EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr D Young	**v**	Fresh Cut Video Limited

Heard at: Reading **On:** 15 and 16 October 2025

Before: Employment Judge S George

Appearances
For the Claimant: Self Representing
For the Respondent: Mr R Magara, Solicitor

JUDGMENT on a Preliminary Issue having been sent to the parties on 31 October 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The background to the claim is set out in the Case Summary of Employment Judge W Anderson (RB page 114) and that of Employment Judge Codd (RB page 136). I refer to but do not repeat those summaries.

2. The case had been listed for a two day preliminary hearing. I timetabled the hearing at the start of Day 1 to provide for judicial reading time, evidence on disability and argument from Mr Magara (for the respondent) and the claimant with a view to delivering judgment on the disability issue in the afternoon of Day 2. In the event, this was not possible and I gave judgment at the start of Day 2.

3. I had the benefit of two Hearing files; the Respondent's Bundle runs to 211 pages. Page numbers in that are referred to as RB page 1 to 211 as the case may be. The Claimant's Bundle addendum runs to 199 pages. Page numbers in that are referred to as CB page 1 to 199 as the case may be.

4. The claimant explained that the reason for producing his own bundle was that the respondent had declined to include in the joint bundle a number of documents which he wanted to refer to at today's hearing. One of the documents which the claimant stated the respondent had removed was the letter notifying him of the diagnosis of ADHD although he, himself, had not particularly wanted it in today's hearing file. Shortly before we broke at the end of Day 1 – when I had heard evidence and submissions on the disability issue - Mr Magara explained that he had delegated preparing the hearing file and had, during the course of the day, enquired about the ADHD document. He stated that he did not want the claimant to be prejudiced if that document was not before me.

5. The claimant did not object as such to the document going in evidence although he observed that, based on his knowledge of the letter, it was, as he put it, "cheeky" of the respondent to suggest that it might prejudice him were it to be omitted. I read Mr Magara to be suggesting that he had a professional duty to draw the contents of the omitted document to my attention and when I suggested that to him, he agreed.

6. I agreed to admit it. ADHD is an admitted disability and there appeared to be ways in which the claimant argued that ADHD was relevant to my decision on the disability issue as I explain in more detail below.

    a. First, the claimant argued that as a person with ADHD he had a disposition to depression which was relevant to the question of whether depression was likely to continue into the future, as at 24 May 2024.

    b. Secondly, the claimant argued that the comorbidity of the two conditions was relevant to his submission on whether it was safe to infer that he did not experience substantial adverse effects of depression and anxiety much before the date he first went to see his GP.

    c. The claimant also argues that the effect of ADHD medication should be ignored.

7. Furthermore, the cumulative effects of impairments can be relied on as meaning that the adverse effects on an individual's ability to carry out day to day activities are substantial.

8. At the respondent's request, the claimant was recalled to be asked questions about the letter. I heard brief submissions following that additional evidence.

9. It was apparent from those questions that the respondent wished to rely on the diagnosis to make points about whether particular impacts were attributable to ADHD rather than to a psychological condition. Naturally, once the document was admitted, the respondent was free to rely upon it as was the claimant. However, the contents of the diagnosis did not appear on the face of it to bear out the suggestion that it would have prejudiced the claimant were I not to see it. I note that here lest the conduct of the litigation become something that the Tribunal has to consider at a later stage.

The Law

10. A person has a disability, for the purposes of the EQA, if they have a mental or physical impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. Substantial in this context means more than trivial: s.212(1) EqA and Goodwin v The Patent Office [1991] I.R.L.R. 540. There is no sliding scale, the effect is either classified as "trivial" or "insubstantial" or not and if it is not trivial then it is substantial: Hutchinson 3G UK Ltd v Edwards UKEAT/0467/13. As it says in paragraph B1 of the Guidance on the definition of disability (2011), this requirement reflects the general understanding that disability is a limitation going beyond the normal differences which exist among people.

11. When considering whether the adverse effects on the claimant's ability to carry out day-to-day activities are substantial the following factors are taken into account (see the Guidance Section B),

    a. The time taken to carry out an activity,

    b. The way in which an activity is carried out,

    c. The cumulative effects of an impairment,

    d. How far a person can reasonably be expected to modify his or her behaviour by the use of a coping or avoidance strategy to prevent or reduce the effects of the impairment,

    e. The effects of treatment

    f. There may be indirect effects, such as that carrying out certain day-to-day activities causes pain or fatigue (See Guidance on definition of disability (2011) paragraph D22).

12. The cumulative effects of related impairments should also be taken into account (see paragraphs B6 and C2 of the Guidance).

13. In the present case, the respondent accepts that the claimant was disabled by reason of ADHD at all material times. However, they deny knowledge of ADHD.

14. The claimant contends that he was also disabled at the material time for the claim by reason of depression and anxiety. The material time for the claim approximately April 2023 to April 2024 – that is the time period covered by the disability discrimination complaints.

15. In the Court of Appeal's decision in All Answers Ltd v W [2021] EWCA Civ 606, their Lordships summarised the relevant law at paras.24 to 26 of the judgment:

> "24. A person has a disability within the meaning of section 6 of the 2010 Act if he or she (1) has a physical or mental impairment which has (2) a substantial and (3) long term adverse effect on that person's ability to carry out day to day activities….
>
> 25. Paragraph 2(1)(b) of Schedule 1 to the 2010 Act defines long term, so far as material to this case, as "likely to last at least 12 months". "Likely" in this context means "could well happen": see Boyle v SCA Packaging Ltd. [2009] UKHL 37, [2009] ICR 1056, per Lord Hope at paragraph 4, and Lord Rodger at paragraph 42, Baroness Hale at paragraphs 70 to 72 (with whom Lord Neuberger agreed at paragraph 81), Lord Brown at paragraph 77.
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> 26. The question, therefore, is whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months. That is what the Court of Appeal decided in McDougall v Richmond Adult Community College: see per Pill LJ (with whom Sedley LJ agreed) at paragraphs 22 to 25 and Rimer LJ at paragraphs 30-35. That case involved the question of whether the effect of an impairment was likely to recur within the meaning of the predecessor to paragraph 2(2) of Schedule 1 to the 2010 Act. The same analysis must, however, apply to the interpretation of the phrase "likely to last at least 12 months" in paragraph 2(1)(b) of the Schedule. I note that that interpretation is consistent with paragraph C4 of the guidance issued by the Secretary of State under section 6(5) of the 2010 Act which states that in assessing the likelihood of an effect lasting for 12 months, "account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood".

16. In Herry v Dudley Metropolitan Council, UKEAT/0069/19/LA, HHJ Eady QC (as she then was) set out the legal framework at paras 29 to 31. Having set out section 6 EQA, she stated at paras 30 and 31:

"30. The term "substantial" is defined by Section 212(1) EQA as meaning "more than minor or trivial". It sets therefore, a fairly low threshold for a Claimant who bears the burden of proving that she is a disabled person for the purposes of the EQA (see Kapadia v London Borough of Lambeth [2000] IRLR 699 CA). Indeed, there is no real dispute between the parties as to the approach that an ET is to adopt in this respect, as was explained by the EAT (Langstaff J presiding) in Aderemi v London and South Eastern Railway Ltd [2013] ICR 591:

> *'14. It is clear first from the definition in section 6(1) of the Equality Act 2010, that what a tribunal has to consider is on adverse effect, and that it is an adverse effect not upon carrying out normal day-to- day activities but upon his ability to do so. Because the effect is adverse, the focus of a tribunal must necessarily be upon that which a claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a tribunal has then to assess whether that is or is not substantial. Here, however it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation; unless a matter can be classed as within the heading "trivial" or "insubstantial", it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other.'"*

17. What the employee is not able to do or is only able to do slowly or less easily is frequently taken into account to decide whether there is disability: Ekpe v Commissioner of Police of the Metropolis [2001] I.R.L.R. 605 @ 608 para 27. Furthermore, the EAT gave guidance on evaluating the adverse effects of an impairment in Goodwin where they said,

"The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook but only with the greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts. Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves. "

18. The EQA provides that, where an impairment is being treated, then it is to be treated as having a substantial adverse effect if, but for the treatment, it is likely to have that effect (Sch 1 para 5(2)). However, where the effect of continuing medical treatment is to create a permanent improvement rather than a temporary improvement it is necessary to consider whether, as a consequence of the treatment, the impairment would cease to have a

substantial adverse effect (See 2011 Guidance at B16 and C11). And C5 ffg.

19. When considering the effect of a mental impairment such as depression the most frequently cited case is J v DLA Piper [2005] I.R.L.R. 608 EAT. Paragraphs 40 & 42 of the judgment of Underhill LJ read,

"40: Accordingly in our view the correct approach is as follows:

(1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin.

(2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in paragraph 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.

…

42: The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at paragraph 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness - or, if you prefer, a mental condition - which is conveniently referred to as 'clinical depression' and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or - if the jargon may be forgiven - 'adverse life events'. We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians – […] - and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most laypeople, 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 the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at paragraph 40(2) above, a tribunal starts by considering the adverse effect 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 commonsense observation that such reactions are not normally long-lived."

20. I have also had reference to other paragraphs in the guidance on the definition of disability (2011) including paragraphs A4 which states that the question of whether there was an impairment is generally judged with reference to the effects that the tribunal have found as a fact. Paragraphs A6 and A7 reflect the principle that the underlying cause may be hard to establish and that it is not necessary to consider it. By the same token, the absence of a diagnosis is not determinative of whether the impairment existed although it may be relevant to that decision.

Findings and Conclusions on the Disability Issue

21. The practical advice in J v DLA Piper was to focus on what adverse effects the Claimant has shown there were on their ability to carry out day to day activities at the relevant time. Then I should assess whether those are substantial or not and determine when they started. If they were not initially substantial when did they become substantial? Then, in the present case, were they long term in the period April 2023 to April 2024 in the sense that they had lasted 12 months or were likely to last 12 months in total? The word likely in that context means (as it does in other contexts in the disability definition) "could well happen". Had the substantial adverse effects lasted 12 months or, from the vantage point of the material time, has the claimant shown that the substantial adverse effects could well last a total of 12 months.

22. The Respondent argues that the existence of an impairment cannot be inferred. They say this, first, because there is no clinical diagnosis. The absence of a diagnosis of depression and anxiety is not determinative. However, it is at least relevant to the disability issue in the present case, that no clinician during the material time attributed the symptoms described by the Claimant to depression and anxiety as such, at least not so far as it appears from the notes. That has to be at least relevant to whether or not the existence of an impairment can be inferred from the facts found, given that the Claimant was in contact with medical professionals from at least October 2023 onwards. If, in October 2023, when he consulted medical professionals, they had diagnosed depression or anxiety, that would support a conclusion that there were adverse effects which were not transitory and were more than merely a reaction to a particular adverse life event.

23. Secondly, the Respondent argues that the Claimant has been inconsistent about the date from which he states he experienced adverse effects. They argue that at one point (in the Impact Statement) he says that they started in May 2023 and at one point that they started in October to November 2023. I reject that argument. Close attention to the words used show that

the phrase relating to the later date is "at least October 2023" (my emphasis) and that is not inconsistent with the other ways that the time was described. I accept the Claimant's explanation of those linguistic differences.

24. The Claimant adopted his Impact Statement and was cross examined on it in oral evidence. He also referred to in oral evidence to his Claim Form in which there is a discussion of what he states was the effect on his ability to carry out day to day activities caused by the actions he complains of. However, he has not found it possible to put specific dates to the effects he noted, he has not, in may case, put even an approximate date to the point from which he found his ability to carry out the activities he mentions were impaired.

25. He explained and I accept, that the incident referred to in the List of Issues at LOI 11.9, which the Respondent dated from April or May 2023, was an occasion following which he was unsafe to drive home because he was in tears. Other than that, it is difficult, if not impossible, to date particular effects on his ability to carry out day to day activities from his evidence. That is necessary to build up a picture of accumulated detail about whether the adverse effects were more than trivial and whether they indicated the presence of an impairment and from when.

26. The scanned ET1 and attachment in the Respondent's Bundle are poor copies and difficult to read. At CB page 8 there is a legible copy of the Claim Form dated 12 April 2024 in which the Claimant states,

> "I have increasingly over the past year felt utterly dejected, hopeless and as the year went on I would find myself regularly crying "randomly" at the situation at work occurred to me during lunch breaks at work by myself, in front of my partner, in the evenings, and at weekends, as I tried to sleep and when I trying to enjoy hobbies, etc. … I've experienced a pervasive sense of anxiety and hopelessness which is invaded every aspect of my life, and had deleterious effects on my relationships. On a few occasions outside work I became so emotional about various aspects of treatment by my employer that I realised I could not safely drive and had to pull over, something which has never happened to me before."

27. He continued in the Claim Form that he neglected life long daily passions and skills such as writing and producing music, that he would "crash" at the end of the working day. He referred to becoming increasingly secluded. He states,

> "Weekends were filled with feelings of inescapable dread of returning to the office, and even during longer breaks such as Christmas I found myself unable to function normally."

28. This must be a reference to Christmas 2024.

29. In the Impact Statement the Claimant describes the effects on him as "deteriorating mental health", (see RB page 198) he was emotionally overwhelmed, socially withdrawn, had cognitive difficulties and had a significant decline in functioning. Elsewhere the Impact Statement states the following:

> "The disabling mental health condition developed and escalated from around May 2023 onward."

30. On the other hand, the claimant does not state what the particular effects on his ability to carry out day to day activities were at that point or much detail about the activities affected. He states it culminated in what he describes as a mental breakdown in late 2023, leading to GP intervention (see the chronology of medical evidence below). He says he was continuously unfit to work from between 8 January and dismissal on 24 April 2024. He said the effects had been continuous since at least mid 2023 and (at RB page 199) the Claimant describes the effects to his emotional state in similar terms to how they are described in the Claim Form. There is a difference between that description and the claim form in that the inference from the word "continuous" is that the effects were immediately as bad in mid-2023 as they were in the first months of 2024. This is inconsistent with the earlier statement that the impacts developed and escalated from around May 2023 onwards.

31. He describes mental fog, difficulty processing information and making decisions together with rumination. He states he had debilitating fatigue and lower energy, changes of appetite, neglect of diet, social withdrawal, neglect of self care, avoiding communication and tasks perceived as stressful and on occasion the emotional distress in 2023 was severe enough to impede his ability to drive. Some of those activities would quality as day-to-day activities: socialising, self-care, inability to carry out tasks without fatigue and ability to drive. However, the claimant does not give specific instances of when or how frequently this happened and, until January 2024, he managed to continue to attend work.

32. In oral evidence he also stated that he concentrated intensely on keeping going until, on the urgings of friends and family, he sought GP advice. He described this as akin to when you are running downhill and you focus intensely on keeping your feet moving to avoid falling. He seemed to be saying that when in a deteriorating mental health situation, he was focused so intensely on keeping going that he did not have the perspective that would have caused him to realise he needed to seek medical help.

33. He also argues that too much emphasis should not be placed on the date on which he sought medical help, for a different reason. He argues that as a person with his type of ADHD, the impact of his organisational skills, which were already challenged, of the mental health issues and the breakdown of his coping mechanisms meant that he felt he did not have time to do anything. He argues that that and the natural tendency on the part of someone with ADHD to procrastinate provides a reason to

conclude that the adverse impact past the test of significance well before he answered the urgings of his nearest and dearest and took medical advice.

34. Nevertheless, the description of the Claimant prior to the start of such documentary evidence as there is of his visits to the GP for mental health problems, amounts, when analysed, to only a small number of examples on the impact of the abilities to carry out day to day activities. I say that because a lot of it is generalisation rather than him pointing to particular abilities to carry out day to day activities. He talks about changes in appetite, neglect of diet, social withdrawal, neglect of self care and difficulties communicating, not following his hobbies, becoming secluded, an impact on sleep and the one that is really clearly identified is his effect on driving.

35. My view of the evidence presented by the claimant is that it amounts to a small number of examples of things that he says were affected and not much granular detail about the way in which it impacted his day to day activities, to what extent and how frequently it did so.

36. The first description in the Impact Statement of a developing and escalating situation from May 2023, is broadly consistent with the timing described in the Claim Form, which was over the last year or twelve months. That would mean at the earliest from mid-April 2023, because the Claim Form was presented on 12 April 2024.

37. Given all of that, I am not satisfied that the Claimant has shown that the condition he is relying on immediately impacted his ability to carry out day to day activities in a way that was more than trivial. He has talked about it as a developing situation. For any adverse impact on his ability to carry out day to day activities immediately to be more than trivial would be inconsistent with the way he has described it. The lack of dates or frequency of the incidents that he relies on means that I am not persuaded that qualitatively or quantitatively the Claimant has shown the cumulative impact, for example on his hobbies, relationship, safe driving, sleep, appetite and diet was more than trivial at a particular date prior to the date in October when he consulted his GP.

38. The contact to him by his Therapist on 25 October means it is likely he contacted his GP before that date, and there is in fact a record of a telephone communication on 24 October. I accept that he was probably at his lowest ebb for some time before he was persuaded to visit his GP. However, it is clear that he was not at that point continuously at that level since May 2023.

39. Overall, the claimant's evidence of adverse impact on his day-to-day activities does not provide sufficient detail to prove substantial adverse impact before October 2023. That should not be taken as a finding that he has shown substantial adverse impact at that time. I have to consider what the Claimant could not do, or what he could only do with difficulty.

The evidence of that is limited to quite general statements. The one concrete example was that of being unsafe to drive home in April or May 2023 because he was overcome with emotion. That one occasion was a reaction to a specific event and is insufficient to support an inference that his ability to drive was, in general, adversely affected at that time.

40. I do accept that the effect on him on what he now knows to be ADHD, the diagnosis was in February 2024, probably meant that he did not seek help as soon as somebody without ADHD would have done and that does cause me to think that I should not draw a bright line to draw at the point when he sought medical advice between when the adverse effect of a psychological impairment were substantial and when they were not. It is not the case that when he sought medical advice it was because he had only then reached the point that there was substantial adverse impact and not before.

41. I do not overlook that it was his Therapist who pointed him, as I understand it, to the right route to an ADHD diagnosis so he was not in the process of getting an ADHD diagnosis prior to that point. Although one can see from his initial contact with the GP that that was something that was in his mind.

42. Furthermore, the comorbidity issue means that I do not think it is safe to infer the existence of a specific mental health condition from those effects which evidence suggests are as likely to arise from ADHD as from any co-existing psychological condition. See below for further details from the ADHD diagnosis.

43. Those are my findings and conclusions about the time period prior to the claimant consulting his GP. From that point there is documentary evidence in the form of a chronology of medical evidence. There was a telephone consultation with Dr Chong on 24 October 2023, where the Claimant is recorded as saying he was concerned about possible ADHD and he was referred for Therapy the following day. I take into account the contents of the letter (see CB page 190) from his Therapist, setting out some details of their contact. He had that first Counselling session following a booking in session on 25 October 2023. The first Counselling session was on 23 November 2023 and he underwent six sessions from then until May 2024. I accept his evidence that counselling ended because he had received the total amount offered by the NHS, not because he was discharged as having achieved a particular improved state of mind.

44. The Claimant started a Christmas break on 18 December 2023, according to information provided to the GP in the Medical Records. He had a Counselling session on 4 January 2024, by which time he had been off work because of the Christmas break and told the Counsellor that he did not feel as good as he was hoping. He was counselled about dealing with unhelpful thinking styles.

45. He then states and I accept that he was persuaded to seek time off work and on the following day a Fit Note was issued which certified that the reason for him not being fit for work was stress. The note of the consultation shows that he attributed his current mental state largely to work. This appears to have been following a contact with NHS 111 (RB page 207 & CP page 198) during which answers to the online questions or questions asked by the operator were recorded. It is difficult to place much reliance upon the nuance of these answers because they record answers to stock often binary questions rather than a narrative by the claimant. However he had said he had little interest or pleasure in doing things for the last 4 weeks.

46. The claimant had another Counselling appointment on 25 January 2024. It is recorded that he had not looked at the resources that the Therapist had sent to him. That might be suggested that he was not prioritising logically but it is difficult to know what to infer from that given that ADHD can cause impulsivity and difficulty in prioritising appropriate as well as the mood, or stress or mental element that the Claimant is also describing.

47. A further Fit Note was issued at the beginning of February 2024 for stress. On 7 February 2024 the Claimant had an ADHD Assessment.

48. The Claimant knows himself. He described to the ADHD Assessor those matters that he thought were relevant for the Assessor's task of assessing whether or not he was a person with ADHD. However, the Assessor, a Psychiatrist, has to exclude other psychological causes for the matters that are reported, that is stated in the Report. There is clearly some discussion of mood. The claimant reported that he was low and stressed but on the other hand described himself as sleeping reasonably well despite putting off going to bed because of losing track of time. The other matters that are relevant in the Report that are noted by the Psychiatrist is that no psychological symptoms of depression, I accept that probably means clinical depression given the professional qualification of the person making the note, no scoring was done at the time of the Claimant's mood. There is a note that there is no evidence of lack of self-care, although he has observed that his mood is "bad" but he is described as euthymic.

49. A Fit Note again for one month was issued on 15 February 2024 – again for stress. There had obviously been a discussion about medication but the Claimant had decided that was probably not helpful. He had started titrating medication for ADHD and did not want to cloud the assessment of the efficacy of that. Further monthly Fit Notes were issued until the date of the dismissal.

50. The Claimant argues that I should ignore the effect of medication taken for ADHD on his mood. He states those were stimulants and had a buoyant effect on his mood. He argues that I should make findings about the deduced effect of his mental health condition on his abilities, during the time after he started on ADHD medication, having discounted the effect on mood of that medication. He took it from about February 2024 onwards.

51. As with his description of effects on his ability to carry out day to day activities in general, his evidence does not provide enough specificity for me to deduce from his description that before titrating ADHD medication the effect of his mental health problems on his day to day activities was quantifiable as a particular thing and after starting the ADHD medication the effect was quantifiable as something else. That is the evidence which would be needed for me to draw an inference of deduced effect. Therefore, I discount that submission. Furthermore, I have no expert medical evidence about the effect of the particular drug taken in the prescribed quantities.

52. The Claimant also said that I should ignore the effects of Therapy. However, I do not have evidence to which I can attach weight about what the adverse effect on the Claimant's ability to carry out day to day activities were by a monthly basis, from which I could infer what they would have been had he not undergone Therapy. He underwent Therapy, as I have just said, following an initial referral and the sessions lasted between November 2023 until May 2024.

53. I have referred to the Therapist's letter which describes what he was told by the Claimant and that the Claimant told him about the effect work was having on him, which he described as profoundly negative.

54. There are three ways in which the Claimant relied on the inter relationship between depression and anxiety as he describes it and ADHD.

    a. First, that as a person with ADHD he had a disposition to depression which was relevant to the question of whether depression was likely to continue into the future, as at 24 May 2024.

    b. Secondly, he argues that the comorbidity of the two conditions is relevant to his submission on whether it is safe to infer that he did not experience the adverse effects when he went to see his GP, as I have already explained.

    c. He also argues that the effect of ADHD medication should be ignored but I have explained why I do not consider there is evidence from which I can draw any particular inference of deduced effects and reject that submission.

55. There is a tension between the way the Claimant described his mental health to the ADHD Assessor in February 2024 and what he says now. It may well be as he states that the communication to that Assessor was done having in mind that it was for an ADHD Assessment. I took that to mean that Mr Young said he did not emphasise mental health problems in that conversation.

56. Nevertheless, I am seeking to make findings about adverse effects and then infer the existence of a mental impairment, of depression and anxiety, from that. Where the ADHD Assessor has reported the Claimant telling him that he had no particular difficulties with sleep, self care and a good

appetite, that is bound to contrast with the Impact Statement which says that he was actually experiencing poor sleep, poor self care and poor appetite in the same period. I accept that appetite is different to diet but both are mentioned in the Impact Statement.

57. Furthermore, there is a lifelong condition in this case, the effects of which on Mr Young and evidence of those effects was taken as supporting the ADHD diagnosis. Those overlap with the effects that he says leads to an inference of a long term mental health condition. A medical professional has attributed particular effects to one condition which has been diagnosed. I am now urged to infer from the same adverse effects that there was a different alleged long term mental health condition which has not been formally diagnosed at the relevant time. The absence of a diagnosis or explanation is particularly problematic in those circumstances.

58. The questions that the Claimant was asked to answer by Judge Anderson make clear that it is normally the time material for the claim that the Tribunal will be considering. Despite this, the collection of adverse effects that he describes are, in all but a handful of cases, not dated. I can accept as plausible that the effect of ADHD on him and his organisational skills mean that it is more likely than not that he did postpone making an appointment to see the GP until some time after he should have done, until some time after it was justifiable by his state of mind but how much before October is impossible to judge. The only documented PHQ-9 GAD-7 scores was a date from after the material period. The clearest evidence he gave is in the Impact Statement but that talks about a deteriorating situation and therefore although it is described as a low bar for the litigant to have to surmount, nevertheless they do have to show some apparently credible evidence that their ability to carry out day to day activities was adversely affected in a way that was more than trivial from no later than the date which means they satisfy the long term criterion. Since his dismissal was in April 2024, for him to be disabled by reason of depression and anxiety as at April 2024, he would need to show that the adverse effects of depression and anxiety were substantial from no later than May 2023.

59. In reality, much of what the Claimant describes are not the adverse effects on his ability to carry out day to day activities, in so much as conclusions he would draw from it. He describes social withdrawal, an inability to enjoy previous hobbies, mental fog, fatigue, disrupted sleep although that is difficult to pin down to any mental health problem rather than ADHD.

60. This very limited number of examples mean that even though I accept in principle that he delayed in seeking medical advice beyond the point at which he started to experience adverse effects, he has not shown that the point at which the adverse effects became significant in the sense of having more than trivial adverse impact on his day-to-day activities at any particular date prior to October 2023.

61. There is also the problem that some of the matters are positively explained by ADHD and therefore to infer a mental impairment from them, is problematic and not something that can safely be done.

62. My sense is that since the Claimant was certified unfit to work, it can safely be concluded that the adverse effects of low mood or mental health problems were more than trivial from that point as it was stress or the effect of work on his mood which meant he was unfit for work. That dates it no later than 5 January 2024. It is probable that the adverse effects were substantial before that date but it is hard for me to make specific findings of a particular date because of the uncertainty that I have referred to.

63. Consequently, as at the date of dismissal, the substantial adverse effects have not lasted for 12 months and I have to consider whether they could well have lasted for a total of 12 months. On my findings the Claimant would have to show, from the vantage point of 24 April 2024, that the substantial adverse effects could well have continued up to the end of December 2024. There is no evidence to support that inference. Fit Notes citing stress were monthly, they were not increasing. I infer from that the GP thought that it was worth reviewing the Claimant monthly, anticipating potential improvements. There had only been a series of four Fit Notes at the time of dismissal. It is not in my view possible to infer from that that the same effects could well have continued, particularly since there was the potential for Therapy to achieve a permanent improvement. The point is that the potential for improvement is evidence which weighs against an inference that the adverse effects could well continue some months into the future.

64. The argument that someone with ADHD has a propensity to depression is an interesting argument but there is no medical evidence of that and beyond a general acceptance that that might be so, I think that is insufficient to find a conclusion that any substantial adverse effects on this claimant could well last for a further eight months.

65. I therefore do not accept that the impact of the Claimant's mental health condition as at the vantage point of 24 April 2024 satisfies the long term condition. Such adverse effects as are shown had not lasted 12 months as at that date and he has not shown that they could well have continued to have significant adverse effects for the full 12 months that is necessary under the definition.

Approved by:

Employment Judge S George

Date: …10 January 2026…….

Sent to the parties on: 12 January 2026

For the Tribunal Office.

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