EMPLOYMENT TRIBUNALS

Claimant: Mr Beresford Caps

Respondent: 1. Medivet Group Limited
2. Joey Kapff,
3. Lyn Wathen,
4. Thomas Pedley,
5. Robyn Pratt,
6. Christiaan Cools,
7. Carol Cooke,
8. Bart Borms

Heard at: London South by CVP **On:** 5 June 2026

Before: Employment Judge Martin

REPRESENTATION:

Claimant: Mr Hay – Counsel
Respondent: Ms E Hodgetts - Counsel

RESERVED JUDGMENT

1. the claimant was not a disabled person as defined by section 6 Equality Act 2010 at the relevant times.

2. The claim for disability discrimination is dismissed.

RESERVED REASONS

1. This hearing was held to consider whether the Claimant was a disabled person pursuant to section 6 Equality Act 2010 because of depression, stress and anxiety. The relevant time, as set out in the list of issues, is between 30 June 2023 and 4 October 2023 when the claimant was dismissed.

The hearing

2. I had before me a bundle of documents comprising 250 pages which included the claimant's medical records from 9 February 2008 to 4 March 2024, and a disability impact statement. Additionally, I had two letters from private GP's and written outline submissions from the respondent. I heard oral evidence from the claimant only.

3. I conducted a preliminary hearing on 25 November 2025 (which the claimant did not attend) and in the order I confirmed the only impairments pleaded were stress, depression and anxiety. Although the claimant, subsequent to his claim form, referred to a heart condition and type 2 diabetes these were not pleaded and therefore not before the tribunal.

4. Appended to my order were the list of issues provided by the respondent which had previously been sent to the claimant. I set out that *"If the Claimant wishes to amend or add to the list of issues, he must also refer to the relevant paragraph number of his particulars of claim sent with his claim form".* There was no subsequent correspondence from the claimant. This list of issues contained the relevant dates as set out above.

The law

5. *The Equality Act 2010 says that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.* I have considered the different elements of this definition in turn below.

6. In determining disability status, I have taken into account any aspect of the Guidance on the definition of Disability (2011) and the EHRC Code of Practice on Employment (2015) which appears to be relevant. The burden of proof is upon the claimant to show that he is disabled as defined.

7. I also considered what medical treatment, including medication the claimant had and whether he had taken other measures to treat or correct the anxiety and depression. Other measures include alternative medications and therapy. I also considered what the effects of the depression and anxiety would have been without any treatment or other measures together with any other information the claimant relies on to show that he had a disability.

Evidence

Medical evidence

8. The medical information was scant. Despite there being 64 pages of medical notes included in the bundle a substantial number of pages were redacted and the majority of the entries were not related to the claimant's mental health. The claimant accepts that the first reference to a mental health issue in his GP records was on 30 June 2023 when he contacted his GP surgery asking for a med 3 certificate to sign him off work for reactive depression. This was when he was suspended from work pending disciplinary procedures.

9. The relevant GP records record:

   30 June 2023:
   "'I would like a sick note for reative depression' [sic - quotation marks in original] sold practice 18m ago, disciplinary procedure now being started, unable to attend work at present. No thoughts of deliberate self harm … offered help - happy he will manage given this time off". Sick note issued to 17/7/23; no medication;"

   27/7/23:
   "sick note re-issued to 15/10/23 "reactive depression"; no medication;"

   "29/11/23: sick note re-issued "reactive depression"; no medication."

   This is the full extent of the references to his metal health in the GP records.

10. The other entries in the medical notes relate to other medical issues including his heart condition and diabetes. The other medical evidence provided was from two private GP's, Dr Fatima and Dr Soori, who both wrote letters on his behalf. Dr Soori had Dr Fatima's letter before her, but neither had the claimant's medical records so what is recorded is based on what the claimant must have told them.

11. Dr Fatima saw the claimant on 28 November 2023 the day before his hearing appealing the termination of his employment. The consultation was either by telephone or by video. There was no in person meeting. Her letter says:

    "I saw Mr. Beresford Capps, a Veterinary Surgeon, as a private patient.

    He told me he has been suffering with depression and anxiety disorder since 2016. He struggled with sleep, loss of appetite and get stressed and anxious easily. He takes a great deal of time dressing/undressing, bathing and struggles to concentrate for periods of time. His mother also suffered with anxiety and depression and on antidepressant medication since his father passed away. The way antidepressant medication has affected his mother's emotions Mr

Beresford chose not to go that route but to self-manage with long walks with dog, smoking and relaxation techniques.

He has an appeal meeting with ex-employer tomorrow 29th November 2023. He will need reasonable adjustments to deal with such matters.

In my medical opinion he is not fit to attend this meeting and will need to be reviewed in a months' time either by myself or his NHS GP".

12. Dr Soori's letter is dated 18 November 2024 following either a telephone or video consultation and says:

"I am writing following consultation with Dr Beresford Capps on 14/11/24 to inform you that he is suffering from both physical and mental health disease following a period of prolonged stress in relation to his unexpected and unsubstantiated dismissal from work.

It is clear that the adversarial process he has had to endure because of his work situation has very negatively impacted his health. He is suffering from symptoms of low mood, anxiety, insomnia and lack of appetite which he has been trying to manage with herbal medication, with no avail. Additionally, earlier this year, in February he experienced an episode of unstable angina and was hospitalised. CT coronary angiogram revealed plaque build up in the arteries and he has since been on multiple daily medication and is under regular cardiology specialist review. He was also found to have borderline diabetes. Diabetes is an independent risk factor for heart disease and he was advised his diet and lifestyle needed to be improved to curtail any additional risk.

Dr Capps has had to take extra care of himself physically, as well as in terms of stress management. He has made effort to improve his diet, partake in regular exercise, but due to his work related stress and associated low mood and anxiety he has found it challenging at times to do so.

My recommendations following the consultation on 14/11/24 were to optimise his diet and lifestyle, maintain regular exercise, see a psychotherapist to help him process and work through the traumatic experience he has had to deal with at work. I have also asked him to consider antidepressant medication, although I understand his concerns around this (as per his consultation with Dr Fatima in November 2023) and provided him with some natural options to help manage his stress and related symptoms.

In my clinical opinion, Dr Capps is not medically fit to cope with any further adversarial litigation. I request that he be granted reasonable adjustment for judicial or shuttle mediation or arbitration if absolutely necessary to alleviate some of the intensity of the confrontational court process and avoid further deterioration in his health. If court hearings are unavoidable then these should be done via video and he would require frequent breaks to enable him to cope and recuperate."

13. The only oral evidence heard was from the claimant who provided a disability impact statement. His evidence is particularly important given the limited medical information before me. This statement deals with depression, stress and anxiety as well as his other medical conditions of diabetes and heart conditions. Although the claimant says he has had depression, stress and anxiety for many years, he did not provide any corroborating evidence, for example from his brother (who is an academic and barrister and advised the claimant), his wife, a friend or anyone else and his medical records do not record anything about this. Therefore, all I had before me was the Claimant's statement and his evidence in cross examination.

14. Before I discuss the claimant's evidence, I note the following authorities highlighted by the respondent in its written submissions. The claimant's representative did not indicate any issue with the content.

15. The two cases cited are about the reliability of witnesses and relate to commercial cases where the rules of evidence are much stricter than they are in the Employment Tribunals. However, the general principles are relevant. Employment Tribunals are used to considering uncorroborated evidence and evaluating the veracity or otherwise of it. However, it remains true that supporting evidence, especially documentary evidence, is of vital importance.

    Gestmin v Credit Suisse [2013] EWHC 3560 (Comm), per Leggatt J as he then was [22]:

    "the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity to which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

    Simetra Global Assets Ltd v Ikon Finance Ltd [2019] 4 WLR 112 (CA) at [48]:

    "…Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than that the oral evidence of witnesses, still less their demeanour while giving evidence…"

The claimant's witness statement and evidence

16. I considered how far I should take the claimant's demeanour and manner of giving evidence into account. I am mindful that the events and the time I am considering are now nearly exactly three years ago. The claimant said in evidence that things change, when asked about Dr Soori's comment in her letter that she did not consider him to be medically fit to cope with any further adversarial litigation. I am mindful that the person I am hearing from may be very different in presentation to who he was at the material time.

17. The claimant's witness statement is made to *"detail the impact of my severe depression and generalised anxiety disorder, heart condition, and Type 2 diabetes on my daily life, professional responsibilities, and overall well-being.*" The first thing to note it that it deals with diabetes and a heart condition which are not impairments before the tribunal. These conditions were not diagnosed until after his employment terminated and are therefore not within the material time. It is difficult to separate what he says relates to mental health issues and what relates to the other issues.

18. The statement is mainly written in the present tense. It was written in November 2025. The claimant confirmed that much of what is said relates to how he was at that time and not the material time. This inevitably makes it very difficult for me to understand how the claimant was at the material time, something which the claimant acknowledged.

19. Counsel for the respondent was very critical about the claimant's evidence, highlighting inconsistencies, inaccuracies, and what it says is implausible. I have not set them out in detail however they are reflected in my conclusions. Mr Hay made no specific submissions about to the reliability of the claimant's evidence.

20. This is a case where the credibity of the claimant is everything. In analysing the different elements of the definition, I have to be satisfied on the balance of probabilities that the claimant has demonstrated he is disabled. The burden of proof is on him to do so. I have spent some time considering the claimant's evidence and the limited relevant documents.

21. On balance, I do not find the claimant's evidence to be reliable and accurate. He conceded his statement predominately related to the time it was written (November 2025) rather than the material time. He accepted when I put it to him, that it is very difficult for me to ascertain how he was at the material time. As such, I simply have no idea of whether the claimant had impairments that had a substantial and adverse impact on his day-to-day activities at the relevant time. I can accept that when he went to his GP in June 2023, he was likely to be feeing stressed and anxious about the impending disciplinary proceedings although he also said that the reason for going was to put on the record that he was depressed. This would seem to be a precautionary step he took on advice from his brother in the anticipation of this litigation and to be signed off work.

22. I have no doubt that the claimant was stressed about the disciplinary process. This is a natural and expected reaction to this type of event. However, there is a difference between stress about life events and an impairment. There is no detail about what was happening at that time and what the claimant was finding it hard to do or oud do but only with difficulty. I am mindful that my focus is on what the claimant could not do or could only do with difficulty. There are broad statements in his disability impact statement, but no examples and no time line.

23. This, coupled with the paucity of the medical evidence means that I am unable to find the evidence to be reliable for the reasons already set out. Had there been supporting oral testimony, for example, from his brother, wife or friends, then I would have taken that into account. That type of evidence can be very powerful and compelling, especially where the documented medical evidence is scant and can be conclusive even in the absence of medical records.

24. There are other matters, such as Dr Soori's letter specifically saying that the claimant's mental condition at the time she saw him was a reaction to the disciplinary matters. She does not refer to any earlier mental health issues. It would be commonsense to assume that the claimant did not mention it to her as it is not recorded. The question is why he would not mention this if it were true as it would obviously be relevant to her assessment of his mental condition. Dr Soori is not someone he socialises with so her opinion of him would not matter.

25. I also take account that the claimant is a veterinary surgeon with knowledge of medical matters. Knowledge, which he says enabled him to evaluate his treatment and decide to reject the medical advice of his doctors by not taking recommended medication or certain medical tests. He would know the importance of telling his doctors everything when asking for a diagnosis and the importance of having tests. Therefore, the assumption is that if he had been having long term mental health issues, he would told his GP in June 2023 if not before, and have at least told Dr Fatima and Dr Soomi given that his reason for not telling his GP's was his friendship with them. He did not do this.

26. Another inconsistency is that the claimant's case is that he had depression, stress and anxiety for a long period. In his impact statement he says from 2003. The letter written by Dr Fatima records it as being from 2016. Other dates were also mentioned during the hearing. The claimant appeared surprised by what Dr Fatima recorded notwithstanding that he had had this letter for a very long time.

Physical or mental impairment

27. The Equality Act does not define an 'impairment' which should be given its ordinary meaning. Appendix 1 paragraph 6 to the EHRC Code states: *'The term "mental impairment" is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities'. Where there is no clear medical diagnosis it may be legitimate for a tribunal to first consider adverse effect and then to consider whether the existence of an*

impairment can reasonably be inferred from those adverse effects (J v DLA Piper UK LLP 2010 ICR 1052, EAT). The cause of the impairment does not require to be established (Guidance A3). A person may have more than one impairment. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities (Guidance B6). A distinction may be drawn between a mental impairment such as clinical depression and stress/ low mood (both of which may be a reaction to adverse life circumstances). In some cases tribunals may find that effects suffered by a claimant were sometimes attributable to a mental impairment and sometimes to stress/ low mood which does not amount to a mental impairment (J v DLA Piper UK LLP 2010 ICR 1052, EAT).

28. By June 2023 the claimant says he needed to go to his GP to be signed off work. This was due to the disciplinary proceedings he was subject to. In evidence he said he had been advised to do this, presumably by his brother so it was put on record. There is nothing in the GP notes outlining any symptoms, or for how long the claimant had been feeling this way or anything except the claimant asking or a medical certificate signing him off work for reactive depression. No doubt the claimant was upset about the prospect of disciplinary action. However, there is a difference between a reaction to life events and an impairment. There is no corroborating evidence from anyone about how the claimant was at this time and the claimant's witness statement does not set out how the claimant was and what symptoms he was experiencing at this time. It does seem strange to me, that the claimant, if he had had depression for decades did not mention this to the GP during the consultation.

29. Given the lack of specific information about the claimant's mental health at the relevant time, it is difficult to say definitively whether the claimant had a mental health impairment at the material time. I can accept that possibility that the claimant had a mental health impairment given the nature of the disciplinary proceedings which ultimately led to the termination of his employment. A reaction would be normal. It is not necessary to find a clinical diagnosis. However, even if I did find an impairment, the other aspects of the definition would still need to be satisfied.

Did that impairment have a substantial adverse effect on his ability to carry out normal day to day activities?

30. The impairment must cause an adverse effect on normal day to day activities but there does not need be a direct causal link. 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.

31. This includes work related activities such as interacting with colleagues, using a computer, driving, keeping to a timetable etc (Guidance D2– D3). The adverse effect must be substantial. Section 212(1) of the Equality Act provides that "*substantial*" means more than minor or trivial. The EHRC Code notes that a disability is "*a limitation going beyond the normal difference in ability which might exist among people*". It is important to consider the things that a person

cannot do, or can only do with difficulty (Guidance B9). This is not offset by things that the person can do.

32. The time taken by a person with an impairment to carry out an activity should be considered when assessing whether an effect is substantial (Guidance B2). The Guidance provides at para B7 *"Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities."*

33. Whist the claimant listed these categories or some of them in his statement he does not give examples and does not provide a time. I have no doubt that the institution of disciplinary proceedings caused the claimant stress. However, the question is, did this have a substantial adverse effect on his normal day-to-day activities and if so whe? I find that his witness statement being written in the present tense for the most part sets out the effects at a different time to the material time I am considering. This view is supported by the claimant's evidence and submissions that I should look at the impairments (including his heart condition and diabetes) together. Given that the heart condition and diabetes were not known about until after the claimant's employment had been terminated, this indicates to me that the time that the claimant is talking about in his statement must be after the material time.

34. There is no cogent evidence before me from which I can conclude that any impairment the claimant may have had, had a substantial adverse effect on his ability to carry out normal day to day activities.

Was the substantial adverse effect on his ability to carry out normal day to day activities long term?

35. I went on to consider the position had I found the claimant had an impairment which had a substantial adverse effect on his ability to carry out normal day to day activities.

36. Schedule 1 paragraph 2(1) of the Equality Act provides that the effect of an impairment is long term is 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.

37. Schedule 1 paragraph 2(2) provides that if an impairment ceases to have a substantial adverse effect, it is to be treated as continuing to have that effect if that effect is likely to recur. In SCA Packaging Ltd v Boyle 2009 UKHL 37, the House of Lords ruled that "*likely to*" in this context means "*could well happen*"

rather than "*more likely than not*". This must be judged at the relevant time and not with the benefit of hindsight. An employment tribunal should disregard events taking place after the relevant period but prior to the tribunal hearing.

38. I have to consider how long the claimant had the impairment. The first documented record is the consultation. This was only about 3 months before the termination of the claimant's employment. The claimant says he had depression, anxiety and stress from 2003. However, as already noted, there is nothing to substantiate this.

39. On balance I find that the impairment complained of was a reaction to the disciplinary proceedings (as described by Dr Soori) rather than lasting for many years before. It is for the claimant to prove this, and he has not done so.

40. I find that at the relevant time the claimant had been suffering from stress for a couple of months at the most. It certainly had not lasted for one year. The issue therefore, is whether any effect was likely to last for at least 12 months or the rest of his life. "Likely" means it could well happen, rather than more likely than not. This is to be judged at the relevant time. Having regard to the relatively short period of the disciplinary proceedings, there is no reasonable basis upon which it could be inferred that any effect could well last for at least 12 months especially as the depression was reactive in nature and the conclusion of the disciplinary process would alleviate matters. Indeed, the claimant says he has been doing locum work since leaving the respondent's employment which he enjoys even though it appears that his heart condition has impacted his life in some ways.

My finding

41. I conclude that stress, anxiety and/or depression did not have an effect on the claimant's normal day to day activities which was either substantially adverse or long term at the relevant time. Accordingly, the claimant was not disabled by reason of his mental health at the relevant time. The claimant's claim of discrimination on the protected characteristic of disability is therefore dismissed. His other claims will proceed to hearing.

Approved by:

Employment Judge Martin

10 June 2026

Notes

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