



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001393/2025

Preliminary Hearing held in Glasgow via Cloud Video Platform (CVP) on 17 October 2025

Employment Judge S Neilson

Mr A Jokiel

**Claimant
In Person**

STEF Langdons Limited

**Respondent,
represented by
Mr O'Carroll,
Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The decision of the Employment Tribunal is that –

1. the claimant was not a disabled person in terms of section 6 Equality Act 2010 during the relevant period because of diverticulosis, hemorrhoids, colonic polyp and/or diahorrea; and
2. the claimant was a disabled person in terms of section 6 Equality Act 2010 during the period of October 2022 to December 2023 only, because of a pus infection in his groin area.

REASONS

Background

1. The case called on 17 October 2025 for an open Preliminary Hearing by CVP to deal with the single issue of disability in relation to the claims lodged by the claimant.
2. The claimant attended in person. The respondent was represented by Mr O'Carroll, Advocate.
3. The background to these claims is that the claimant lodged an ET1 with the Employment Tribunal on 1 June 2025. In the ET1 the claimant brought claims

in respect of constructive unfair dismissal, whistleblowing; disability discrimination, race discrimination and a claim in respect of flexible working.

4. The claims in respect of disability are direct discrimination under section 13 of the Equality Act 2010 ("EqA"); discrimination arising from disability under section 15 of the EqA; failure to make reasonable adjustments under section 20/21 EqA and harassment under section 26 EqA.
5. The claimant is alleging that he suffers from two different disabilities. The first disability he describes as diverticulosis, hemorrhoids and colonic polyp. He also references suffering from persistent and chronic diarrhoea which he alleges is caused by the diverticulosis. The second disability he describes as a pus infection in his groin area.
6. There was a case management preliminary hearing in this case on 3 September 2025 before Judge Robinson. Following that hearing the claimant was required to provide both medical evidence and an impact statement for the respondent to consider regarding the first disability and the second disability. These were provided and the respondent confirmed thereafter that the issue of disability was still disputed.
7. The claimant alleges that both disabilities are substantial and long term and have an adverse effect on his ability to carry out day to day activities – as set out in his disability impact statement.
8. The purpose of the hearing on 17 October 2025 was only to determine disability status. It was agreed that any issue related to knowledge of disability, if still relevant, would be determined at the final hearing.
9. At the hearing the claimant accepted that the relevant period for considering the issue of disability in relation to his claims was the period from March 2023 through to March 2025 – his employment having terminated on 29 March 2025.

Relevant Law

10. Section 6(1) EqA provides that a person has a disability if they have "a physical or mental impairment; and the impairment has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities." The burden of proof is on the claimant to show that he satisfies the definition.
11. The statutory definition of "substantial" in section 212(1) EqA is, "more than minor or trivial".
12. Supplementary provisions for determining whether a person has a disability are found in part 1 of schedule 1 to the EqA. Schedule 1, paragraph 2 provides

that the effect of an impairment is long-term if it has lasted at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person.

13. Schedule 1, paragraph 5(1) EqA provides that an impairment is treated as having a substantial adverse effect on the ability of the person concerned if measures are taken to correct it and, but for that, it would be likely to have that effect.
14. The Equality and Human Rights Commission Code of Practice on Employment 2011 sets out guidance on the meaning of disability at Appendix 1 (the Code). Supplementary provisions on disability status are also contained in the Guidance on matters to be taken into account in determining questions relating to the definition of Disability (the Guidance),
15. There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause (paragraph 7, the Code).
16. A substantial adverse effect is something which is more than a minor or trivial effect (paragraph 8, Appendix 1) and “Account should also be taken of where a person avoids doing things which, for example, cause... substantial social embarrassment.....” (paragraph 9, the Code).
17. If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is, if it might well recur (paragraph 13, the Code).
18. Day to day activities are things people do on a fairly regular and frequent basis and include but are not limited to –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 oneself (paragraph 15, the Code). Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment). In such cases the treatment is ignored, and the impairment is taken to have the effect it would have had without such treatment (paragraph 16, the Code).
19. The leading case on the examination of whether a person is disabled is the EAT decision of *Goodwin v Patent Office [1999] ICR 302*. While that case concerned the predecessor legislation to the EqA, the four questions identified in Goodwin remain appropriate: (1) Does the claimant have an impairment which is either mental or physical? (2) Does the impairment affect the claimant’s ability to carry out normal day-to-day activities, and does it have an

adverse effect? (3) Is the adverse effect (upon the claimant's ability) substantial? (4) Is the adverse effect (upon the claimant's ability) long-term?

20. The time at which to assess the disability (i.e. whether there is an impairment that had a substantial adverse effect on normal day to day activities) is the date of the alleged discriminatory act (*Cruickshank v VAW Motorcast Ltd [2002] ICR 729, EAT*). This is also the material time when determining whether the impairment has a long-term effect.

Issues

21. The issues to be determined were whether the first disability and second disability qualify as disabilities under Section 6 of the EqA.

Findings in Fact

22. I make the following findings in fact having heard evidence from the claimant and considered the documents provided by the claimant – primarily his impact statement and medical records.

23. The claimant had an operation for a hernia in Warsaw, Poland in or about 2002 that left a scar in the left-hand side of his groin.

24. The claimant was employed by the respondent as an HGV driver between 10 May 2022 and 29 March 2025. He was based at the respondent's Motherwell site.

25. In or about early October 2022 the claimant noticed that the scar in his groin area was weeping a liquid. This was the first time that he experienced this.

26. The claimant consulted his GP on 22 October 2022 regarding the discharge from his groin scar.

27. A radiology report was carried out in or about 6 February 2023 in relation to the scar in the claimant's groin area. The report recommended a referral to general surgery.

28. On 23 February 2023 the claimants GP referred the claimant to the general surgery team at University Hospital Wishaw to examine the scar in his groin area.

29. The claimant continued to experience discharge from the scar in his groin area from time to time throughout 2023 until at least October 2023.

30. On 27 June 2023 the claimant had a consultation with his GP about the continuing discharge from the scar in his groin area.

31. The claimant had a further consultation on 2 October 2023 with his GP regarding the discharge from the scar in his groin area.
32. The discharge from his scar required to be cleaned regularly and necessitated a change of underwear and clothes. The claimant required to carry wet wipes to keep it clean.
33. The discharge was unsightly and foul smelling and had an impact in inhibiting the claimants sex life.
34. Lifting any heavy weight, such as a pallet, exacerbated the problem of the discharge in his groin area.
35. The claimant, as part of his role, was required to lift weights such as pallets.
36. The claimant was prescribed antibiotic medicine for the treatment of the discharge from his groin scar on 20 October 2022 (Flucloxacillin); 24 May 2023 (Flucloxacillin); 27 June 2023 (Co-amoxiclav) and 2 October 2023 (Flucloxacillin)
37. The claimant had the scar area of his groin examined at Monklands University Hospital in early December 2023. At that time the report back to the claimant's GP noted that "There was no visible suture material or associated inguinal hernia recurrence." The report noted that a CT scan had been requested.
38. Following a CT scan carried out in early September 2024 in relation to the claimant's groin scar signs of chronic diverticulitis were noted. A colonoscopy was arranged for the claimant for October 2024.
39. The claimant was diagnosed on 14 October 2024 as having diverticulosis following a colonoscopy. The colonoscopy report of 14 October 2024 from the Golden Jubilee Hospital stated under "Advice Comments" – "Mild scattered diverticulosis, otherwise reassuring."
40. Following a stool test the claimant was advised in February 2025 by his GP to have a further colonoscopy.
41. Following a colonoscopy on 31 March 2025 the claimant was diagnosed as having "Diverticulosis, haemorrhoids and Colonic polyp". The Colonoscopy report from Hairmyres Hospital noted "no current bowel symptoms." Under Advice/Comments it was noted "Diverticular disease and haemorrhoid advice some area of diverticular disease has minor inflammation."
42. The claimant from time to time suffers from diarrhoea.

Discussion & Decision

The First Disability

43. The first issue is to determine whether or not the first disability is a physical impairment. In considering the issue of physical impairment it is not necessary to be able to point to the cause of that impairment (*Millar -v- Inland Revenue Commissioners 2006 IRLR 112*). The claimant has set out his first disability as being diverticulosis, haemorrhoids and Colonic polyp. However, he has also consistently referenced diarrhoea. This is set out in his ET1 where he references diverticulosis, haemorrhoids and Colonic polyp causing diarrhoea. In the agenda for the case management preliminary hearing the claimant referred to his disability as (under Schedule 2 – D1) “diverticulosis, haemorrhoids, Colonic polyp, diarrhoeas”. In his impact statement the claimant is clear that it is the diarrhoea that causes him a problem with his day to day activities.
44. Mr O’Carroll for the respondent submitted that there had to be a causal link between the impairment and the adverse effect. That was put forward on the basis that the impairment was the diverticulosis and the adverse effect was the diarrhoea. However, I think it would be wrong to simply focus on the diverticulosis when in reality what the claimant is saying is that the diarrhoea itself is a physical impairment. I consider that it is not helpful to micro – analyse the particular bowel issues and that one should approach this from the point of view of considering whether there is a physical impairment rather than focussing on the precise medical cause. On that basis I am satisfied that there is a physical impairment in that the claimant has clearly been diagnosed as having diverticulosis and I would also accept that he does suffer from time to time from diarrhoea. There is no medical evidence to establish any link between the diverticulosis and the diarrhoea – but I do not think it is necessary that a clear medical link is established.
45. The second issue is whether it had an adverse effect on the claimant’s ability to carry out day to day activities. The diverticulosis has no impact on day to day activity by itself – I accept that there is no evidence that shows that it has directly caused any day to day issues. On the issue of the Haemorrhoids the claimant accepted that they do not impact his day to day activities and there was no evidence that the colonic polyp had any impact upon day to day activities.
46. The diarrhoea is a separate matter. The claimant in giving evidence stated that on average he has to go to the toilet 5 times a day. That this has been an issue since he started work with the respondent. That it impacts his day to day activities by restricting his social activities by the need to constantly be close to toilet facilities. The claimant also referenced occasions when he would have an accident, requiring a change of clothes.

47. In considering this issue I have had regard to both what the claimant has said in his impact statement and in evidence at the hearing, and to the medical records. The medical records disclose no reference whatsoever to diarrhoea or any other bowel problems other than the references to diverticulosis etc. I do find it very surprising that given both the severity of the diarrhoea issue that the claimant alleges and the fact that he is no stranger to seeking medical advice that there should be no reference to the diarrhoea in the medical notes. The medical notes cover the period from May 2022 through to March 2025. I also note that the discovery of the diverticulosis only arose because of the CT scan that was looking at the groin scan. It did not arise because the claimant was complaining of bowel issues. It was only following that scan that in September 2024 diverticulosis was suggested and then confirmed in October 2024. I would have expected that if the claimant was experiencing severe bowel issues in the period from when he started with the respondent – as he alleges – then he would have raised that with his GP on at least one occasion. At no point does he appear to actually raise it with his GP. The claimant was in very regular contact with his GP during 2022 and 2023 and into 2024 regarding the second disability. He was also in regular contact with his GP practice to obtain a prescription for his inhaler every month or second month (he has asthma). I also note from the medical records that he complained to his GP in July 2024 regarding a varicose vein. If he was impacted by persistent chronic diarrhoea as he claims then I would have expected this to be raised with his GP. If, as the claimant, alleges, it is linked to his diverticulitis and he is undergoing further tests for possible cancer then I do find it remarkable that the issue has not been raised.

48. I also note that the hospital records dealing with the diverticulitis make no reference to any diarrhoea or other bowel problems. Specifically, the Colonoscopy Report of 14 October 2024 makes no reference to diarrhoea. The Colonoscopy Report of 31 March 2025 states “no current bowel symptoms”.

49. The claimant in his impact statement references being advised by medical professionals to follow a strict dietary regime (both at paragraph 4 and 4.1 – where he references a “medically prescribed dietary regime”) – but there is no evidence of any such advice being given to the claimant in his medical records. When asked about this under cross examination he accepted that he had not received formal written advice but insisted it was what he was told by doctors. There is however no evidence that he ever formally consulted a doctor on this issue.

50. In terms of the credibility of the evidence from the claimant I also take into consideration what is said at paragraph 14 of Judge Robinson’s note of the case management preliminary hearing “The claimant’s position is that he was

diagnosed with the linked conditions of diverticulosis/hemorrhoids and colonic polyp (the first disability) in late 2022, and he informed Mr McLachlan about them in the beginning of 2023." This is in contrast to the medical evidence and the admission made by the claimant at the hearing that the full diagnosis was only made in March 2025 with diverticulosis being first diagnosed in October 2024. The claimant alleged that what he said at the case management hearing was misinterpreted due to English being a second language and that he meant that his symptoms started in 2022. I do not accept that explanation. The claimant has demonstrated a good ability to conduct these proceedings in English to date and I find the reference from Judge Robinson to be very specific and when linked to the reference to informing Mr McLachlan about them in the beginning of 2023 I accept that the note is likely to be an accurate record of what was said. I do find that this then damages the credibility of the claimant in relation to his broader evidence.

51. In considering the impact statement the claimant has, in my opinion, tended to exaggerate the impact of his condition. Under the heading of what the claimant claims he cannot do in paragraph 3 are:-

“• maintain ability to participate fully and effectively in working life on an equal basis with other workers
• lifting heavy items (up to 25kg)
• working at night
• interacting with colleagues
• driving
• keeping to a timetable or shift pattern”

If that were correct it would be impossible for the claimant to remain in his role as an HGV driver – yet he carried on in that role until March 2025 when he resigned.

52. The onus is on the claimant to establish his case and in the absence of any medical evidence and given the concern I have about the claimant's credibility I am not satisfied that he has established that the physical impairment has had an adverse effect on his ability to carry out day to day activities. I accept that there may have been occasions when the claimant suffered from diarrhoea but I am not satisfied that it was to the extent described by the claimant in his impact statement or that it both had an adverse impact upon his ability to carry out day to day activities and was substantial.
53. For the reasons set out above I do not find that the claimant has a disability in terms of Section 6 of the EqA in respect of diverticulosis, hemorrhoids, colonic polyp and/or diarrhoea.

The Second Disability

54. I find that the claimant did have a recurring discharge from his groin scar in the period from October 2022 through to around December 2023. The medical records support the evidence provided by the claimant for this. On the first issue I accept that that is a physical impairment.
55. The second issue is whether it had an adverse effect on his ability to carry out day to day activities. The claimant alleged that it had an impact both in his requirement to be cleaning it and changing underwear and in particular in relation to his sex life. Whilst I appreciate that I have not found the claimant credible in relation to his evidence on the impact of the diarrhoea I do consider that he is more credible on this issue. The medical evidence strongly supports the evidence put forward by the claimant in regard to the second disability. It does appear that the second disability was the primary medical issue that was concerning the claimant through the later part of 2022 and into 2023. I accept his evidence in relation to the impact that it had upon him and I am satisfied that those impacts do mean that the second disability had an adverse impact upon his ability to carry out day to day activities. I also take into consideration that the claimant was in receipt of medication to lessen the impact of the second disability – I must of course discount that.
56. The third issue is whether the adverse effect is substantial. I do accept that it was substantial as the effect was in my view not trivial particularly as regards the impact on his sex life.
57. The final issue – whether it is long term. On this Mr O'Carroll submitted that according to the dates in the medical evidence the issue is covered by medical entries running from 20 October 2022 through to 2 October 2023 – when the claimant is last prescribed with an anti-biotic. This is just under 12 months. However, even on the medical evidence it is clear that the claimant complains of the discharge starting a couple of weeks before 20 October 2022 (the notes refer to the claimant mentioning that it occurred about two weeks prior whilst on holiday) and if he is last provided with anti-biotics on 2 October 2023 these would take a few weeks to run through. Accordingly, I am satisfied that the condition has lasted more than 12 months. It does therefore qualify as long term.
58. Mr O'Carrioll' main submission on the second disability was that in any event the evidence points to the condition having been cured by at latest December 2023. That is the date of the medical report from University Hospital Monklands. Under cross examination the claimant accepted that there were no further medical records that showed any further issues with his groin scar after December 2023. The claimant in evidence said that there had been a recurrence and he referred to having a recurrence as at the date of the

hearing. He also claimed that there would be medical records from after the end of his employment that would support this (although these were not produced). He did however accept that there were no medical records to support any recurrence from December 2023 to the end of his employment.

59. There is no medical evidence of any further medical intervention on the second disability after December 2023. There is no evidence in the GP notes or in any hospital or consultant records. There is no evidence of any further medication beyond October 2023. Based on the medical records it would appear that the issue of the second disability had resolved by December 2023. Given that the claimant was regularly in contact with his GP and other consultants in the period from October 2022 through to December 2023 in respect of the discharge from his groin scar and was regularly receiving antibiotics in that period the absence of any further mention in the medical records and in particular the absence of any further prescriptions strongly suggests that there was no recurrence in the period from December 2023 through to March 2025 (the end of employment). In Mr O'Carroll's submission the evidence points to the issue having resolved by that date with no evidence that it was likely to recur. I do have to consider whether the substantial adverse effect is "likely to recur" and in considering that I bear in mind that that has been interpreted as "could well happen" (*SCA Packaging Limited -v- Boyle 2009 UKHL 37*). The fact that there has been a recurrence since the end of the employment is not relevant for these purposes. I am required to consider the issue as at the date of the alleged discrimination – which in this case means at the latest 29 March 2025 (see *McDougall -v- Richmond Adult Community College 2008 IRLR 227*).
60. There is no evidence that the second disability manifested itself prior to October 2022. The claimant had the scar for 20 years prior to then. The medical evidence that I have seen gives no real explanation as to why the discharge occurred when it did. The claimant alleged that lifting heavy weights exacerbated the problem. However, given his job it is difficult to see why lifting heavy weights would not have brought on the problem before October 2022 or between December 2023 and 29 March 2025. Considering the matter as at March 2025 there is no evidence to suggest that the discharge is something that could well happen again. It would appear to have fully resolved by December 2023 – and in light of the fact that it did not occur during the first 20 years I consider that it cannot be said that it is likely to recur. Accordingly, I find that whilst the claimant did have a qualifying disability in respect of the second disability in the period between October 2022 and December 2023 that it had resolved by December 2023 and that for the remainder of his employment he did not have a disability in respect of the second disability.

Conclusion

61. As set out above I find that the first disability is not a qualifying disability under the EqA section 6. That the second disability is a qualifying disability under the EqA but only in respect of the period from October 2022 to December 2023.

Date sent to parties01 December 2025