



EMPLOYMENT TRIBUNALS

Claimant
Mr C Tanner

v

Respondent
H Young Structures Limited

PRELIMINARY HEARING

Heard at: Norwich

On: 18 May 2018

Before: Employment Judge Postle

Appearances:

For the Claimant: Mr Magee, Counsel.

For the Respondent: Miss Sharma, Solicitor.

JUDGMENT

1. The claimant does have a disability namely a liver condition and asthma within the meaning of s.6 of the Equality Act 2010.

REASONS

1. This is a preliminary hearing to determine whether the claimant had a disability within the meaning of s.6 of the Equality Act 2010. In this hearing we have heard evidence from the claimant through a prepared witness statement, and the Tribunal have also had the benefit of a bundle of documents consisting of 217 pages.

The Law

2. S.6 of the Equality Act 2010 says a person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long term adverse effect on that person's ability to carry out normal day-to-

day activities. That requires the Tribunal to look at all of the evidence by reference to four different questions:

- 2.1 Did the claimant have a mental or physical impairment?
- 2.2 Did the impairment affect the claimant's ability to carry out normal day-to-day activities, known as the adverse condition?
- 2.3 Was the adverse condition substantial?
- 2.4 Was the adverse condition long term?

It is correct that those four questions should be posed sequentially and not together.

3. In deciding whether the impairment is long term, the Tribunal looks to see if it has lasted for a period in excess of 12 months. Substantial means more than minor or trivial. Account should be taken where a person avoids doing things that cause pain or fatigue. The focus should be on what a person cannot do, or can only do with difficulty rather than things that he or she can do.
4. It is clear that the claimant was diagnosed with asthma around August 2009 – that is an impairment. Does it affect his ability to carry out normal day-to-day activities? I accept that that impairment causes the claimant breathlessness, he struggles to get upstairs, he is slow, it will often lead to a coughing fit, he finds walking any distance difficult, he will walk long distances, he has to stop frequently and would not go walking without his medication. It is clear that impairment affects his normal day-to-day activities and that adverse condition was substantial and clearly was long term since 2009. It therefore satisfies the condition of disability within the meaning of s.6 of the Equality Act 2010.
5. Dealing with the liver/portal hypertension condition, it is clear that the condition is an impairment. It is also clear to me on balance, that it affects the claimant's normal day-to-day activities, and I accept there have been varying degrees of pain certainly in the six months prior to the diagnosis of the cirrhosis in February 2017. It is clear the claimant because of his condition does not sleep well, in normal situations ie in a bed because that causes him to roll and pain. He prefers to sleep on a sofa, that is clearly a normal day-to-day activity. It is also clear that it affects his ability to lift normal everyday items and lifting exacerbates his condition, the pain will become more severe. Certainly, the claimant prior to his diagnosis, before medication felt listless, he was lethargic, he was lazy, he came home from work and he would fall asleep, he had no energy, to use the claimant's colloquial "he was knackered all the time" prior to the diagnosis. It is clear, there is an adverse condition, and that condition was substantial and long term commencing at least 6 months prior to the diagnosis.

6. In relation to the diabetes, that is an impairment but on the claimant's own candid evidence and admission in this Tribunal it does not affect his ability to carry out normal day-to-day activities. In his view the diabetes is irrelevant and not a problem.

Employment Judge Postle

18 / 5 /2018

Sent to the parties on:

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For the Tribunal:

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