Case Number: 6018926/2025

EMPLOYMENT TRIBUNALS

Claimant: Ms T Brown

Respondent: K D Hawes Limited

Heard at: Watford Employment Tribunal
On: 18 August 2026
Before: Employment Judge L Wilson

Appearances:
For the Claimant: In person
For the Respondent: Ms L Hession, counsel

JUDGMENT with full reasons was given at the hearing on 18 August 2026 and full written reasons were requested by the Respondent in accordance with Rule 60 of the Employment Tribunals Rules of Procedure. The following full written reasons are therefore provided:

FULL REASONS

Introduction

1. By way of a claim presented on 21 May 2025, the Claimant complains of direct disability discrimination and discrimination arising from disability. The ACAS Certificate was issued on 24 April 2025. By way of a response (undated) and in the Amended Grounds of Resistance (undated), the Respondent defends the claim.

2. The Claimant was employed by the Respondent as a support manager from 8 January 2024. Her employment was terminated on 19 March 2025. On 7 February 2025 the Claimant was admitted to hospital with a hand infection, undergoing surgery on 8 February 2025 and 11 February 2025. She returned to work on 20 February 2025 but was readmitted to hospital on 25 February 2025 and did not return to work after that.

3. The Claimant was diagnosed with osteomyelitis, which she says is a disability. The Claimant's case is that her employment was terminated, on 19 March 2025, either because of her disability or because of the absence which arose from her disability. The Respondent's case is that the Claimant was dismissed for reasons unconnected with her disability, namely a breakdown of trust and failure to follow management instructions.

4. This was a pubic preliminary hearing to determine a single issue, namely whether the Claimant was a disabled person within the meaning of section 6 Equality Act 2010 at the relevant time, namely 19 March 2025. This decision is entirely limited to that issue. In particular, nothing in this decision should be taken to determine whether the Respondent knew or could have reasonably been expected to know that the Claimant was disabled. That issue is a matter for the final hearing.

Evidence

5. In advance of the hearing, parties had prepared a joint bundle of documents consisting of 145 pages ('the bundle'), for which the Tribunal is grateful. The Claimant's medical evidence begins at page 69 of the bundle. The Claimant's hospital records begin at page 85 of the bundle.

6. The Tribunal heard evidence from the Claimant regarding the issue of her disability status. Ms Brown had provided a disability impact statement as ordered by the Employment Tribunal at a hearing on 19 May 2026, together with GP and hospital Records. Ms Brown also gave evidence before me and was cross examined. There was no evidence adduced on behalf of the Respondent. I was assisted by the oral submissions of both parties.

Position of the Parties

7. The impairment relied upon by the Claimant is osteomyelitis affecting her left middle finger, together with the consequences of that condition and its treatment.

8. The Respondent does not dispute that the Claimant suffered from osteomyelitis, although it disputes that the condition satisfied the statutory definition of disability.

9. The Respondent relies upon the acute nature of the infection, that the diagnosis was not of a chronic condition, the fortnightly sick-notes, that the Claimant's physical abilities were improving within 6-8 weeks, including the Claimant's ability to walk around, with more strength returning to her hand around August-September 2025.

Findings of Fact

10. The Tribunal found the Claimant to be a credible and reliable witness.

11. Having considered the Claimant's evidence and the contemporaneous medical records, I make the following findings.

12. The Claimant developed a serious infection of her left middle finger in early February 2025. She attended hospital on 6 February 2025 and was admitted on 7 February 2025 following rapid deterioration in her condition.

13. The Claimant underwent operative washout procedures on 8 February and again on 11 February 2025. The records demonstrate ongoing infection, swelling, pain and restricted movement.

14. Although the Claimant briefly returned to work between 20 and 24 February 2025, she was readmitted to hospital on 25 February 2025 after the infection was found to have spread to the bone.

15. On 28 February 2025 clinicians proceeded on the basis that the Claimant was suffering from osteomyelitis. A PICC line was inserted, and she commenced a prolonged course of intravenous antibiotic treatment. The treatment plan was expected to continue for approximately six weeks.

16. I accept the Claimant's evidence that during the relevant period she experienced significant pain, fatigue, reduced dexterity and functional restriction.

17. I also accept the Claimant's evidence that she required assistance from family members with activities including dressing and washing. Her account is consistent with the contemporaneous medical material.

18. I further accept that the Claimant's condition had not resolved at the time of her dismissal in March 2025 and that the prognosis was uncertain. I accept that the 6-week treatment plan was provisional, subject to weekly reviews, and that physiotherapy to her hand was not limited in time; this was expected for as long as required to enable the Claimant to regain mobility and strength to her hand. The Claimant was told by clinicians that they expected recovery to be prolonged, and that the osteomyelitis was likely to recur without aggressive treatment.

19. The Claimant remained under active treatment at the relevant time, in March 2025.

The Legal Test

20. Under section 6 Equality Act 2010, a person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

21. Section 212 Equality Act 2010 defines "Substantial" as being more than minor or trivial.

22. Schedule 1, part 1, para. 2 of the EQUALITY ACT 2010 defines “long-term”. An effect is long term if it has lasted, or is likely to last, at least 12 months, or it is

likely to last for the rest of the life of the person affected. Para. 2(2) provides that 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 it is likely to recur.

23. In determining the effect of an impairment, account must also be taken of what the effect would have been in the absence of measures being taken to treat or correct it.

24. Para. 12 of Schedule 1 of the Equality Act 2010 provides that when determining whether a person is disabled, the Tribunal "must take account of such guidance as it thinks is relevant". The "Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability" (Updated 8 March 2013) was issued by the Secretary of State pursuant to section 6(5) of the Equality Act 2010 ("the Guidance"). I have taken this Guidance into account when reaching my decision.

25. The burden rests upon the Claimant to establish that she had a physical or mental impairment which had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.

26. In Goodwin v Patent Office [1999] I.C.R. 302, Morison J (President), provided some guidance on the proper approach for the Tribunal to adopt when applying the provisions of the Disability Discrimination Act 1995. Morison J set out four questions to be answered by the Tribunal in order. This four-stage approach was approved more recently by the Court of Appeal in Sullivan v Bury Street Capital Limited [2021] EWCA Civ 1694, where Singh LJ listed the questions as:

    i. Was there an impairment? (the 'impairment condition');
    ii. What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');
    iii. Were they more than minor or trivial? (the 'substantial condition');
    iv. Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

27. Singh LJ emphasised that these are questions for the Tribunal; although it may be assisted by medical evidence, it is not bound by any opinion expressed.

28. In J v DLA Piper UK LLP 2010 WL 2131720 Underhill J (President) observed that,

> 'In many or most cases it will be easier (and is entirely legitimate) for the tribunal to ask first whether the claimant's ability to carry out normal day-to-day activities has been adversely affected on a long-term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the Claimant is suffering from an impairment which has produced that adverse effect. If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve the difficult medical issues.' [40].

29. In Mr A Elliott v Dorset County Council, UKEAT/0197/20/LA HHJ Taylor emphasised Morison J's warning in Goodwin of the risk of "disengaging" the four questions, observing that whilst they can be addressed separately, it is important not to forget the purpose of the legislation, and to look at the overall picture.

30. In Cruickshank v Vaw Motorcast Ltd [2002] I.C.R. 729, the Court confirmed that the relevant point in time to be looked at by the Tribunal when evaluating whether the Claimant is disabled under s. 6 is not the date of the hearing, but the time of the alleged discriminatory act.

31. There is no statutory definition of a physical impairment. In College of Ripon and York St John v Hobbs 2002 IRLR 185 it was held that a person has a physical impairment if he or she has "something wrong with them physically". In Millar v Commissioners for HM Revenue and Customs 2006 IRLR 112 Ct Sess (Inner House) it was noted that many forms of physical impairment may result from conditions that cannot be described as an illness such as a genetic deformity.

32. At A3, the Guidance states that the term, 'mental or physical impairment should be given its ordinary meaning'. It goes on to state that, whether a person is disabled for the purposes of the Act is generally determined by reference to the effect that an impairment has on that person's ability to carry out normal day-to-day activities [A4], and that a disability can arise from a wide range of impairments [A5]. The Guidance does not seek to provide an exhaustive list of conditions that qualify as impairments for the purposes of the Act, recognising that, 'any attempt to do so would inevitably become out of date as medical knowledge advanced' [A4].

33. In Rayner v Turning Point UKEAT/0397/10/ZT, HHJ McMullen QC held, at [22], that although the question of whether there is a "substantial" adverse effect is a matter of fact for the Tribunal to determine, in circumstances where a Claimant was diagnosed with anxiety by his GP and his GP advises him to refrain from work, that is "in itself" evidence of a substantial effect on day-to-day activities, because were it not for the anxiety the Claimant would have been at work, and his day-to-day activities include going to work.

34. In Harry Stedman v Haven Leisure Ltd [2025] EAT 82 HHJ Stout held that in judging whether the adverse effect is substantial, the comparison is between the Claimant as they are and as they hypothetically would be without the impairment. HHJ Stout also held that when considering adverse effects on normal day-to-day activities, the Tribunal should not carry out a comparison exercise by weighing what the Claimant cannot do against what they can do and that it can be sufficient if the Claimant has a mental or physical impairment that has a substantial adverse effect on just one day to day activity.

35. At B2-B3, the Guidance states that the time taken by a person with an impairment to carry out a normal day-to-day activity, and the way in which it is carried out, should be considered when assessing whether the effect of that impairment is substantial. At B4, the Guidance provides that it is important to consider the cumulative effects of an impairment, rather than looking at factors in isolation.

36. On the question of whether an impairment is 'Likely' to last for at least 12 months, it has been held to mean it is a "real possibility" and 'could well happen' rather than something that is probable or more likely than not (SCA Packaging Ltd v Boyle [2009] ICR 1056).

Analysis

37. Applying these legal principles to the facts of this case, I reach the following conclusions.

Physical Impairment

38. The Respondent does not dispute that the Claimant suffered from osteomyelitis at the relevant time, namely 19 March 2025, although it disputes that the condition satisfied the statutory definition of disability.

39. In my judgment, osteomyelitis plainly constitutes a physical impairment for the purposes of section 6.

Substantial Adverse Effect

40. I am satisfied that the impairment had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities.

41. The evidence establishes significant restrictions affecting the use of the Claimant’s left hand. She experienced pain, swelling, restricted movement and loss of function.

42. I accept her evidence that she struggled with washing her hair, fastening clothing, tying shoelaces, preparing food, carrying items and driving. These are ordinary day-to-day activities within the meaning of the legislation.

43. In addition, the condition required repeated surgery, inpatient admission and prolonged intravenous treatment. The resulting fatigue and pain materially affected everyday functioning.

44. The substantial adverse effect is assessed disregarding the ameliorative effect of treatment.

45. I therefore find that the adverse effects were considerably more than minor or trivial.

Long-Term Effect

46. The principal issue in dispute is whether the adverse effects were long term.

47. The relevant question is not whether the Claimant had already experienced the effects for 12 months by 19 March 2025. She had not.

48. The question is whether, at the relevant time, the effects were likely to last at least 12 months or were likely to recur.

49. I find that they were.

50. By late February and March 2025, the Claimant had required two surgical procedures, had developed infection extending to the bone, had been fitted with a PICC line and had embarked upon a lengthy course of intravenous antibiotic treatment. The duration of recovery was uncertain and there was no identified recovery date.

51. The contemporaneous medical evidence demonstrates that clinicians anticipated a prolonged recovery rather than a short-lived condition.

52. The medical evidence establishes that the condition was not following the course of a straightforward acute infection. On 6 February 2025, the Claimant already had marked swelling, tenderness and an inability to flex or extend the DIP joint. All antibiotics were commenced, but by the following day the claimant had worsening swelling and pain, extension of pain into the palm, and worsening restriction of movement. She required admission and IV antibiotics. That concern materialised. On 10 February 2025 the finger remained sore, swollen and erythematous, she remained unable to make a full fist and a second washout was required on 11 February. On 12 February after the second operation the claimant's hand remained swollen and stiffness was preventing movement. The claimant was readmitted on 25 February, approximately 2 weeks after the second operation. The records identify suspected osteomyelitis and continued tenderness, swelling, erythema and reduced range of movement. The claimant required further IV vancomycin and oral rifampicin. On 27 February the claimant continued to experience shooting pain in the left middle finger together with tenderness, swelling and arrhythmia. Repeat imaging and discussion with a hand consultant were required. Significantly on 28 February the hand consultant advised that the condition should be treated as osteomyelitis, radiology reported a high suspicion of osteomyelitis on X-ray, and microbiology recommended six weeks of IV Taser planning. A PICC line was inserted and an OPAT referral made.

53. Moreover, the treatment itself required a PICC line, OPAT involvement, and weekly teicoplanin levels and wound checks. On 1 March, immediately before discharge, the Claimant still had restricted full flexion of the hand.

54. The medical record does not say that the claimant was expected to recover after six weeks. It says that microbiology recommended teicoplanin for six weeks, with the possibility of switching to co-trimoxazole for the final two weeks if it was not tolerated.

55. The treatment therefore represented the prescribed duration of antimicrobial therapy, not a medical prognosis that the functional adverse effects would cease at its conclusion.

56. There was also contemporaneous evidence of significant treatment burden. By 21 March, the hospital history records nausea as having been ongoing for approximately 6 weeks and palpitations for several weeks whilst the claimant remained on teicoplanin. This reinforces that the course of IV treatment itself was substantial rather than merely precautionary.

57. I accept the claimants evidence that at the date of dismissal there was no anticipated recovery date and that her treating clinicians expected recovery to be prolonged. Whilst the material before me does not contain a contemporaneous medical opinion, made by 19 March 2025, expressly predicting 12 months of functional impairment, I find that the medical records provide objective support for the seriousness and persistence of the underlying condition.

58. Looking at the evidence as a whole, and avoiding hindsight, I conclude that at the material time there was a real possibility that the adverse effects would continue for at least 12 months.

59. In reaching that conclusion I have not relied upon the fact that some symptoms did subsequently persist for that period

Conclusion

60. For those reasons I am satisfied that:
    60.1. The Claimant had a physical impairment, namely osteomyelitis, at the relevant time.
    60.2. The impairment had a substantial adverse effect on the Claimant’s ability to carry out normal day-to-day activities.

60.3. The adverse effect was long term within the meaning of Schedule 1 to the Equality Act 2010.

60.4. Accordingly, the Claimant was a disabled person within the meaning of section 6 Equality Act 2010 at the material time.

Approved by:

Employment Judge L Wilson

2 October 2026

SENT TO THE PARTIES ON

3 November 2026

FOR THE TRIBUNAL OFFICE