



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Yearwood

Respondent: Department of Work and Pensions

Heard at: Watford **On: 12 August 2020**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Mrs M Hodgson, counsel

For the Respondent: Mr John-Paul Waite, counsel

JUDGMENT

The claimant was a disabled person from November 2013.

REASONS

1. The claimant has made a witness statement of 33 pages dated 20 January 2019. The claimant has made two further statements. The first is titled “disability impact statement dated 8 March 2019 running to 13 pages. The second is also titled “disability impact statement” is dated 19 March 2019 running to 17 pages. The claimant also gave evidence on the question whether she is disabled within the meaning of the Equality Act 2010 (“the 2010 Act”). In all these statements the claimant gives little explanation of the impact of the impairment on her ability to carry out day-to-day activities.
2. The claimant makes reference to a period in 2010 when she was very unwell as a result of mental health issues and that she has had mental impairment from about 2013/2014 until her dismissal in 2018. The respondent challenges this and suggests that the claimant’s medical records show that she has had isolated periods of work-related stress.
3. In discussing her circumstances with occupational health, the claimant is reported as saying that she “was not sleeping well” and “she has problems with memory and concentration”.¹

¹ OH Assist report dated 6 December 2017 (p99)

4. The claimant's medical records from 2010 to 2018 have been produced. The medical records make many references over those years to the claimant suffering from stress at work.
5. On 4 June 2013 the claimant's medical record states: "Has noted short term memory loss at work", there are also occasions when the claimant has told her doctor about suffering headaches when consulting about stress at work. The medical records do not otherwise clearly reference how the claimant is affected in carrying out normal day to day activities because of this.
6. In a letter dated 8 July 2020, responding to a request to say "*whether her stress at work is capable of affecting her daily life*", the claimant's doctor states that the claimant has been "*documented to suffer with memory loss, tension headaches, atypical chest pain and voice hoarseness as well as multiple somatic symptoms... In my opinion there is no doubt that her daily life is affected by the effects of on-going chronic work-related stress.*" Beyond this there is no further explanation of the impact on the claimant's ability to carry out normal day-to-day activities.
7. The claimant's doctor has not been asked to answer the question whether the claimant has a physical or mental impairment, that has a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities, i.e. to address wording taken from the definition of disability in the 2010 Act. Additionally, there is no detail to understand the doctor's letter in the context of the 2010 Act.
8. In her witness statement the claimant says that work related stress affects her daily life causing her to have memory loss, self-neglect, loss of appetite, struggle to get out of bed, loss of confidence, difficulty climbing stairs, tearfulness, shortness of breath, her starts to beat fast, she gets nervous and scared. The claimant gives some examples of how these symptoms manifest themselves in her life in paragraph 42 of her witness statement, she has to write things down at work, on one occasion she left home wearing odd shoes, has caught the wrong bus after her mind went blank, and she does not want to cook, eat or wash. The claimant says that she has panic attacks.
9. When seen by Dr Shamim Ahmed on 18 October 2013 the claimant showed no signs of self-neglect (p132). Dr Ahmed records that the claimant's sleep is disturbed and that her "forgetfulness is due to anxiety state and low concentration." The claimant at the time was complaining that she "forgets what she was thinking or doing and at certain times forgets some familiar names" she stated that "this has been going on for the last year and it may happen two or three times a week".

10. In her impact statement² (p61) the claimant says that she was seen by OHS 6 December 2017 and mentioned then that she had “been often forgetful and muddled since being stressed from work” she also mentioned having difficulty sleeping.
11. The claimant was not off sick in the period from 2014 until September 2017. In In September 2017 the claimant was again off work due to work related stress until her dismissal in January 2018.
12. A person (P) has a disability if P has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities. Substantial means more than minor or trivial. Assistance with the determining disability can be found in “Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability” (“the Guidance”).

“A3. The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long-term. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.

A4. 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.”³
13. In answering the question whether the claimant is a disabled person for the purposes of section 6 of the 2010 Act I have to consider what is it that the claimant cannot do as a result of her impairment and is it substantial.
14. The impairment that the claimant relies on is a mental impairment. In particular the claimant relies on depression and work-related stress. The claimant considers that these matters align, and it was put by counsel for the claimant in the following way; “underlying clinical depression exacerbated by work related stress”.
15. The respondent says that the claimant has not established that she suffers from a relevant impairment and/or that this has a substantial adverse effect on her ability to carry out normal day-to-day activities and/or that any such impairment is long term.

² Dated 8 March 2019

³ Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability (“the Guidance”).

16. The claimant objected to the way that the respondent's case is put in challenging the claimant's assertion that she is a disabled person, saying that the respondent was going back on a concession previously made when it was stated in an email of 1 October 2019 that "*it is accepted that the claimant was absent by reason of work related stress and that she has suffered from stress on previous occasion during her employment.*" I considered the claimant's objection in the context of an application for a postponement which I refused. The question I have to decide, however it is argued, is whether the claimant was a disabled person within the meaning of section 6 of the 2010 Act.
17. The issues to be decided in this preliminary hearing were identified in paragraphs 5.1, 5.2 and 5.3 of the record of case management summary this document does not indicate that a concession was then being made in the matters to be determined in deciding whether the claimant was a disabled person.

The claimant's submissions

18. On impairment, "4.1.1. The claimant relies upon a history of depression and work-related stress since 1999"; "4.1.2. ...the claimant's evidence ... was that she suffered from an underlying medical condition, depression, which was constant, ..."; "4.1.4 ...the symptoms experienced by the claimant ...I include ... anxiety, low mood, memory loss, and inability to concentrate which affects not only her home activities , such as sleeping, eating, taking care of herself, but also include perceptions of her abilities and self-worth.."
19. On substantial, the claimant firstly says that for the purposes of the Equality Act 2010 "substantial" means "more than minor or trivial" (section 212 (1)). The claimant's evidence points out that she struggles to get out of bed, has periods of self-neglect, suffers loss of appetite, loss of self-confidence, shortness of breath, voice hoarseness due to anxiety, her ability to socialise is affected, there is an effect on her professional life including loss of memory and inability to concentrate. These matters are all listed by the claimant as the effects of the impairment on the "claimant's day to day life". The claimant relies on the reports made to her GP and other medical professionals including the respondent's occupational health advisers.
20. On whether the impairment is long term, The claimant refers to having a depressive illness going back to 2004. She accepts that medical sickness certificates relate to specific times of work-related stress. The claimant submits that under the Equality Act 2010 conditions which recur can qualify as long term if they recur or are likely to recur.

The respondent's submissions

21. The respondent contends that the Claimant failed to discharged the burden of demonstrating that she was at any material time a disabled

person for the purposes of section 6 of the Equality Act 2010 because (a) she has failed to give a credible account of the nature of her symptoms, the duration of those symptoms or their effect on her normal day to activities and (b) on a proper construction of her witness statements and the medical evidence the Claimant does not suffer from a relevant impairment and/or one that has a substantial adverse effect on her ability to carry out normal day-to-day activities and/or an impairment which is long term. The evidence describes short term episodes of stress which are attributable to work events.

Conclusions

22. Does the claimant have a mental impairment, namely mental health issues described as work-related stress?
23. The respondent's contention is that the alleged mental health impairment relied on by the Claimant is described in the Tribunal's case management summary on 30.11.18 as "stress at work". The respondent goes on that it is not open to the Claimant to introduce a different alleged impairment at this stage, such as "clinical depression". The respondent does not accept that the claimant's medical records show that the claimant is suffering from an underlying medical condition which makes her more vulnerable to stresses at work or more likely to react to such events.
24. On the evidence produced on behalf of the claimant the respondent says the following: "The starting point for most assessments of disability by a Tribunal is a credible description by the person concerned of the effect of any claimed impairment upon their normal, day to day activities. ... the Claimant has not given a credible description of her symptoms, their duration or their effect on her normal day to day activities."
25. The claimant's evidence, it is said by the respondent, is implausible in parts- reference is made to the way that the claimant answered questions in respect of paragraph 42 of her witness statement. The respondent's closing submissions clearly set out how the claimant's evidence in parts is hard to credit and appears in parts exaggerated, an example is set out at paragraph 9 of the respondent's submissions.
26. The failure to address matters which go to the definition in a simple and clear way describing the nature of the impairment and the effect it has on the claimant's ability to carry out normal day-to-day activities has disadvantaged the claimant. Her statements address her grievances concerning her treatment by her employers and managers and also extensively explain the symptoms that the claimant has. What the witness statement is not so clear on is the effect that the impairment has on her ability to carry out day to day activities. Thus in the evidence she gave while being questioned the claimant expanded on this in some areas and gave evidence which was criticised by the respondent in its closing submissions, the effect of which is that it is said that the claimant's evidence in significant parts is not credible.

27. While there is some validity in these criticisms of the way that the claimant expresses herself I am satisfied that it has been shown so that I can be satisfied on balance of probability that the claimant has a mental impairment. In coming to this conclusion, I take into account that the term physical or mental impairment is to be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness.⁴ A disability can arise from a wide range of impairments which can be anxiety, low mood, depression, or work-related stress.
28. The claimant has shown that she suffers from work-related stress, this is evidenced by the account she gives of her impairment and also by the references to work-related stress through her medical records. While the claimant goes further and says that she has a underlying medical condition, depression, which was constant, I am not satisfied that the evidence establishes that.
29. The principle matters that I have to consider are whether the impairment that the claimant has was substantial and long-term in its adverse effect on the claimant's ability to carry out normal day-to-day activities.
30. In determining whether a person is disabled all factors which form part of the definition should be considered. The "Guidance" states that the various sections should not be read in isolation but must be considered together with all the other sections.
31. Does the impairment have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities? If so, is that effect long term?
32. The disadvantage to the claimant arising from the way that the claimant's statements are drafted makes it particularly difficult to assess whether the impairments that the claimant has were substantial or indeed whether they were long term. The respondent says that the claimant has failed to give a credible account of the nature of her symptoms, the duration of those symptoms or their effect on her normal day to activities.
33. The claimant contends that it is relevant that the claimant was dismissed for her inability to attain suitable attendance levels at work in a reasonable time showing that she was not capable of participating in professional life. The claimant points to exceeding her allowance of sick leave in 2014 and concern that about the claimant's absences expressed in a letter from 9 June 2010.
34. The claimant relies on the impact statement of 8 March 2019 referring to paragraph 2 as detailing the effects of the impairment. In that paragraph the claimant refers to "constant headaches, constant chest pains, low

⁴ Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability a paragraph A3.

mood, feeling unwell and struggling to get out of bed". The claimant also refers to paragraph 2 of her impact statement of 19 March 2019 where the claimant additionally refers to "losing the ability to think straight and memory loss", irregular sleep, dizziness, loss of confidence, low morale, and thinking that everything that goes wrong a work is her fault. The claimant again refers to loss of memory, adding inability to concentrate at work, erratic heartbeat, self-neglect, loss of appetite, shortness of breath, difficulty climbing the stairs, tearfulness, and not wanting to socialise.

35. Most of the matters that the claimant refers to are a list of symptoms rather than a description of the effect it has on the claimant's ability to carry out normal day to day activities. Except for having difficulty getting out of bed, not wanting to socialise, and difficulty going up stairs the claimant fails to address what she cannot do as result of the impairment. The claimant does not give examples of the impact of the various listed symptoms on her actions or how they prevent her actions in the context of day to day activities, making it difficult to assess the scale of the impact.
36. As the claimant has not clearly set out the normal day to day activities affected by the symptoms that the claimant describes. To arrive at the conclusion that the cumulative effect of the disparate matters that the claimant is referring is substantial requires me to draw inferences from what she says.
37. The way that the claimant's witness statement has been drafted makes it clear that there were periods when the effect of the impairment was substantial, it prevents her from working for significant periods of time. The evidence does not suggest that the effects on the claimant are consistent or constant outside those periods of absence from work. The medical records show periods when the claimant is "not acutely ill", "not unwell" and "generally well". The medical records show that there were periods when the claimant was unfit to work as a result of the impairment. The claimant's own evidence is that there were periods when the effect of the impairments was severe, and her evidence is that these were the times when she sought assistance from her GP. I am satisfied that during these periods at least the effect of the impairments was substantial, it was more than minor or trivial.
38. From the evidence it is possible to infer that when the claimant is not well enough to work the effect of the impairment of work-related stress is substantial. If the claimant is not well enough to go to work, she cannot do the normal day-to-day activities involved in going to work. It was during these periods that I understood the claimant's evidence to be that she had irregular sleep, unable to get up, did not eat properly, was self-neglecting and suffering all the listed symptoms to such an extent that she sought medical assistance and was unable to work. When the claimant is at work the picture is not so clear the claimant's evidence does not credibly and clearly set out the impact of the impairment when the claimant is fit to work.

39. The claimant does not credibly set out the duration of the adverse impact, she says it was constant, but this in my view is unlikely to have been the case. The claimant herself gives evidence which showed that her condition got better and got worse. The medical evidence makes reference to periods when the claimant is “not acutely ill”, “not unwell” and “generally well”.
40. The claimant states in her written submissions that “while it is accepted that medical sickness certificates relate to specific times of work related stress, it is submitted that, under the EQA conditions which recur can qualify as long term if they recur or are likely to recur... the claimant’s condition has clearly recurred as evidence by the various medical certificates.”
41. The respondent contends that the “Evidence describes short term episodes of stress which are attributable to work events rather than any underlying impairment or medical condition which qualifies as a disability under the Act.”
42. Schedule 1 Part 1 paragraph 2 provides that the effect of an impairment is long-term if (a) it has lasted 12 months, (b) it is likely to last for 12 months, or (c) it is likely to last the rest of the life of the person affected. None of these apply in the claimant’s case. Paragraph 2(1) says 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. Likely in this context means could well happen.⁵ The Guidance makes clear that a person may still satisfy the long-term element of the definition even if the effect is not the same throughout the period. The effect may disappear temporarily.
43. Has the evidence shown that the claimant had periods when there was a substantial adverse effect on the claimant’s ability to carry out normal day-to-day activities, lasting less than twelve months that was likely to recur and therefore is to be treated as continuing to have that effect?
44. The claimant had periods of absence from work in 2010 which appear from medical records to have been around March to July. This absence is due to stress at work, or work-related stress. This arises in circumstances where events at work occur which the claimant considers amount to unfair treatment of her. Then there was a further period in 2013 from about November 2013 to February 2017 when the claimant was off work due to stress at work. These events again arise in circumstances when the claimant is in conflict with colleagues who she considers were colluding to remove her from her employment and again treating her unfairly. Then in 2017 the claimant was again off work due to stress at a work from around September 2017 until around January 2018 in similar circumstances.

⁵ See section C3 of the Guidance.

45. All these periods of stress at work appear to have been at times when the claim was enduring difficulties in the workplace. There is no underlying clinical cause for the absences. The respondent says that these were isolated reactions to *specific life events* culminating in sporadic absences of a limited duration. However, there does not need to be clinical cause for the absences. The question is whether the impairment has a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities, ceases to have a substantial adverse effect on a the claimant's ability to carry out normal day to day activities but is likely to recur.
46. Taking account of all the evidence including the claimant's evidence that she was able to employ strategies to enable her to keep working and she was able to do so successfully for extensive periods of time. There were periods when the claimant suffered from work-related stress that meant that she was unable to continue to work and was signed off sick. This happened on three occasions in the period from 2010 to 2018. The evidence shows that the impairment ceased to have a substantial adverse effect on the claimant's ability to carry out normal day to day activities, but it did recur twice. I am satisfied that from about 2013 the claimant was therefore a disabled person.

Employment Judge Gumbiti-Zimuto
Date: 24 August 2020

Sent to the parties on:02.09.2020.....

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For the Tribunals Office

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