EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001031/2025

Held in Glasgow on 18 May 2026

Employment Judge E Mannion

Mr Z Naveed	**Claimant** **In person**
Openreach Limited	**Respondent** **Represented by:** **Ms L McSporran,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is the claimant was not a disabled person for the purposes of the Equality Act 2010 in respect of his chronic fatigue which has symptoms of tinnitus, insomnia, malabsorption and energy crashes or his mental health.

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 process of the hearing was discussed and I explained the legal test which is applied in coming to the decision on disability – whether there is a physical or mental impairment, whether this impairment had a substantial adverse effect on day to day activities and whether this adverse effect was long term. Specifically I explained that the Tribunal is concerned with the adverse effect of the symptoms of his various conditions on his day to day activities and whether this effect is long term, rather than a focus only on the symptoms. I gave an example of a person with arthritis and their symptoms – pain, impact on mobility – versus effect on day to day activities – unable to lift certain weights, unable to lift groceries out of trolley, unable to get items from an

under counter cupboard. It is this latter information which should be focused on when dealing with that part of the test.

3. I also explained that while a bundle has been provided, the documents – aside from the pleadings – are not read or relied upon by the tribunal unless a witness has spoken about them in evidence. I explained that if there were any documents such as medical records or reports which the claimant wanted me to consider, he should refer me to the pages in the bundle to bring them into evidence. Throughout the course of the evidence in chief, I prompted the claimant to whether there were documents in the bundle he wanted to refer to.

4. The claimant gave evidence on his own behalf. There were no respondent witnesses.

5. A joint bundle of documents was prepared and lodged in advance of the hearing. The claimant stated that a document was missing from this bundle, an application he made on 27 December 2025 amending his claim. Ms McSporran confirmed that this was not included as it related to a previous application to amend. There was no objection to this document being referred to.

6. During his evidence the claimant was asked whether there were documents he wanted to bring into evidence and he made reference to a DSAR document, summary document and letter from a Dr Suziki which were not in the bundle. He agreed that the bundle was sent to him in advance to agree and did so.

7. At the conclusion of the hearing, after submissions and after I notified the parties I would provide a reserved judgment, the claimant made an application that I consider other documents or "evidence" that he had previously provided to the Tribunal because these documents are relevant to the question of disability and should have been included in the bundle. I explained again the position of evidence and documents in evidence, namely that sending a document to the tribunal does not make it evidence. Only when a witness in evidence speaks about a document does it become evidence. I stated that it would not be the proper course of things to review documents previously sent to the tribunal and take those documents into account because they are not evidence. It would also deny the respondent the right to cross examine the claimant on those documents. The claimant submitted that he expected the respondent to put all of his medical evidence into the bundle but they did not do so. The respondent confirmed that they took the medical documentation provided by the claimant and collated it into the bundle. It was then sent to the claimant to review and consider and agree if it contained everything. He did so. I confirmed to the claimant that I would not be reviewing any other

documentation he had previously sent to the tribunal, save for pleadings, to determine the question of disability status.

Relevant law

8. Section 6 of the Equality Act 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.

9. 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. The steps, which are to be considered sequentially, 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?

10. 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 assess the claimant's disability status.

11. A lack of medical evidence was considered by the EAT in ***Igweike v TSB Bank plc*** 2020 IRLR 267 where Auberbach J at paragraph 50 notes: *[I]t is a practical fact that, in some cases of this type, the individual's own evidence may not be sufficient to satisfy the tribunal of the existence of an impairment. In some cases, even contemporary medical notes or reports may not be sufficient, and expert evidence prepared for the purposes of the litigation may be needed. To say all of this is not to introduce either of these legal heresies by the back door. The question is a purely practical or evidential one, which is sensitive to the nature of the alleged disability, the facts, and the nature of the evidence, in the given case.'*

12. 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."

13. 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.

14. Section 212(1) of the Equality Act provides that "substantial" means more than minor or trivial.

15. 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.

16. 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 v London and South Eastern Railway Ltd*** 2013 ICR 391. 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).

17. The tribunal is required to consider whether the claimant is disabled at the material time, that it when the alleged discrimination occurred. This was confirmed in **Cruickshank v VAW Motorcast Ltd** 2002 ICR 729, EAT.

Issues

18. The claimant confirmed that he was relying on the physical impairments of chronic fatigue syndrome and coeliac disease. He stated that symptoms of both conditions are tinnitus, insomnia, malabsorption and energy crashes. He also stated that he was relying on a mental impairment, namely the effect of the physical conditions on his mental health. This latter aspect was not featured in his ET1 or in other documentation to the tribunal.

19. The respondent conceded that the claimant's coeliac status was a disability under the Equality Act 2010 but Ms McSporran submitted that if the claimant's position is that the symptoms of tinnitus, insomnia, malabsorption and energy crashes are caused by his coeliac status, the Tribunal requires to make findings on this. Ms McSporran also submitted that the claimant had not previously referred to any mental impairment he was relying on as a disability.

20. Ms McSporran confirmed that all aspects of the Section 6 definition were disputed by the respondent.

21. Therefore the Tribunal has to determine the following issues:

    9.1 Did the claimant have a mental and physical impairment at the material time (20 May 2024 to 16 January 2025)?

9.2 If so, did that impairment have an adverse effect on his ability to carry out normal day to day activities at the material time?

9.3 If so, was that effect substantial (as in more than minor or trivial) at the material time?

9.4 If so, was the effect long term at the material time?

Findings in fact

22. The Tribunal makes the following findings in fact on the balance of probabilities having considered the available evidence.

23. The claimant was diagnosed with coeliac disease in 2018 and has followed a gluten-free diet since that time to manage his symptoms.

24. The claimant had a serious viral respiratory infection in February 2024 which lasted a number of weeks, causing him to be off work. Towards the end of March 2024, he began to feel better and indicted to his line manager he would soon be in a position to return to work.

25. On 31 March 2024, the claimant ate some fermented food which had an instant reaction in his gut and bowel, requiring him to attend A&E. He had intense abdominal distension and constant belching.

26. Following this, the claimant made an appointment with a private gastroenterologist Dr Bouton-Jones to assess his symptoms on 9 April 2024. Dr Boulton-Jones wrote in a letter of the same date that these symptoms (severe stomach bloating and the feeling that his gut would explode) do not suggest any underlying GI upset, noting a lack of weight loss, vomiting or blood in his stool. He noted that the GI symptoms were likely related to a combination of a change of bowel habits and the recent chest infection and that they should settle.

27. The claimant returned to shortly after this but had another period of absence beginning at the end of May or start of June 2024.

28. The claimant attended at a doctor in Pakistan in or around July 2024 as he felt that it was slow to get appointments via the NHS. While under the care of that doctor, he underwent an endoscope. He was also prescribed sertraline by that which he tried but found that he did not get any benefit from and so he stopped taking it.

29. The claimant was then seen by the respondent's occupational health provider in August 2024. The report from the occupational health provider dated 29 August 2024 noted that the claimant developed abdominal symptoms at start of April 2024 after eating fermented foods and has been absent due to

feelings of abdominal bloating, discomfort, shortness of breath, feeling weak and fatigued. The report noted an inflammation of his gastric tract was the outcome provided by the doctor in Pakistan. The report also noted that the claimant was previously diagnosed with coeliac disease in 2018 and is on a strict gluten free diet. The report does not link the abdominal symptoms and his coeliac disease. The report noted that the claimant was able to undertake all normal daily activities at home.

30. The claimant was referred to Gastroenterology by the NHS on 9 September 2024 due to his ongoing symptoms of abdominal pain, bloating and nausea. He also contacted Ross Hall, a private hospital on 25 September 2024 looking for a SIBO test setting out his symptoms of constant belching, distended abdomen with bloating, his “system [being] slow and not working the way it used to”. He also refers to tinnitus and insomnia.

31. He underwent a private consultation at the Mayo Clinic in October 2024. The report which followed confirmed his active issues were generalised malaise, gastrointestinal symptoms, low energy, chronic fatigue, tinnitus. There was no discussion within the report about how any of his symptoms were affecting his daily activities. The prognosis was that the gastrointestinal symptoms warrant further assessment and a gastroscopy and colonoscopy were suggested.

32. The claimant was reviewed by Dr Shanmugam, Speciality Doctor in Psychiatry November 2024. The prognosis from that consultation was that the claimant had low mood and anxiety reactive to his current physical health issues. He confirmed that his symptoms were reactive to the current circumstances, that he did not wish to undertake any medication or psychological therapy. He did not feel he needed mental health support at that time but wanted to get help for his gastro symptoms. He was discharged from the psychiatry services in December 2024.

33. His mental health declined significantly after the loss of his job which took effect on 27 February 2025, the decision to dismiss being made on 16 January 2025. He had suicidal ideation but no thoughts of self harm at that time.

34. The claimant’s ability to undertake household cleaning tasks was effected, in that he would observe that cleaning was required, but he could not motivate himself to undertake these tasks. Months would go by before he could do so. This lack of motivation was due to his mental health. The effect did not present itself for all of the material time.

Observations on the evidence

35. The claimant gave his evidence to the best of his ability and I considered he was giving an honest account of events as he remembered them.

Submissions

36. 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?

37. I considered firstly the question of whether there was an adverse effect on day to day activities as this informed the question of impairment. The terms of the Statutory Guidance require that I focus on what the claimant could not do or only do with difficulty.

38. As of 25 August 2024, there was no impact on his day to day activities.

39. The claimant's maintained that the day to day activities effected are household chores, specifically cleaning the house. He referred to some activities within that category – wiping fingerprints off a mirror, hoovering, cleaning the toilet, cleaning the kitchen, cleaning the driveway. His evidence was vague and while I brought him back to the question of the effect on his day to day activities multiple times, the focus of his evidence was on his symptoms. What his evidence came to was that there is an overall lack of motivation to do these tasks. He can notice that there are fingerprints on his mirror for example but it might be three months before he cleans them off. The same with cleaning the toilet. He can identify it needs to be cleaned, but it can take months for him to do so. There does not appear to be any difficulty when it comes to actually doing the task. It is not that his physical symptoms mean he cannot wipe fingerprints off his mirror or clean out his toilet. It is that he is unable to motivate himself to do the task and so it goes undone for months at a time, even though he knows he should complete it.

40. When pressed on which symptom or aspect of the chronic fatigue meant it was difficult to clean his home, the claimant repeatedly referred to the mental health impact of the physical symptoms. This was repeatedly stated as the reason why months would pass before he could undertake cleaning tasks.

41. The only activity which where there was an overlap with the physical symptoms was cleaning the drive. It was not immediately clear what the claimant meant by this, whether it was power washing, weeding, clearing leaves and debris but he said that it was something he would normally do on a monthly basis. He stated that it can take him months to be motivated to do this and that after he undertakes the task, he is physically exhausted for days. His evidence was not that the physical exhaustion was what put him off

undertaking this tasks, but rather the general motivation to do the task caused by his mental health.

42. I determined that wiping the mirror, hoovering, cleaning the toilet or kitchen, cleaning the driveway are day to day activities. They are things that are ordinarily done by people with a certain degree of frequency. However they are not day to day activities which are effected by the symptoms of his chronic fatigue, namely tinnitus, insomnia, malabsorption or energy crashes per his evidence. Rather by his own admission, it is his mental health which has created this adverse effect.

Did the claimant have a mental impairment which resulted in this adverse effect?

43. Given the determination that the day to day activities were not effected by chronic fatigue, tinnitus, insomnia, malabsorption, energy crashes , but rather his mental health as per his evidence, I required to determine if the mental health issues amounted to a mental impairment.

44. The claimant made reference at the outset of the hearing to the mental health impact from the physical symptoms of his malabsorption. Through his evidence, it became clear that the lack of a clear answer and treatment along with NHS waiting times had a negative impact on his mental health. This was confirmed by the report from Dr Shanmugam on 2 December 2024 (in respect of a consultation on 6 November 2024) who noted that the claimant's low mood was reactive to his current physical health, which the claimant agreed with, and that the majority of the appointment with Dr Shanmugam was spent discussing his physical health symptoms and feelings of being let down by the NHS. The claimant confirmed this in evidence wherein he stated that he did not need support from the mental health team, what he required was help with his gastrointestinal symptoms. There was no reference in that report to the impact of his low mood on his ability to undertake any normal or day to day activities.

45. The claimant's mental health was also impacted by the death of his brother-in-law in January 2025. It further deteriorated after his dismissal on 16 January 2025 which took effect on 27 February 2025.

46. While prescribed sertraline in July 2024, he took it for a short period and then stopped. He could not recall how long he took the sertraline for and maintained that he took this and other medication on an ad hoc basis. At the time of the gastro referral in September 2024, no medication was noted. At the consultation with Dr Shanmugam in November 2024 he was not taking sertraline and did not want a further prescription for it or other medication. He did not want a referral for further mental health treatment at that time.

47. None of the claimant's absences from February 2024 to the date of dismissal were due to his mental health.

48. Taking all of the above into account, I determined that the mental health impacts were a reaction to the ongoing physical gastro symptoms suffered and the feeling of disillusionment from September 2024 to January 2025 with the NHS system rather than a mental impairment. The medical evidence and the claimant's own evidence was that the low mood was not a symptom of an underlying mental health condition, but a reaction to the life events, specifically the difficulty in diagnosing and treating his gastro symptoms.

49. The claimant therefore does not fulfil the definition of disability for his chronic fatigue which encompasses symptoms of tinnitus, insomnia, malabsorption or energy crashes or his mental health.

Further procedure

50. This case will proceed to the final hearing scheduled for August 2026 to consider the question of ordinary unfair dismissal and any allegations of disability discrimination as a result of the claimant's coeliac disease.

Date sent to parties **17 June 2026**