



EMPLOYMENT TRIBUNALS

Claimant

Mr S Gasca

v

Respondent

Wickes Building Supplies Ltd

Heard at: Huntingdon (by CVP)

On: 01 March 2022

Before: Employment Judge Ord

Appearances

For the Claimant: In person.

For the Respondent: Mr D Brown (Counsel).

JUDGMENT ON PRELIMINARY ISSUE

The claimant was not at the material time a disabled person within the meaning of s.6 of the Equality Act 2010, his claim to be the victim of discrimination on the ground of disability is therefore dismissed.

REASONS

1. This matter came before me today to determine a preliminary issue of whether or not the claimant was at the material time a disabled person within the meaning of s.6 of the Equality Act 2010.
2. I was referred to a bundle of documents including medical reports and records together with an Impact Statement from the claimant. The claimant gave evidence and was cross examined by Mr Brown, Counsel for the respondent.
3. The claimant relies on two conditions firstly Post Traumatic Stress Disorder or mental ill-health and secondly physical impairment following an accident which he sustained on 16 April 2019.
4. Insofar as PTSD is concerned, the records show that after his accident the claimant suffered night tremors or nightmares and flashbacks to the incident when he was riding his motorbike and was struck by a motor car.

He tells me that he was prescribed medication which caused side effects so that he therefore stopped taking the prescribed medication. It is clear however that after May/June 2019, within three months of the accident, there was no ongoing reference to medical intervention, treatment or complaint of ongoing mental health issues/PTSD.

5. The claimant was examined by Mr Peter Hull a Consultant Orthopaedic Trauma Surgeon for the purpose of his personal injury claim following the accident in July 2020. Tellingly however he was not as far as I have been told examined by any specialist in PTSD or other mental health issues although Mr Hull refers to incidents of anxiety, depression and nightmares – these are said to have been in the past which corroborates the lack of general practitioner involvement from July 2019 onwards.
6. In the absence of evidence of ongoing difficulties relating to mental health or Post Traumatic Stress Disorder from June 2019 onwards I am not satisfied that the claimant has established that he is a disabled person as a result of any mental health issues within the meaning of s.6 of the Equality Act. The claimant has not satisfied me that the condition lasted for 12 months or was likely to recur (there was no evidence at all regarding any prospect of recurrence).
7. Insofar as his orthopaedic injuries are concerned, I have again found considerable assistance from Mr Hull's report. He recorded the claimant as stating that he had difficulties with bathing or showering for one month and with dressing or cleaning for three months. He advised that he had not gone to the gym or enjoyed playing games for a period of seven months after the accident. There is no reference to those matters continuing. The only ongoing difficulty which the claimant has referred me to is a combination of some continuing discomfort in his left hip and interrupted sleep because of that pain or discomfort. He says that he has his sleep disturbed once or twice per night and the claimant says that he is unable to lift heavy weights, he previously lifted weights of up to 70 kgs and that he has pain after long periods of driving.
8. The claimant was anxious to confirm that he has not made a full recovery from his injuries and I accept that. He is unable to engage in weightlifting. Lengthy periods of driving cause him some discomfort, that discomfort has been described medically as an ache although the claimant refers to pain. The question for me is whether those matters cumulatively constitute a disability within the meaning of s.6 of the Equality Act and I am not satisfied that they do. The claimant has not satisfied me that his condition has a material adverse effect on his ability to carry out normal day to day activities. The issues he has referred to such as being able to engage in weightlifting or go to the gym are not normal day to day activities within the meaning of the Act. When he was asked about normal day to day activities by Mr Hull he replied that his difficulties had lasted for a few months the longest period being seven months.

9. I have considered whether an ongoing disturbance of sleep as the claimant describes it would be enough to constitute a disability and in the circumstances of this case I do not find that it does. The claimant did not suggest any inability to return back to sleep, he referred to waking once or twice per night as a result of discomfort in his hip. Insofar as that is an impact on a normal day to day activity, it is not in my view substantial.
10. Accordingly the claimant is not disabled within the meaning of s.6 of the Equality Act and his complaint of disability discrimination is dismissed.

Employment Judge Ord

Date: 04 March 2022

Sent to the parties on:

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For the Tribunal Office