



EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

Claimant

Mr F Iqbal

v

Respondent

OVO(S) Metering Ltd

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford by CVP

On: 18 January 2021

Before: Employment Judge Alliott

Appearances:

For the Claimant: In person

For the Respondent: Ms Rosie Kight, Counsel

JUDGMENT

1. The judgment of the Tribunal is that:

1.1 The claimant was a disabled person within the meaning of s.6 of the Equality Act 2010 at all relevant times from May 2017. The disability is the physical impairment of a prolapsed disc at the L5/S1 level.

REASONS

1. This open preliminary hearing was ordered by Employment Judge Ord on 2 June 2020 to determine the following issue:

“Whether the claimant is disabled within the meaning of s.6 of the Equality Act 2010.”

2. The claimant was employed by the respondent on 15 October 2014 as a dual fuel smart metering engineer.
3. On 2 May 2017 the claimant injured his back whilst at work. An occupational health report dated 24 August 2017 recites that he felt his back “go”. “He initially thought he had pulled a muscle but by the next morning he was unable to move and had sensory loss in the right leg as far as the foot.”
4. The claimant was referred for an MRI scan which took place on 13 May 2017 and revealed that the claimant had a prolapsed intervertebral disc at L5/S1.
5. On 7 November 2017 the claimant had a right S1 nerve route injection. His neuro-surgeon reported on 2 January 2018 as follows:

“He had a good response to this injection and no longer suffers from sciatica. He has ongoing S1 distribution numbness however.

Mr Iqbal appears to be getting on very well. He does get occasional left-sided back pain when he stoops. I have let him know that despite the resolution of his sciatica, he does have an injury of his back and he will be at risk of further back problems in the future if he is not mindful of this.”

6. The claimant had returned to office based duties on 6 August 2017 and embarked on a phased return to his job as from 7 February 2018. The OH report of 7 February 2018 reports the clinical examination as follows:

“On examination of Mr Iqbal’s back there was no limitation in range of movement and function any more, but Mr Iqbal continues to have abnormal sensation/numbness in his right leg.”

7. It would appear that the claimant worked normally until 29 January 2019 when he injured his back again. He went off work and obtained prescription painkillers from his GP. The claimant described having difficulties bending/lifting/carrying/working at heights or in confined spaces and picking up his children, sitting and walking caused pain.
8. The claimant was seen by Occupational Health on 14 March 2019. This reported:

“His current symptoms are pain and numbness in his leg. He is very limited in the activities that he can do, he is unable to sit or stand for long periods or undertake any manual handling activity.”

For what it is worth, at that stage, occupational health did not regard the claimant as being disabled within the meaning of the Equality Act.

9. The claimant was referred for another MRI scan on 18 July 2019 which indicated that the discal herniation had slightly increased in size.
10. On 16 August 2019 the claimant had a telephone consultation with OH. This records:

“The pain appears to travel from his lower back, down his right leg and he also has numbness in his foot. He states that the pain is very severe, and he has been prescribed very strong pain relief medication. He struggles when walking on uneven surfaces as this does cause a significant increase in his pain. He also has pain when sitting in one place for a long time. He tries to walk for five to ten minutes at intervals in order to relieve his pain, but he is still in extreme amounts of discomfort.”

11. At that point the claimant had a follow-on consultation with his doctor scheduled for 24 September 2019. For what it is worth, at that point, OH considered that the claimant did qualify as disabled within the meaning of the Equality Act 2010.
12. The claimant attended a clinic with Mr Mendoza, consultant neuro-surgeon, on 24 September 2019 and an operation was recommended.
13. The claimant was dismissed on 25 September 2019.
14. S.6 of the Equality Act 2010 provides as follows:

“(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.”

15. Schedule 1 to the Act provides as follows:

“(2) If an impairment ceases to have a substantial adverse effect on a persons’ ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.”

And

“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 treat or correct it, and
 - (b) But for that, it would be likely to have that effect.”

16. In her closing submissions Ms Kight submitted that it was for the claimant to establish that he was disabled within the meaning of the Act as at the date of the alleged discriminatory conduct and that the long term issue related to the effects and not the disability itself. Whether or not the effect of the impairment was likely to last for at least 12 months is an objective test.
17. The respondent accepts that the claimant had a physical impairment but disputes that that amounted to a disability because the effect had not lasted and was not likely to last for twelve months.
18. I find that from May 2017 the claimant had a physical impairment of a prolapsed disc. I find that the physical impairment had a substantial adverse effect on the claimant’s ability to do normal day-to-day activities. He was unable to bend or

work in confined spaces, his mobility was restricted as was his ability to sit for prolonged periods. These are day-to-day activities.

19. The claimant had a spinal injection in November 2017 which clearly ameliorated his symptoms but for the purposes of the Equality Act I have to consider what the situation would have been but for that treatment. In my judgment it is likely that the substantial adverse effects on the claimant's ability to undertake normal day-to-day activities would have continued.
20. Consequently, I find that the claimant's impairment was long term as it lasted for at least twelve months and/or was continuing as it was likely to recur.
21. In any event, the claimant's condition did recur in January 2019. I find that it did have an adverse effect on the claimant's ability to undertake normal day-to-day activities as described. The claimant was taking powerful painkillers and was anticipating having surgery, which in fact he had in December 2019. However, but for that medical treatment, I find that the effects of the claimant's physical impairment had lasted twelve months and were likely to last for twelve months.
22. Accordingly, I find that the claimant was disabled within the meaning of s.6 of the Equality Act 2010 by virtue of the physical impairment of a prolapsed disc.

Employment Judge Alliott 29/1/21

Sent to the parties on:

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For the Tribunal:

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