



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001385/2024

Held in Glasgow via Cloud Video Platform (CVP) on 11 May 2026

Employment Judge E Mannion

Mr J Kilday

Claimant
Represented by:
A Callan -
Solicitor

LRQA Group Limited

Respondent
Represented by:
Ms L Reed -
Counsel

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is the claimant was a disabled person by virtue of his depression and anxiety for the purposes of the Equality Act 2010.

REASONS

Introduction

1. This is a claim of disability discrimination which is contested by the respondent. The issue of whether the claimant was a disabled person in terms of section 6 of the Equality Act 2010 (“the Equality Act”) was to be determined as a preliminary issue at this hearing.
2. The claimant gave evidence on his own behalf. There were no respondent witnesses.
3. A joint bundle of documents was prepared and lodged in advance of the hearing.

Relevant law

4. **Section 6** of the Equality Act 2010 provides a definition of “disability” as follows:
 - (1) A person (P) has a disability if:
 - (a) P has a physical or mental impairment , and

- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
5. The leading case of **Goodwin v Patent Office** 1999 ICR 302 provided the four step test that the Tribunal must apply when considering the question of disability status. They are as follows:
- a. Did the claimant have a physical or mental impairment?
 - b. Did the impairment affect the claimant's ability to carry out normal day to day activities?
 - c. Was the adverse effect substantial?
 - d. Was the adverse effect long term?
6. The burden of proof is on the claimant to show that he was disabled. In applying the Goodwin steps, the Northern Ireland Court of Appeal **in Veitch v Red Sky Group** 2010 NICA 39 held that industrial tribunal erred when they assumed the claimant had an onus of producing medical evidence to underpin his case for every aspect of the Goodwin steps, and in the absence of such evidence, his claim failed. This was deemed to be too strict an approach. Rather a Tribunal should assess the medical evidence available to it to determine disability status.
7. It is no longer the case that for mental health issues such as anxiety and depression, there must be a clinically recognised illness. In **Igweike v TSB Bank plc** 2020 IRLR 267, EAT Judge Auerbach determined that the application of a clinical label is 'neither necessary nor if it has been applied, conclusive' but instead, it is for the tribunal to determine if, when drawing on the totality of the evidence, the mental health issues amount to an impairment. Igweike took into account and reiterated the decision of the EAT in **J v DLP Piper UK LLP** 2010 ICR 1052 that there distinction between clinical depression and a reaction to adverse circumstances. The issue of a response or reaction to adverse circumstances was considered by the EAT in **Herry v Dudley Metropolitan Council** [2017] ICR 610,EAT at paragraph 56 where they noted

"Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment tribunal is not bound to find that there

is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction; but in the end the question whether there is a mental impairment is one for the employment tribunal to assess."

8. The EAT in **DLA Piper** also determined that it is not always necessary to follow the **Goodwin** test in sequential order, and that often in cases of a mental impairment, starting with the adverse effect on day to day activities, whether this has been substantial and long term, will likely conclude This case noted the overlap that often arises metal health cases between the question of whether there is an impairment and whether there is a substantial adverse effect on day to day activities. The EAT determined that tribunal are not required to follow the Goodwin test sequentially and that often looking at the effect on day to day activities will inform the question on whether there is a mental impairment rather than a response to adverse circumstances.
9. Section 212(1) of the Equality Act provides that 'substantial' means more than minor or trivial. Using this terminology does not create and spectrum with minor or trivial on one side and substantial on the other. Rather the EAT in **Aferemi v London and South Eastern Railway Ltd** 2013 ICR 591 EAT determined that "unless a matter can be classed as within the heading trivial or insubstantial, it must be treated as substantial."
10. The Tribunal must take into account Statutory Guidance on the definition of Disability (2011) which stresses that it is important to consider the things that a person cannot do, or can only do with difficulty (B9). This is not offset by things that the person can do. This is also confirmed in **Aderemi** (*citation above*). Day to day activities are things people do on a regular or daily basis such as shopping, reading, watching TV, getting washed and dressed, preparing food, walking, travelling and social activities. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc (Guidance D2 – D7).
11. Paragraph 5(1) of Schedule 1 of the Equality Act provides *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 measures are being taken to treat or correct it, and but for that, it would be likely to have that effect.*

12. Schedule 1 of the Equality Act gives further details on the determination of a disability. For example, Schedule 1 para 2(1) provides that the effect of an impairment is long term if it has lasted for 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 affected. In *Abadeh v British Telecommunications plc* 2001 ICR 156 EAT, the EAT looked at this in the context of treatment for depression by medication, stating that if the final effects of the medication are not known or there is a substantial risk of a relapse when the treatment ceases, the effects of the medication are to be disregarded.
13. When looking at a condition which recurs, the question as established in **Swift v Chief Constable of Wiltshire Constabulary** 2004 ICR 909 EAT is whether the substantial adverse effect of the impairment is likely to recur, not whether the impairment itself is likely to recur. When considering this likelihood, (and the question of disability status as a whole) the tribunal should look only at the circumstances that arise at the relevant time as per the Court of Appeal in **McDougall v Richmond Adult Community College** 2008 ICR 431, CA.

Issues

14. None of the elements of the definition of disability were conceded. Therefore the Tribunal has to determine the following issues, although not necessarily in the following order:
 - 13.1 Did the claimant have a mental impairment?
 - 13.2 If so, did that impairment have an adverse effect on his ability to carry out normal day to day activities?
 - 13.3 If so, was that effect substantial (as in more than minor or trivial)?
 - 13.4 If so, was the effect long term?

Findings in fact

15. The Tribunal makes the following findings in fact on the balance of probabilities having considered the available evidence.
16. The claimant has suffered in terms of his mental health since approximately 2004, namely depression and anxiety.
17. On 30 April 2004 the claimant attended at his GP who noted that he was 'depressed', with low motivation, 'some tearfulness, difficulty coping' and 'feeling down since early Jan'. The claimant attended at his GP at this time as he was struggling to cope with both the premature birth of his child and the

fact that his wife was also unwell. The GP records also note the death of an aunt. The claimant suffered from severe mood swings and suicidal ideation. He felt a constant dark cloud over him and struggled with self-worth. He became withdrawn and did not want go anywhere or see anyone. He became argumentative.

18. A further consultation on 17 August 2005 confirmed that the claimant had been prescribed Fluoxetine, an anti-depressant, for mood problems after the birth of his child, referring to the consultation in April 2004, and a medication review took place at that time. The claimant has consistently been on an anti-depressant since 2004.
19. The claimant continued on anti-depressants but did not require any further GP intervention until 2014 when he attended his GP for suicidal ideation on 9 July 2014 with symptoms 'similar to previous depression'. The claimant was struggling with day to day tasks and was 'under a black cloud'. This black cloud was an intense feeling of impending doom or pure sadness where the claimant felt that everything was going against him. He withdrew into himself and withdrew from social life, specifically regular events with family members. If family events were taking place as organised by his parents or brother, he would attend but would not want to be there and would almost immediately create an excuse as to why he had to leave. Other social events, he would not attend, even for a short time. During the intense period of the 'black cloud' the claimant would not eat, would not want to talk to anyone and would not want to move. He did not want to leave the house in case he saw trees tall enough that he could hang himself from.
20. A further consultation took place on 20 October 2014 where he advised the GP he had 'low mood [for] many months' and had thoughts of self-harm.
21. The claimant attended his GP again August 2015 wherein he advised the GP of his low mood for the past year. This included suicidal ideation and the making of plans for same. At this time the GP noted the claimant as suffering from anxiety alongside his depression.
22. A consultation took place in September 2015 which confirmed that the claimant was 'feeling much better – no further dark thoughts' although demotivation and clouded thinking continued to be an issue. The note 'feeling much better' referred to a reduction in his suicidal thinking. In November 2015 the claimant was reviewed by his G who noted that he felt better, which referred to a relief from his suicidal thoughts, but continued to be demotivated and ill tempered.
23. In September 2016, the claimant attended at his GP to discuss changing his anti-depressant medication to assist with his sleep. He was prescribed

Mirtazapine, an anti-depressant with a sedative. This medication was reviewed in October 2016 and continued. The claimant remains on this medication to date.

24. There was then a substantial period where the claimant did not require to attend his GP but continued to be prescribed anti-depressants. He continued to feel demotivated, argumentative and unable to socialise.
25. The claimant engaged with his GP again in August 2023 due to a recurrence of 'the black cloud'. This followed his line manager accusing the claimant of acting in an aggressive manner towards another colleague. He was certified as unfit for work due to work-related stress and this was cited in the GP notes as the "problem" for which the claimant sought medical intervention. His inability to socialise developed so that leaving the house became a more difficult issue and he would only do so with his wife or son. He would feel nauseous and panicked at the thought of leaving the house. On one occasion when he went to a local shopping centre with his son, he became overwhelmed and felt as though everyone's voices were amplified. He was overwhelmed to the point where he had to leave the shopping centre. He became more isolated and spent the majority of his time in the house staring at the television, unable to wash or eat without being prompted.
26. The claimant also developed further symptoms, namely hallucinations and OCD like symptoms. In respect of the latter, the claimant found that he would avoid lines and cracks in the footpath when walking. If driving his wife to work, he required to return along the same route. When at the supermarket, he required to traverse the aisles in a particular grid pattern. He required his wife and son to sit to his right. If he did not do these things, he felt panicked and had feelings of dread. In respect of the hallucinations, he saw faces in the carpet and wallpaper. He also developed a buzzing in his head and frequent headaches.
27. These new symptoms began in or after October 2023. Both the new symptoms and the deterioration of his social anxiety and continued through the relevant period being 26 February 2024 to 12 June 2024. In October 2023 the claimant's GP noted that the OCD symptoms were likely a "manifestation of current stress reaction and anxiety." There was no further prognosis by the GP about the likely length of these symptoms.
28. As well as attending his GP, the claimant was also reviewed by the respondent's occupational health provider in October 2023 and January 2024. In January 2024, the occupational health adviser provided the opinion after examination that the claimant was 'experiencing clinical symptoms of severe anxiety and severe depression.' Their view was that while interventions such as increased medication would assist, their view was that the "key to regaining

psychosocial resilience is discussing and addressing the stressors that he perceives.”

Observations on the evidence

29. The claimant gave his evidence in a clear way and I considered he was giving an honest account of events as he remembered them.

Submissions

30. Both parties made submissions at the conclusion of evidence. For brevity I have not included their submissions in this judgment but they were fully considered when coming to the decision below.

Decision

Was there an adverse effect on the day to day activities of the claimant?

31. It was agreed between the parties that the relevant time was 26 February to 12 June 2024.
32. The terms of the Statutory Guidance require that I focus on what the claimant could not do or only do with difficulty.
33. I considered that the claimant’s ability to leave his house during the relevant period was adversely affected. His evidence, which was accepted, was that he was primarily confined to his home, that he would only go out with his wife or son present, that he was anxious about leaving the house and would feel nauseous and panicked in advance of this task and that when he did leave the house, he tended to become overwhelmed. If he was out with his wife and/or son, he would engage in OCD tendencies in order to cope, such as following specific routes when driving and following a grid system in the supermarket, having his son or wife on his right hand side. If he did not do so, he would have feeling of dread and panic.
34. I considered that the day to day activities of showering and preparing food were adversely affected. During the relevant period, the claimant would not shower regularly unless prompted and was not eating (both preparing food and eating) unless prompted by his wife.

Was that effect substantial?

35. For the effect to be substantial, it requires to be more than trivial or minor.
36. On the basis of the evidence given to me by the claimant and the facts as set out above I consider that throughout the period from 26 February 2024 to 12 June 2024, the adverse effect on the above day to day activities was substantial.

37. The claimant avoided leaving the house due to the feelings of panic and dread. If he did leave the house, it was only with his wife or son and he would engage in OCD tactics such as following specific routes, having his wife or son on his right, in order to assist with or alleviate the feeling of panic. This is inherently substantial rather than minor or trivial. It cannot be classified as trivial or insubstantial and so must therefore be treated as substantial (Adremi). So too is an inability to shower frequently or prepare food and do so only when prompted. The effect on these activities cannot be classed as trivial. It is noted that these day to day activities were adversely effected despite the claimant being prescribed and taking anti-depressants.

Was the substantial adverse effect long term?

38. I then considered whether the substantial adverse effect was “long term”. The claimant’s accepted evidence was that he has continually suffered from demotivation and a difficulty in socialising and leaving the house as part of his depression and anxiety.
39. In respect of social anxiety namely, socialising and leaving the house, prior to 2023/2024 this adversely effected his ability to attend regular family events and when in the throes of suicidal ideation avoided leaving the house so as not to see locations where he could undertake his plans. I found that the adverse effect on his ability to leave the house and/or socialise was substantial prior to 2023/2024. It was a constant feature. While it did not stop him from attending his work, it was serious enough that he would either not attend events or try to leave as soon as he got there. It was happening at a frequency that family members outside of his parents and brother stopped inviting him to events. It was not trivial. I found it to be substantial.
40. I found that his inability to leave the house in 2023/2024 unless accompanied by his wife or son, and the difficulty in doing was a more extreme version of the inability to leave the house or socialise which was occurring prior to the relevant time. It is not the mere fact of socialising with others which was the adversely affected prior to 2023/2024 but the requirement to leave his house, to be out of his comfort zone as the claimant put it, in order to meet and socialise with family. This manifested itself in his difficulty socialising with family pre-2023 and post-2023 in leaving the house at all unless accompanied by his wife or son.
41. I also considered that anti-depressants have been a constant feature since in or around 2004/2005. He has been prescribed and has taken an anti-depressant consistently since that date. Ms Reed submitted that as the claimant has been on anti-depressants so long, it is difficult to see what his symptoms might be without them. While the claimant agreed with this position on cross examination, it is not accepted by the Tribunal. The claimant has

required to be take anti-depressants for almost 20 years now and even with the medication has had severe spikes in his symptoms, has had consistent ongoing symptoms and these symptoms have had a substantial adverse effect on his day to day activities.

42. I found therefore that the significant adverse effect is long term.

Did the claimant have a mental impairment

43. The final question therefore to consider is whether the claimant had a mental impairment which resulted in the substantial and long term adverse effect on day to day activities. I considered that where an impairment is recurring, it must be that both on previous occasions and in the current circumstances, the impairment has a substantial adverse effect on day to day activities.
44. The respondent's position was that during the relevant time, any symptoms the claimant may have been suffering from were a response to workplace events and not a mental impairment. The claimant's position was that the symptoms were a continuation of his anxiety and depression which manifested itself in more serious symptoms than previously suffered.
45. I found that the claimant was suffering from a mental impairment, namely anxiety and depression at the relevant time. I did not accept the respondent's submission that the symptoms were a reaction to workplace events and so did not amount to an impairment. It was not in dispute that the catalyst for the deterioration in the claimant's mental health the accusations made by the claimant's line manager against him. This case can be distinguished from DLA Piper and Herry as there was a substantial and long term adverse effect on day to day activities as per my findings.
46. I considered the claimant's evidence that he rarely left the house or was anxious when he did so and engaged in OCD thinking, was tearful was demotivated, that he suffered feelings of dread and constantly thought about why this had happened to him. These symptoms were consistent with his historical depression and anxiety. His GP records confirmed in October 2023 through to January 2024 that different anti-depressants were discussed and prescribed and that in December 2024 his sertraline was increased. The fact that the GP records at this time do not mention depression or anxiety and instead refer to work related stress does not point away from a mental impairment. GP notes are there as a contemporaneous note of symptoms and/or the current position in respect of a particular condition and are not written with litigation, or indeed Section 6 of the Equality Act, in mind. I accepted the unchallenged evidence of the claimant that he has been on anti-depressants for as long as he can remember and the reason was due to his ongoing depression and anxiety wherein he continued to suffer with demotivation, social anxiety and low mood. This is consistent with the GP

records which refer to the claimant's depression from 2004 onwards and anxiety from 2014 onwards. Further, occupational health opined in January 2024 that the claimant was experiencing symptoms of severe anxiety and severe depression, albeit they believe these symptoms will alleviate once the stressors are dealt with. The OH provider did not review the claimant's GP history in drafting their report. The claimant's evidence, which was accepted, was that these symptoms were ongoing throughout the relevant period. The fact that he was suffering from new symptoms as well as the above does not point away from a mental impairment of depression and anxiety, particularly as OCD itself is a form of anxiety disorder.

47. I also considered the recurrent nature of his condition and the fact that on previous occasions and in 2023/2024, the claimant's day to day activities were substantially adversely affected by his impairment of depression and anxiety.
48. In conclusion, I determined that the claimant suffered a mental impairment, depression and anxiety, which substantially adversely effected his day to day activities and this effect was long term.

Further procedure

49. The Tribunal will contact the parties about further procedure in this claim. For the avoidance of doubt, the findings in fact in this judgment relate only to the issue of disability status. They do not bind a future tribunal dealing with the merits of the claim and considering issues such as knowledge of the respondent.

Date sent to parties

18 May 2026
