

Neutral Citation Number: [2024] EAT 172

Case No: EA-2023-SCO-000008-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 06 November 2024

Before :

THE HONOURABLE LORD COLBECK

Between :

CHRISTOPHER RODGER

Appellant

- and -

FORESTRY AND LAND SCOTLAND

Respondent

Mr Christopher Rodger the **Appellant** in person
Mr Hugh Olson, Advocate (instructed by Harper Macleod LLP) for the **Respondent**

Hearing date: 29 October 2024

JUDGMENT

THE HONOURABLE LORD COLBECK:

Introduction

1. The appellant, who was the claimant before the employment tribunal, was employed by the respondent, as an HR assistant from 2 October 2019 until his employment ended on 10 July 2022.
2. The appellant brought claims of disability discrimination against the respondent. Following an open preliminary hearing in Edinburgh on 30 November 2022, before Employment Judge d’Inverno, in a judgment sent to parties on 19 December 2022, the tribunal held that the appellant lacked title and interest and the tribunal lacked jurisdiction to consider his complaints of discrimination because of the protected characteristic of disability. As a consequence the appellant’s claim was dismissed.
3. The appellant appealed against the decision of the tribunal. Following a rule 3(10) hearing before HHJ Barry Clarke on 30 October 2023, the appeal was allowed to proceed in relation to two amended grounds of appeal.

The grounds of appeal

4. The first ground of appeal is, essentially, in the following terms:

“In determining the [appellant] was not a disabled person under section 6 of the Equality Act 2010, the tribunal misapplied / misconstrued the evidence (**Melon v Hector Powe** 1980 SC 188 at 198) in respect of treating the two occasions of the [appellant’s] certified absences in January 2021 and March 2022, or other instances of symptoms, as being unconnected in the absence of a medical diagnosis of depression.”

5. The appellant further contends that the evidence before the tribunal germane to the question of whether or not he was a disabled person included the periods of sickness absence in January 2021

and March 2022 certified by GP Fit Notes, two Occupational Health Reports, obtained in February 2021 and March 2022, prescription of medication for the period March to May 2022, and two occasions when the Appellant undertook a Cognitive Behavioural Therapy programme following referrals that took place on 28 January 2021 and 9 March 2022. Viewed in cumulation the evidence established a link between the absences of January 2021 and March 2022 as opposed to two discrete and unconnected episodes that supported the conclusion the Appellant had a long term, adverse impairment on his ability to carry out day-to-day activities.

6. The first ground of appeal is, in essence, one in which the appellant accepts that the tribunal had regard to the relevant evidence, but argues that the tribunal misapplied or misconstrued that evidence and failed to give sufficient weight to it. The tribunal considered the two occasions of the appellant's certified absences in January 2021 and March 2022 (see paragraphs 21(a) and 21(d) of the judgment), and other instances of symptoms. It is not suggested that it failed to do so. The appellant takes issue with the conclusion drawn by the tribunal, that these instances were unconnected in the absence of a medical diagnosis of depression.

7. The tribunal had the benefit of hearing the evidence. As is apparent from its judgment, the tribunal had regard to that evidence, asked itself the correct questions and reached decisions upon those questions. Essentially, the appellant disagrees with the conclusions reached by the tribunal. It cannot be said that the conclusions reached by the tribunal were not ones which were open to it. The appellant has failed to identify any error of law by the tribunal in respect of the first ground of appeal.

8. The second ground of appeal is in the following terms:

“Separately, it is respectfully submitted the Tribunal inadequately reasoned its conclusion that the [appellant] was not a disabled person as detailed above notwithstanding evidence of that served to establish a connection between the Appellant's instances of symptoms. In particular the Tribunal made no reference to the cognitive behavioural therapy undertaken by the [appellant] beyond referring to the

email referrals at ET Judgment paragraph [6].”

9. The first part of the second ground is, effectively, a restatement of the first ground. It raises no new point. In relation to this I refer to and adopt my reasoning above at paragraph 7. The fact that the tribunal made no reference to the cognitive behavioural therapy undertaken by the appellant beyond referring to the email referrals is, in and of itself, of no moment. A tribunal is not required to identify all the evidence relied on in reaching its conclusions of fact. To impose such a requirement would put an intolerable burden on any fact finder (see **DPP Law Ltd v Greenberg** [2021] EWCA Civ 672 at paragraph 57). The appellant has failed to identify any error of law by the tribunal in respect of the second ground of appeal.

Conclusion

10. The appellant has failed to identify any error of law on the part of the tribunal. The tribunal reached a decision it was entitled to reach on the evidence. The appeal is refused.