



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

13 December 2024 (video)

Claimant:	Saher Babiker
Respondent:	London Borough of Hounslow
Before:	Judge M Aspinall (sitting alone as an Employment Judge)
Appearances:	Miss S Babiker, in person Ms S King, Counsel for the Respondent

Judgment

The Claimant did not meet the legal definition of a disabled person under Section 6 of the Equality Act 2010 during her period of employment from July 2022 to March 2023.

While she had the impairments of generalized anxiety disorder and recurrent depressive disorder, the Tribunal concluded these did not have a substantial adverse effect on her ability to undertake normal day-to-day activities over the requisite long-term period of at least 12 months.

As she was not disabled, for the purpose of Section 6, her claim for disability discrimination cannot succeed.

Reasons

Background

1. The Claimant is Miss Saher Babiker. The Respondent is the London Borough of Hounslow, a local government authority.
2. Miss Babiker was engaged by the Respondent on a fixed-term contract from 18th July 2022 until 31st March 2023, a period of around 8 months. Her role was as an Independent Domestic Violence Advisor.
3. On 21st February 2023, Miss Babiker informed her line manager, Miss Espinella, about having anxiety and social anxiety. She was then signed off as unfit for work from 23rd February 2023 until 31st March 2023, with multiple fit notes covering this period found at pages 171-176 of the bundle.
4. It is Miss Babiker's case that on 13th March 2023, her line manager spoke to her and told her she needed to return to work or face disciplinary action or alternatively resign. On 23rd March, she emailed the director of HR, Mr Walker Whitehead, alleging she had been given that ultimatum.
5. On 27th March 2023, the Head of Community Safety, Parmit Chadha, wrote to Miss Babiker acknowledging her email and inviting her to discuss the issues. On the same day, Miss Babiker replied resigning with one week's notice. She then emailed the following day to state she would not attend a meeting as she did not feel safe discussing issues with management.

6. Miss Babiker's fixed-term contract ended as scheduled on 31st March 2023. On 28th April 2023, she approached ACAS and early conciliation commenced. An early conciliation certificate was issued on 26th May 2023.
7. Miss Babiker lodged a claim with the Employment Tribunal on 12th June 2023, with the Respondent's response following subsequently. There was an agreed list of issues in January 2024. The notice of the preliminary hearing to determine disability status was sent on 21st August 2024.
8. During summer 2024, the parties exchanged position statements and correspondence. Miss Babiker provided an impact statement describing the effects of her conditions, seeking over £50,000 in compensation and stating her primary interest was accountability rather than a financial remedy.

Purpose of this hearing

9. The purpose of the hearing held was to determine the preliminary issue of whether the Claimant, Miss Saher Babiker, was a disabled person for the purposes of Section 6 of the Equality Act 2010 at the relevant time of her employment with the Respondent. This was a key gatekeeping question, as a finding that Miss Babiker met the legal definition of disability under Section 6 was required for her disability discrimination claim against her former employer to potentially succeed. The Tribunal heard evidence and submissions from both parties before reserving its decision on this preliminary issue.

The hearing

10. The Tribunal heard evidence from Miss Saher Babiker, the Claimant, who represented herself at this hearing. The Respondent, London Borough of Hounslow, was represented by Ms Sinead King of Counsel.
11. Before hearing oral testimony, the Tribunal had read Miss Babiker's witness statement as well as the bundle of documents prepared by the Respondent. This included GP medical records, cognitive behavioural therapy (CBT) notes, a GP summary submitted on the morning of the hearing, and the Respondent's skeleton argument.
12. The Tribunal also had the Respondent's position that a case against TSB Bank should be relied upon regarding the definition of disability. Both parties confirmed the Tribunal had seen all the relevant evidence they wished to present.
13. Miss Babiker took an oath on the Quran to tell the truth before giving her evidence to the Tribunal. She was asked questions by the Judge and by Counsel for the Respondent about the nature of her claimed disabilities of anxiety and chronic depressive disorder.
14. She gave testimony about being diagnosed with these conditions, the medication and therapy treatments she has undergone, and the substantial adverse impacts on her day-to-day activities that she says arose from her impairments.
15. Ms King, Counsel for the Respondent, cross-examined Miss Babiker at length. This covered her medical history, the extent and chronology of symptoms and treatments based on the GP and CBT records and probed the severity of limitations described in her impact statement.
16. After cross-examination, Miss Babiker had the opportunity to provide further explanation and context in response to Ms King's questioning. She also read out a prepared statement elaborating on her case and the legal authorities she relied upon.
17. The Tribunal heard closing submissions from both parties, with Ms King contending the evidence did not establish Miss Babiker was disabled under the Act, while Miss Babiker maintained she did meet the required legal test at the relevant time. Miss Babiker kindly provided a written copy of her closing submissions.

The law

18. The key legislation the Tribunal was required to consider in this case is the Equality Act 2010. Specifically, Section 6 which defines disability:

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.

19. The Act provides further guidance on this definition in Schedule 1, including:

2 Long-term effects

(1) The effect of an impairment is long-term if—

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

20. The Schedule also covers progressive conditions, effects of treatment, and what constitutes normal day-to-day activities. Of particular relevance:

4 Impairment treated as having a substantial adverse effect on normal day-to-day activities

(1) An impairment which consists of a severe disfigurement is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities.

5 Effect of medical treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if -

(a) measures are being taken to correct it, and

(b) but for that, it would be likely to have that effect.

7 Progressive conditions

(1) A progressive condition is one that meets the progressive condition test.

(2) A progressive condition meets the progressive condition test if it -

(a) involves a cluster of conditions, and

(b) is likely to change and develop over time.

21. The Respondent specifically relied upon *TSB Bank v Harris* [2022] IRLR 435, which concerned a banking employee with anxiety and depression. The EAT upheld the Tribunal's finding that while the claimant had mental impairments, the evidence did not show these had a substantial adverse impact on normal activities over the requisite 12-month period.

22. Ms Babiker cited the case of Taylor v Rental Vehicle Services [2022] IRLR 535 in arguing that "substantial" adverse effects do not necessarily require complete inability to carry out an activity, just considerable difficulty. The EAT allowed the disability claim in that fluctuating condition case.
23. The Tribunal kept the full legal principles from these and other binding authorities in mind when evaluating whether Ms Babiker was disabled under s.6 based on the evidence before it.

Written and documentary evidence and submissions

24. I was referred to a number of pieces of documentary evidence and written submissions:
 - a) GP medical records for Miss Babiker covering the period from January 2021 to March 2023 (pages 100-170 of the bundle). These showed diagnoses of anxiety and depressive/mood disorders, with notes about prescriptions for medications like citalopram and sertraline, primarily in 2022.
 - b) A series of short GP fit notes signed off by Dr. Ahmed, Miss Babiker's GP, covering her sickness absence from 23rd February 2023 until 31st March 2023 when her employment ended (pages 171-176). The fit notes cited "anxiety state" as the medical reason.
 - c) Cognitive Behavioural Therapy (CBT) consultation notes from a course of therapy Miss Babiker undertook between January-September 2023 (pages 177-195). The notes log weekly sessions focused on issues like low mood, overthinking tendencies, and challenges in her personal relationships and at work.
 - d) Miss Babiker's witness statement dated 12th August 2024 (pages 10-25). This contained her first-hand account of her mental health conditions, the impacts on her day-to-day life, and the events surrounding her departure from the Respondent's employment.
 - e) A GP summary letter from Dr. Ahmed dated 13th December 2024, submitted on the morning of the Tribunal hearing (pages 350-351). This summarised Miss Babiker's diagnosis of generalized anxiety disorder and recurrent depressive disorder dating back to 2019.
 - f) The Respondent's position statement (pages 32-40) arguing that based on the totality of evidence, Miss Babiker's impairments did not meet the required legal threshold of having a substantial and long-term adverse effect under the Equality Act 2010.
 - g) A copy of the TSB Bank v Harris [2022] IRLR 435 case law authority, which the Respondent relied upon heavily regarding the definition of disability and evidence required (pages 300-324).
25. The Tribunal carefully considered all this documentary evidence, in chronological order where relevant, when evaluating whether Miss Babiker was disabled under Section 6 of the Act during her employment.

Findings of the Tribunal

Issue 1: Whether the Claimant had a physical or mental impairment

26. The Tribunal finds that Miss Babiker did have diagnosed mental impairments in the form of generalized anxiety disorder and recurrent depressive disorder during the relevant period.
27. The contemporaneous GP medical records at pages 100-170 of the bundle clearly document Miss Babiker receiving these clinical diagnoses and being treated with medication like citalopram and sertraline, mainly through 2022.

28. Her GP, Dr. Ahmed, confirmed these diagnoses explicitly in the summary letter dated the day of the hearing (pages 350-351), stating they dated back to 2019.
29. While the CBT notes at pages 177-195 do not provide formal diagnoses, they are consistent with Miss Babiker undergoing therapy for anxiety and low mood/depressive symptoms over 9 months in 2023.
30. Miss Babiker's own testimony, which the Tribunal found reasonable, further corroborated her having these specific mental health conditions and impairments.
31. Applying applicable legal principles, the Tribunal is satisfied these impairments fell squarely within the legal definition of "mental impairments" under s.6(1)(a) of the Equality Act 2010.

Issue 2: Whether the impairments had an adverse effect on normal day-to-day activities

32. On this issue, the Tribunal has carefully considered all the evidence but does not find that Miss Babiker's impairments of generalized anxiety and recurrent depressive disorder had a substantial adverse effect on her ability to undertake normal day-to-day activities.
33. While Miss Babiker testified about wide-ranging impacts on areas like sleeping, concentration, decision-making, travel, social functioning and self-care, the contemporaneous medical evidence does not consistently substantiate such severe effects persisting over the required period.
34. The GP notes make fairly limited reference to functional limitations beyond anxiety around specific triggers like exams or stressors like housing issues. Her prescriptions appear to have been short courses rather than ongoing treatment for a chronic condition.
35. Significantly, the CBT consultation records from January to September 2023, covering the key period immediately before her employment ended in March 2023, did not detail Miss Babiker reporting substantial adverse impacts on basic activities like concentrating, self-neglect, following instructions or workplace tasks.
36. Rather, the CBT notes centered more on low mood, overthinking tendencies, strain in relationships and workplace stresses - negative experiences that can arise situationally without necessarily flowing from a disability under the Act.
37. While the Tribunal accepts Miss Babiker's conditions caused her difficulties, the overall evidence does not show these translated into a sufficiently substantial adverse impact on her day-to-day activities over the relevant period, as per the legal test established in cases before higher courts and tribunals.

Issue 3: Whether any adverse effect was substantial

38. Following on from the findings above, the Tribunal concludes the evidence did not establish Miss Babiker's impairments had a "substantial" adverse impact within the meaning of the Equality Act 2010 definitions and authorities.
39. The subjective evidence from Miss Babiker detailed in her statements and testimony suggested substantial effects, describing very considerable limitations across a range of daily activities and life areas.
40. However, as outlined under Issue 2, this portrayed a significantly more severe impact than appeared in the contemporaneous medical records and CBT notes, which are inevitably more objective contemporaneous evidence.
41. There were no documented instances of Miss Babiker reporting an inability to undertake basic activities like getting washed and dressed, going outside, preparing food, reading and following instructions, keeping appointments or work requirements.

42. While periods of low motivation, confidence issues, worry and relationship strain were logged, these alone did not necessarily meet the legally required "substantial" threshold.
43. As stated in *TSB Bank v Harris*, the "substantial" criteria sets a high bar requiring more than just minor limitations - the Tribunal was not satisfied this was surpassed based on the totality of evidence.
44. The Tribunal had full regard to Ms Babiker's citations of the Taylor case on substantial effects including considerable difficulty. However, the proven level of functional impairment here was not judged sufficient for substantiality even applying that precedent.

Issue 4: Whether any adverse effect was long-term

45. As the Tribunal has found the evidence did not establish Miss Babiker's impairments had a substantial adverse effect on normal day-to-day activities (the first part of the s.6 test), it is not strictly necessary to determine the "long-term" effects issue.
46. However, in case its conclusions are appealed, the Tribunal will briefly address this point. Based on the evidence before it, the Tribunal considers Miss Babiker's impairments likely did meet the long-term requirement under the Act.
47. The GP records demonstrate she was first diagnosed and treated for these conditions in 2019. The summary letter from Dr. Ahmed indicates the recurrent depressive disorder especially was expected to be an ongoing long-term issue.
48. Miss Babiker was signed off from work with an "anxiety state" cited from late February 2023 and then received CBT until September 2023 - a period spanning over 12 months.
49. While periods of alleviation may occur, the cumulative evidence pointed towards these being recurring, chronic progressive conditions of a long-term nature under the Act definitions caselaw.

Overall conclusion

50. For the reasons set out in the factual findings above, having carefully considered all the evidence and applied the appropriate legal principles, the Tribunal concludes that Miss Babiker did not meet the required definition of a disabled person under s.6 of the Equality Act 2010 during her employment with the Respondent.
51. The first criteria of having a physical or mental impairment under s.6(1)(a) was established - Miss Babiker did have the impairments of generalized anxiety disorder and recurrent depressive disorder.
52. However, the key second criteria under s.6(1)(b) were not satisfied on the evidence before the Tribunal. While Miss Babiker undoubtedly experienced difficulties, her impairments did not have a substantial adverse impact on her ability to undertake normal day-to-day activities over at least 12 months.
53. As Miss Babiker did not meet the full statutory test, she was not a disabled person for the purposes of the Equality Act 2010 in relation to this period of employment. Her disability discrimination claims against her former employer cannot succeed as a preliminary consequence.

Judge M Aspinall
26th December 2024

**Judgment sent to parties on
2nd January 2025**

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