EMPLOYMENT TRIBUNALS

Claimant: **Mr S Singh**

Respondent: **Asda Stores Limited**

Heard at: **Croydon via CVP** **On: 6/10/2020**

Before: **Employment Judge Wright**

Representation:
Claimant: **In person**
Respondent: **Mr W Horwood - counsel**

JUDGMENT – PRELIMINARY HEARING

It is the Judgment of the Tribunal that the claimant is not a disabled person for the purposes of the Equality Act 2010.

REASONS

1. On 21/11/2018 the claimant presented a claim to the Tribunal. He made a claim of disability discrimination contrary to the Equality Act 2010 (EQA). At a preliminary hearing on 28/4/2020, the case was listed for an open preliminary hearing to determine whether the condition of stress and/or sleep disorder was a disability for the purposes of the EQA. It was agreed this hearing would be conducted via CVP.

2. The claimant has since presented a second claim. This hearing however only addressed the question of disability by reference to the allegations made in the first claim. The cases have not been formally consolidated.

3. The claimant relied upon his disability impact statement and he was cross-examined in that respect by Mr Horwood. There was a bundle of 91-pages, which was referred to. Both parties made closing submissions. The claimant referred to three PDFs he had submitted, containing his medical information. Mr Horwood said his instructing solicitor has included those documents in the bundle. The claimant wished for the documents to be read in the format he had complied them and he resent the documents to the Tribunal in order for it to do so[1].

4. Not all matters referred to by the claimant will be considered or determined. The sole issue for consideration was whether or not the claimant was disabled by reference to s.6 and schedule 1 EQA:

> Section 6 Disability
>
> (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.
>
> SCHEDULE 1
> *Long-term effects*
>
> 2 (1) The effect of an impairment is long-term if—
>
> (a) it has lasted for at least 12 months,
>
> (b) it is likely to last for at least 12 months, or
>
> (c) it is likely to last for the rest of the life of the person affected.

5. The allegations of discrimination cover the period 7/6/2019 and 13/6/2019, following an accident at work, when eventually a fractured bone in the claimant's ankle was diagnosed. The EQA Guidance on matter to be taken into account in determining questions relating to the definition of disability at paragraph C4 provides:

[1] Although the Tribunal found it made no difference.

> In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).

6. Mr Horwood referred to the test set out in Goodwin v Patent Office 1999 ICR 302 EAT:

> did the claimant had a mental and/or physical impairment;
>
> did the impairment affect the claimant's ability to carry out normal day-to-day activities;
>
> was the adverse effect substantial;
>
> was the adverse effect long-term?

7. Mr Horwood submitted that it not enough for the impairment to be long-term, it was the *substantial adverse effect* which needed to be long-term. In short Mr Horwood said the claimant had not satisfied the burden which fell upon him to establish that he was prevented from carrying out normal day-to-day activities due to his condition(s). Or, any effect there was upon the claimant's ability to do so was only minor or trivial. He also said the impairment was not long-term. There was medical evidence that the claimant had complained of sleep problems in 2006, this was however a flare up of this condition, with the cause being a family problem. The same occurred in 2009 when the claimant had had a car accident. In 2019 the trigger appeared to be the accident at work on 8/4/2019.

8. Although the claimant was unable to attend the preliminary hearing on 28/4/2020 (he was unable to leave India and his papers were in the UK), there was a clear direction to him to provide an impact statement in respect of his impairment. He was referred to s. 6 EQA, schedule 1 to the EQA. He was also referred to the statutory guidance, Code of Practice and the Presidential Guidance issued on General Case Management, as far as it relates to disability.

9. Even when the impact statement was read as the claimant wished for it to be (cross referenced to his PDFs in the order he had presented them), he only identified a very limited number of effects on his ability to do day-to-day tasks. He said he was unable to drive on 30/5/2019 due to being on medication. It is not clear whether this was medication prescribed as a result of the fracture, or due to other medication. He was also unable to attend a meeting at work at 5am on 7/6/2019. Putting aside whether or

not a meeting at 5am is a normal day-to-day task, this was an example of something the claimant could not do at the relevant time. Otherwise, there was no other evidence of day-to-day tasks the claimant cannot do or can only do with difficulty.

10. Following an assessment by his GP on 26/4/2019, the claimant was certified as unfit for work for two weeks due to 'other ankle injury' on the Med 3 form. There is a second Med 3 dated 10/5/2019, again for two weeks, certifying the claimant as unfit for work due to 'ankle injury'. The next Med 3 is dated 24/5/2019 and certifies the claimant as unfit for work until the 21/6/2019 due to 'other ankle injury'. In the section 'comments, including functional effects of your condition(s)', it reads 'stress and ankle injury'.

11. The next Med 3 signed the claimant off for one month from 20/6/2019. It gave the condition as 'ankle injury' typed onto the certificate and with the word 'stress' handwritten next to it, with handwritten initials.

12. The claimant was asked about this and whose handwriting it was – he replied, 'not mine'. He was asked if it was that of one of the GPs at his surgery and he said it was. When asked how it came to be added, he said it came out of a conversation with the GP. The claimant claimed the previous Med 3 certificates should also have contained the information that besides his ankle injury, he was suffering from stress.

13. The claimant's GP notes were not provided.

14. The Tribunal finds the claimant did not report accompanying symptoms of 'stress' in the period 26/4/2019 to 21/6/2019 to his GP, despite him now saying that he did report the same. Even by the time of the consultation on 20/6/2019 'stress' was not being recorded as the 'condition' which caused the claimant to be unfit for work. On the 24/5/2019 'stress' was recorded as a functional effect of the condition, but not as the condition causing the claimant to be unfit for work. On 20/6/2019 the word 'stress' was handwritten onto the Med 3, clearly, it was added after the Med 3 had been typed and printed off. The Med 3s are produced in order to inform an employer why the employee is unfit for work (or may be fit for work subject to adjustments). If, as the claimant said he had reported symptoms of stress but his GP had failed to record that on his Med 3, then that record would show in the claimant's GP notes; which were not produced. It is also not clear why a GP would record such symptoms on the later occasions, but not on the earlier ones, if indeed stress was reported.

15. The claimant was unable to drive. He did not say why he was unable to drive. It is however reasonable to conclude that was due to his ankle injury, the stress alone was not causative of him being unable to drive.

16. Even if attending a disciplinary meeting at 5am was a normal day-to-day task, the claimant not being able to attend one meeting on one occasion is not a substantial adverse effect on his ability to do so. The consequences of him not attending may have been more than minor or trivial, but the attendance itself (or lack of) was not a substantial adverse effect.

17. The claimant's lack of attendance at work was not expected to be long-term at the relevant time and it was caused, according to the Med 3s, as a result of the ankle problem, at the relevant time.

18. Even though the claimant had suffered from bouts of stress triggered by unrelated incidents in the past, at the relevant time, the stress was not likely to last for 12 months or more. The stress was caused by the ankle injury and that was expected to heal in the short-term and for the claimant to be able to return to work.

19. Unfortunately, the claimant has not discharged the burden placed upon him to show on the balance of probabilities that he was disabled at the relevant time. There was very limited evidence of the day-to-day tasks he could not do or had difficulties doing at the relevant time. It would be expected that in consulting his GP the claimant would have reported the stress and sleep difficulties, but there was no medical evidence at all of the latter and the stress was not recorded as the condition preventing the claimant from working. The Tribunal therefore finds that the conditions the claimant had at the time were not so substantial and adverse to lead him to mention them to his GP.

20. It is therefore the Judgment of the Tribunal at the preliminary hearing that the claimant was not, at the relevant time, a disabled person for the purposes of the EQA. As the claimant has failed to establish he has the protected characteristic of disability, his claims under the EQA fail and are dismissed.

Employment Judge Wright

6/10/2020