



EMPLOYMENT TRIBUNALS

Claimant: Miss M Klonek

Respondent: University Hospitals Sussex NHS Foundation Trust

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Amended further to an application from the claimant
under Rule 49**

Heard at: London South Employment Tribunal (by CVP)

On: 27 & 28 March 2024 and in chambers on 15 April 2024, and amended
in chambers on 30 and 31 December 2025

Before: Employment Judge Kelly (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr Davies, solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that:

The claimant had a disability under the Equality Act 2010 by reason of the impairment of irritable bowel syndrome (IBS) during the period December 2021 to 27 Mar 2024. The claimant's claim that she had such a disability by reason of other impairments is dismissed.

REASONS

1. During the first day of the hearing, we considered whether the claimant was disabled by reason of any or all of the conditions which she relied on. This Judgement deals with this issue.
2. In a preliminary hearing on 24 Nov 2023 (Nov PH), we had identified the medical conditions relied on by the claimant as disabilities as: Condition1: IBS;

Condition 2: Anxiety, stress and PTSD; and Condition 3: Sweating and poor sleep due to peri menopause.

3. However, in this hearing, the claimant widened Condition 3 to be general peri menopausal symptoms. She widened Condition 2 to include hair loss. She also added as a putative disability a Condition 4: heart condition.
4. Neither party had produced a new bundle further to that prepared for the Nov PH and we were referred to this bundle. The claimant also relied on her document entitled The amended nature of the impairment relied upon as amounting to disabilities v2.0 (Impact Statement 2) and what the claimant called a wellbeing self referral.
5. The Impact Statement 2 was effectively the claimant's impact statement on disability. She had produced a first version for the Nov PH and her Impact Statement 2 was her second version of this.
6. The respondent's position on the disability question was as follows. It conceded that IBS was a medical condition but it did not accept that it had a substantial adverse effect on ability to undertake day to day activities (SAE). The respondent denied that Conditions 2 and 3 were medical conditions and that they amounted to disabilities. The respondent contested that Condition 4 was a disability.
7. The claimant gave oral evidence and was cross examined on it.
8. At the start of the hearing, the claimant identified that the relevant period for deciding the disability issue was 13 Aug 2020 to 26 Mar 2024.

Relevant evidence

9. The claimant had produced her GP records from 6 Jan 2022 to 21 Aug 2023. The GP record also had a summary at the start.
10. This summary recorded as active problems: IBS with the date 4 Nov 2021; and alopecia with the date of 20 Oct 2021. Others matters mentioned have no relevance to the putative disabilities.
11. The summary also set out significant past problems. Included here were: 21 May 2021 Irritable colon; 11 Jun 2013 IBS; 14 Jul 2008 Puerperal depression. None of the other items were related to the putative disabilities.
12. The summary also set out minor past problems including: 10 Feb 2022 Stress at work; 24 Sep 2020 stress-related problem; 20 Mar 2019 stress related problem; 4 Oct 2016 stress at work; 20 Jul 2016 Stress related problem; 17 Dec 2014 loose stools; 20 Jun 2014 abdominal pain; 11 Jul 2013 poor sleep pattern; 9 Jan 2013 chronic diarrhoea; 21 Jun 2011 stress incontinence – female; 28 Jun 2009 diarrhoea. None of the other entries appear to have any potential relevance to the putative disabilities.
13. The section of the notes on consultations from 6 Jan 2022 to 21 Aug 2023 had the following entries which may be relevant to the putative disabilities:

- a. 10 Feb 2022: 'Stress at Work (New)' The notes include that the claimant was feeling overworked and unsupported and anxious at work. She was managing to eat and go out for a run. The outcome was to arrange for the claimant to self refer herself for counselling. A sick note was declined. She was to seek medical advice if her symptoms worsened.
- b. 14 Mar 2022: There is a record of something happening to the claimant which might objectively be seen as stressful but no record of any medical issue suffered by the claimant and we do not consider this demonstrates Condition 2.
- c. 13 Apr 2022: The note described that the claimant was struggling with issues with her former partner. It records that the claimant felt she had PTSD, but do not record this diagnosis by the GP. There is no diagnosis of the matters discussed, but the GP prescribed fluoxetine which we take judicial notice is an anti depressant.
- d. 19 Apr 2022: The note refers to the claimant having to 'get to the loo as has IBS'. It relates to the claimant's upset over family issues but does not diagnose any medical condition. There are further consultations relating to the claimant's upset over family issues on 4 May 2022 and 6 May 2022 but with no diagnosis of a medical condition. The entry on 6 May recorded that the claimant did not wish to take medication.
- e. 24 May 2022: Seen in A&E with palpitations. Nil found. An ECG to be booked.
- f. 9 Jun 2022: 'ECG SR, nil acute, rate 60'. There is no comment on what this meant.
- g. 20 Jun 2022: Referral to hospital cardiology.
- h. 8 Sep 2022: The claimant had been losing hair for 12 month. She had no hot flashes or night sweats. She had not slept for 2 nights as stressed over a domestic issue. She was having counselling. The claimant said friends had told her it was perimenopause. The surgery provided leaflet on menopause. No diagnosis was recorded.
- i. 20 Sep 22: the claimant continued to lose hair. This was worse in last two months. The GP noted that it was likely to be caused by stress.
- j. 30 Sep 2022: The claimant continued to lose hair. She was waking at midnight and felt sweaty. He GP suggested antidepressants. She was upset over domestic issue. She had 'good friends' and was getting counselling. She reported that she got panic attacks (Note that in her claim form, the claimant said she had a panic attack on one occasion.). The GP offered HRT and anti depressants. The GP commented '??' hair loss may be related stress or perimenopause'. She was referred to a dermatology clinic for her hair loss.

- k. 12 Oct 2022: The claimant had discussed her symptoms with a friends and thought her problems were due to a lack of progesterone. She was prescribed progesterone.
 - l. 15 Nov 2022: seen in dermatology clinic when the claimant had had hair loss for at least a year. The situation would be monitored.
 - m. 17 Nov 2022: In another consultation in which the claimant complained of stressors at work, the claimant refused a sick note and no diagnosis was made.
 - n. 5 Jan 2023: There was a consultation relied on by the claimant but apparently showing nothing relating to the putative disabilities; it was about the claimant having pain on getting out of bed. The GP commented 'possible perimenopausal still I believe'.
 - o. On 17 Feb 2023, the claimant felt well in herself. She had no other concerns except for a rash on her back.
 - p. On 7 May 2023, on receipt of a letter from a cardiology unit, the GP concluded that the claimant 'has ectopics which may be treated with lifestyle measures but no significant tachyarrhythmia.' The cardiology letter stated that the claimant was discharged. The claimant also had a consultation with her GP on the same date during which the cardiology issue was not discussed (and it was not discussed in any later consultation). Other unrelated conditions were discussed and the claimant said that her hair loss had improved.
 - q. On 21 Aug 2023 there was a review headed problem 'IBS', giving a history of known IBS, bloated, flatulence, hard to sleep, 'gets sweats ?perimenopause', loose stools 3-5 times a day. The claimant was prescribed amitriptyline. The claimant's evidence was that this medication was for her insomnia, migraine, pain and depression.
14. Apart from the consultations above, the claimant also had other consultations with her GP during the period on unrelated matters such as back pain and dermatological issues, during which consultations none of the putative disabilities were recorded as being discussed.
15. A 4 Nov 2020 assessment from a psychological service recorded an outcome that the claimant was mildly depressed and not particularly anxious.
16. The claimant completed a counselling self assessment form on 1 Aug 2022 in which the claimant said she had a burden of high level stress and pressures. When asked how this affected her, the only effect on her health which the claimant listed was 'tearful and very stressed' and sometimes she could not sleep. The claimant said she had close friends supporting her. To cope, she slept, talked to friends, ate out and walked.
17. A letter from Seaside Medical Centre of 24 Oct 2022 stated that the claimant had consultations regarding stress and emotional problems several times in the last 13 years. The first was in March 2019 (this date must be a typo) when her

mood was low due to problems in her relationship and she was given citalopram but did not continue it and was referred for counselling. In Sep 14, she presented with low mood and was referred for stress management. In Sep 20, she presented with stress and was referred for counselling. In Apr 22, she presented due to issues with ex-partner and was prescribed fluoxetine which was not continued and encouraged to self refer for counselling. The GP met her in September 2022 when she was distressed about what had happened to her over the previous 12 years and it was agreed that antidepressants were unlikely to help her distress which was a normal reaction to extremely challenging life events.

18. On 9 Oct 2022, there was a referral to a dermatological service regarding hair loss. This recorded that the hair loss started a year before, but was more severe over the last 2-3 months. There were no bald patches. The hair looked reasonably thick but was considerably thinner than historic photos. No hot flashes. It was likely to be stress related.
19. A letter of 8 Mar 2023 from a spinal orthopaedic clinic recorded that the claimant had one episode of bowel incontinence and had been actively exercising.
20. The claimant set out the effect of her conditions in her Impact Statement 2, which was her second opportunity to provide written evidence on this. The Tribunal also gave her extensive opportunity to add to this by asking her relevant questions in the hearing.

IBS

21. The claimant said she found it challenging to maintain regular office work because her stomach was inflated and rumbling. She was embarrassed at having to go to the toilet a lot. These effects led to comments from colleagues. This led her to start fasting for an extended period of the day from December 2022. She considered her colleagues did not invite her out after work because she did not eat late. She felt the condition had prevented her from forming bonds with colleagues from end 2021/2022. She considered that the effect of her IBS on her ability to undertake day to day activities started from the end of 2021.
22. The claimant had challenges using public transport especially when toilet facilities were uncertain or unavailable.
23. The claimant said her condition stopped her playing tennis or going running from the end of 2021 or beginning of 2022.

Anxiety, stress and PTSD and hair loss

24. In her Impact Statement 2, the claimant said she had been anxious for 14 years. She said she experienced distressing flashbacks from past traumatic events, the first occurring in 2008, resulting in sleepless nights and being confined to home. She said she may avoid social gatherings or public places where she felt vulnerable. She said she found it challenging to engage in social activities and maintain connections with friends. She said it affected her

parenting abilities and her libido. Sleeplessness caused daytime fatigue and sleeping extensively at weekends.

25. In the Tribunal when asked about the effect on her day to day activities, the claimant responded that she could not trust people. She stopped going out from 2022 because she felt lethargic. Her relationship with her family had broken down. She said she struggled with parenting because she was tired and absent minded. Her daughter became upset with her because her daughter felt she was not listening to her or paying her enough attention or going out with her from 2022. She had lost her relationship with her friends because she did not go out. This was more extreme in Feb and Mar 2023. She said the sleeplessness started in 2013 to 15 and it got worse at the end of 2021. She said it made her 'less focused' on tasks at work, which affected her performance. She became quiet at work from Aug 2021. Her libido declined from summer 2021.
26. The claimant could not give an effect on her day to day activities of her hair loss. She said she was not going out in any event.
27. The claimant said she had a fear of asking for medical treatments. She gave as an example that a couple of months ago, she had not sought medical advice when her kidney was hurting. She said she struggled to ask for anti depressants and adhere to treatment plans.
28. The amitriptyline caused side effects in Aug 2023, but she only took it for a couple of weeks.
29. Under cross examination, the claimant accepted she had no PTSD diagnosis.

Peri-menopausal symptoms

30. The claimant said she was relying on symptoms including hot flashes, mood swings, fatigue and sleep disturbance. She said she was first diagnosed on 30 Sep 22 and 5 Jan 23. We note that there was no such diagnosis on either date or at all. On 30 Sep 22, the claimant suggested to her GP it could be perimenopause, and on 5 Jan 23, the GP noted that symptoms were possibly due to perimenopause.
31. The claimant relied on sleep disturbance, night sweats, fatigue affecting her performance at work, feeling irritable, anxious or sad, and this may impact her relationships with colleagues and family.

Heart condition

32. The claimant said her symptoms started in May 2022. She said she got short of breath when walking upstairs. In her Impact Statement 2, she said she was short of breath when experiencing an episode.

Relevant law

33. Section 6(1) EQA sets out the statutory definition of disability: a physical or mental impairment which has a substantial and long-term adverse effect on the employee's

ability to carry out normal day-to-day activities. We will use 'SAE' below to mean a substantial effect on the claimant's ability to carry out normal day-to-day activities.

34. Section 212(1) EQA defines 'substantial' as 'more than minor or trivial'.

35. This is supplemented by Schedule 1 Part 1 EQA 'Determination of Disability' which says:

- a. The effect of an impairment is long-term if it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. Note that the long term requirement relates to the effect of the impairment, not merely the impairment itself.
- b. 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.
- c. 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—
 - i. measures are being taken to treat or correct it, and
 - ii. but for that, it would be likely to have that effect.
- d. "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

36. In *Goodwin v The Patent Office* [1999] ICR 302 Morison J set out four conditions that require consideration when assessing whether a person is disabled, at p308B: 'The words of the section require a tribunal to look at the evidence by reference to four different conditions. (1) The impairment condition. Does the applicant have an impairment which is either mental or physical? (2) The adverse effect condition. Does the impairment affect the applicant's ability to carry out normal day-to-day activities in one of the respects set out in paragraph 4(1) of Schedule I to the Act, and does it have an adverse effect? (3) The substantial condition. Is the adverse effect (upon the applicant's ability) substantial? (4) The long-term condition. Is the adverse effect (upon the applicant's ability) long-term?'

37. In the EAT judgment in *J v DLA Piper UK LLP* UK EAT/0263/09 the Court stressed the importance of analysing the effect of the employee's condition rather than focussing on a medical diagnosis.

38. When considering disability, the Tribunal must take into account the statutory guidance, "Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability" ("Guidance"). Guidance is also found in the EHRC Employment Code.

39. The Guidance says that:

- a. (D3) In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education- related activities, such as interacting with colleagues, following

instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

- b. (Appendix) As an example of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities: a difficulty carrying out activities associated with toileting, or caused by frequent minor incontinence; difficulty using transport; for example, because of physical restrictions, pain or fatigue, a frequent need for a lavatory; difficulty eating.
40. However, in *Mr A Elliott v Dorset County Council* UKEAT/0197/20/LA, the EAT advised: 'Where consideration of the statutory provision provides a simple answer, it is erroneous to find additional complexity by considering the Code or Guidance.' It also stated: 'The Guidance and Code are most likely to be useful where the answer to the question is unclear. If the answer is clear it may not be necessary to consider the Guidance or Code at all.'
41. The burden of proof lies on the claimant to demonstrate that they have a disability under EQA.

Conclusions

IBS

42. The claimant suffered from IBS on a long term basis, with her GP notes confirming this was a significant problem starting on 2013. On 21 Aug 2023, the GP reviewed the claimant's IBS condition. In her evidence, the claimant said she considered that the IBS started to have an effect on her ability to undertake day to day activities from the end of 2021.
43. We accept the claimant's evidence that, from the end of 2021, IBS did have an SAE. This date frame reflects the other evidence given by the claimant relating to effects from the end of 2021.
44. We accept that she had to go to the toilet a lot and this can be seen as falling within the category of a difficulty carrying out activities associated with toileting, or caused by frequent minor incontinence, as identified by the Guidance as reasonably being viewed to have an SAE. She also experienced difficulties travelling on public transport because of the need to access toilet facilities. The Guidance identifies as reasonably to be viewed as an SAE: difficulty using transport; for example, because of ... a frequent need for a lavatory. We consider that the coping mechanism adopted by the claimant of extended fasting represents a difficulty eating, as referred to in the Appendix to the Guidance. We also consider that recreational sport such as tennis and running is normal day to day activity and that the condition stopping the claimant from pursuing these is also a SAE.
45. We do not consider that the claimant proved her case in claiming that she stopped forming social bonds with colleagues due to IBS. The claimant was vague in her assertions. She failed to cite any specific example with a time frame for it. It is not possible to discern a clear pattern of lack of socialisation with colleagues or that it was a substantial effect.

46. We conclude therefore that the claimant had a disability under the EQA by reason of IBS from the end of 2021, which is when the claimant said the condition started to have a SAE. We accept that it was still continuing to have an SAE as at the date of today's hearing, based on the claimant's evidence and so it was a disability for the period end 2021 to 26 Mar 2024, which is part of the relevant period. The claimant did not specify a date at the end of 2021 when it started to have an SAE. However, having reviewed the disability discrimination issues identified to date, this does not seem material. For the sake of certainty, we identify the end of 2021 as meaning December 2021.

Anxiety, stress, PTSD and hair loss

47. We will deal with hair loss first. We do not consider that the claimant has demonstrated that this had an SAE. The claimant was unable to cite any aspect of her day to day activities affected by it. On October 2022, the referral to a dermatological service stated that there were no bald patches and the hair still seemed reasonably thick. It was only by comparison to earlier photos that it could be seen as different. Although we appreciate that any hair loss can be upsetting, it seems very unlikely that still having reasonably thick hair would have any SAE and this is consistent with the claimant's inability to describe any SAE related to the hair loss. This impairment did not amount to a disability.

48. According to her GP record, the claimant had, a significant past problem of puerperal depression in 2008. This was many years before the relevant period and there is no indication from the GP records that this condition could well recur. By its nature, it would appear restricted to incidents of childbirth.

49. It is clear from the medical record that the claimant suffered from stress related problems intermittently after this. Episodes are recorded in the medical record and GP letter of Oct 2022 in Sep 14, Jul 16, Oct 16, Mar 19, Sep 2020, and Feb 2022. In March 2019, the claimant was prescribed citalopram but did not continue it and had counselling. In Nov 2020, the claimant was assessed as merely mildly depressed and with normal levels of anxiety. April 2022, the claimant tried, but gave up on an anti-depressant, and then had counselling. There is also a consultation related to stress in Sep 2022, when the claimant declined anti depressants. These are all described in the section of the notes headed 'minor past problems'. In the GP letter of October 2022, the conclusion was that the claimant was suffering distress as a normal reaction to extremely challenging life events. There was no diagnosis of PTSD. That she had PTSD was something which was suggested to her GP by the claimant.

50. Having distress as a normal reaction to challenging life events does not mean that there was an SAE or that, if there was, such an SAE could well recur. The fact that the GP classified stress related problems as 'minor past problems' suggests that there was no SAE, although it is not determinative of this.

51. The claimant said the stress condition caused her sleeplessness resulting in a lack of focus at work and apparently also lethargy meaning she stopped going out from 2022. She said she avoided some social situations and public places, fell out with her daughter and feared asking for medical treatment. The claimant was vague in her assertions.

52. We find there is contradictory evidence on these assertions.

- a. In August 2022, the only effects of stress which the claimant recorded in a self assessment form was that she was tearful, stressed and sometimes could not sleep. No other effects are stated. We do not consider that being tearful, stressed and sometimes being unable to sleep can, without more, amount to effects on ability to carry out day to day activities. She said she had close friends supporting her, and that she ate out and walked. This is inconsistent with her assertion that she had an impairment which meant she avoided going out and social situations or that it affected her friendships.
- b. We do not accept that the claimant was prevented from seeking medical advice, given the frequency of GP consultations recorded in the notes provided.
- c. By Feb 2023, the claimant felt well and had no other concerns apart from a dermatological issue.

53. We consider that falling out with a daughter is a commonplace.

54. The claimant did not refer us to any evidence that her performance at work suffered.

55. The claimant has not proved that stress and anxiety caused an SAE. We prefer the evidence contained in contemporaneous documents to the claimant's evidence for this hearing. We consider that, as classified by her GP, this was a minor medical problem, and was essentially distress as a normal reaction to extremely challenging life events. We do not consider that the disability provisions of the EQA are intended to cover distress which most people suffer to challenging life events which happen from time to time. As we have found the claimant did not establish an SAE, we have not had to consider the question of whether it was long term.

Peri-menopausal symptoms

56. The claimant complained of hot flashes, mood swings, fatigue and sleep disturbance. She said it affected her performance at work and may impact on her relationships with colleagues and family.

57. We have already considered these claimed effects of day to day activities above in the context of the putative disability of stress and anxiety. We concluded that the claimant had not established an SAE. We confirm that this is our view in the context of the claimant ascribing them to being peri-menopausal. The matters she is complaining about do not feature in her GP notes as active problems, significant past problems or minor past problems. This supports our finding that there was no SAE. As we have found the claimant did not establish an SAE, we have not had to consider the question of whether it was long term.

Heart condition

58. The claimant complained of shortness of breath, in her Impact Statement, when experiencing an episode, and in the Tribunal, when going up stairs. There is no medical evidence of any day to day impact on the claimant of her heart impairment. We consider it significant that, when the claimant had a consultation with her GP on 7 May, the day her GP apparently reviewed the cardiologist letter, there is no record that the issue was even discussed. If the claimant was suffering from a condition which had the potential to limit her ability to mobilise or was causing shortness of breath, one would have expected some kind of report of this and advice. Moreover, the issue was never discussed with her GP after that until the notes end. A letter of 8 Mar 2023 from a spinal orthopaedic clinic record that the claimant was actively exercising. We cannot therefore accept that the claimant has proved that this impairment had an SAE upon her. As we have found the claimant did not establish an SAE, we have not had to consider the question of whether it was long term.

Employment Judge Kelly

15th April 2024

And amended on 31 December 2025

Note

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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