referred me to the decision in Metroline Travel Ltd v Stoute UKEAT/0302/14/JOJ, in which the Respondent's appeal against the tribunal's determination that the Claimant was disabled by reason of type 2 diabetes was allowed. The statutory guidance made clear that a condition controlled by a minor alteration of a diet, in that case abstaining from sugary drinks, was not a long-term condition restricting the ability of a claimant to carry out ordinary day-to-day tasks. Without further information from the Claimant regarding her son's dietary regime and how he (as opposed to how she) manages it, particularly given his age, it is essentially impossible for me to reach any view as to whether the situation is distinguishable from that in the Metroline case. There was a potential opportunity for the Claimant to address the matter when she emailed the Respondent's solicitors following receipt of their letter dated 11 March 2025. However, instead of describing the impact on daily activities she simply wrote:

"The reality that my son's Type 2 diabetes is a lifelong condition that severely affects his daily activities."

31. In my judgement, the Claimant has failed to discharge her burden of proving that her son was disabled at the material time.
32. In the circumstances, I shall strike out the Claimant's disability discrimination complaints as they have no reasonable prospect of success.

Approved by:

Employment Judge Tynan

Date: 1 December 2025

Sent to the parties on:

19 December 2025

For the Tribunal:

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