

Neutral Citation Number: [2025] EAT 203

Case Nos: EA-2024-000831-DXA

EA-2024-001374-DXA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11 December 2025

Before:

THE HON. LORD FAIRLEY (PRESIDENT)

Between:

MR A SINGHA

Appellant

- and -

LLOYDS PHARMACY LIMITED
(NOW KNOWN AS DIAMOND DCO TWO LIMITED (IN CREDITORS' VOLUNTARY LIQUIDATION))

Respondent

Mr Ed Carey, of Counsel, for the Appellant
No appearance for the Respondent

Hearing date: 11 December 2025

JUDGMENT

SUMMARY

Disability discrimination; disability status; substantial and long-term adverse effect

Victimisation; causation of detriment

The appellant's complaints of disability discrimination and victimisation were each dismissed by the Employment Tribunal. On appeal, the appellant submitted that the Tribunal had (i) erred in its assessment of the evidence of the effect of his disability on day-to-day activities; and (ii) erred in its assessment of causation in the victimisation complaint.

Held: The Tribunal had erred in the first but not the second respect. The appeal against dismissal of the victimisation complaint was refused. The appeal against dismissal of the complaint of disability discrimination was allowed and the question of disability status to a differently constituted tribunal.

THE HON. LORD FAIRLEY:

1. The appellant was employed as a human resources business partner with Lloyds Pharmacy Limited, now known as Diamond DCO Two Limited (in creditors' voluntary liquidation). He was dismissed from that role with effect from 16 November 2021. Following his dismissal, the appellant presented a claim form in the Employment Tribunal in which he made complaints of disability discrimination and victimisation.

2. Disability status was contested, and an open preliminary hearing was fixed on that issue. That hearing took place in November 2023 before Employment Judge Gaskell. The relevant period was between 26 May 2021 when the appellant's sickness absence commenced and 16 November 2021 when he was dismissed. It was common ground that the appellant had established that during that time he was suffering from a mental impairment described as stress, anxiety and depression (ET§ 20).

3. In a reserved judgment dated 16 February 2024, the Judge determined that the appellant had not established disability status. Reasons for that decision were given on 21 May 2024. In summary, the Judge found that the appellant had not discharged the burden of proving either (a) substantial adverse effect on day-to-day activities and/or (b) that any such adverse effect was long term. Those conclusions are the subject of the first appeal.

4. By the summer of 2024, the respondent had entered creditors' liquidation. The liquidators indicated that they would not contest the appellant's claims. In these circumstances, a rule 21 hearing was fixed at which the Tribunal (Employment Judge Camp, sitting alone) considered the victimisation complaint. Having heard evidence, the Judge dismissed the complaint in a judgment dated 4 September 2024. In summary, the Judge concluded that, whilst the appellant had done a protected act on 20 April 2021 and had proved four detriments that had occurred after the protected act, the detriments were not because of the protected act. That conclusion is the subject of the second appeal.

5. The respondent having elected not to participate in the appeal was not represented at the hearing before me today.

The first appeal

Ground 1

6. At paragraph 20, the Judge accepted that the condition of stress, anxiety and depression clearly “had a degree of impact on the claimant’s life and his ability to carry out normal day-to-day activities.” On the issue of whether that effect was substantial, in the sense of being more than trivial, counsel for the appellant submitted that the Tribunal’s conclusions at paragraph 21 – (a) that the appellant’s disability impact statement said very little regarding any effect on his ability to carry out normal day-to-day activities; and (b) that there was nothing in the GP records to suggest that the claimant was unable to carry out any day-to-day activity or any for which he experienced great difficulty - were clearly wrong to the extent that the Tribunal could be said to have erred in law. I agree with that submission. The appellant’s disability impact statement dated 21 August 2022 was before the tribunal and is replete with references to normal day-to-day activities that were affected by the appellant’s illness to an extent that was more than trivial. These included issues with holding basic conversations, washing, ironing, cooking, cleaning, watching television and attending social gatherings. The Tribunal made no adverse finding about the credibility or reliability of the appellant’s evidence including the evidence contained in the disability impact statement. Whilst the Tribunal correctly quoted section 212 of the Equality Act containing the statutory definition of “substantial” (ET§ 19(c)), its conclusion that the evidence before it was not sufficient to satisfy that low test is difficult to understand. This suggests that the appellant is correct in the submission that the Tribunal must have ignored relevant and material sections of the evidence, particularly, the terms of the disability impact statement. I agree therefore with the appellant that the conclusion at paragraph 23 was clearly wrong to an extent that it amounted to an error of law and that ground 1 is therefore well founded.

Ground 2

7. On the issue of whether the adverse effect of the impairment was long term, counsel submitted that the issue before the Tribunal was whether, at the date of the allegedly discriminatory act, the adverse effects were likely to last for more than twelve months. **SCA Packaging v. Boyle** [2009] ICR 1056 was authority for the proposition that “likely” did not mean “on a balance of probability” but was a lower standard of “could well happen”. The Judge had placed improper reliance on the short-term nature of the fit notes whilst failing to recognise that by the date of dismissal the condition had already endured for eight months. He had improperly attached weight to post-discrimination improvement (**Richmond Adult Community College v. McDougall** [2008] ICR 431) and, contrary to **Parnaby v. Leicester City Council** UKEAT/0025/19/BA and **Morris v. Lauren Richards Limited** [2023] EAT 19, had concluded that since there was a link between the appellant’s work issues and his impairment, it could be inferred that the impairment would quickly have resolved when the work issues were resolved.

8. On this issue, there was no direct medical evidence as to the likelihood of the duration of the appellant’s stress, anxiety and depression. The Judge’s assessment of it was therefore based upon the claimant’s evidence, medical records and an assessment as to what the appellant’s GP would have said if asked in November 2021 (ET§ 24).

9. The tribunal had two sets of GP records. The first ran to 26 November 2021, which was ten days after the dismissal. They suggest a decline in the appellant’s mental health between May and October 2021 with contact from work making him feel worse. By 9 November 2021 things were reported to be a bit better and it is recorded that he had started CBT. That first set of GP records stops at 26 November 2021 when the appellant is recorded as having moved away from the practice area. The Judge dealt with this issue at ET§ 24 saying:

“My judgment is that if asked at the time to assess the likelihood of the claimant’s mental health conditions continuing for twelve months or more, the GP’s response would have

been that this was unlikely in the anticipation that the relationship difficulties could be resolved quickly.”

At ET§ 25, that led to a conclusion that:

“On the evidence before me, I am not satisfied that any adverse impact on the claimant judged at the material time could be said to have been long term. On this basis also the claim fails to meet the definition of disability.”

10. There was certainly a basis in the GP records for the Judge’s view that the appellant’s stress and anxiety and consequent adverse effects were linked to his work situation. What is less clear is that there was an evidential basis for a conclusion that, at the date of the allegedly discriminatory act in November 2021, the GP would have considered that the work issues were likely to be resolved within a short period of time. There is simply no mention of that in the GP records or in any finding of fact. Taking the dismissal itself out of the picture (per **Parnaby**), the Judge’s hypothesis as to what a GP would have said if asked about the issue of duration in November 2021 lacked an evidential basis and was simply speculation. Consequently, the conclusion that the condition and the effects of it did not meet the “could well happen” test for a further four months was based upon a false premise. Ground 2 is also therefore well founded.

The second appeal

11. Turning to the second appeal, both of the grounds address the Tribunal’s conclusions on causation (ET§ 38).

Ground 1

12. In the first ground the appellant submits that the Tribunal’s self-direction that he “must satisfy” the Tribunal (seen at ET§ 6, 22, 43 and 47) was a material misdirection and misapplication of the burden of proof provisions of section 136 of the Equality Act. The appellant submits that it was an error of law for the Tribunal not to apply the two-stage test referred to in **Ayodele v. Citylink Ltd** [2018] ICR 748.

13. The Tribunal gave a self-direction on the burden of proof at ET§ 7. It also seems expressly to have considered whether the burden of proof had shifted at ET§ 42. It must also always be remembered that the two-stage analysis referred to in **Ayodele** is no more than an analytical tool. As Elias P pointed out in **Laing v. Manchester City Council** [2006] ICR 1519, it will not necessarily be an error of law for a Tribunal to examine first the employer's evidence as to the reason for the allegedly detrimental treatment. That is also seen in the cases of **Brown v. London Borough of Croydon** [2007] ICR 909 and **Gould v. St Johns Downshire Hill** [2021] ICR 1.

14. Here the Tribunal ultimately concluded that the burden of proof had not shifted (ET§ 42). Thereafter, however, it also made a positive finding between ET§ 43 and 45 as to the reason for the established detriments. That latter finding seems to have been based upon the Tribunal's assessment of the contemporaneous documents from May to November 2021. That was, in principle, a legitimate approach. In summary, therefore, I do not consider that the Tribunal failed to apply the two-stage approach to the burden of proof. Even if I am wrong about that, however, it was not bound to do so as a matter of law and I do not therefore consider that this first ground in the second appeal is well founded.

Ground 2

15. In the second ground, the appellant submits that the Tribunal erred in its conclusion as to whether or not the burden of proof had shifted (ET§ 42). He also submits that the Tribunal failed to recognise that the protected act need not be the only reason for the established detriments provided that it had a material influence on the decision-maker. The first of these arguments faces the same difficulties that I have already identified in relation to ground 1. In particular, even if the Tribunal erred in its approach to limb 1 of the burden of proof, it was able to go on to make positive findings of fact under limb 2 and did so.

16. On the second point, and as I have already noted, it appears from ET§ 20 to 22 and 43 and 44 that the Tribunal made its findings as to what was operating on the mind of the appellant’s manager solely from its assessment of the contemporaneous documents between May and November 2021 including, principally, the minute of the meeting of 21 May 2021. That was a legitimate approach. The credibility and weight to be attached to those documents were ultimately matters for the tribunal.

17. I agree with the appellant that the Tribunal’s use of the definite article “the reason” in its self-directions on the law at paragraphs 6 and 22 rather than the indefinite “a material reason” are both unfortunate. When the reasons are viewed as a whole, however, it seems that the Tribunal ultimately concluded that the performance factors referred to at 43 to 45 were the only reason for the detrimental treatment.

18. Ultimately, therefore, this ground must stand or fall upon the proposition that the Tribunal’s conclusions as to the thought processes of the appellant’s manager, in particular that he held genuine concerns about performance and that those were the sole reason for the established detriment, were in each case perverse. The way that is presented in the ground of appeal is in a suggestion that there was no evidence to support such findings.

19. The minute of 21 May 2021 meeting has been produced. That document makes very clear reference to performance concerns then held by the manager. The issues of whether those concerns were genuine and whether they formed the only reason for the established detriments were each ultimately issues of fact for the Tribunal. For this ground to succeed, therefore, it is not enough that I might have come to a different view. The conclusions of the Tribunal on these issues must be such as to fly in the face of common sense and reason. Surprising as the conclusions at paragraphs 43 to 45 might appear given that performance concerns appear to have emerged largely out of the blue on 21 May 2021, the assessment of the credibility and weight to be attached to the documented evidence of those concerns was pre-eminently one of fact for the Tribunal. I cannot say that the conclusions

in those paragraphs were simply not open to the Tribunal such that they meet the very high standard required for perversity.

Conclusions and disposal

20. In summary, therefore, I will allow the first appeal, set aside the judgment of 16 February 2024 and remit the question of disability status to a differently constituted tribunal to consider anew. The second appeal fails and is dismissed.