# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. R Davies
**Respondent:** Planning Solutions Limited
**Heard at:** Nottingham Employment Tribunals **On:** 11 January 2024
**Before:** Employment Judge Heathcote (sitting alone)

**Representation**

**Claimant:** Mrs. T Davies, Representative

**Respondent:** Mr. J Franklin, Counsel

# RESERVED JUDGMENT

1. The Claimant did not have a disability (within the meaning of section 6 and Schedule 1 of the Equality Act 2010) during the relevant period (26 March 2021 to 6 June 2023) and his complaints of unlawful disability discrimination contrary to the Equality Act 2010 are dismissed.

# REASONS

## Background

1. This hearing was listed by my colleague Employment Judge Butler who conducted a case management hearing on 22 September 2023 which both parties attended.

2. EJ Butler listed this Public Preliminary hearing to determine whether the Claimant was a disabled person under the Equality Act 2010 at the relevant time that the complaints were made. The Claimant's alleged disability was identified as dyslexia, "probable" ADHD and chronic anxiety. EJ Butler noted in his Order that the Claimant's representative, "indicated that there were other conditions she had

not mentioned such as fibromyalgia which are essentially biproducts of his main conditions and which do not seem to be relied upon in these proceedings".

3. In paragraph 2 of the Order, EJ Butler ordered that the Claimant provide the following information to the Respondent:

    *1.2.1 How long has the Claimant had the impairment?*
    *1.2.2 What were the effects of the impairment on the Claimant's ability to do day-to-day activities during his employment with the Respondent? The Claimant should give clear examples. If possible, the examples should be from the time of the events the claim is about. The Tribunal will usually be deciding whether the Claimant had a disability at that time.*
    *1.2.3 Give the dates when the effects of the impairment started and stopped. If they have not stopped, say how long they are expected to last.*
    *1.2.4 If the effects lasted less than 12 months, why does the Claimant say they were long-term?*
    *1.2.5 Has the Claimant had medical treatment, including medication? If so, what and when?*
    *1.2.6 Has the Claimant taken other measures to treat or correct the impairment? If so, what and when?*
    *1.2.7 What would the effects of the impairment have been without any treatment or other measures? The Claimant should give clear day-to-day examples, if possible.*
    *1.2.8 Any other information the Claimant relies on to show that s/he had a disability.*

4. The Claimant was also ordered to send to the Respondent copies of the parts of his GP and other medical records that are relevant to whether he had the disability at the time of the events the claim is about and any other evidence relevant to whether he had the disability at that time.

5. The Respondent does not accept the Claimant was disabled as defined in s6 Equality Act 2010 ("EqA").

**Claims and issues**

6. The issue to be decided was: did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? This requires determination of:

    a. What is the relevant time period?
    b. Did the Claimant have a physical or mental impairment(s) of dyslexia, "probable" ADHD and chronic anxiety.?
    c. Did it/they have a substantial adverse effect on his ability to carry out day-to-day activities?

d. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
e. Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
f. Were the effects of the impairment long-term? In considering this:
    i. did they last at least 12 months, or were they likely to last at least 12 months?
    ii. if not, were they likely to recur?

7. At the outset of the hearing, the Respondent agreed that the relevant time period of alleged discrimination is 26 March 2021 to 6 June 2023 ("the relevant period").

**Procedure, documents and evidence heard**

8. On the morning of the hearing, the Claimant attempted to adduce late evidence in the form of a short letter from Miss Beverley Town, dated 4 January 2024. Given Miss Town's relationship with the Claimant, he had ample opportunity to obtain this evidence following the case management hearing. Miss Town was not a witness at the hearing, and I refused to admit this letter as evidence. Nevertheless, the Claimant was afforded the opportunity of addressing Miss Town and her role in his complaint, in oral evidence. Mrs Davies also sought to introduce a 'mind map' diagrammatical representation of the Claimant's alleged disability, explaining that it helped Mrs Davies and the Claimant to structure their thoughts. On closer inspection, the document largely repeated the information contained in the ET1 Claim Form and in the bundle of documents and whilst Mrs Davies was invited to use this to assist her in structuring her submissions, I did not feel it necessary to consider this further.

9. At the conclusion of the hearing, Mr Franklin explained that a page had been omitted from the bundle, which related to the Claimant's pre-employment questionnaire. The Respondent was responsible for the preparation of the bundle and no further written evidence was admitted, although this matter was considered earlier in the oral evidence.

10. I was provided with a bundle of documents totaling 149 pages, including the Claim Form and Response, the Claimant's medical information and disability impact statement. Mr Franklin also provided a written Skeleton Argument. I am grateful to the parties for their patience in the delay to the hearing, which was necessary to enable me to consider the documents. I am also grateful to Mrs Davies for providing a further bundle of documents containing the pages from the original bundle that she felt may be difficult to read. Ultimately, there was only one page that proved problematical and the version from the additional bundle was copied and used at the hearing.

11. I heard evidence from the Claimant, who was cross examined by Mr Franklin. At one point, Mrs Davies raised an objection, fearing that the Claimant's medication, diazepam and propranolol, was impacting on his ability to provide coherent answers. She explained that the medication was taking effect and affecting his memory. The Claimant had been asked about the history of his medication and had replied that he could not remember. I questioned the Claimant on his medication and its effect and whether he had taken the prescribed dosage. I was content that the Claimant was being defensive in his answers and at some points almost argumentative; he is an intelligent person and was thinking carefully about his response and what it may mean to his claim. I am confident that the Claimant was able to play a full part in the hearing.

12. Following the lunchtime adjournment, Mrs Davies again raised an objection to my questioning of the Claimant, fearing that his medication was wearing off and he was not considering his answers carefully. I had asked the Claimant about his daily routines. I was content that the Claimant was being open in his answers to me to assist my understanding of his condition. I was again content that the Claimant was able to participate fully in the hearing and was not prejudiced in any way.

13. The Claimant was afforded regular breaks, declining the opportunity on one occasion. Mr Frankiln was asked to simplify his cross examination on one occasion, and I am grateful for his consideration. The hearing took longer than anticipated as time was needed for consolidation and reflection and I am similarly grateful to the parties and their representatives for their flexibility in this regard.

14. At the conclusion of the hearing, Mrs. Davies indicated that she felt disadvantaged by:

    a. Not having time to consider Mr. Franklin's written submissions which she states were received on the morning of the hearing.

    b. Feeling rushed and not having sufficient time to address me fully on the matters that she felt were necessary.

15. Mrs. Davies had explained previously that she suffers from a neurodiversity and reminded me of this when raising the matters referred to above.

16. Given that the hearing did not commence until 10:40am, I am content that the Claimant would not have been disadvantaged by the Written Submissions, which were providing advance notice of the Respondent's case. Mr Franklin also carefully addressed this document in his closing submissions. However, I was keen to ensure that the Claimant was able to present his case fully and so determined that it was in the interests of justice that the Claimant make final submissions in writing.

17. The Claimant subsequently requested an extension to the 14 days provided for the filing of written submissions, which was granted by the Tribunal. Thereafter the Claimant submitted an extremely lengthy document which was difficult to follow and contained a great deal of repetition. In some respects, the Claimant's written submissions seeks to introduce additional matters that were not raised in the hearing and attempts to mitigate and clarify the oral evidence provided by the Claimant. I have taken very careful consideration of this document and adopted a cautious approach. I have not accepted any of the additional evidence that was not considered in the hearing itself.

18. The Respondent was at liberty to file a further response 14 days thereafter. This was submitted on 22 February 2024, but only forwarded to me in late March. This additional time period has resulted in a delay to the promulgation of this decision, and I apologise to the parties for the delay.

**The law**

19. S6 Equality Act 2010 (EqA) provides:

> "(*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"*

20. A Tribunal must take into account any relevant aspect of:

    a. Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) ( "the Guidance"); and

    b. The Equality and Human Rights Commission: Code of Practice on Employment 2011 ("the Code")

21. The question of whether a person meets the definition of disability is matter for the Tribunal and not medical experts: *Paterson v The Commissioner of Police of the Metropolis [2007] ICR 1522.* While the view of doctors on the nature and extent of claimed disability is relevant, the crucial issue is one for the Tribunal itself to decide on all the evidence.

22. <u>What does impairment cover?</u>

    a. The Guidance

A3. The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness.

b. The Code, Appendix 1:

5. It covers physical or mental impairments. This includes sensory impairments, such as those affecting sight or hearing.

6. The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities.

7.There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.

23. Does the impairment have an adverse effect on their ability to carry out normal day-to-day activities?

*a.* EqA:

"*Schedule 1, Para 5(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 treat or correct it, and*
*(b) but for that, it would be likely to have that effect.*
*(2) "measures" includes, in particular, medical treatment …or other aid"*

b. The Guidance:

A4: Whether a person is disabled for the purposes of the Act is generally determined by reference to the effect that an impairment has on that person's ability to carry out day-to-day activities. It is the effects of the impairment(s) that need to be considered.

c. The Code, Appendix 1:

14. Normal day-to-day activities are activities carried out by most men or women on a fairly regular and frequent basis.

15. Day-to-day activities thus include – but are not limited to –activities such as walking, driving, using public transport, cooking, eating, lifting and

carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.

24. Is that effect substantial?

a. EqA:

S212(1) defines "substantial" as "more than minor or trivial".

b. The Guidance:

B2 & B3: The time taken to carry out an activity and the way in which an activity is carried out are factors to be considered when assessing whether the effect of an impairment is substantial.

B4 An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

c. The Code, Appendix 1:

8. A substantial adverse effect is something which is more than minor or trivial.

9. Account should be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

25. Is that effect long-term?

a. EqA:

*"Schedule 1, Para 2(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."*

b. The Guidance:

C2. The cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect for the purposes of meeting the definition of a disabled person. The substantial adverse effect of an impairment which has developed from, or is likely to develop from, another impairment should be taken into account when determining whether the effect has lasted, or is likely to last at least twelve months, or for the rest of the life of the person affected.

26. The focus in an assessment of disability should be on what an employee cannot do or can only do with difficulty, and not what they can do. I am required to look at the whole picture and it is not simply a question of balancing what an employee can do against what they cannot. If the employee is substantially impaired in carrying out any normal day to day activity, then they are disabled notwithstanding their ability in a range of other activities.

**Findings of fact**

27. The Claimant was employed by the Respondent as a Ropes Team Leader, undertaking seasonal work at 'Conkers', the Respondent's visitor attraction in Derbyshire. His employment commenced on 26 March 2021. All high ropes workers were made redundant in October 2023. The Claimant contends that he was dismissed sooner, but this was not a matter that required resolution at this stage.

28. My findings are limited to the issue of whether the Claimant was disabled during the relevant period (26 March 2021 to 6 June 2023). The impairment relied on is 'dyslexia, "probable" ADHD and chronic anxiety'. The Claimant's impact statement refers to these matters both individually and under the umbrella term of 'neurodivergent disability'. It also refers other matters, including chronic exhaustion, chronic generalised pain, and chronic insomnia. I make no findings with regard to the potential causes of the Claimant's claimed disabilities as it is not necessary for me to do so for the purpose of deciding whether the definition of disability in s6 EqA is met.

29. I have considered all the medical evidence provided by the Claimant and have listed these in chronological order; the page numbers in the bundle appear in brackets below and throughout this judgment:

    a. Letter dated 8 August 2019 from Dr Raghuram Shivram. [133].

    b. Letter dated 27 August 2019 from Alex Butcher, Nurse Team Leader/Nurse Practitioner. [132].

    c. Letter dated 9 January 2020 from Dr Emma McCollum, Occupational Physician. [134].

d. Letters dated 19 March 2020 [136-137] and 30 December 2020 from Julie Pickering, Physiotherapist. [138-139].

e. PRISM Referral Form dated 24 February 2021. [140-142].

f. Letter dated 26 August 2021 from Andrew Leaver, Assistant Psychologist. [125-126].

g. Letter dated 30 November 2021 from Mr Peter Chessuin, Advanced Clinical Practitioner. [130].

h. The Claimant's medical records from Castle Medical Group between the dates of 18 October 2021 and 29 September 2022. [112-123].

i. The Claimant's medical records from Castle Medical Group between the dates of 29 September 2022 and 29 September 2023. [97-111].

j. 'Fit note' dated 27 March 2023. [124].

k. Letter dated 28 March 2023 from Dr Pradeep Krishnamurthy. [128].

l. Letter dated 30 March 2023 from Deborah Mason, Advanced Clinical Practitioner. [129].

m. Derbyshire Health United OOH Call Incident Report 2 April 2023. [127].

n. Letter dated 12 May 2023 from Dr Pardeep Krishnamurthy. [131].

30. Having considered the above and the Claimant's impact statement, I unfortunately found that there were inconsistencies between the documentary evidence and his oral evidence. The Claimant was guarded with his answers in cross examination, thinking carefully about how his answers might affect his complaint. At times his answers were evasive, but on balance, I accept that there were matters that he found difficult to recall and I felt that he gave an honest account of his situation in response to the matters on which I sought further clarification.

31. The Claimant's GP reports that the Claimant has a history of 'mental health problems' [133] and sought to refer the Claimant to the MDT in August 2019, having been previously discharged in 2013. The Nurse Team Lead did not feel it necessary to see the Claimant, describing that on reviewing his notes, 'it appears that anxiety has been a feature throughout his life and in particular, at times of stress' [132]. The mental health problems are not specified or detailed.

32. The Claimant also reported longstanding symptoms of tiredness, managed by pacing his activities [134]. His previous shifts, working at Aldi were a problem for him and the recommendation from his Occupational Physician in 2020 was that he should not work for more than 30 hours per week. [135].

33. These matters prompted a referral to a Physiotherapist in 2020. He was discharged following telephone consultations, but still reported 'widespread aches and pains and fatigue'. [138].

34. When asked further about this, the Claimant explained in oral evidence, that he feels tired at the end of a working day and needed time to unwind. He referred to an example of when he was required to use a strimmer to undertake ground works for an 8 hour shift and explained that tidying up the site was part of the duties he and his colleagues undertook.

35. On 21 February 2021, the Claimant self-referred for an assessment for Autism Spectrum Disorder [140-142]. 3 days later, on 24 February 2021, the Claimant had a telephone consultation with his GP. His notes refer to, 'Background of learning difficulties… poor sleep due to shift changes. Often doesn't eat, and doesn't socialise…' [119].

36. The ASD consultation took place on 25 June 2021. The result, stated in the letter of Mr Leaver, Assistant Psychologist, was that it was felt that 'there is nothing to indicate the need for us to look more closely at the question of possible Autism Spectrum Disorder' [125]. Mr Leaver also stated that the Claimant has existing diagnoses of dyslexia and dyspraxia. The letter of the Dr Pardeep Krishnamurthy, dated 12 May 2023 [131], implies that the Claimant received these diagnoses at this clinic. It is not clear where the diagnoses originate from, but it was not from this intervention. Nor was the Claimant diagnosed with 'probable ADHD' as asserted by Dr Krishnamurthy; the highest that Mr Leaver goes is to suggest that there is a 'possible' diagnosis and saw fit to discharge the Claimant.

37. There was a further GP consultation on 18 November 2021 due to the Claimant attending Accident and Emergency 12 days earlier, suffering a spontaneous pneumothorax. The GP note records that '…work involves heavy lifting' and that the Claimant 'otherwise feels fine apart from a slight pain in the chest at times.' [115]. This was confirmed in a letter from Mr Peter Chessum, Advanced Clinical Practitioner, dated 30 November 2021 [130].

38. The Claimant's GP reports that the Claimant was seen on 6th February 2023, with 'worsening symptoms of anxiety and daily panic attacks where he has shaky hands, racing heart, severe worrying thoughts.' [131] The Claimant was prescribed Propranolol as a result. The GP notes corroborates this, but do not make reference to 'worrying thoughts', rather 'has new job lined up, getting

physical symptoms of stress daily and also can get these at work – shaky hands, racing heart, feels emotions building agree can try pm Propranolol'. Reference is also made to low back pain. [109]. The Claimant was prescribed Propranolol 10mg tablets 3 times per day. [122].

39. On 27 February 2023 Mrs Davies attended the GP surgery to share her concerns about the Claimant. The GP records state: '[Mrs Davies] came in today to discuss about Rhys. He struggles with mental and physical difficulties. Needs physical and emotional support on a daily basis. Gets overwhelmed easily. Anxious and depressed.' [108].

40. On 27 March 2023, the Claimant attended his GP reporting worsening anxiety and more frequent panic attacks [131]. The GP notes state: 'Seen mum, Theresa and patient. Mum provided a list of issues ongoing for him for which he has been referred to ADHD services. He is going into crisis – getting severe panic attacks, propranolol helps partially… stuck in the house all day, he is doing only light duties.' [105].

41. Accordingly, the Claimant's GP asked for an ADHD referral to be expedited, although it is not clear when this referral was made [128]. The request was unsuccessful, with the Claimant being advised to access support from ADHD Solutions [129]. The Claimant remains on the waiting list.

42. On 9 May 2023, the Claimant reported symptoms of depression and PTSD, involving flashbacks of a physical assault by the Respondent's manager while at work. He also reported adversely affected sleep, chronic nausea, loss of confidence and increase in chronic exhaustion. The Claimant was prescribed Citalopram 10mg [131]. The GP notes report: 'ADHD awaiting assessment. Physical assault and sacked by manager at previous job. Left that job. Having flashbacks. Panic attacks, triggers email/phone call from work, talking to colleagues, talking about the incident. Propranolol helping'. 'Low mood, not eating well, not sleeping well'.

## Discussion and conclusion

43. The volume of submissions in this matter have been lengthier than would normally have been expected. The grounds of complaint run to 72 pages; the Claimant's written submissions run to approximately 40 pages. I appreciate the difficulties faced by the Claimant and his representative. However, the repetitive nature of the submissions has led to some contradictions and, in some cases, an over exaggeration of the Claimant's position. Whilst I do not propose to deal with each and every instance, I will refer to examples in this decision.

44. In asking for written submissions, I attempted to emphasise the importance of focusing on the evidence presented both before and at the hearing.

Unfortunately, the Claimant's written submissions, in places, seek to introduce new evidence, or to mitigate the evidence that the Claimant gave during the hearing. I have therefore approached these matters with caution and disregarded any instances where I felt that evidence went beyond that which had been considered at the hearing. To the extent that there were additional matters that the Claimant sought to rely on in evidence, they should have been referred to in the impact statement and/or formed part of the documentary evidence in the bundle. It is unacceptable to offer further clarification, or evidence in the manner proposed by the Claimant.

45. I would add that there were continued examples of an over exaggeration of symptoms. For instance, there is a suggestion that the Claimant experienced fatigue and pain when, queuing in a shop and carrying shopping. The documents referred to in support, dated 24 February 2021 [140] and 19 March 2020 [136] do not support these contentions, nor is there any mention of this in the impact statement. This suggestion, and the one in the impact statement that the Claimant has severely limited mobility in his home is at odds with his physical work on the high ropes course and his current employment as a casual snowboard instructor.

46. Similarly, the submissions refer to struggling to secure and maintain employment. Apart from the current matter, the only employment mentioned at the hearing or alluded to in the bundle is the Claimant's current employment as a casual snowboarding instructor and his previous employment with Aldi, which he was able to maintain for several years. The suggestion that the Claimant only carries out *minimal* work as a snowboard instructor was also not included in the Claimant's oral evidence, although Mrs Davies did attempt to interrupt his evidence to seek to clarify this point on behalf of the Claimant.

47. The Claimant has described an incident where he dropped a metal clip (maillon) when working at height on the Respondent's rope course. This led to further dispute with the Respondent's manager and was described in the grounds of complaint as the precursor to the next stage of the dispute. However, the written submissions seek to identify this incident as a symptom of exhaustion and a 'lack of concentration'. This is the first occasion that this has been raised in this way and suggests a continued attempt to exaggerate symptoms.

*Impairment*

48. Turning to whether the Claimant has an impairment, Mr Franklin invites me to distinguish a clinical impairment from a situational issue, citing, among others, the case of In *J v DLA Piper UK LLP 2010 ICR 1052 EAT*.

49. Paragraph A3 of the Guidance states that the term mental or physical impairment should be given its ordinary meaning; A6 states that it may not always be

possible, nor is it necessary, to categorise a condition as either a physical or mental impairment'. I accept that the Claimant was prescribed Propranolol on 6 February 2023 and that the medical records did not suggest any medication for anxiety prior to this date. It is possible therefore to assume that the conditions that the Claimant reported to his GP on 6 February 2023 were situational; a result of the reaction to the escalation of the workplace dispute.

50. However, it is also of note that the Claimant's GP reports a 'history of mental health problems' [133] and sought to refer the Claimant to the MDT in August 2019, having been previously discharged in 2013. The Nurse Team Lead suggested that the Claimant is susceptible to anxiety and that it was a 'feature throughout his life and in particular at times of stress'. Giving this its ordinary meaning suggests that the Claimant's anxiety is an impairment. This is a trait that has persisted throughout his life and whilst there is no formal diagnosis, or identifiable cause, this is not required. Anxiety is identified as a symptom of a mental health condition in paragraph A5 of The Guidance.

51. The Claimant also has a confirmed diagnosis of dyslexia, and he seeks to rely on that as part of his disability. Whilst the date of the original diagnosis is unclear, it is referred to in the letter of Dr Krishnamurthy [131] and is also identified as a developmental disability in paragraph A5 of The Guidance.

52. The Claimant also cites 'probable ADHD' as an aspect of his disability. Whilst he is awaiting an assessment, there is no formal diagnosis, although I remind myself that this is not necessary. The Claimant uses the umbrella term of 'neurodivergent disabilities' to describe the combined effect of his mental impairments. He describes an inability to concentrate, difficulty in socialising, poor memory functioning, and poor organisational skills, all of which contribute to the impairment suffered by the Claimant. I accept that these are not evident from the medical records, but I accept the Claimaint's evidence that these are issues that the Claimant faces and has faced throughout his life. He has described interventions at school and university which indicate a generalised learning difficulty.

53. Whilst the Claimant refers only to dyslexia, "probable" ADHD and chronic anxiety in his claim for disability discrimination, he seeks, at various points, to introduce chronic fatigue/exhaustion, chronic pain, chronic nausea and chronic insomnia as additional aspects. I do not find that these are impairments, in their own right.

54. There is little evidence of chronic fatigue/exhaustion in the medical records. In January 2020, the Claimant reported longstanding symptoms of tiredness, managed by pacing his activities.

55. The Claimant faced difficulties when working at Aldi in 2020 and the medical records suggest that he was struggling with the shift patterns. An accident at

work prompted the Claimant to seek assistance. The recommendation of the Occupational Physician was that the Claimant should not work for more than 30 hours per week [134]. The Claimant was subsequently discharged in December 2020 but still reported 'widespread aches and pains and fatigue'. [138]. Since that time, however, he has been able to work in a physically demanding role, as a high ropes instructor. In his impact statement, the Claimant describes 'heavy maintenance work', including 'using a petrol strimmer for 8 hours'. He explained that the Respondent would employ an external 'guy' to carry out groundwork, but due to the cost would often ask the Claimant and his colleagues to undertake this instead. The Claimant explained that a 'big drainage ditch' would need clearing of vegetation and that there was a lot of woodwork that needed replacing.

56. In his oral evidence, the Claimant explained that after work he would need 'a couple of hours to wind down'. I do not find that the Claimant suffers from chronic fatigue/exhaustion, moreover, the Claimant is currently able to deliver snowboarding lessons and is undergoing further training as a 3D Artist, albeit in his own home and at his own pace.

57. Nor do I accept that the chronic pain alleged by the Claimant is an impairment. The reference to 'widespread aches and pains and fatigue', above was made in 2020. In his oral evidence the Claimant explained that he had spasms in his back and legs and given that there was no visible or apparent damage, he was awaiting an MRU scan. There is a note in his medical records of a GP consultation on 18 November 2021 due to the Claimant attending Accident and Emergency 12 days earlier, suffering a spontaneous pneumothorax. The GP notes record that '…work involves heavy lifting' and that the Claimant 'otherwise feels fine apart from a slight pain in the chest at times.' [115]. From the evidence before me, there did not appear to be any issues for the Claimant in performing his duties on the high ropes course. Any such impairment would have prevented both this and his current, albeit it casual, employment as a snowboarding instructor.

58. In his oral evidence, the Claimant stated that he had had nausea for as long as his anxiety and ADHD symptoms. There is reference to the prescription of gastro-resistant tablets, but in the absence of any further evidence, I see this as an attempt by the Claimant to label each symptom or condition as a disability, which is not the purpose of the Equality Act.

59. I do not find that the Claimant's claim of chronic insomnia amounts to an impairment. When asked about his sleep in his oral evidence, he stated that he 'wouldn't describe it as insomnia', although went on to describe a lack of

refreshing sleep. Nevertheless, when cross examined about his caffeine intake, he stated that his sleep was not a problem while working for the Respondent.

60. I accept that the Claimant did not record any disabilities on the Respondent's pre-employment registration form, but I do not regard this as having a bearing on the factual determination of disability.

*Substantial adverse effect on ability to carry out normal day-to-day activities*

61. Having found that the Claimant has impairments of dyslexia, learning difficulties associated with ADHD and anxiety, I must consider whether they had a substantial adverse effect on his ability to carry out normal day-to-day activities.

62. Paragraph B1 of The Guidance provides that a substantial effect is one that is more than 'minor or trivial' and that substantial must be read in conjunction with 'normal day-to-day activities'. Paragraph B6 invites me to consider the cumulative effect of impairments.

*i Dyslexia and learning difficulties (ADHD symptoms)*

63. It is for the Claimant to prove the substantial effect on day-to-day activities. I have therefore taken careful account of the evidence presented to me. The Claimant was able to achieve 13 GSCEs, which is in excess of the number available to most students. He was also able to go on to study A levels and a HND at university. However, despite the Claimant's intellect, I need to consider what he cannot do as opposed to what he can (The Guidance B9).

64. The Claimant's impact statement reads:

> *I have the physical and mental impairments attributed to dyslexia and ADHD such as:* ***sensory difficulties, chronic exhaustion*** *following work (as a result of hyper-focusing on safety, etc),* ***chronic pain , chronic nausea, and chronic anxiety*** *(due to chronic anxiety as a result of everyday difficulties),* ***difficulties with concentration*** *(anxiety talking to management resulting in - difficulty in focusing on what people say, so it sometimes seems I am not listening - I will be able to listen to the start of a conversation, get distracted and pick up the end of the conversation but I am too embarrassed to ask people to repeat what they have just told me - so this results in me interrupting people not to lose my train of thought),* ***focusing*** *(having multiple thoughts going through my head at the same time), memory (I will often misplace and have difficulty finding things at home), processing information and difficulty in social situations (will become embarrassed when suddenly realising I am talk too much in a situation jumping around in conversations so that people complain that it is hard to*

*follow a conversation with me, this results in me being even more reluctant to socialise)…'*

65. In his evidence, the Claimant described his dyslexia as not relating to memory, but to words. He explained that he will read certain words in the way he expects them to be written and will make certain mistakes in his writing. Beyond that description, the Claimant failed to show any causal link between the impairment and his day-to-day activities. He does mention a DWP assessment finding that he needs 'aids and appliances which were supplied as part of the Educational Psychologist assessment while at university, 'in order to read and write sufficiently'. The Claimant did not provide any of these reports in his evidence, nor did he explain the 'aids and appliances'. He did, however, explain how he had undertaken a 'series of additional niche qualifications' in relation to his employment with the Respondent, how he was engaging in further training and how he had spent hours researching his conditions on the internet. Whilst I do not wish to focus on what the Claimant can do; he has provided more persuasive examples of what he can do as opposed to what he cannot. I do not find that the Claimant's dyslexia has a substantial adverse effect on his ability to carry out day-to-day activities.

66. The Claimant did not provide any details of aids or appliances, or other measures taken to manage his dyslexia and I am unable to consider whether these were effective and/or what the effect would be without such measures.

67. The ADHD symptoms identified relate to an inability to concentrate, difficulty in socialising, poor memory functioning, and poor organisational skills. There is no need for a formal diagnosis.

68. The Claimant's impact statement describes him 'hyper focussing' at work. He has used the skills gained through his niche courses and online research to fully comprehend the safety aspects of his role as a high ropes instructor.

69. Similarly, the Claimant states that he has poor organisational skills, despite claiming to be 'extremely organised' at work, in his impact statement. Within that statement, the Claimant describes how he needs help to organise and prepare food, stating that he employs a helper to 'regularly throw away the out-of-date foods [he has] been unable to use due to organisational difficulties and chronic nausea'. He goes on to explain that the helper cleans his fridge, shops for fresh foods, clears away after meal preparation, changes his bed, picks up his clothes, washes, cleans, and prompts him to wash and dress. In his oral evidence, the Claimant clarified that this person was his cleaner whom he employs for two hours each Thursday as he wanted to be more independent, rather than relying

on his mother to undertake these tasks on his behalf. In oral evidence, when I asked the Claimant to describe his normal day, he described going to the shop to buy a ready meal for his evening meal and using the microwave to cook. Accordingly, I find that the impact statement significantly overstates the position here and I do not accept that the Claimant needs anywhere near the level of care and support as claimed.

70. The Claimant does, however, refer to losing his bank cards, phone and shoes and seeking assistance from his family when this happens. He states that he uses Apple Air Tags to help locate these items, but when they do become lost, it increases his anxiety, stating in his evidence that 'you could starve to death' due to the loss of a bank card. The Claimant explained that this happened daily and has resulted in him cancelling his bank cards. I accept that the Claimant may have a tendency to lose things, but I do not see this as having a substantial adverse effect on his day-to-day activities.

71. The Appendix to The Guidance sets out an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. These include matters that have been referred to by the Claimant at various stages of his evidence, including:

    a. difficulty in getting dressed, for example, because of physical restrictions, a lack of understanding of the concept, or low motivation
    b. difficulty using transport; for example, because of physical restrictions, pain or fatigue, a frequent need for a lavatory or as a result of a mental impairment or learning disability
    c. persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder

72. In respect of a: In his impact statement, the Claimant states that the DWP have assessed him as needing prompting from another person to undertake self care needs such as washing and dressing due to exhaustion. I do not agree that this is necessary. Firstly, no such assessments were provided by the Claimant, or other proof of the assessment offered. Secondly, when I asked the Claimant about his normal day, he described getting up and getting to work with minimal difficulty. He was often on time and had a better timekeeping record than some of his colleagues. Thirdly, the Claimant intentionally overstates his needs in his impact statement, as described at paragraph 69, above.

73. In respect of b: When I asked the Claimant about his reluctance to use public transport, he told me that he had 'zero sense of direction' and was terrified of getting lost. He said that he would not go on holiday abroad and that whilst he knew how 'busses worked', if it went in the wrong direction, he 'would be lost forever'. The Claimant offered very little evidence over and above that, and I am not satisfied that the Claimant's day-to-day activities are significantly adversely affected.

74. In respect of c: Social interaction is something that the Claimant finds difficult. However, at different points the Claimant's aversion is described differently. The impact statement details the awkwardness felt by the Claimant in relation to his ability to converse coherently; later the inability to socialise due to overwhelming exhaustion. Mr Franklin points out that the Claimant was home schooled and would not have experienced the same social integration as would be expected in an educational establishment. There is no evidence that this is the case. However, the PRISM referral form suggests the lack of a social circle [141]. Indeed, university was a problem for the Claimant due, in part, to his inability to extend his social circle. Nevertheless, in his evidence, the Claimant described to me that his work involved safety briefings with members of the public where he 'would tell a couple of jokes, go for lunch and call it a day'. He spoke fondly of conversing with his work colleagues during the day and mentioned that on odd occasions they would go for drinks after work.

75. I do not accept that the Claimant's day-to-day activities are impacted in the way he describes. He was able to offer instruction to those on the high ropes course and currently does so in small group snowboarding lessons. The Claimant explained that in respect of the latter, he is following a 'script'. I do not accept that this is the case. The differing abilities of the participants and the need to establish a rapport, at the very least, requires an ability to converse coherently.

*ii Anxiety*

76. The Claimant's anxiety is a matter that has troubled him for some time, as described in paragraph 50. The Claimant is vulnerable to episodes of anxiety, especially in times of stress. The medical records detail the consultation on 6 February 2023 which refers to 'shaky hands, racing heart, feels emotions building agree can try pm Propranolol'. Thereafter, the intensity of the Claimant's anxiety increased, prompting Mrs Davies to attend the GP surgery. The GP records state: '[Mrs Davies] came in today to discuss about Rhys. He struggles with mental and physical difficulties. Needs physical and emotional support on a daily basis. Gets overwhelmed easily. Anxious and depressed.' [108]. On 27 March 2023, the Claimant attended his GP reporting worsening anxiety and more frequent panic attacks [131]. The GP notes refer to the Claimant 'going into crisis – getting severe panic attacks, propranolol helps partially… stuck in the

house all day, he is doing only light duties.' [105]. A further consultation with Dr Jyoti Mehta on 9 May 2023 saw the prescription of Citalopram [102].

77. The first consultation in February 2023 was at the time that the Claimant was allegedly assaulted by his manager; there were heightened tensions in the work environment. Mrs Davies attended the GP surgery later in the same month and then again with the Claimant in March 2023. A further consultation with Dr Jyoti Mehta on 9 May 2023 saw the prescription of Citalopram. The medical records refer to flashbacks and panic attacks, not sleeping well and not eating well [102]. However, the letter of Dr Krishnamurthy dated 12 May 2023 goes further stating that the Claimant also reported 'chronic nausea, loss of confidence and increase in chronic exhaustion.' Dr Krishnamurthy did not see the Claimant on 9 May 2023, yet expands on the symptoms reported in the medical notes. I do not find this to be an accurate summary of the matters reported to Dr Jyoti.

78. I accept that the Claimant was experiencing flashbacks and panic attacks, but there is very little further evidence on the effect on day-to-day activities. The Claimant's impact statement refers to nausea, fatigue and his other ailments as additional matters that subsisted before 9 May 2023. He does state in his impact statement that he is 'too exhausted following a panic attacks (sic) and PTSD to get myself anything to eat or drink, to get up to get myself a change of clothes, wash or dress myself, my lack of self-confidence has resulted in decreased inability to socialise'. For the reasons stated above, I find these matters to be exaggerated. In addition, the Claimant refers to being mentally and physically exhausted after the working day. The Claimant was not working for the Respondent at this time. I do not find that the Claimant's anxiety had a substantial adverse effect on his normal day-to-day activities. Nor do I find that the cumulative effects of the nausea, fatigue, and other matters indicated by the Claimant had such an effect.

79. The Claimant's medication may go some way to reducing the impact of his anxiety, but there was little evidence before me to enable me to consider the effect on the Claimant if it were not for the medication. It is for the Claimant to show the deduced effect. The trigger for the Claimant's anxiety related to the dispute at work. He no longer works for the Respondent and is pursuing different avenues of employment, which he is seemingly doing with success.

*Long term*

80. I have considered whether the Claimant's dyslexia, learning difficulties ('probable ADHD') and chronic anxiety, were long term, although given my findings, this is not strictly necessary.

81. Dyslexia is a lifelong condition; it is long-term. Similarly, the Claimant's other stated learning difficulties which I refer to above, inability to concentrate, difficulty

in socialising, poor memory functioning, and poor organisational skills are also likely to be lifelong impairments. The Claimant refers to this in his evidence when recounting the problems he faced at school and at university.

82. Whilst the Claimant's anxiety is also a feature of his life, it does not have a substantial adverse effect on his normal day-to-day activities. However, I have considered whether the heightened anxiety that the Claimant faced since his first GP consultation on 6 February 2023 could be regarded as having this effect and if so, whether that was long term.

83. In that instance, I do not find the heightened anxiety to be a lifelong condition, nor that it had persisted for at least 12 months; it began on 6 February 2023, or accepting the Claimant's impact statement, the 1 February 2023. Accordingly, the Claimant would need to show that the effect is likely for at least twelve months or may recur; he has not done so. I was not provided with a prognosis or any indication of the duration of the heightened anxiety. He was able to give evidence in the hearing and came across as an intelligent and confident person. As stated elsewhere, I have found the Claimant's symptoms to be exaggerated.

84. It could be that the Claimant's medication has lessened his anxiety, but I was not provided with sufficient evidence on what the deduced effect would be if it were not for the medication and the Claimant has failed to discharge his burden of proof.

85. Accordingly, bearing in mind all of the above factors, I do not find that the Claimant was disabled at the material time.

86. The Claimant's remaining claims are unaffected by this decision. They are currently listed to be heard on 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 31 March 2025 and 1, 2, 3, 4 April 2025 in Nottingham. I have listed a further Preliminary Hearing by telephone to determine the remaining issues and to consider the likely length of the hearing.

Employment Judge Heathcote

8 April 2024

Sent to the parties on:

…08 April 2024…….

For the Tribunal Office:

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