EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002497/2025

Held in Glasgow on 4 June 2026

Employment Judge S Cowen

Mr T Olszewski	**Claimant** **Represented by:** **Mr Werenowski** **Counsel**
Miller Fabrications Limited	**Respondent** **Represented by:** **Mr James -** **Advocate**

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Claimant was a disabled person between 19 May 2025 and 5 August 2025.

REASONS

Introduction

1. An agreed bundle was provided including the Claimant's medical evidence and his impact statement. Both parties provided skeleton arguments. The hearing heard oral evidence from Mr Olszewski (via an interpreter) and submissions from both parties, including reference to a bundle of authorities provided by the Respondent.
   The decision was reserved, but it was noted that the final hearing was due to commence on 1 September 2026.

2. The claims were issued in an ET1 on 16 October 2025 having complied with ACAS Early Conciliation. The claims include issues in relation to disability discrimination. The issue for this public preliminary hearing was whether the Claimant was a disabled person between 19 May 2025 and 5 August 2025. It should be noted that the Respondent contests the initial date of this period, but that is not relevant for today and therefore the Claimant's case was taken at its highest.

The Facts

3. The Claimant started working for the Respondent as a welder on 29 April 2024. He worked on the night shift, which he had also done at his previous employer.

4. On 6 March 2025 he suffered an injury to his toe at work. As a result of this he was off sick as he could not wear the required health and safety equipment (steel capped boots). This resulted in a reduced income for the Claimant, which in turn led to stress and anxiety, including symptoms of disturbed sleep, fatigue and worry/anxiety. The Claimant returned to work on the night shift and commenced proceedings in relation to personal injury.

5. In May 2025 the Respondent moved the Claimant to the day shift. The Claimant did not want to make this move, for reasons connected to childcare responsibilities and due to the difference in income which would occur.

6. The Claimant alleges that it was this change in his shift which initiated his mental ill-health. Up to this point, there is no mention in the Claimant's GP records of any depression, anxiety or other mental health problem.

7. The Claimant first attended his GP on 2 June 2025 in relation to "mood nadir and insomnia without deliberate self harm or suicidality". This was noted to be " related mainly to work place stressed with childcare issue". At that appointment the Claimant was issued with a Med3 fit note for "depression" and prescribed escitalopram and melatonin. He was also referred to a support worker, with whom he had first contact on 11 June 2025. An Occupational therapy appointment on 12 June 2025 recorded that the Claimant had " difficulty to sleep and eat and lack of routine or enjoyment from usual activities".

8. On 16 June an OT recorded that the Claimant " used to enjoy going on family days out or taking his **** to soft play or the playground, watching films or playing computer games. However, Tomasz struggles to focus and with low motivation, as well as overthinking. Tomasz struggles to fall asleep and will wake up several times in the night worrying. Tomasz also reports low appetite,…. Has withdrawn from leisure activities… lacks routine…. Is struggling to maintain his role as a dad and he feels he should be doing things with his **** but does not feel able to".

9. On 25 June – at a telephone appointment with a health support worker, after his friend's death by suicide, he states he is OK and is signposted to Petal, YAMS and SAMH for support after a suicide".

10. At an OT appointment on 9 July 2025 the claimant's suicidal ideation is decreased.

11. He missed appointments on 23 July and 8 August with the OT. During that period he was issued with a further Med3 for depression.

12. The Claimant's impact statement and oral evidence indicated that he had struggled to wash and dress himself, had to be prompted by his wife, had found it difficult to sleep and eat and had not done things as he did previously as he was lacking motivation. He indicated that his wife had to do most of the responsibilities such as cooking, dressing and taking their daughter to school. The Claimant was able to accompany his wife to do the shopping once or twice a month, rather than a few times a week.

13. A GP letter written on 3 November 2025 (after the material time) stated that the Claimant had had anxiety and low mood for 5 months. It described that the Claimant had received treatment but had not had significant improvement. The letter stated that the GP could not predict if this will be a long term mental health issue for the Claimant, but that it had the "potential to last longer than 12 months, or be a recurrent and relapsing condition".

14. A GP letter written on 24 February 2026 (after the material time) stated that the Claimant had been suffering from anxiety and depressed mood from approximately June 2025. The letter refers to him having disturbed sleep at night and sleeping in the day, not wanting to leave the house and requiring significant encouragement from his wife to do daily tasks like wash, dress and help with meal preparation. It describes that he lacks concentration and motivation.

The Law

15. **Section 6(1) Equality Act 2010 (EqA**) states:
    1. *"A person (P) has a disability if—*
    2. *P has a physical or mental impairment, and*
    3. *the impairment has a substantial and long-term adverse effect on*

    P's ability to carry out normal day-to-day activities."

    4. **Part 1 of Schedule 1 to the EqA** ;
    5. *"Long-term effects*
    6. *The effect of an impairment is long-term if—*

it has lasted for at least 12 months,
it is likely to last for at least 12 months, or
it is likely to last for the rest of the life of the person affected.

If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

…

Effect of medical treatment

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.

"Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid."

16. *Goodwin v Patent Office* [1999] ICR 302 sets out that each of the points must be considered in turn and separately.

17. 'Guidance on matters to be taken into account in determining questions relating to the definition of disability' (2011) ('the Guidance') sets out:-
    i. that anything which occurs after the date of the discriminatory act will not be relevant to the consideration of definition of disability.

18. The time at which the Tribunal is to consider the disability is the date of the alleged act of discrimination *Tesco Stores v Tennant* 2020 IRLR 363. This is also the relevant date when considering whether any impact is long term**.** *All Answers Ltd v W* **2**021 IRLR 612, CA, set out that the Tribunal must look at the facts and circumstances existing at the date of the discrimination and not to events which occurred subsequently.

19. The Tribunal may consider first whether there was a substantial adverse effect on day to day activities, before considering whether the Claimant had a mental impairment, as that may be inferred, where the effect has been shown; *J v DLA Piper UK LLP* 2010 ICR 1052.

20. Further, *J v DLA Piper UK LLP* 2010 ICR 1052 also indicates that there is a distinction to be made between symptoms which are a reaction to 'adverse life events' and 'clinical depression'.

21. A disability which recedes to remission may be treated as a disability under s.6 EQA where it is 'likely to recur', that is that it could well happen. The Tribunal must consider whether the substantial adverse effect of the impairment is likely to recur; Boyle v SCA Packaging Limited 2009 ICR 1056

22. 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: *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)

23. In **Paterson v Commissioner of Police of the *Metropolis*** *[2007] IRLR 763,* Elias J said:"… when assessing the effect, the comparison is not with the population at large. As paragraphs A2 and A3 [of the then Guidance] make clear, what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired."

24. The burden of proving disability lies with the Claimant who must provide evidence of circumstances which fall within s.6 Equality Act 2010. Each disability must be considered independently.

The Decision

Impairment

25. In accordance with J v DLA Piper I first considered whether the Claimant, at the material time of 19 May 2025 to 5 August 2025 suffered from an impairment which had a substantial adverse effect on his ability to carry out day to day activities.

26. Taking into account his evidence and his impact statement, the Claimant initially had some anxiety with regard to his physical injury and the fact that this led to financial problems for him, (due presumably to sick pay being less than his full contractual pay). To that end, it is noted that the Claimant returned to work before he was fully fit to do so.

27. Equally, I take into account that he was signed off as unfit to work from 2 June 2025, but it appears that he continued to work until 6 June 2025. He said that this was also due to financial pressure.

28. I do not accept any suggestion by the Respondent that the reason/cause of the Claimant's mental ill-health plays any part in the decision making about whether his mental ill-health amounted to a disability. Whether his condition started due to an action of the Respondent, or someone else, or due to some other misfortune in life is of no consequence as to whether at the material time, the Claimant fitted the relevant s.6 EQA definition. This Tribunal makes no decision on the causation of his mental ill-health, nor does it take into account or decide any liability for it. The decision of this Tribunal is limited to the effect of the symptoms on the Claimant (and the way in which the Respondent responded to the Claimant's illness).

29. Likewise, having read J v DLA Piper, I recognise the distinction which is being drawn between a reaction to “adverse life events” and “clinical depression”, as it is set out there.

30. It seems that there is nothing to prevent a conclusion that what might arise initially as a response to adverse life events, might develop into a clinical depression if, the person does not recover (by the extent, or in the time period) as might be reasonably expected, from the adverse life event. Or possibly if some other adverse event belies them at a time when they are already vulnerable due to the aforementioned adverse life events.

31. The evidence in this case indicated that the Claimant suffered some low mood and anxiety as a result of his physical injury in March 2025. He returned to work, before he was physically fit, due to his concern about his financial position. He was suffering at the time of his physical ill health from stress and anxiety, including symptoms of disturbed sleep, fatigue and worry/anxiety.

32. After he returned to work, he was subsequently told in May 2025 that he was being moved to the lower paid day shift; this added further reason for concern to the Claimant.

33. It was shortly after this that the Claimant first attended at his GP for issues related to his mental health. I accept this as an indication that the situation for the Claimant moved beyond one of manageable symptoms which he was confident would resolve, to one which required medical intervention.

34. It was at this point that the Claimant required medication and the input of a support worker and occupational therapist. This was a new and different way of addressing his mental health, which was greater than had been required previously.

35. I have also taken into account that his GP considered him to be unfit to attend work at this point and that this continued up to 5 August and beyond.

36. It is the conclusion of this Tribunal that the Claimant was suffering from the mental impairment of anxiety/low mood/depression from around the start of June 2025.

Day to Day Activity

37. The evidence shows there being some effect on his day to day activities, which may or may not be substantial. The requirement for professional intervention is an indicator that the person is not coping with their usual daily life and needs assistance from some form of treatment.

38. The Claimant’s evidence was that after 2 June he did less in terms of looking after his child, household shopping and that he had to be prompted to carry out washing and dressing himself. These are day to day activities which the Claimant was not been able to carry out.

39. The Respondent submitted that missed OT appointments on 23 July and 8 August were evidence of improvement by the Claimant. This is impossible to tell and could as much be an indication, as the Claimant asserted, of a decline in his mental health to the point that he could not engage with the OT. As there is no evidence to help indicate which of these two options is more likely to be the case, the Tribunal considered this point to be entirely neutral and disregarded it.

40. The Tribunal considered that on the basis that there was an effect on day to day activities – the Claimant was unable to work, not caring for his child or himself in the usual way – that this amounted to a mental impairment. The Claimant's symptoms went from reaction to stress, to depression when he could not recover from it and when had had to face a further issue by way of the change of his shift.

41. The Tribunal then considered whether these were substantial. Given that they go to the heart of the Claimant's ability to engage with his family and friends, the Tribunal was satisfied that they are substantial in the sense that they are more than trivial, lasted for a lengthy period and necessitated a change in his routine of caring for his child, going to work and his sleep and social routine. They also warranted medication, an intervention by his GP, an OT and support worker.

Long term

42. The Tribunal then considered whether the effects of the disability were long term. The Tribunal were satisfied that as at 5 August 2025, the Claimant's depression had not lasted for 12 months. The issue therefore was whether it was, as at that date, likely to last 12 months, or to be remitting.

43. The Tribunal have taken into account the Guidance on disability and in particular paragraph C3 which stipulated that relapse is likely to happen if it 'could well happen'. The Tribunal also noted that this must be considered in relation to the effects, rather than the impairment.

44. The Claimant's only evidence on this came from the GP letter 3 November 2025 which stated that it he could not predict but that the condition had the potential to last over 12 months to be a relapsing or remitting condition. The Tribunal noted that 'could well happen' did not require a balance of probabilities Boyle v SCA Packaging ltd 2009 ICR 1056 HL.

45. The Tribunal concluded that 'potential' to last 12 months or recur indicated a sufficient possibility of illness as to meet the 'could well happen' threshold. At the time the Claimant was dismissed on 5 August, there was no sign that the Claimant's health was improving and he had been ill for at least 2 months prior. By the time the letter was written the Claimant had been ill for 5 months (although this time period is not relevant to the Tribunal's decision).

46. The Tribunal therefore concluded that the Claimant did meet the requirement in terms of the test in Goodwin and was therefore a disabled

person within the meaning of s.6 EQA between 19 May 2025 and 5 August 2025, in respect of his depression.

Date sent to parties **04 August 2026**