



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr S Egan v

The Environment Agency

**Heard:** in Lincoln

**On:** 17 August 2022

**Before:** Employment Judge Ayre sitting alone

**Representatives:**

**Claimant:** In person

**Respondent:** Mr J Chegwidan, counsel

## RESERVED JUDGMENT FOLLOWING PRELIMINARY HEARING

The claimant is not disabled by reason of workplace situational anxiety.

## REASONS

### Background

1. The claimant was employed by the respondent as a Regulatory Officer. On 29 November 2021 he issued a claim in the Employment Tribunal, following a period of early conciliation that started on 21 September 2021 and ended on 2 November 2021. The claim included a complaint

of disability discrimination and the claimant also ticked the box claiming 'other payments'.

2. A case management Preliminary Hearing took place before Employment Judge Clark on 27 April 2022. At that hearing it was clarified that the 'other payments' referred to in the ET1 were compensation for discrimination rather than a separate cause of action. The only claim before the Employment Tribunal therefore is one of disability discrimination.
3. The disability relied upon by the claimant is 'workplace situational anxiety'. The respondent defends the claim and does not admit that the claimant is disabled within the meaning contained in Section 6 of the Equality Act 2010 ("**the EQA**").
4. At the hearing before Employment Judge Clark in April 2022 the claimant was ordered to provide more information about the disability he relies upon and the case was listed for an open preliminary hearing to consider the question of disability if not conceded by the respondent.
5. After receiving the additional information from the claimant about his alleged disability, the respondent continues to argue that the claimant is not disabled.

### **The Proceedings**

6. The issue that fell to be determined at today's Preliminary Hearing was whether, at the time of the alleged acts of discrimination, the claimant was disabled by reason of workplace situational anxiety. In his Record of the Preliminary Hearing on 27 April 2022 Employment Judge Clark also identified that today's hearing would:
  - a. Identify any remaining legal and factual elements of the claim; and
  - b. Make further case management orders as necessary.
7. It was not possible in the time allocated today to deal with these other issues, so the hearing today considered solely the question of disability. In any event, in light of my conclusions on that issue, it is no longer necessary to do so, as the entirety of the claimant's claim fails.
8. The claimant clarified at the start of the hearing that the period during which he alleges the respondent discriminated against him began in January 2020 (when the respondent conducted an investigation and produced an investigation report dated 23 January 2020) and ended in December 2021. It is therefore in respect of that period that I have considered whether the claimant is disabled.
9. I heard evidence today from the claimant and, on behalf of the respondent, from Helen Renshaw who was, at the relevant time, the claimant's line manager, and from Aman Hundal, HR Specialist.

10. There was before me an agreed bundle of documents running to 412 pages. The bundle included a document created by the claimant after the last Preliminary Hearing, and which included a paragraph headed "*the claimants witness statement regarding why the impairment amounts to a disability under Section 6 of the Equality Act 2010...*" The claimant told me that he wanted to rely upon that document as his witness statement for today's hearing.

11. I explained to the parties that I would only read documents in the bundle that are referred to in the witness statements or during the course of the hearing.

12. At the start of the hearing Mr Chegwidden raised an issue in relation to 3 lines that had been redacted within the claimant's GP records (which were in the bundle) and asked to see an unredacted version.

13. With the agreement of Mr Chegwidden, the claimant passed me an unredacted version of the records. The redacted section referred to an incident in the claimant's personal life that was not relevant to the question of disability. Mr Chegwidden indicated that he was happy to proceed using the redacted version.

14. Mr Chegwidden also prepared a Note on the law, for which I am grateful.

### **Findings of Fact**

15. The respondent is a non-departmental public body with statutory responsibility for the protection of the environment in England. The claimant was employed by the respondent as a Regulatory Officer working in the Lincolnshire and Northamptonshire Area. The claimant's role involved regulating industrial refineries, including a refinery known as 'P66'.

16. In 2017 and 2018 P66 made complaints about the claimant's behaviour. In late 2018 the respondent began an investigation into the complaints and, whilst this investigation was ongoing, the claimant was removed from regulating P66.

17. The outcome of the investigation was that the complaints made about the claimant were, on the whole, not upheld. The respondent decided however that the claimant should not return to regulating P66 but should instead focus on other sites. The respondent contends that this decision was taken, at least in part, out of concerns for the claimant's welfare.

18. The claimant was not happy with the decision to remove him from regulating P66 after he had, as he saw it, been cleared of false allegations made by P66. He subsequently raised a grievance and appealed against the outcome of that grievance.

19. On 23 November 2018 the claimant began a period of sickness absence. He remained off work until October 2019, with the exception

of one day in January 2019. Throughout this period, he was certified by his GP as unfit for work due a 'stress related problem'.

20. There was no evidence before me of the claimant having experienced any stress related issues or mental health concerns before November 2018. The trigger for his ill health therefore appears to be the events at work.
21. The claimant submitted fit notes dated 27 November 2018, 11 December 2018, 14 January 2019, 29 January 2019, 14 February 2019, 7 March 2019, 29 March 2019, 23 April 2019, 14 May 2019, 6 August 2019, and 1 October 2019. All of those fit notes gave the reason for absence as 'stress related problem', with the exception of that dated 7 March 2019 which referred to a 'stress related issue'.
22. Helen Renshaw stayed in regular contact with the claimant during his sickness absence. During a welfare call on 8 January 2019 the claimant told her that he'd been in touch with his GP and, although there was no change, he was willing to return to work as he felt sufficiently rested.
23. The claimant returned to work the following day and Helen Renshaw held a return to work meeting with him. During that meeting the claimant was very angry that he was not being allowed to continue working with P66. He displayed visible signs of frustration and stress, which caused Helen Renshaw to suggest that he go home and see his GP, which he did.
24. The claimant consulted his GP regularly during the period from November 2018 to December 2019. He then did not contact his GP at all for a period of almost 2 years, until December 2021.
25. The GP records for the period from November 2018 to December 2019 refer consistently to the claimant having stress related problems and suggest that those problems were related to work. In an entry dated 11 December 2018 the GP wrote: *"Had a good week feeling a little more relaxed but in last week has started to feel anxious again about returning to work. Is still very angry about the way he has been treated by his employer and plans to log a complaint / grievance....Sleep still broken, motivation not what it normally is but is playing Golf on Sat and Sun each week which he enjoys. Trying to distract himself with DIY jobs at home."*
26. On 14 February 2019 the GP notes record: *"...taking a grievance forwards at work. Needs med3 covering him for longer..."* On 19 March the GP noted: *"...issues with work... looking at early retirement on medical grounds...in my experience this is a problem caused by work so...I don't think this would qualify for medical early retirement...currently coping ok without medication and aware TT therapy there if needed..."*
27. On 29 March 2019 the GP wrote: *"...his 6 mths full pay will be running out shortly so may decide to go back as doesn't want to be out of pocket as he feels this is their fault..."*

28. On 14 May the GP commented: “...ongoing issues with work, had occ health tele appt and agree situational anxiety and not right to return to work until grievance procedure finished...in himself doing ok and feels in control..”
29. After a period of almost two years, the claimant contacted his GP again on 6 December 2021. The GP’s notes of that consultation record that the claimant is not depressed and diagnose him with work related stress. They also note that the claimant “Wants sometime off work to reflect on what to do next...”
30. On 14 October 2019 the claimant returned to work on a part time basis. He worked 50% of his normal hours of work and was not required to carry out his normal regulatory duties. Instead, he used his working hours to work on his grievance, and to carry out some administrative duties.
31. The claimant remained at work part-time from October 2019 until December 2021 when he was certified by his GP as unfit to work due to work related stress. He remained off with work related stress until August 2019 when his employment terminated by reason of ill health retirement. Over the next two years the respondent allowed the claimant to spend a lot of his working time concentrating on his grievance and grievance appeal.
32. The claimant was referred to occupational health on a number of occasions. The first referral was in April 2019 and in that report, the occupational health consultant commented that the claimant’s GP had not recommended any specific treatment, that the claimant “has no history of mental health problems and his general health is stable” and that “At the assessment Shaun appeared angry and resentful and frustrated. He was otherwise clear, rational and although anxious about the future his mood appeared to be normal.”
33. The doctor diagnosed the claimant as “suffering from situational anxiety which has arisen as a result of difficult situation at work. Shaun perceives that he has not been supported at work.” He assessed the claimant as being “medically fit to return to work, but it may be beneficial for him to remain off work whilst the grievance process is followed through.” The doctor commented in the report that: “In my opinion this is a matter for management to resolve as this appears to be entirely situation arising as a result of issues at work. There is no evidence that Shaun has a long-term serious health problem, rather that there is an ongoing dispute at work, which is causing Shaun’s current health issues. I would expect that normal employment processes would be appropriate to address this matter.”
34. The claimant was assessed again by occupational health in November 2019, after he had returned to work. On that occasion, the doctor reported that the claimant told him “not much had changed and there had not been much progress at work in resolving matters”, that “he had been coping okay with his anxiety and frustration about his employment situation” and that “progress since his return to work had

*been slow and the impact on his health has continued. If anything, it has slightly increased because he is finding that his thoughts are preoccupied about the grievance matters".* The doctor assessed him as continuing to experience symptoms of anxiety and reduced mental well-being which were directly linked to work and commented that *"this appears to remain a workplace situation rather than a medical one and so the resolution will be through management action rather than medical treatment"*. The claimant was, in the doctor's opinion, fit to work 50% but not full time.

35. In January 2020 a further occupational health assessment took place. The doctor reported that the claimant was fit to participate effectively in the grievance process and that he was fit to return to work on a reduced hours basis.

36. The claimant was next assessed by occupational health in October 2021, this time by a different occupational health consultant. The doctor commented that the claimant was continuing to struggle with disrupted sleep and anxiety related to the workplace, and that: *"The main barrier to increasing his hours and returning to his normal duties appears to be his perception of the unresolved issues within the employment relationship. The resultant emotional and psychological strain that he feels appear to be driving his current illness."* The doctor also assessed the problem as being *"clearly employment issues"*.

37. In December 2021 the claimant began a new period of sickness absence and was referred to occupational health again. On that occasion the doctor referred to the claimant experiencing *"significant distress and frustration."* He also advised that:

*"At this stage I think it is best to describe his situation as being of distress, albeit that there could be a number of other labels attached.*

*Pragmatically I do not see a medical treatment solution (medication or psychological therapies) while he continues to be in the current situation.*

*Realistically I think his employment situation is now likely to be irreparably damaged...*

*I see no value in any report from his general practitioner nor do I see any value in any further psychological assessment at this stage. This is because his health issues are situational and unlikely to be resolved in a medical context..."*

38. The final occupational health report in evidence at the hearing was dated 14 February 2022 and was prepared for the purposes of assessing the claimant's eligibility for ill health retirement. It was prepared by a third occupational health doctor. That doctor's opinion was that the claimant *"has developed significant distress and frustration as a result of his very strong beliefs about his work activities and issues in the workplace"*, that medication and talking therapies would *"have no substantial impact upon his functional capacity so long*

*as he has the very fixed views he describes and so long as he remains in dispute with his employer.”*

39. The doctor concluded that: *“On the balance of probabilities I do not therefore believe he is able to return to sufficient “health” to allow him to return to work for his current employer...In the circumstances I advise it is possible to make a construct to determine that as a result of his fixed views and his employment situation that he is permanently incapable of discharging efficiently his Environment Agency Employment duties going forward but there is not, yet, any evidence to suggest that he could not return to better health once his current situation is resolved and that he could then return to other gainful employment in the near future...”*
40. The claimant was therefore offered the lowest level of ill health retirement, Tier 3, on the basis that he was considered likely to be capable of undertaking gainful employment within three years of leaving the respondent’s employment. The claimant subsequently agreed to take ill health retirement and his employment terminated on 15 August 2022 as a result.
41. The claimant’s ‘disability impact statement’ was limited to one paragraph and contained limited evidence of the impact of his mental impairment on his ability to carry out day-to-day activities. It describes the situational anxiety as manifesting itself *“in several mental and physical ways including difficulty in sleeping, fatigue and difficulty concentrating with a general lack of motivation for tackling day to day tasks.”*
42. The claimant acknowledged in his evidence that his health issues are situational and unlikely to be resolved in a medical context. He has tried to resolve his health issues through the grievance process rather than through medical treatment. He has not received any medication or other treatment for his workplace situational anxiety.
43. During the relevant period, ie from January 2020 through to December 2021, the claimant was able to work on a part-time basis. He was also able to write and respond quickly to detailed work related emails, and to pursue his grievance. He got help from a colleague and his wife when writing lengthy documents relating to his grievance.
44. In his oral evidence to the Tribunal the claimant accepted that his stress was a result of work. He also acknowledged that the occupational health reports did not suggest that he was not capable of carrying out normal day-to-day activities.
45. The claimant’s condition caused him to have difficulty sleeping at times, and that caused him fatigue and concentration issues. When he felt tired or struggled to concentrate, he waited until he felt better before carrying out activities. When tired he would spend longer in bed trying to catch up with sleep, but there were no days when he could not get out of bed.

46. The impact of the claimant's condition upon him varied. On bad days it could take him longer to do things, but on others he could function much better. He was able to challenge colleagues and to respond quickly to emails. He wrote long and detailed emails to colleagues, including on complex technical issues. On good days he was able to function normally.

47. The claimant told me that he was able to watch TV from time to time, that he could wash and dress himself, although on bad days his personal hygiene standards slipped, he was able to drive, to use a computer and to communicate.

### **The Law**

48. The relevant statutory provisions are contained Section 6 of the Equality Act 2010 which provides that:

*“(1) A person (P) has a disability if -*

- a) they have 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”.*

49. Schedule 1 Part 1 Para 2 of the Equality Act defines long-term as:

*“an impairment which has lasted for a least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person effected”.*

50. Paragraph 12 of Schedule 1 of the Equality Act provides that:

*“When determining whether a person is disabled the Tribunal must take account of such guidance as it thinks is relevant”.*

51. The Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability (“the Guidance”) was issued by the Secretary of State pursuant to section 65 of the Equality Act in May 2011.

52. In ***Goodwin v Patent Office [1999] ICR 302*** the then President of the Employment Appeal Tribunal gave guidance on the approach for Tribunals Tribunal to adopt when deciding whether a claimant is disabled. He suggested that the following 4 questions should be answered in order-

- a. Did the Claimant have a mental or physical impairment?
- b. Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?
- c. Was the adverse impact substantial?
- d. Was the adverse impact long-term?

53. Mr Justice Underhill, in ***J v DLA Piper UK LLP [2010] ICR 1052*** suggested that, although it is still good practice to the Tribunal to set



out separately its conclusions on the question of impairment, there is generally no need to consider the impairment question of detail, as:

*“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.”*

54. When considering whether a Claimant has an impairment the guidance of ***Rugamer v Sony Music Entertainment UK Ltd [2011] IRLR 664*** is helpful. In that case the EAT defined impairment as ‘some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition’ and the phrase “physical or mental impairment” as referring to a person ‘having in everyday language something wrong with them physically or something wrong with them mentally’. The statutory Guidance states at paragraph A5 that a disability can arise from a range of impairments and sets out some examples of what those impairments can be.

55. The Tribunal has to decide whether the impact on the Claimant’s ability to carry out normal day to day activities is substantial. Section 21(1) of the Equality Act defines substantial as meaning “more than minor or trivial”.

56. When deciding whether the adverse impact is substantial or not the Tribunal must take account of the cumulative effects of the impairment. The Guidance provides examples of factors which it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. Paragraph B2 states that *“The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial”*. Paragraph B7 provides that: *“Account should be taken of how far a person can reasonably be expected to modify his or her behaviour. For example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities”*. Account should also be taken of where a person avoids doing things example because they cause pain, fatigue or social embarrassment or because of the loss of energy or motivation.

57. It is for a Tribunal to decide whether an impairment has a substantial effect and when making that decision the Tribunal must take account of the impact on day-to-day activities were the individual not receiving the medical and other treatment to support their condition.

58. Day-to-day activities are given a wide interpretation and in general will be things that people do on a regular or daily basis. They can include general work-related activities but will not include activities which are only normal for a small group of people. In ***Adremi v London and South Eastern Railway Ltd [2013] ICR 5912***, the EAT held that a Tribunal has to consider the adverse effect not upon the claimant's carrying out of normal day-to-day activities, but upon his ability to do so. The Tribunal's focus should be on what the claimant says he cannot do as a result of his impairment.

59. The burden of proving that he is disabled within the meaning of section 6 of the Equality Act 2010 falls on the claimant, ***Kapadia v London Borough of Lambeth [2000] IRLR 699***.

## Submissions

### Claimant

60. The claimant submitted that it was clear that the workplace situational anxiety caused him a mental impairment. Anxiety is, he says, a mental impairment, which manifested itself with physical symptoms. His work as a regulatory officer was a big part of his life and he was no longer able to do that work.

61. The claimant accepted that he had returned to work for a period of months, but as he was not carrying out his regulatory role when back at work, he did not consider that to be 'work'. The fact that the respondent has offered him ill health retirement is, he argues, an indication that he had an underlying medical condition.

62. The main impact of that medical condition, in the claimant's submission, is on his ability to work as a regulator and go back to his career. The secondary impact was that it was difficult for him to engage in the grievance process.

63. He did not want to take medication and that is, he suggests, the reason why occupational health referred to his condition being situational rather than medical. He accepted that he had not seen his GP for a period of 2 years, but that was because he didn't need a fit note or treatment and was instead trying to resolve the situation through the grievance process.

### Respondent

64. Mr Chegwidan submitted, on behalf of the respondent, that the claimant was not disabled for three principal reasons:

- a. The claimant's condition of 'workplace situational anxiety' does not amount to a mental impairment falling within the meaning of the EQA;

- b. Even if it does, the evidence does not demonstrate substantial adverse effect on the claimant's ability to carry out normal day to day activities; and
- c. The condition is not 'long term'.

65. The claimant's medical records and the claimant's own evidence disclose, in Mr Chegwiddden's view, a stress condition deriving almost directly from a workplace dispute. There is, he says, no underlying medical condition, but rather fixed attitudes towards work and a reaction to adverse life circumstances.

66. Mr Chegwiddden referred me to the case of ***Herry v Dudley Metropolitan Council [2017] ICR 610*** in which the EAT upheld the decision of an Employment Judge to draw a distinction between stress which amounted to a mental impairment and stress which was a reaction to life events, and applied ***J v DLA Piper UK LLP [2010] ICR 1052***.

67. In ***J v DLA Piper*** Mr Justice Underhill, then President of the Employment Appeal Tribunal, accepted that a distinction could be made between a mental illness such as clinical depression, which causes symptoms of low mood and anxiety, and "*a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – "adverse life events"*".

68. In ***Herry***, the EAT held, at paragraph 56 of its judgment, that:

*"...there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment Tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction; but in the end the question whether there is a mental impairment is one for the employment tribunal to assess."*

69. Mr Chegwiddden argues that this case is akin to the position in ***Herry*** and in ***J v DLA Piper*** and there is no medical evidence that the claimant has a serious long-term health problem, but rather there was an ongoing dispute at work that was causing the claimant's health difficulties.

70. In addition, the respondent submits that there is little to no evidence that the claimant's ability to carry out normal day-to-day activities was in fact diminished. The claimant did not receive any medical treatment, which suggests that his ability to manage was sufficient. The claimant's inability to return to work, whilst a factor, was not due to an inability to perform ordinary day-to-day tasks, but rather due to the ongoing dispute with his managers.

71. Mr Chegwidden also submits that the medical evidence indicates that the impact of the claimant's condition was not consistent and varied considerably over time.

### **Conclusions**

72. I have reached the following conclusions having considered carefully the evidence, the legal principles summarised above, the oral submissions of both parties and the written Note on the law submitted by Mr Chegwidden.

73. There was, in this case, considerable medical evidence before me and that evidence was largely consistent. The doctors who assessed the claimant formed the view that the claimant's stress was caused by work issues. The weight of the medical evidence is that the claimant did not have an underlying medical condition, but rather that his health condition was related to the situation at work.

74. The claimant has no history of stress or mental illness. He began experiencing symptoms of stress and anxiety in November 2018 when he was experiencing a difficult time at work. At no point during the relevant period was he diagnosed with an underlying mental health condition. Whilst the absence of previous mental health conditions is not, in itself, an indication of disability status, as mental illness can affect any of us at any time, the timing of the onset of the claimant's absence and the lack of any history of poor mental health is, in this case, a relevant factor. It is a further indication that the claimant's stress was a reaction to events at work rather than an underlying medical condition.

75. The claimant was not prescribed any medication, nor did he receive any other treatment. Both his GP and the occupational health doctors who saw him were of the view that the resolution to his health condition was situational or work related, and not medical. In other words, there was no medical treatment that could improve the claimant's health. The claimant shared this view, as he also believed that the 'cure' for his ill health was through the grievance process. He was, to his credit, candid in his evidence, that he believed the cause of his health problems to be events at work.

76. The later occupational health reports refer to the claimant as experiencing 'distress', do not make any clinical diagnosis, and are clear that there was no solution to the claimant's health issues whilst the claimant remained in the work situation.

77. In light of both the medical evidence before me and the testimony of the claimant, I have no hesitation in finding that the claimant's ill health was a reaction to a difficult situation at work. The claimant falls squarely into the situation envisaged in **Herry**. He experienced a strong reaction to what happened at work and over time his views became entrenched. He spent a lot of time focussed on the grievance and appeared unable to move beyond what happened in 2018 and 2019. I make no criticism of him for doing so, as it is clear to me that the claimant is genuine in his beliefs and perception of what happened.

78. There was no underlying medical condition, and, on balance, I find that the claimant was not suffering from a mental impairment. There was no clearly diagnosed mental health condition or illness, but rather a stress reaction to adverse events at work. It is, in my view, telling that during the relevant period (ie the period during which the claimant alleges that the respondent discriminated against him) the claimant did not consult his GP at all. He sought no medical advice during that period and received no medical treatment. It was only in December 2021, after the last alleged act of discrimination, that the claimant went back to his GP for advice and support.

79. I have also considered whether the claimant's health had an adverse impact on his ability to carry out normal day-to-day activities. The claimant described experiencing difficulty sleeping, which in turn caused him fatigue. He also described having difficulty concentrating at times, lower energy levels and a general lack of motivation for tackling day to day tasks.

80. Throughout the relevant period the claimant was at work, albeit on a part-time basis and not carrying out his normal duties as a Regulatory Officer. The fact that he was able to work is of course not in itself determinative of disability status, as many disabled people can and do work, but it is evidence of the claimant's ability to carry out normal day-to-day activities.

81. It is clear that the affects of the claimant's health varied considerably. On good days he was able to write clear, detailed, and lengthy documents, some of which covered complex and technical issues. He was able to attend work part-time and engage in leisure activities and DIY. He was able to get out of bed every day, although did experience loss of motivation on occasions.

82. In determining the impact of the claimant's condition, I must of course focus on what the claimant could not do or could only do with difficulty, rather than on what he could do. There was however very limited evidence before me of the claimant's ability to carry out day-to-day activities being impaired.

83. On bad days the claimant avoided doing certain things because he was tired, and on those days he spent more time in bed. This was not always the case however and the claimant was unable to tell me how often he had bad days. The claimant told me that he needed help preparing detailed documents in relation to his grievance, but many

people without medical conditions need and seek help and advice with grievances and the preparation of lengthy documents.

84. I have considered the Appendix to the statutory Guidance on Matters to be taken into account in determining questions relating to the definition of disability. That contains illustrative and non-exhaustive lists of factors which it would and would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.
85. In relation to motivation, the Appendix suggests that difficulty getting dressed due to low motivation and 'persistent general low motivation or loss of interest in everyday activities' are likely to have a substantial adverse effect. There was no evidence before me of the claimant having difficulty getting dressed, or that his lack of motivation was persistent or consistent. He was, for example, able to work, he was able to play golf, he was able to carry out DIY.
86. In relation to concentration, the Appendix suggests that 'persistent distractibility or difficulty concentrating' is likely to have a substantial adverse effect, but that 'inability to concentrate on a task requiring application over several hours' is not likely to. It is my view, based on the evidence before me, that the difficulty the claimant occasionally experienced in concentrating falls into the latter category, not the former. His ability to concentrate was not always affected, it did not prevent him from writing complex and technical documents, he merely needed help at times with long grievance documents.
87. There were many days upon which the claimant was able to function normally. On 'bad' days he was still able to carry out many activities, and throughout the relevant period he was able to work part-time. The occupational health reports make no mention of a substantial adverse impact on the claimant's ability to carry out normal day-to-day activities.
88. In light of the above, I find that the claimant's workplace situational anxiety did have some adverse impact on his ability to carry out normal day-to-day functions, but that the impact was not substantial. In reaching this conclusion I have taken account of the fact that 'substantial' means 'more than minor or trivial' and is therefore a relatively low threshold. The claimant has not, however, discharged the burden of proof on this issue.
89. Although it is not necessary, given my findings above, for me to decide whether the adverse impact on the claimant's ability to carry out normal day-to-day activities was long term, if I had been required to decide that issue, I would have had no hesitation in finding that the long-term condition was met.
90. The claimant was suffering from work related stress from November 2018 onwards, and whilst the affects of the condition fluctuated, they lasted for more than twelve months.
91. I recognise that in most cases where an employee is assessed by the employer's occupational health providers as qualifying for ill health

retirement, the employee will meet the legal definition of disability contained within section 6 of the EQA. The test for disability in the EQA is not however the same as the test for ill health retirement, and it is the former that I have to apply when reaching my decision.

92. For the above reasons I find that the claimant was not disabled within the meaning contained in section 6 of the Equality Act 2010.

93. As disability discrimination is the only claim brought by the claimant, the claim fails and is dismissed.

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Employment Judge Ayre

26 August 2022

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JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE