



EMPLOYMENT TRIBUNALS

Claimant

Mr L Neagoe

v

Respondent

(1) Dean Port;
(2) Crystal Electronics Limited

Heard at: Bury St Edmunds (by CVP)

On: 25 January 2023

Before: Employment Judge K J Palmer (sitting alone)

Appearances

For the Claimants: In person

For the Respondents: Mr M Nadin, Solicitor

RESERVED JUDGMENT Pursuant to a Preliminary Hearing

1. The Claimant is a disabled person at the material time under S.6 of the Equality Act 2010.

REASONS

1. This matter came before me today pursuant to a notice of Hearing issued by the Tribunal, dated 17 July 2022. The purpose of the Hearing was to consider the following:
 - 1.1. Whether at the relevant times the Claimant was a disabled person within the meaning of s.6 Equality Act 2010.
2. Sadly the Hearing was under listed and only three hours was allowed for the Hearing to take place. That was insufficient. I had further hearings in the afternoon and therefore there was simply no time for me to give Judgment within the three hour time slot.
3. It was therefore necessary for me to reserve this Judgment.

History

4. The Claimant presented a claim to this Tribunal on 5 May 2022. The Claimant was employed by the Second Respondent between 1 October 2018 and 18 February 2022 when he was dismissed. The Respondents

argue that the dismissal was by reason of the Claimant's conduct. The Claimant at the time of his dismissal was a Director of the Respondents and Head of the Booking Department.

5. In his ET1 the Claimant pursues claims for unfair dismissal and disability discrimination.
6. The claim is home made and the Claimant is not represented.
7. The nature of the Claimant's claims in disability are not entirely clear from his pleading. It would appear, however, that he is pursuing claims in direct discrimination under s.13 Equality Act 2010 and discrimination arising from a disability under s.15.
8. He also pursues a claim for unfair dismissal.
9. The Claimant has joined in Dean Port as First Respondent. Dean Port is the Managing Director and Principal Shareholder of Crystal Electronics Limited, the Second Respondents who employed the Claimant.
10. The Respondents filed an ET3 through their Representative. Those Representatives instructed by the Respondents represent both Respondents. Mr Nadin of those Representatives was before me today.
11. I had a Bundle before me, running to some 83 pages. I heard evidence from the Claimant.
12. The only issue before me today was to determine whether the Claimant is a disabled person under s.6 Equality Act 2010 for the purposes of his disability discrimination claims going forward. At the same time that this matter was listed for a Preliminary Hearing to determine that issue, the Tribunal caused an Order to be sent to the Claimant requiring him to provide information with respect to the disability he is relying on in these proceedings. The Claimant complied with that Order and provided what amounts to a Statement dated 12 August 2022. That Statement takes the form of a Disability Impact Statement and runs to some 4 pages. This was before me in the Bundle at pages 39 – 42. I also had before me in the Bundle various medical evidence upon which the Claimant relies in support of his claimed disability. The claimed disability the Claimant relies upon is depression and anxiety disorder.

Findings of Fact

13. The Claimant accepts that after commencing work at the Second Respondent, he rose swiftly to a position of some responsibility. He said that he did so as a result of working six days a week and devoting his life to work. He accepted in evidence that whilst he raised his disability with Dean Port on many occasions, he only did so verbally and not in writing. He said he did raise issues about reasonable adjustments at the end of 2021 but that was in a conversation and it was never followed up by him. In his

Statement dated 12 August 2022, the Claimant specifies that he has suffered from depression and anxiety disorders for some 15 years. He said he was diagnosed and started treatment in May of 2007. He said his mental health impairment was severely aggravated during the period of August 2021 to February 2022 as a result of the actions of the Respondent.

14. He goes on to list the impairment having the following effects on his ability to carry out day to day activities:
 - 14.1. He says he constantly feels tired and restless, even without engaging in any physical or mental activity. He says he finds it very difficult to wake up in the morning and he always gets up from bed tired. He says going to work makes him feel very tired and most times he sleeps all weekend. He says during his employment at the Second Respondents, the First Respondent purposefully held late meetings until 12am and required him to work long out of hours. He said these actions were deliberately done to affect his mental health impairment and to create additional stress.
 - 14.2. He says he has disturbed sleep and wakes up during the night. He says it is very hard to wake up in the morning and he is very tired during the day. He said at night he finds it very difficult to fall asleep and stay asleep. He says that even after a lot of sleep he still feels fatigued and lethargic.
 - 14.3. He says he experiences low mood and feels sad and irritable. He said these affects have been aggravated by participating in meetings where the First Respondent intentionally used denigrating language towards him and demoted him in front of other colleagues. He says the unfair and biased disciplinary process which he was put through was purposefully organised to add more stress and put more pressure on him.
 - 14.4. He said on 31 January 2022 the First Respondent used an intentionally aggressive tone to him and shouted at him to leave the room in front of other members of staff.
 - 14.5. He said he feels very emotional, he gets tearful and starts crying. He said although the First Respondent was aware of his mental health disability, he shouted at him and humiliated him over two meetings in the same day, in front of colleagues on 21 January 2022.
 - 14.6. He said he does not feel good about himself and he loses self confidence and over thinks things. He said he has low self-esteem and sometimes finds it very difficult to engage with people. He says this has been further aggravated by numerous accusations and insults throughout the period of August 2021 to February 2022. He said on 22 November 2021, the First Respondent purposefully shared private and confidential information about his mental health

condition to different members of staff in order to denigrate and humiliate him.

- 14.7. He says he feels very anxious and gets panic attacks. He said before important meetings, or getting close to the deadline he gets very agitated. He says during heated conversations or important meetings he gets very stressed and anxious and shakes. He says his legs shake and he bites his nails. He said if he receives or is about to receive what may sound like negative or bad news, he gets very scared and anxious. He said if he is going through a problem or stressful situation and gets bad news or fails at something, he loses control of himself and has panic attacks. He said the Second Respondent deliberately knew about this and they have refused requests to organise the disciplinary meeting outside the office in a private setting, although this was done for other employees. He said that on 20 September 2021 in a meeting with several participants, Dean Port humiliated him in front of many members of staff. He said this offended him and he used numerous threats saying he would be dismissed and that his car would be taken from him. He said the experience was horrible and affected him very much and aggravated his condition.
- 14.8. He says he has reduced concentration and struggles to focus. He said he struggles to stick to deadlines and has trouble finishing Reports or documents in time. He said he constantly revisits tasks given to him numerous times and second guesses his ability to complete the work to the best standard. He said he loses concentration and takes lots of breaks to finish the work. He said the first Respondent constantly switched his tasks and duties in order to create confusion and make it unclear as to what his job roles were and furthermore, used that against him.
- 14.9. He says he is losing interest and enjoyment in his favourite physical exercising activities. He says he finds it very difficult to go swimming or walking. He says this makes him upset as he knows that swimming and walking will help him improve his impairment and by not doing them he is not helping himself. He says he does not want to go out with friends and he does not want to leave the house. He says although he recognises that spending time with friends will improve his mood, he still struggles and lacks motivation to meet up with them.
- 14.10. He said he is feeling guilty and worthless. He said if he gets into a debate or a misunderstanding, he over thinks things and blames himself even when he is not to blame.
- 14.11. He said he feels rejected and constantly lives with the fear of being rejected by work colleagues, family members, friends and his life partner. He said he feels that he will be isolated and left by himself.

- 14.12. He says he does not have the energy to do simple household tasks such as going to the store to buy food. He says he struggles to pay bills on time and he will leave everything to the last minute. He said he fails to manage cleaning the house, washing dishes or doing laundry. He said he does not have the energy to cook and sometimes he stops in the middle of cooking and does not finish it.
- 14.13. He says he gets unhappy for no reason and his mood changes extremely quickly from being normal to being unhappy.
- 14.14. He said the affects of his mental impairment started 15 years ago and have never stopped. He expects the impairment to last for the rest of his life.
- 14.15. He said that ever since he was diagnosed with depression and anxiety disorder, he had been under strict medical treatment. He said he has been on medication from May 2007 to the present day and has also done various forms of therapy such as Cognitive Behavioural Therapy, Interpersonal Therapy and Counselling.
- 14.16. He said that as a consequence of the First Respondent's treatment of him in the period between August 2021 to September 2022, his disability was aggravated and he suffered a chronic mental breakdown. He said that after medical consultations he received two consecutive sick notes signing him off from work between 24 September 2021 and 24 October 2021 and further from 24 October 2021 to 21 November 2021. He said as a consequence of the treatment he suffered at the hands of Dean Port, his medication dosage was doubled from 10mg to 20mg of Escitalopram. He then provides a lengthy list of medication which he says he has been taking variously from 2007 to the present day.
- 14.17. He goes on to say that without medication, his condition gets much worse and life becomes unbearable. He says some of the effects he has experienced are: mental breakdowns, uncontrollable crying for hours and severe panic attacks, inability to leave the bed for several days, complete loss of appetite, inability to leave the house for any reason, self-imposed isolation, pain in the body from stress, loss of weight in a very short period due to not eating, being extremely negative, frustrated and pessimistic and cannot see any solution to his problems, insomnia and inability to perform everyday self-care activities such as washing and shaving.
- 14.18. He said Dean Port, the First Respondent and the Second Respondent were aware of his disability and medical treatment as this was discussed with them in several correspondence from different senior members of staff.
15. The Respondents' position is that the medical evidence produced by the Claimant in support of his allegation that he is disabled, does not gel with

the Statement produced by him on 12 August 2022. Essentially, Mr Nadin's position is that for the purposes of this Hearing, the Claimant has substantially "gilded the lily" and fabricated much of the effects of his condition. The Respondents accept that the Claimant has an impairment of depression and anxiety, but they rely on the fact that the impairment is not serious enough to amount to a disability as defined at s.6 of the Equality Act 2010. They say based on the medical evidence supplied by the Claimant, the Respondents maintain that the impairment relied upon by the Claimant does not have a substantial adverse effect on his ability to carry out normal day to day activities.

16. I had before me in the Bundle such medical evidence had produced for this Hearing. Both in cross examination and in submissions, we were taken by Mr Nadin to a letter from the Claimant's General Practitioner dated 16 August 2022. At no point in that letter does the GP state that the Claimant has a mental impairment that has a substantial and long term adverse effect on their ability to carry out normal day to day activities. He says that letter does not contain a professional medical opinion that the Claimant has a disability as defined in the EqA 2010. He says the GP's letter states at various points throughout the letter, that the Claimant has normal speech, is well dressed, has good rapport, looks well, appears alert, has no thought disorder, no delusion and no thoughts of self-harm or suicide. Mr Nadin's position is that such observations by a medical professional are not consistent with the information given in the Claimant's Statement dated 12 August 2022.
17. This was the main stay of Mr Nadin's approach on behalf of the Respondents, both in cross examination and in submissions. He also said that the evidence in the Bundle showed that there had been significant gaps in the Claimant's taking of medication suggesting that his condition was mild. The Claimant largely refuted this but did admit that there was a gap when he moved to England, but that gap was only for a few weeks.
18. It is the Respondents' position that this is not supported by the documentation in the Bundle. He referred the Claimant to a Medical Report from a Romanian practitioner describing his condition as a recurring depressive disorder with a current moderate episode.
19. The principal Medical Report before me dated 16 August 2022, is from The Mount Medical Centre in Northampton, addressed to "Whom it may concern". Mr Nadin says that this Report simply does not support the extreme picture painted by the Claimant in his Statement of 12 August 2022. He said that the picture painted by the evidence suggests that the Claimant was treated until May 2016 and then there was no further treatment between May 2016 and September 2017 when the Claimant was by then in the United Kingdom. He said this shows a considerable gap rather larger than that admitted to by the Claimant.
20. He refers the Claimant and me to page 49 which lists various medications taken by the Claimant in his referral form for Adult Mental Health Services.

He says that looking at the timeline there are considerable gaps in what appeared to be the prescription of medication to the Claimant. He said these gaps in the taking of medication appeared to continue throughout 2021 and 2022.

21. The Claimant refuted this and said he had continued to take medication throughout but that documents did not reflect the fact accurately that he was on repeat prescriptions. He said the medications continue until there is a change. He said he had continued to take the medication monthly throughout.
22. Mr Nadin also questioned the Claimant's evidence in his Statement that he had had a chronic mental breakdown in September of 2021. He said there is no evidence in the Bundle to support this either in the GP notes produced or any of the other evidence put forward.
23. He draws the Claimant's attention to the fact that the Claimant's appointments with the Northampton Health Care NHS Foundation Trust Changing Minds Service, between 2017 and 2019, and that this suggests a mild condition.
24. Mr Nadin suggested to the Claimant that difficulties experienced in or around August and September 2021 and beyond probably related to a severe bout of Covid which the Claimant suffered in August of that year.
25. In the letter dated 16 August 2022, Mr Nadin says that there is a gap in treatment between August 2019 and 24 September 2021, a gap of two years and that the Claimant missed various sessions and pursued no GP appointments.
26. In response, the Claimant said there was no gap and he continued to take medication but did not need to see anyone through that period. When asked why he had missed an appointment with the Mental Health Team previously, he said that he had now started attending such appointments again.
27. He was questioned by Mr Nadin as to the fact that he had agreed to become a Crew Member on an ocean going boat as part of a reward scheme operated by the Second Respondent. He said he had agreed to go on such a trip despite the fact that he was going to be surrounded by other people, some of which he would not know. He was asked how he would have the confidence for such a trip, bearing in mind that he would be surrounded by many total strangers for three weeks. The Claimant responded by saying that he did not go on the trip in the end as it was cancelled due to Covid.
28. He was also questioned about why he had not disclosed his disability when he completed an Induction Form when he started working at the Second Respondent. He had indicated that he did not have a disability when completing this form. He said that he had misunderstood the form and thought it was referring only to a physical disability. He said his English was not good then and he clearly misunderstood.

29. He was questioned about what essentially would be the material period in this case being between August 2021 and February 2022. He said that in that period of time there were lots of activities he could not do, namely washing, ironing, shaving, preparation of food and eating food.
30. I heard submissions from both Mr Nadin and from the Claimant. Mr Nadin said that the evidence does simply not support the fact that the depression and anxiety was sufficiently substantial to qualify as a disability under s.6 EqA 2010. He said that on the evidence before me, the Claimant fails the “substantial test”. He said the material time was August 2021 to February 2022.
31. He said that the Claimant’s Statement did not gel with the rest of the evidence. The alleged chronic mental breakdown is not revealed in Medical Certificates produced at the time the Claimant alleges the breakdown took place.
32. He said that in September of 2021 the Claimant had suffered from a severe bout of Covid. There was no mental breakdown. He was hospitalised for one week with severe Covid. He said any difficulties were much more likely to be linked with the Covid infection. He said the documents before me simply do not go far enough. The Report at pages 80 – 83 was a Report produced pursuant to a telephone conversation. He said there was no professional medical opinion about s.6 in that Report. He said the letter made it clear that the Claimant had normal speech, was well dressed and had no thoughts of self-harm or suicide. He said the other evidence suggested only a moderate anxiety condition. He said there was perhaps some treatment provided overseas, but no evidence of this. He said he missed an appointment on 27 November 2019, some 27 months prior to the relevant period.
33. He said the documentary evidence in front of me was therefore considerably at odds with the disability Statement. There were significant gaps in what appears to be the medication taken by the Claimant. He went for a period of time of two years without seeing his GP, or without any other medical treatment. He said that therefore his evidence in the Statement is misleading. He said that prior to August 2021 when the disciplinary process was initiated against the Claimant, his attendances had been excellent and there had been very little time taken off. He said the picture painted by the Statement provided pursuant to these proceedings is very different from that illustrated in the documentation in front of me.
34. He said the Respondents could not have known about the Claimant’s disability. He specifically indicated in an Induction Form that he was not disabled and nothing in his approach to work suggested that he was, including the agreement to go on a sailing trip. He would be a crew member having to conduct the very normal day to day activities he says he cannot do.

35. He refers me to the case of J v DLA Piper (UK) LLP [2010] ICR1052. He said that although the Claimant has the impairment and that is accepted, it is not substantial.
36. In his submissions, the Claimant said that he has been taking medication since 2007 and there were no gaps. He said he cannot explain how apparently the details listed in some of the documentation before me suggested that there were gaps. He said that the filling in of the Induction Form was simply a mistake due to poor English. He said that the sailing trip was never asked for by him, it was something offered. He said he never went on it anyway as it was cancelled.
37. He explained the Doctors notes, by which I believe he was referring to the GP Report, did not detail his condition fully. He said the chronic incident in September 2021 was a massive episode and it doubled the amount of his medication.

The Law

38. For the purposes of pursuing discrimination claims on the basis of the protected characteristic of disability, a Claimant must satisfy the test under s.6 of the Equality Act 2010:

6 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.
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability—
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
 - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
- (4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—

- (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
 - (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
- (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
- (6) Schedule 1 (disability: supplementary provision) has effect.
39. When considering whether a person is disabled under s.6 EqA 2010, the Supplementary Provisions for determining that disability appear in Part 1 of Schedule 1 to the Equality Act 2010. Guidance is also given in the Disability Discrimination (Meaning of Disability) Regulations 1996 and the Equality Act 2010 (Disability Regulations 2010) as well as the Government Guidance on matters to be taken into account in determining questions relating to the definition of disability. Tribunals must take this guidance into account where they consider it to be relevant.

“Substantial”

40. The substantial part of the test is defined in s.212(1) EqA 2010 as meaning “more than minor or trivial”. In the case of Anwar v Tower Hamlets College EAT0091/10, the Employment Appeal Tribunal held that an Employment Tribunal had not erred when it found that the effect of an impairment was “more than trivial”, but still “minor” as opposed to “substantial”. In the case of Aderemi v London and South East Railway Limited [2013] ICR 591, the Appeal Tribunal which did not refer to Anwar commented on the definition of “substantial” in s.212(1) EqA 2010 stating that,

“The act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial, but provides a bifurcation, unless a matter can be classified as within the heading trivial or insubstantial it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other. It is generally suggested that that is the preferred view.

In determining whether an adverse effect is substantial, a Tribunal must compare the Claimant’s ability to carry out normal day to day activities with the ability the Claimant would have if not impaired.

Tribunals should consider first and foremost whether an adverse effect is substantial in the light of the statutory definition. The guidance and code are supplementary. It is important that the Tribunal considers and

concentrates on what an individual cannot do rather than what an individual can do.”

41. In Igweike v TSB Bank Plc [2020] IRLR267, His Honour Judge Auerbach reiterated the established principle that a Tribunal should always consider the effect on the particular individual concerned and specifically, whether that effect was more than minor or trivial.

Conclusions

42. I am asked by Mr Nadin to conclude that the Claimant has substantially gilded the lily in his Statement of 12 August 2022. He says that the Statement is not reflective of the documentary evidence before me in the form of medical certificates, the GP Report and other documents.
43. English is not the Claimant’s first language and whilst in cross examination he was unable to explain fully the anomalies in the documentary evidence relating to medication, his answers were clear and unshakeable in my judgment.
44. I have to judge the evidence that is before me and I do so on the basis of a combination of the documents in front of me, including the Claimant’s Statement of 12 August 2022, the other documents and his live evidence given at this Hearing.
45. It is for the Claimant to prove on the balance of probabilities that he is a disabled person for the purposes of s.6 EqA 2010 and having read his Statement and heard his live evidence, whilst there is some disparity between that evidence and the documentary evidence in front of me provided by the medical certificates and the Report, I consider that on the balance of probabilities the Claimant has given an accurate indication of the nature of the impairment and I believe him when he says that he has taken medication almost constantly for many years.
46. I therefore believe the evidence of the Claimant, both before me today and in his Statement of 12 August 2022.
47. Mr Nadin pointed out differences between that evidence and the physical documentation before me and there are some differences and it may be that the Doctor’s Assessment does not go far enough. But that does not mean that the evidence of the Claimant is manufactured or fabricated. I therefore accept the Claimant’s evidence.
48. Applying that evidence to the test, the test is satisfied. I regard the Claimant’s impairment as being more than minor or trivial and therefore substantial.
49. The Claimant has a mental impairment and the impairment has a substantial and long term adverse effect on his ability to carry out normal day to day activities.

50. The impairment has been continuing for some time and continued throughout what is the material period for the purposes of this case between August 2021 and February 2022.
51. The Claimant is therefore disabled by reason of the impairment being depression and anxiety.
52. It is not part of my remit today to make any findings with respect to knowledge and any such findings must be left for a later date.
53. It will be necessary now to have a Telephone Preliminary Hearing Case Management Discussion and one should be listed on the next available date with three hours allowed. The parties should attend with completed Agendas and where possible, a List of Issues. It may be necessary for there to be further Orders at that Hearing for the provision of further and better particulars, or at least clarification of the Claimant's claims in disability discrimination.

Employment Judge K J Palmer

Date: 25 April 2023

Sent to the parties on: 26 April 2023

For the Tribunal Office.