



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

Ms S Christy
Claimant

Chambers and Newman Limited
Respondent

V

HELD AT: London Central ON: 22/1/2020
Employment Judge: Mr J S Burns

Appearances
For Claimant: In person
For Respondent: Ms C Urquhart (Counsel)

JUDGMENT

1. The Claimant was not disabled at the relevant time.
2. The claims are dismissed.
3. The final hearing listed for 28/4/2020 to 4/5/2020 is cancelled.

REASONS

1. The judgment followed an open PH to consider whether the Claimant was disabled during the relevant time - namely the period 19/3/2019 (this being the date on or after which occurred the matters she relies on – see paragraph 7 of Appendix A of the PH note dated 18/11/2019), up to the date of presentation of her ET1 on 13/6/2019.
2. At the outset, I explained to the Claimant the legal test pertaining to disability and drew the Claimant's attention to the summary of this in paragraphs 7 and 8 of a Respondent's note for the hearing dated 22/1/2020, of which the Claimant had been provided with a copy. I told the Claimant that she had the burden of proof on a balance of probabilities.
3. I asked the Claimant at the outset to tell me if she required any adjustments or assistance during the hearing. She said she might need a break and I asked her to ask me for one at any time. In the event she did not ask for a break. The hearing started at about 10.45 am. I heard evidence from the Claimant who was cross-examined by Ms Urquhart. I myself then asked the Claimant some questions. The Claimant's evidence was completed by noon. After a break of 30 minutes I received final submissions between 12.30 and 1.00 pm when the hearing ended.

4. The Claimant appeared fit and well and she was able to understand and fully participate in the hearing, and she made pertinent submissions at the end.
5. In a previous PH the Claimant had been ordered to provide to the Respondent “*copies of any medical notes (including GP), reports and other relevant evidence she wishes to rely on relevant to the issue of whether she was disabled...*”
6. The joint bundle contained, amongst other things, an impact statement (pages 64 to 68) and some medical letters and documents, (69 to 87) which material the Claimant confirmed at the outset was all she wished to produce in relation to the disability issue. Given the fact that the Claimant was claiming (at least initially) 12 different impairments, this material was surprisingly scanty.
7. No GP notes have been produced, although the Claimant explained that she does and did regularly attend her GP and that abundant GP notes do exist. Instead there is a short letter from a GP dated 7/11/2019 providing a summary. However, the only actual consultation which the GP author (Dr Alam) refers to having conducted personally with the Claimant was one on 11/4/2019, (which post-dated the relevant period and which was for left knee pain, which is not one of the impairments claimed for the DDA claim). This letter is not an adequate substitute for the GP notes.
8. A lengthy OH report dated 29/11/2018 (74 to 80) has been produced but in a version heavily redacted at the Claimant’s direction and request.
9. I am not satisfied that the Claimant has given full disclosure of all relevant documentation in relation to the issue under consideration and the reasons for all the redactions are unclear.

The Impairments

10. Of the 12 claimed impairments referred to in the impact statement, the Claimant confirmed during cross-examination that number 1 (bronchial spasm) and number 12 (allergies) were “background only” and that she did not suggest that these amounted to disability impairments.
11. Similarly, she confirmed in evidence that number 8 (Raynaud’s syndrome) was not a matter which was relevant to or which had caused any disability discrimination during the relevant period. It is not mentioned in any of the medical documents.

12. The Claimant stated that claimed impairments number 2 (Migraines and headaches), number 6 (Arthritis of neck and spine/neuropathic/radicular/paraesthesia symptoms/drop-foot related) and number 7 (coccyx pain) should be regarded as interlinked.
13. Based on the references in the medical documents and in particular the letter from a Consultant Neurologist dated 29/11/2018 (page 81) I find that the Claimant does and did at the relevant time suffer from cervical and lumbosacral spondylosis, and associated intermittent headaches (and in the past she has received physiotherapy for this).
14. As stated in the OH report dated 29/11/2018 (page 76) these are “*age-related changes which cause at times pain, no other significant problems.*” A letter dated 10/7/2018 following an MRI scan of the Claimant’s head and cervical spine reads “*The MRI scan of the brain was essentially unremarkable, this is re-assuring. The MRI of the cervical spine showed central disc Osteophyte bar at C6/7 minimally indenting the thecal sac, without visible nerve compression*”
15. Claimed impairment number 3 (palpitations/irregular heartbeat) is mildly supported by an equipment loan agreement and a self-monitoring diary both dated 14/5/2019, and in the GP letter dated 7/11/2019, all of which considerably post-date the relevant period. It is not referred to in the OH report dated 29/11/2018. The GP letter states “*She has reported palpitations, an ECG confirmed normal sinus rhythm with ventricular ectopics and she is not currently on any medical treatment for this*”. As the Claimant explained, ventricular ectopics is when the heart either skips a beat or adds an extra beat. They are also called premature heartbeats. Ectopic heartbeats are usually not a cause for concern, and they may occur for no known reason. Despite the skipped or added beat, the heart otherwise functions normally.
16. Claimed impairment number 4 is high blood pressure. The GP letter confirms: “*She has hypertension for which she is on Losartan and this is a long management and her blood pressure is currently well-controlled*”. The Claimant confirmed that prior to July 2019 she was not taking any medication for this.
17. Claimed impairment 5 is right hand tremor. The Claimant suggested that this was confirmed by a letter dated 10/7/2018 which is quoted above. I do not accept that the letter refers to a hand tremor at all. The Claimant reported the claimed hand tremor to OH in November 2018 but at that stage it was still under investigation and “*no formal diagnosis had been made*”. The later GP letter does not refer to it. The Claimant did not exhibit any noticeable hand tremor during the hearing.

18. Impairment 9 is work-related-stress and impairment 10 is depression/anxiety. I accept that the Claimant has had a history of recurrent bouts of low mood and anxiety/stress in the past. There is no evidence that she has moderate or severe depression. She has not taken any medication for depression since 2006. By November 2019 she was awaiting talking therapy for her low mood.
19. Impairment 11 is “*neurodiversity*”. The Claimant suggested that she is hypersensitive to stimuli such as smells, noises or bright light which causes anxiety. This appears to be closely related to or the same as impairments 9/10. At one stage, while discussing neurodiversity, the Claimant suggested she may PTSD. I do not accept this because there is no medical evidence or reference to support such a specific and severe diagnosis.
20. In summary, I find that the Claimant did at the relevant time suffer from a number of impairments the most significant of which were age-related degenerative problems in her cervical and lumbar spine, and a tendency to recurrent anxiety/stress/low-mood, and that these either had at the time or were likely to last at least 12 months.

The impact of the impairments on the Claimant’s ability to carry out day-to-day activities.

21. As confirmed by the Claimant during the hearing a number of times, the only medication or other treatment which she received during the relevant period for any impairment was occasional puffs from an asthma inhaler, for impairment number 1 (bronchial spasm) which however the Claimant expressly disclaimed as an impairment she wished to rely on for her disability claim.
22. Hence, she was not taking or seeking any treatment for any other impairment. This tends to confirm the impression given by the available medical evidence that the Claimant’s health problems, such as they were during the relevant period, were having a limited impact on her, and were mild.
23. I asked the Claimant open questions about her life-style and day-to-day activities in the relevant period. She gave me answers in the present tense but I obtained her confirmation that her answers also applied to the relevant period. She lives independently and alone. She works full-time and commutes to work each work day between her home in Chatham in Kent and her work in Piccadilly in London, which is a 2-hour commute each way using car, train and bus. She has no problems with this commute. She lives in a double-storey house which she keeps clean herself and has a garden in which she mows the lawn and prunes bushes as required. She does her own shopping in a supermarket and drives herself, including journeys up to

25 or 30 miles at one time. In 2017 she went overseas holidays to the Canary Islands with friends and to Egypt.

24. I also asked the Claimant about her journey to the Tribunal today. She had travelled again by car, train and bus and had carried with her a bag containing her tribunal papers as well as her personal effects. She had not found it necessary to use a bag with wheels or any similar aid.

25. The Claimant told me she is planning to join a gym.

26. I have had regard to the 2011 Guidance on the definition of disability which confirms that "*a substantial effect is one that is more than minor or trivial*".

27. I bear in mind that the effects of treatment are to be ignored for the purpose of assessing whether an impairment has a substantial adverse effect. That is particularly easy in this case because the Claimant was not receiving any treatment for the impairments she now relies on.

28. I accept that the Claimant does suffer some adverse impact from her impairments but I find that this impact was mild and insignificant during the relevant period. I have read what the Claimant wrote in her impact statement about this. I reject that evidence to the extent that it conflicts with my conclusion about this. I find that the Claimant has not proved on a balance of probabilities that her impairments had a substantial adverse effect on her ability to carry out normal day-to day activities

Conclusion

29. Hence the Claimant is not entitled to bring her disability discrimination claims and they must be dismissed.

22/1/2020
Employment Judge J S Burns
London Central

For Secretary of the Tribunals

Date sent to the Parties
24/1/2020