



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Ashley

**Respondent:** British Dyslexia Association

**Heard By Video at:** Swansea Civil Justice Centre      **On:** 7 July 2023

**Before:** Employment Judge S Povey

## **Appearances**

For the Claimant: Mr Chambers (solicitor)

For the Respondent: Ms Anderson (counsel)

## **JUDGMENT**

The Claimant was not a disabled person as defined by section 6 of the Equality Act 2010 at the relevant times.

## **REASONS**

1. At the culmination of the hearing on 7 July 2023, I provided my judgment and reasons orally to the parties.
2. Afterwards, the Claimant's solicitor made a request for a transcript of my reasons. This is that transcript.

### **Background & the Hearing**

3. The Claimant was employed by the Respondent initially as Chief Development Officer and latterly as Chief Executive Officer. She brings complaints of unfair dismissal, direct disability discrimination, discrimination arising from disability and failure to make reasonable adjustments. The Claimant says that she is disabled by reason of rheumatoid arthritis, Reynaud's & Sjogren's syndrome.
4. By case management orders of 29 March 2023, Employment Judge Webb listed this hearing to decide whether or not the Claimant was disabled at the relevant time (as defined by section 6 of the Equality Act 2010). That relevant time was identified today as the period from October 2021 to August 2022.

5. The Respondent accepts that the Claimant has the physical conditions, both now and at relevant time, of rheumatoid arthritis, Reynold's and Sjogren's syndrome and that those conditions are long-term. However, the Respondent does not accept that, at the relevant time, those physical conditions had a substantial adverse effect on the Claimant's ability to carry out normal day to day activities.
6. Further to Employment Judge Webb's case management orders, I was provided with a bundle of evidence ('the Bundle') and a bundle of guidance and legal provisions. The Claimant was directed to provide a disability impact statement which would stand as her evidence in chief.
7. It is noteworthy that Employment Judge Webb's orders included the following direction at Paragraph 9 (at [49] of the Bundle):

By 26 April 2023, the Claimant and Respondent must send to each other copies of all relevant medical evidence, including the parts of GP and other medical records that are relevant to whether the Claimant had the disability at the time of the events the claim is about.
8. It was not suggested to me by either party that Paragraph 9 or any other relevant direction for this hearing had not been complied with.
9. I heard oral evidence from the Claimant, who adopted her disability impact statement as her evidence in chief. I also received submissions from Ms Anderson for Respondent and Mr Chambers for the Claimant.

### **Analysis of the Evidence**

10. The Claimant's disability impact statement is dated 23 April 2023. On its face, it does not explicitly address the relevant period nor detail how the Claimant's conditions affected her ability to carry out normal day to day activities at that time or how, but for the medication, treatment & strategies she referred to, her conditions would have affected her abilities to carry out normal day to day activities.
11. Whilst the disability impact statement was drafted by the Claimant, it was created for the clear purpose of responding to the Respondent's position that disability was not conceded. In addition, the Claimant has had the benefit of legal advice and assistance throughout this process. As such, it was surprising that the disability impact statement did not focus more keenly on those issues most relevant to what the Tribunal had to decide.
12. The disability impact statement was not wholly without relevant information. The Claimant described the prescription medication she has been on and, in her oral evidence, confirmed that she continued to be on. The Claimant described in her disability impact statement how she struggles to open items that involve twisting, how her ability to grip has deteriorated and how she has moved to clothing which does not involve buttons.

13. However, these examples are limited and do not, in terms, state whether such functional limitations existed during the relevant time of October 2021 to August 2022.
14. The Claimant explained in her disability impact statement the impacts of her medication on her health generally, both in alleviating the symptoms of rheumatoid arthritis, and in their side effects. There was reference to a hospital attendance on 17 July 2021, which was supported by medical evidence, where the Claimant believed that she had fractured her wrist whilst gardening but in fact the x-rays revealed degenerative changes, also referred to as “*wear and tear*” (at [115] of the Bundle). In her oral evidence, the Claimant stated that she has since been diagnosed with osteoarthritis.
15. The Claimant also referred to fatigue in her disability impact statement, which she expanded upon in her oral evidence, explaining how she manages her energy levels throughout the day. She also referred in her disability impact statement to symptoms of pain, joint inflammation, mobility issues, freezing sensations in her hands and feet, dry eyes and dry mouth.
16. However, as explained, there was little information as to the functional effects of those symptoms or impairments and still less on the functional impact at the time under consideration (namely, October 2021 to August 2022).
17. On the Claimant’s own case, the medication prescribed to her, most notably Cimza which was prescribed five years ago (per the Claimant’s disability impact statement), does have some ability to control the symptoms of rheumatoid arthritis. I was prepared to accept, even in the absence of medical evidence for the relevant period, that the Claimant was prescribed and was taking Cimza at the relevant time. Her disability impact statement referred to it being first prescribed before her employment with the Respondent began and her oral evidence today was that she has continued with that and other prescription medication ever since.
18. However, there was a distinct lack of other supportive or corroborative medical evidence, as to the functional effects of the Claimant’s health conditions whether at the relevant time or otherwise, the impact of the medication she was on in respect of those functional effects or the likely effects on that functionality if the Claimant was not on that medication. Whilst it is for the Tribunal to determine disability, the lack of such evidence and the lack of any explanation for the lack of medical evidence damaged the Claimant’s case.
19. There was some limited assistance derived from a letter dated 16 April 2012 to the Claimant’s GP from the rheumatology registrar under whose treatment the Claimant was at that time (at [99] of the Bundle). It stated as follows (so far as relevant):

...

[The Claimant] had a difficult time over December [presumably 2011] as her methotrexate was stopped when -having moved home - she had not been seen in Rheumatology on two occasions as she was no longer living at the address in the hospital records.

Her joints flared severely following this, and she was subsequently seen in primary care and started on steroids (initially at 30mg prednisolone for a week, then 15mg) and methotrexate restarted at 10mg weekly. Her joints have begun to improve, though she does not feel well on prednisolone. She is tolerating the methotrexate.

Her inflammatory arthritis is clearly active today with multiple swollen joints. I have increased her methotrexate back to the previous dose of 1 5mg weekly, and suggested she taper her steroids by 5mg each week. We will review her in clinic in 8 weeks.

...

20. This letter gave a glimpse of the Claimant's symptoms without medication but is significantly limited as evidence because:
  - 20.1. It refers to a period 10 years before the relevant period in this case;
  - 20.2. It does not explain the functional impact on day-to-day activities; and
  - 20.3. It pre-dates the apparent move from methotrexate to Cimza.
21. The Claimant did not explain anywhere in her disability impact statement how she would fare without medication. She was not asked about that in cross-examination and, as such, it was not appropriate for her to be asked about it in re-examination. But it is a significant omission from the evidence adduced to support the Claimant's claims.
22. There was a distinct lack of supportive, corroborative and contemporaneous medical evidence before me. It was not suggested by the Claimant or Mr Chambers that attempts had been made to secure that evidence which had run into difficulties. It was not suggested that no medical evidence existed for the period under scrutiny. It was not suggested that the Claimant's treating medics had been approached for their written opinions on the issues pertinent to this hearing but had refused or failed to respond. No explanation was given for what appeared to be significant omissions in the medical evidence, both as to time and content.
23. And all against the backdrop of the clear direction given by Employment Judge Webb regarding the disclosure of relevant medical evidence.
24. The Claimant also relies on an award of Personal Independence Payment ('PIP'). There was an Annual Advice letter of 15 February 2016, which evidenced awards of the daily living and mobility components both at the standard rate for a period of four years from August 2015 to June 2019 (at [105] of the Bundle). The Claimant also adduced a Yearly Update letter dated 12 March 2023, which explained an annual increase in her entitlement (at [123]).
25. The following could be derived from the letters:

- 25.1. The Claimant met the criteria for awards of both the daily living and the mobility components when the awards were made in or around 2015 or 2016.
- 25.2. The amount of PIP payment she received reduced from 2016 (£76.90 per week) to 2023 (£61.85 per week, rising to £68.10 per week from April 2023).
- 25.3. There was no reference in the 2023 Yearly Update to the mobility component, only to the daily living component of PIP.
26. There was no explanation for the reduction in PIP payments, save for the 2023 Annual Update letter making no mention of any mobility component award. That may or may not explain the change. However, no other details of the awards were provided. The breakdown of how points were awarded for each aspect of the two components was not included (PIP is assessed on a functional basis). The Claimant would have been told on what basis she had been assessed and what points she had been awarded. None of that has been disclosed. There is no documentary evidence that the Claimant was in receipt of PIP at the relevant time. She says in her oral evidence that she was but there is no explanation for why that has not been evidenced. I am again reminded that the Claimant has had the on-going benefit of legal advice and assistance.
27. There is no explanation for why, at least at face value, the Claimant is no longer receiving the mobility component. When did that end and for what reasons?
28. Like with the medical evidence, there appeared to be a potential source of corroborative, informative, contemporaneous evidence available to the Claimant which she has chosen not to rely on in support nor was it suggested that any attempts were made to secure that evidence but without success.
29. For the sake of completeness, I deal with the submission regarding the ET1 Form. The Respondent relied upon the Claimant ticking "no" in response to the question in the form about whether or not the Claimant has a disability (at [9] of the Bundle). I attach little, if any, weight to that. It is in reality a question pertaining to the duty on the Tribunal to make reasonable adjustments and is also clearly a mistake (as the Claimant's asserts it is), when considered against the claims of disability discrimination which have been pursued from the outset.

### **Findings & Conclusions**

30. I can only make my decision on the evidence presented. The burden of proving that she was disabled at the relevant time, as defined by section 6 of the Equality Act 2010, is on the Claimant.
31. Having regard to all the evidence seen and heard, I was unable to find on balance that the effects of the Claimant's physical impairments on her ability to undertake normal day to day activities was impaired, significantly or otherwise. There were simply too many gaps in the evidence, whether from the Claimant herself, from those treating her or those who have awarded her PIP. And it was

gaps in evidence which, in the absence of any explanations, appeared to have been reasonably available to the Claimant, even more so given the legal advice and assistance she has benefitted from throughout this process.

32. The overall lack of evidence proved decisive. The evidence that was presented was not, in my judgement, sufficient to show, on balance, between October 2021 to August 2022 and ignoring the effects of medical treatment, that the Claimant's physical impairments of rheumatoid arthritis, Reynaud's and Sjogren's syndrome had a substantial adverse effect on her ability to carry out normal day to day activities.
33. It follows that I am unable to find that the Claimant was disabled as defined by section 6 of the Equality Act 2010 for the relevant time in respect of her claims of disability discrimination.
34. I know that this outcome will be disappointing to the Claimant. It does not change the fact that she has these physical conditions nor how they impact on her life nor how she seeks to manage and cope with them. But decisions in courts & tribunals can only, and must only, be based upon the evidence presented by the parties. On that evidence, and only on that evidence, I have, for the reasons explained, been unable to find that the legal test for disability has been made out at the time relevant for the claims being pursued.

Employment Judge Povey  
Date - 10 July 2023

Sent to the parties on 11 Jul 2023

For the Tribunal Office Mr N Roche