



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Hawkins

**Respondent:** (1) Franklin Funeral Directors  
(2) Miller Beare Limited  
(3) Gary Franklin  
(4) Tina Franklin  
(5) Andrew Hawkins  
(6) Gail Puttock

**Heard at:** Midlands West Employment Tribunal  
via CVP

**On:** 16 June 2023

**Before:** Employment Judge C L Taylor

## Representation

Claimant: Mr M Curtis, Counsel

Respondents 1,3,4 and 5: Mr J Small, Counsel

Respondent 2: Mr R Quickfall, Counsel

Respondent 6: Mr J Feeny

# RESERVED JUDGMENT AND REASONS

The Judgment of the Tribunal is that the claimant was disabled in accordance with the definition at section 6 of the Equality Act 2010 during the relevant period of June 2021 to December 2021.

## Introduction

1. The claimant was employed as finance director for the first respondent. The claimant is also a director and co-owner of the business.

## **Claims and Issues**

2. This hearing was listed to determine two issues as follows:
  - a. Whether the claimant is disabled within the meaning of the Equality Act 2010 at the material times.
  - b. Whether the second and sixth respondents were acting as agents for the first respondent within the meaning of s109 of the Equality Act. It was accepted, shortly before the hearing in correspondence, that the second and sixth agents were acting as agents for the first respondent.
3. The relevant questions in respect of the first issue are as follows:
  - a. Did the claimant have a physical or mental impairment?
  - b. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
  - c. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
  - d. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
  - e. Were the effects of the impairment long-term? The Tribunal will decide, did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?

## **Procedure, Documents and Evidence Heard**

4. The hearing took place via CVP which none of the parties objected to and which did not impact upon the fairness of the hearing. A break of ten minutes was taken every hour during the hearing, All parties were represented. I had before me a bundle of 500 pages and a Skeleton Argument on behalf of the claimant.

## **Claimant's evidence**

5. I heard evidence from the claimant and made a full note of the evidence. The claimant stated in cross-examination that the description of a typical day on the psychiatrist's report did not refer to a bad day.
6. The claimant does not associate difficulty concentrating with the menopause, but with PTSD. She does not know whether forgetfulness is to do with menopause or her mental health, she cannot allocate which symptoms were caused by which condition. The claimant stated that the referral her GP made to the community mental health team was rejected because her condition was too complex and not because there was no active or immediate risk because of her mental health.

7. The reason for taking time off work is because the claimant has PTSD and not because she wanted to avoid the environment in the workplace.
8. The letter of 11<sup>th</sup> August was a HSE stress questionnaire to inform the HR consultant and not a place to list symptoms. The document was written with a view of when the claimant went back to work.
9. The claimant was asked, if it wasn't for the toxic work environment would she have been going to work, the response was no.
10. Paragraph 4 of the impact statement was intended to cover the period June 2021- February 2022.
11. The claimant maintained throughout her evidence that her sick leave was due to PTSD and not due to the work environment.
12. The claimant continued to undertake payroll until October 2021, her therapist approved of this, carrying out the task was easier than collating all of the data to be handed over to the accountant who was changing account programmes within a few months.

## **Submissions**

### Submissions made for the first, third, fourth and fifth respondents.

13. The Tribunal has to determine whether the definition of disability was met at the time of the alleged discrimination and is not allowed to have regard to events occurring after that period in considering whether the impact of the impairment was substantial and in considering whether the effect was long-term.
14. The claimant was not a credible witness and there is clear contemporaneous evidence which goes against what the claimant says in her witness statement. The report of Dr Grewal does not contain a diagnosis of complex PTSD but describes that as his impression, the language used is telling.
15. The evidence of the impact of the impairment on the claimant's day to day activities is absent. The description given by the claimant in her impact statement is not borne out by the evidence. The claimant was carrying out payroll functions, it is clear from her own correspondence that the reason the claimant did not want to go to work because of a toxic environment with her ex-husband and not because of symptoms related to her impairment. The claimant's explanation that this correspondence was setting out what would be required upon her return to work does not make sense. It is recorded in the

claimant's medical records that in 2020 she suffered from forgetfulness and issues concentrating as menopausal symptoms. There is nothing to say that the complex PTSD had an impact upon her concentration.

16. There are no concentration issues in the claimant's medical records. The medical records do not evidence a link between PTSD and insomnia. There is no medical evidence that the claimant cannot get out of bed because of PTSD and no evidence that the claimant could not leave the house or attend social events.
17. It is telling that the claimant was only taking a small dose of diazepam and only as and when needed. There is no evidence that the claimant was suffering with mental health issues prior to 2021.

#### Submissions on behalf of the second respondent

18. In addition to adopting the submissions above, the following submissions were made for the second respondent.
19. The relevant period in respect of the second respondent is 12 August 2021 to 01 October 2021. The claimant has fallen short of proving a substantial adverse effect on any day to day activities. It is telling that the claimant keeps coming back so symptoms rather than activities. Although she may have multiple symptoms that is not the same as being able to prove a substantial adverse effect on day to day activities.
20. The claimant has failed to prove a substantial adverse effect and failed to prove that any effects were long term. It is not just a matter of the claimant saying something in her witness statement, she has to prove it.
21. The GP report is dated a year after the relevant period for the second respondent and makes no mention of day to day activities. The claimant states that the only reason she could function was because she was taking diazepam and anti-depressants. She did not start the anti-depressants until December 2021 which is two months after the relevant period for the second respondent.
22. It is right that the claimant was described diazepam by her psychiatrist, that would have been at her appointment on 01 June 2021. The question is whether the claimant was taking the diazepam when she described her typical day to the psychiatrist and the answer is no because the prior prescription for diazepam was for 7 tablets in July 2019.

23. The claimant was not taking diazepam with any frequency when she saw Dr Grewal in June 2021, yet what is described about her typical day does not show substantial adverse impact on day-to-day activities. There is no medical evidence linking the insomnia to any mental impairment and the claimant accepts this, she says it could have been back pain or hot flushes.
24. The evidence in the impact statement cannot safely be relied upon by the Tribunal. The claimant says in that statement that it was only because I was taking diazepam that I was able to function but she cannot provide medical evidence of this.
25. The claimant's own letter of 11 August 2021, written with the assistance of a HR professional says that she has no issue with work demands. It was only in later cross examination that the claimant attempted to suggest, notwithstanding there is no mention of it in the letter, that she was taking about when she is fit to return to work. This contemporaneous written evidence is in stark contrast with the claimant's impact statement.
26. The impact statement is written in the present tense and refers to the date of 04 May 2022, being generous, it is arguable that the impact described is correct at that time, but not at the relevant time.
27. The claimant states that she struggled to get out of bed between June 2021 to February 2022, but the only evidence in support of that is an entry in her medical records from March 2022, way out of time. It is not the case that the claimant was struggling to get out of bed in August and September 2021, quite the opposite, the description in Dr Grewal's report (p420) describes a normal day doing normal tasks.
28. There is no evidence that PTSD is a recurring condition and no evidence that at August and September 2021 it had lasted for 12 months. There is no evidence from August and September 2021 that PTSD had any impact upon day to day activities. The psychiatrist stated that the claimant was likely to respond very positively to therapy and has a good prognosis.
29. The Tribunal should be cautious of accepting the evidence in the impact statement.

#### Submissions on behalf of the sixth respondent

30. Mr Feeny adopted the submission above and added that the available evidence shows that the only thing the claimant could not do was work with her husband and the other two directors which is not a substantial adverse effect.

### Submissions on behalf of the claimant

31. There are four questions for the Tribunal to answer, does the claimant have an impairment, what were the adverse effects, were they more than minor or trivial and was there a real possibility it would continue for more than 12 months. The Skeleton Argument sets out a lot.
32. The respondent's position is wrong. The respondents seem to be saying that if symptoms are not recorded in GP records then they didn't happen. This is divorced from reality.
33. The Tribunal is invited to find what ought to be common knowledge, that the role of a medical professional is not to list every symptom for the purposes of a future claim. The role is to balance a number of things in a ten minute appointment, to listen, read notes, consider treatment, explain, prescribe and to record such key information as they consider is necessary for the purposes of treatment.
34. The representative of the second respondent submitted that it is necessary to have medical evidence to prove symptoms. This is wrong in law, it is possible for the Tribunal to make a finding of disability without a shred of medical evidence. In this case there is evidence.
35. The evidence of symptoms consists of the claimant's witness statement, confirmed under oath. The report prepared by the claimant's GP (p498) which it is presumed is prepared partly from the GP's own knowledge and partly from GP records. This report refers to the claimant having nightmares, waking up with doom, flashbacks and thoughts of self harming, these are symptoms. The report also refers to the claimant forcing herself to get out of bed and not sleeping.
36. An entry in the claimant's medical records from 12 April 2021 refers to the claimant struggling with nightmares, waking up with doom and flashbacks. Much has been made of the fact that this is not repeated in the entry of 01 June 2021, this is because the entry starts with the words see previous, referencing back to the entry of 12 April 2021. The records also refer to the claimant being stressed, anxious and not sleeping on 18 June 2021 (p371).
37. The reality of the respondents' position is that they are saying that the claimant is lying in her witness statement and in her oral evidence.

38. Regarding the claimant's impact statement and the time referred to therein, the fourth line of the statement expressly states that it refers to June 2021 to February 2022. Much has been made of the claimant's letter of August 2021 and suggestion made that it is incompatible with the claimant's assertion that she was unable to focus and became overwhelmed if she had more than one task to do. The context of this letter is that it was written at a time when the claimant was off sick from work, it is headed reasonable adjustments and states, "I am currently unaware of when I will be well enough to return, when I am considered fit to return...."
39. We heard evidence about how the claimant takes diazepam, in effect she says when she needed to do something, she would take diazepam to get it done. On days she didn't have things to do, she wouldn't. The Tribunal is invited to find that there has been an honest and compelling account from the claimant.
40. It was suggested that there is not evidence that this is a long term condition, the GP report states that the symptoms could well recur even if they go into remission for a period of time. If the condition could well recur, it is long term.
41. Paragraph 4 of the impact statement sets out the impact of the condition on the claimant's ability to carry out day to day activities and is supported by the medical records and the GP report.

## **The Law**

42. The provisions concerning disability in respect of discrimination claims are set out in s6 Equality Act 2010 as follows:

### **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.

(1) In this Act- ...

'Substantial' means more than minor or trivial.

43. There are supplementary provisions in relation to disability in Schedule 1 of the 2010 Act. Guidance has been issued by the Secretary of State regarding matters to be taken into account by Employment Tribunals in determining questions relating to the definition of disability particularly with regard to long terms effect, effect of medical treatment, certain disabilities being classed as disabilities, (which actually doesn't apply in this case) and other matters.

44. I am required to take into account any aspect of the Guidance which appears to be relevant. Paragraph A2 of the Guidance contains a helpful analysis of Section 6 of the Equality Act 2010. I have had regard to the EHRC Code of Practice.

### **Fact Finding and Conclusions**

45. I accept that the claimant has a mental impairment, namely complex PTSD. Any reference to PTSD within this judgment, should be read as a reference to complex PTSD. I accept that this diagnosis was given by Dr Grewal on 01 June 2021. I do not accept that the fact that this was termed impression on the report undermines that this was a diagnosis. The psychiatrist referred the claimant for therapy for PTSD and also prescribed medication for PTSD, this is consistent with the doctor making a diagnosis and not with him having an impression in the ordinary understanding of the word impression. There are numerous references to the diagnosis within the claimant's medical records and the report from her GP.
46. Dr Grewal's report describes a typical day for the claimant which describes waking at 8am and working until 5pm. In her oral evidence the claimant clarified that the description of a typical day was of a good day. The report was prepared at a time when the claimant was not working. The description of the typical day could not therefore be referring to the time when the report was written and the report goes on to describe recent events. I accept the claimant's explanation in respect of the description of a typical day.
47. The claimant states that the adverse impacts of her impairment are an impact upon her ability to get out of bed or leave her bedroom, struggling to leave home and engage in social events, being unable to sleep, finding it difficult to concentrate, being overwhelmed and unable to concentrate on tasks. I find that paragraph 4 of the claimant's impact statement relates to the relevant time period and not to May 2022 when the statement was written. Paragraph 4 states, "my condition has had a substantial adverse effect," the paragraph is referring to the past. '
48. Paragraph 5 of the statement describes the current i.e. May 2022 medication dosage and how this helps. The statement also states that the claimant has "been experiencing some if not all of the symptoms set out above ...since at least 2019."
49. There is medical evidence which supports the adverse effects described by the claimant. There are contemporaneous entries in the claimant's medical records which refer to nightmares, waking up with doom, and flashbacks. I accept the



submission that the entry of 01 June 2021 is referring back to the symptoms described in April with the words, see previous.

50. The report from the menopause clinic dated 15 July 2021 states that hot flushes are waking the claimant up, disturbing her sleep and giving her a fuzzy head. I do not find that disturbed sleep because of menopausal symptoms, or back pain, and insomnia because of PTSD are mutually exclusive. The GP report (p498) refers to the claimant struggling with nightmares, her impact statement describes being unable to sleep whilst the letter from the menopause clinic refers to hot flushes waking her up, rather than preventing her from sleeping.
51. The respondent has raised the correspondence of the claimant of 11 August 2021. I accept that the purpose of this letter was to set out factors to be considered when the claimant was well enough to return to work and based upon the HSE Stress Questionnaire. The letter is clear that it seeks reasonable adjustments when the claimant returns to work. The respondent raised the sentence in this letter "my absence is not related to my ability to do my job," The respondents' position is that the claimant did not want to go to work because of the environment created by her ex-husband and not because of her impairment. The claimant's fit notes are within the bundle, the reasons for her absence are given as mental health and related issues and PTSD. The fit notes do not refer to workplace stress or a toxic environment at work. I accept the evidence of the claimant, supported by the fit notes, that she could not work because of her mental health and PTSD. Whilst the environment at her workplace was undoubtedly a stressor for the claimant and hindered her recovery, the reason for her absence was PTSD. I take the letter of 11 August to mean, the claimant has the skills to do her job, but, because of her PTSD, she could not continue to perform her job in the environment she was working in.
52. I find the appellant to be a credible witness. Her oral evidence was forthright, she made concessions where appropriate and gave considered responses. Her oral evidence was not undermined by the documentary evidence. Assessing the evidence of the adverse impact in the round, the impact statement, the oral evidence, the medical records, the GP and the psychiatrist report I accept that PTSD adversely affected the claimant as described in her impact statement.
53. Focusing on what the claimant could not do, she could not sleep properly, she found getting out of bed difficult, she found socialising difficult, she could not perform her full job role, she was unable to concentrate and became overwhelmed. These adverse effects impacted upon the claimant's ability to carry out normal day to day activities in more than a trivial way.
54. Turning to whether the adverse effects of the impairment were long term, the claimant's GP has provided medical evidence that the symptoms of complex PTSD, even if they go into remission for a period of time, could well recur. I note

that Dr Grewal's gave the claimant a good prognosis for recovery. The evidence of the GP is that, even if the symptoms go into remission, they could well come back. I accept this medical evidence and therefore find that the effects of the impairment are long term and were likely to last at least 12 months.

Employment Judge C L Taylor

Date: 10 July 2023