



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103805/2025 & Ors

Hybrid Hearing Held at Aberdeen on 13 July 2026

Employment Judge McFatridge

Mrs A Brzakalska

**Claimant(s)
In Person**

H Oleszkiewicz

Greene King Limited

**Respondent
Represented by,
Ms Barry,
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant was not disabled in the period from June 2024 to May 2025. The claim of disability discrimination is dismissed.

REASONS

1. The claimant submitted a claim to the Tribunal in which she made claims of sexual harassment and also various claims of disability discrimination. Her claim of sex discrimination was submitted alongside that of another claimant who was only claiming sex discrimination. The respondent submitted a response in which they denied all claims. It was their position that the

claimant was not disabled in terms of the Equality Act and that the claim of disability discrimination should be dismissed. A Preliminary Hearing took place on 13 February 2026 following which the Employment Judge submitted a Note with various Orders. In paragraph 13 he appointed an Open Preliminary Hearing be fixed to deal solely with the issue of whether or not the claimant was a disabled person within the terms of the Act at the relevant time which was stated to be "from in or about June 2024 up to and including end of May 2025". It was noted that the claimant's asserted medical condition was "work-related stress". The Hearing took place before me on 13 July 2026. It was originally set down for two days but was completed within one. At the Hearing the claimant gave evidence on her own behalf and led evidence from her husband. Both the claimant and her husband gave evidence with the assistance of a Polish Language Interpreter. The claimant also referred to the short documentary bundle which is referred to below by page numbers. On the basis of the evidence and the productions I made the following findings in fact relevant to the sole issue which I required to determine namely, disability.

Findings in fact

2. The respondent operates a large number of public houses and restaurants throughout Great Britain. One of these is the Holburn Bar in Aberdeen. The claimant commenced employment with them at the Holburn Bar on or about September 2023. She initially completed training two weeks in another bar and was then working in the Holburn Bar as a Kitchen Assistant. She initially worked under the supervision of a Kitchen Manager however, in or about May 2024 that person left and the claimant was appointed as Kitchen Manager.
3. The claimant found her new job to be stressful. The claimant was meant to have Sundays off but at some point during 2024 the respondents began to ask the claimant to come in on a Sunday to work to finish things off. The claimant asked for someone to help and was told that there wasn't anyone. The claimant was unhappy about having to come in to work on the Sunday in order to do her preparation for Monday. The claimant began to find that she was stressed at work. It began to affect her family life. She was annoyed that she could not have her only day off with the family each week because she kept being asked to work it. On a few occasions the claimant refused to come in on her day off and on those occasions she felt under pressure from her manager.
4. During 2024 and 2025 the claimant started having arguments with her husband. She felt her family life was being affected. She began to have

some sleeping problems. The claimant's daily routine was to get the child up in the morning and then take her dogs for a walk. There were times when she couldn't take her dogs out for a walk and had to ask her husband or her friends to do the school run taking her child to school. She felt that all of this was a result of being stressed at work.

5. The claimant had some difficulty sleeping. She did not seek any medical guidance in relation to this. She purchased some melatonin around Christmas 2024. This is an over the counter remedy for sleeplessness. The claimant started taking this once every two nights however she did not find that it was helpful. The claimant's sleep difficulties meant that she would stay awake until around 3 to 5pm and then fall asleep for a few hours before she had to get up in the morning. The Claimant initially did not seek any medical assistance regarding her issues. In early 2025 her sister recommended a polish speaking psychotherapist based in Poland and the claimant began having online therapy sessions with this person.
6. The claimant felt that she did not have enough training as Kitchen Manager and that this caused her a lot of stress because she felt that she had to learn everything herself as there was no one to refer to in the kitchen. She would sometimes ask the Manager for advice but the Manager had little experience of running a kitchen and was often unable to help her.
7. The claimant's position is that during a period in 2025 she was also subject to harassment by her Manager on the grounds of sex and this caused her stress. She felt that she was working so hard that she was unable to do the things at home that she was supposed to like take the child to school and take the dogs out and cook meals. On occasions the claimant would suffer what she now recognises to be panic attacks which began on or about August 2025. The claimant went off sick on or about 15 August 2025. She self-certified herself as suffering from work-related stress.
8. The claimant's medical records were lodged pages 52-61. They show no consultations with her G.P. relating to depression or stress at work until August 2025. As part of the preparation for this Hearing, following an Order from the Employment Judge, the respondent's Agents provided the claimant with a request for Further Particulars. It set out at pages 41-51 of the Bundle. The claimant's questions and answers are set out at pages 40-44.
9. In answer to the question at point 6 which asks: "Do you agree that there has been no medical assessment or prognosis that your stress was likely to last for 12 months or more?", the claimant's answer was "I agree that the Occupational Health Report dated 29 October 2025 stated that the condition

was likely to last less than 12 months, however, I rely on the substantial effect the condition had on my day-to-day activities.” In answer to the question 1.7 which asks the claimant to specify what specific day-to-day activities could she not do or only do with difficulty and asked her to be specific and identify tasks or activities with as much detail as possible, the claimant stated “during this period I experienced insomnia, difficulty concentrating, anxiety related to attending work, family strain caused by work-related stress. These symptoms affected my daily functioning.”

10. A Fit Note dated 22 August 2025 was lodged (page 27). It states stress at work. The claimant remained signed off until 26 October 2025. Her two Fit Notes issued during this period were lodged (pages 78-79). The claimant was invited to a welfare meeting on 16 October which she attended. Notes of this meeting were lodged (pages 81-84). The claimant was again signed off as unfit for work on 27 October to 24 November 2025. Once again the cause was said to be stress at work (page 85). The claimant was referred by her employers to Occupational Health and the Occupational Health Report was lodged (pages 86-90). This was based on a telephone interview with the claimant which took place on 29 October 2025. The claimant resigned her employment in or about February 2026.

Observations on the evidence

11. During her evidence I had to continually remind the claimant of the need to concentrate on the issue at hand which was whether she met the definition of being a disabled person in the period prior to May 2025. During her evidence, when asked, the claimant said that she considered herself to be disabled from August 2025 onwards. The claimant at times did not appear to fully understand what the claim of disability discrimination was about. Instead, her view appeared to be that she was making a claim to the effect that her employers had made her ill as a result of failing to provide her with enough support at work and asking her to work on her days off. There was really no evidence before me which could lead me to the view that the claimant was suffering from any kind of mental impairment over the period. The claimant confirmed that she had undergone some counselling sessions with a counsellor based in Poland and that she continued to see her G.P. She indicated that her G.P. had at no time suggested prescribing any drugs to assist her. Her Polish Counsellor had not prescribed drugs although it was the claimant's understanding that she was not permitted to prescribed drugs in the UK.

Issues

12. The sole issue which I required to determine was whether or not the claimant met the definition of disability in the period set out in EJ d'Inverno's Note namely from June 2024 to May 2025. Judge d'Inverno's Note indicated that this was the relevant period for the claim of disability discrimination since this was the period over which the claimant alleged that the respondents had unlawfully discriminated against her.
13. The definition of disability is set out in paragraph 6 of the Equality Act 2010. It is well to set it out in full.

“(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;

(2) With reference to a disabled person's reference to a person who has a disability;

(3) In relation to a protected characteristic of disability:

- (a) a reference to a person who has a particular characteristic is a reference to a person who has a particular disability;
- (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.....”

14. It is clear from the case law that the onus was on the claimant to prove that she was disabled at the relevant time. The definition of substantial is contained in section 212(2) of the Act and is more than minor or trivial. In order to satisfy the long-term effects test the impairment has to have lasted at least 12 months or likely to last 12 months.
15. There has been a considerable amount of case law handed down from the higher courts setting out the approach which should be taken particularly in a case where a mental impairment such as anxiety, stress or depression is alleged. I would agree with the respondent's representative that there is a distinction to be made between a mental impairment and a normal reaction to adverse life events. It maybe that this is something which develops into an impairment but the distinction requires to be borne in mind at all times.
16. There were a number of difficulties with the claimant's case which was that she met the definition of disability during the period up to May 2025. The first is that there is absolutely no medical evidence suggesting the claimant suffered from any impairment at all. She herself did not seek any medical

attention during this period albeit she may have sought advice from the Counsellor in Poland towards the end of this period. In any event there is no information about this. The second point is that in my view the claimant entirely failed to show the effects of any such alleged impairment were substantial. She talks of being unable to take her child to school and unable to take the dogs for a walk. She also referred to arguing with her husband and feeling that her private life was being affected by being having to work longer hours. In my view, these are matters which anyone who was having to deal with what the claimant says she was dealing with at work may well have suffered from without necessarily meaning that they are disabled as a result of suffering from mental health issues. Finally, there was absolutely no evidence to the effect that either such impairment had lasted more than 12 months or was likely to last 12 months. As noted above there was absolutely no medical evidence in this case. It is not even the case that the claimant's G.P. had prescribed anti-depressants. At no time do the Fit Notes refer to any mental illness but simply refer to stress at work. In my view, it is absolutely crystal clear that the claimant was not disabled at the relevant time. The claimant herself, in evidence, felt her disability had not started until August 2025 which was sometime after the relevant period as identified by Judge d'Inverno. I had therefore little hesitation in finding that the claimant had failed to show that she was disabled at the relevant time and accordingly the claim of disability discrimination must fail and will be dismissed.

Date sent to Parties

28 July 2026
