



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Addison  
**Respondent:** British Steel Ltd  
**Heard at:** Hull                      **On:** 13 May 2019  
**Before:** Employment Judge Knowles

***Representation:***

**Claimant:** In person  
**Respondent:** Mr D Jones, Solicitor

## JUDGMENT

1. The judgment of the employment tribunal is that the Claimant is not a disabled person for the purposes of the Equality Act 2010.
2. The Claimant's claims of disability discrimination under the Equality Act 2010 are therefore not well founded and are dismissed.

## RESERVED REASONS

### **Evidence**

1. I heard evidence from the Claimant.
2. The Respondent produced a bundle of documents.

### **Issues / preliminary matters**

3. The issues for me to determine in this preliminary hearing are those set out at the previous case management hearing which took place on 19 March 2019 as directed by Employment Judge

Lancaster. These are:

- a. Was the Claimant a disabled person within the meaning of the Equality Act 2010?
- b. What are the issues in the case?
- c. Having identified those issues, does any part of the claim have no, or little reasonable, prospect of success?
- d. What further case management orders should be made and what further hearings are to be listed.

4. Employment Judge Lancaster also made orders for the Claimant to disclose documents and any expert evidence relevant to his condition and to serve a statement concerning his condition on or before 9 April 2019. The Claimant arrived today without having served any documents and without a statement.

5. The Claimant states to me that he has tried to get a copy of his 2008 dyslexia certificate but learned only on Friday that his College do not have a copy, although his Secondary School states that those records will now be with the College. The Claimant stated that he had not been able to serve a statement because he was waiting to obtain a copy of his certificate.

6. In any event I afforded the Claimant time to tell be everything he wished concerning his condition and how it adversely affects his ability to carry out normal day-to-day activities. The Respondent was provided with an adjournment to reflect on that evidence and determine whether they wished to proceed to cross examine the Claimant or adjourn to consider calling evidence themselves. The Respondent chose to proceed to cross examination after that short adjournment.

## **Evidence**

7. I make the following findings of fact on the balance of probabilities.

8. The Claimant began employment with the Respondent as a manufacturing trainee which provides on the job training and academic study in conjunction with North Lindsay College, including Maths, English and NVQ Level 2 in Performing Manufacturing Operations and Level 3 Technical Certificate in Iron and Steel Making Process.

9. English and Maths are tested through examinations, whereas the other qualifications are gained through reports prepared through

experience at work.

10. The Claimant has attended today and stated that he was diagnosed with dyslexia in 2008 during his secondary school education and has a dyslexia certificate. He has tried to obtain that from the school, but they referred him to his college, who have recently told him they cannot locate a dyslexia certificate in any of his records.

11. The Claimant has not served any documents concerning his condition. The Respondent's documents do contain some information which I will cover later in this judgment.

12. The Claimant states that he takes longer to understand and process information and struggles to put things onto paper. He states his thought processes take longer, he has to adjust, to pause a few times to take things on board. He states he takes longer than an average person. He states that his sentences sometimes don't make sense and his spelling is not the best. He did not provide specific information about how long matters take him but did state that he takes longer than the 'average person'. I did ask him how he knew it took him longer than the average person but he answered that things take him longer than others.

13. He provided an example of shift handover reports at work, suggesting that it takes him longer than others to read and understand them and that he needs people to read them to him at work. His team leaders and team colleagues have done that for him in the past.

14. He states that outside of work it affects things like shopping, he has to read information about what he is buying and has to read over it several times so that he understands.

15. He states that he was too embarrassed to tell his employer when he began employment. He states however that he did tell Mr Stagg (one of the Respondent's managers) and Mr Carvell (his college supervisor), which is why they brought in Richard Nelson on 18 May 2017 from the college to recommend adjustments in the light of his condition (see support plan and review p22). He states that Mr Nelson is from the college and helps people with learning difficulties.

16. He states that the college and the Respondent did not put in place the support plan.

17. He states that the recommendations in the support plan cover

mainly his difficulties with reading and writing but also mentions his problems with maths.

18. I asked the Claimant whether or not Mr Nelson tested his condition or relied on what the Claimant told him. I found the Claimant evasive upon whether or not Mr Nelson had undertaken any tests. Initially he stated that Mr Nelson already had the support information. When asked repeatedly to confirm whether or not Mr Nelson had got him to complete any tests on his abilities of any kind he answered that he did test his reading and writing.

19. The Claimant states that when his tutor was informed of his condition and put in place adjustments, including letting him answer on a computer and giving him additional time, he was able to pass his English examination whereas before then he had failed when examined.

20. The Claimant states that he fell behind with his course work and examinations because of his condition.

21. The Claimant states that he told Mr Stagg and Mr Cavell of his dyslexia early in his employment, within the first few weeks.

22. The Respondent submits that they were unaware of any condition affecting the Claimant's work until around May 2018 when the college advised them that the Claimant had notified them he had dyslexia.

23. The Respondent also submits that the Claimant made no reference to difficulties with his course work being down to his condition. They state that the documents show he was reporting personal difficulties at home as the cause of his lack of progress at college.

24. When he signed his apprenticeship learning plan and commitment statement on 6 April 2017 he completed the individual needs part of the form ticking that he did not consider himself to have a medical condition, disability or learning difficulty. He requested no learning support. See pages 19 and 20.

25. On 18 May 2017 he was attended by Richard Nelson who developed the computer report which is printed on page 22. This states:

*[The Claimant] was referred to the Success Centre after disclosing difficulties associated with dyslexia. He has been in receipt of previous support at North Lindsey College (New Beacon House on LWS Programme). [The Claimant] stated that he has developed strategies to cope with writing and maths (has passed maths exams at site) but he really struggles with revising for exams that require high levels of description. He states his mind just “goes blank” despite how much pre-reading he does.*

#### *Recommendations for course tutors and/or teaching assistants*

*Written material: Wherever practicable, print handouts on pastel coloured paper rather than white. Use fonts such as Comic Sans Arial, Verdana, Tahoma a minimum of 12/14 to reduce “visual pollution”. Double line spacing and a line between paragraphs makes text easier to read. Change background colour of page when processing in word. Putting headings and important points in bold or highlighting them makes them easier to scan.*

#### *Additional support*

*Richard Nelson will organize for [the Claimant] to visit college and undertake support for exam revision. Access to success centre if necessary – to be determined by staff for support or tutor. PAC to monitor closely. Arrange exam access arrangements if required.*

#### *Student*

*Keep tutor, assessor and progression coach informed of all changes to your circumstances. Negotiate with tutor or support tutor any problems in college, be open and honest. Make full use of exam access arrangements provided – remember these are here to help you. Do use TextHelp Read, Write – Gold “Text Help” software, available on all college PC’s. This will help with proof reading, grammar, structure and research (support for using this software can be provided by staff in the LRC or staff in the success centre). Ensure you have a supply of highlighter pens, post-its, etc to help you organize your work.*

26. Page 23 contains an in-company assessment which is dated 7 June 2017, which describes this as the first on-site review. The Claimant is asked to complete two units of his assessment reports by 28 June 2017. He doesn’t. His college reviewer emails him (page 24). The deadlines are moved to 22 August 2017 because the Claimant reported that his partner had a baby (page 27). He has a second review 22 August 2017 but completion against the

programme is recorded as 0% (page 26). He receives good feedback 14 September 2017 from his college reviewer but this appears to relate to only one unit from the four units which were scheduled for completion by then (page 28). There is a review meeting 26 September 2017 where the Claimant is recorded as having partially completed 4 modules with a target of completing two by 19 October 2017 (page 29). On 21 November 2017 the college reviewer Mr Cavell reports to the Claimant's employers that he attended a review considerably distressed with personal issues (page 33). Mr Altoft replies from the Respondent the same day and offers, once he is 'sorted at home' he can spend time at work completing his college work in the office instead of being out 'on plant'. Page 35 records that Mr Cavell is having problems getting hold of the Claimant, and rearranges the date for his review from 15 January 2018 to 7 February 2018. There is an email from Mr Stagg to Mr Altoft concerning the Claimant where actions are recorded as 'assignment one to be completed before next week' (page 36). The Claimant appears not to have completed any of his assignments after 9 months of the course. The college send an email to the Claimant 13 March 2018 chasing progress and setting out revised deadlines to bring work in by April (page 37). On 14 March 2018 Mr Altoft reports to colleagues within the Respondent that he has taken the Claimant off shifts to focus on his college work stating "I can't see him being anywhere near completing his NVQ in 10 weeks without something drastic happening" (page 38). Mr Cavell attends the meeting and his report (page 39) records "[the Claimant] has had a succession of issues during the last year, his partner had a hard pregnancy, followed by a considerable number of hospital visits for his young child, this coupled with the collapse of his relationship has effectively meant that [the Claimant] has submitted little or no work during his apprenticeship". It describes Mr Altoft's decision to remove him from plant as a 'massive gesture', and schedules fortnightly reviews with the Claimant. Some progress is reported by 28 March 2018 (page 41) and by 19 April 2018 he returns to shifts (page 42). Occupational health report on 7 June 2017 when the Claimant is signed off as unfit for work due to workplace stress, and refers to being threatened with the sack by his superiors and not being aware of deadlines in relation to his college work. At a review meeting on 12 July 2018 the Claimant blames the college, stating they have let him down. At this stage he is 60% complete on his NVQ but the time for completion had passed and he had not completed his functional skills examination. On 8 August 2018 some work submitted by the Claimant is suspected not to be his own work (pages 48 and 49). On 17 September 2018 he invited to a disciplinary hearing for failing to complete his college work (page 50). He receives a final written warning 2 October 2018, he is told he must pass the English and Maths functional skills

courses (page 59), but his NVQ is held as the examinations would be given priority. The notes of the hearing indicate that the Claimant admitted he submitted 6 reports, but two were duplicates, one contained only a heading and two were written by his brother. The Claimant disputes the content of the notes. The Claimant is on sick leave from December 2018. Occupational health report on 4 February 2019 that he had passed his English functional skills exam. The report refers to the Claimant mentioning his dyslexia but the OH report states he has not previously brought that condition to their attention.

27. The Claimant stated in cross examination that the ‘personal problems’ referred to in the documents were the pressures of the course, not his problems at home.

28. The Claimant was asked whether his maths capability had ever been assessed, he stated he wouldn’t like to comment.

## **Submissions**

29. The Respondent submitted written submissions.

- a. In the absence of any medical assessment it is not possible, in R’s submission, to make the findings necessary to determine whether the claimant is disabled.*
- b. The importance of Medical/professional assessment*
- c. The case of Royal Bank of Scotland plc v Morris EAT 0436/10 (Morris) highlights the difficulties in making findings without medical evidence when dealing with mental impairments. In Morris it was the opinion of Mr Justice Underhill, that issues associated with mental impairments will often be too subtle to allow a tribunal to make proper findings without expert assistance.*
- d. The subtlety of dyslexia is characterised by the very fact that so many people go undiagnosed. The British Dyslexia Association (BDA) states on its website that dyslexia is “not an obvious difficulty”; it is hidden”.*
- e. The BDA’s website makes a reference to the 2009 report on ‘Identifying and Teaching Children and Young People with Dyslexia and Literacy Difficulties’ (Sir Jim Rose) which states that: “a good indication of the severity and*

*persistence of dyslexic difficulties can be gained by examining how the individual responds or has responded to well-founded intervention”.*

- f. This type of examination is, in the Respondent’s (R) submission essential and something that the tribunal will not, with respect, be qualified to undertake. If it cannot do this then it will not, in R’s submission, be able to make the necessary findings on whether there is an adverse effect on day to day activities that is substantial and/or long term.*
- g. The only document that references dyslexia is at page 22 of the bundle. It says that C has disclosed difficulties associated with dyslexia (revising for exams that require high levels of description...mind “goes blank”). The document was not created, as far as R understands, by anyone qualified to assess C for dyslexia and nor is it the opinion of the author of the document, that C is dyslexic. Neither does the author give any opinion on the extent of the effect on day to day activities.*

#### *Coping strategies*

- h. In the Government’s guidance on the definition of disability, updated on 2 June 2014. It states, at para B7 that “account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial, and the person would no longer meet the definition of disability”.*
- i. It is evident (see page 22) that C had referred to coping strategies. There is no credible or objective assessment as to the effect of any coping strategies that C implements.*

30. The Respondent handed forwards a copy of **RBS PLC v Morris UKEAT/0436/10** and **Herry v Dudley MBC and Others UKEAT/0100/16**.

31. The Claimant submitted that there were issues between him



and Mr Stagg. He was not provided minutes of the meetings and was not given an opportunity to look over them to see if they were correct. He did not want it to come to this, he wanted to get through and to keep his job.

## The Law

33. The Equality Act 2010 contains the definition of disability and provides:

### 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.*
34. Schedule 1 sets out supplementary provisions including:

**Paragraph 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.*
- (2) *If an impairment ceases to have a substantial adverse effect on a person's 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.*
- (3) *For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.*
- (4) *Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.*

*Effect of medical treatment*

**Paragraph 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 and the use of a prosthesis or other aid.*
- (3) *Sub-paragraph (1) does not apply—*
- (a) *in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;*
- (b) *in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.*

35. The burden of proof is on the Claimant to show that he or she satisfies this definition. The standard of proof is on the balance of probabilities.

36. The Government has issued ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’ (2011) under S.6(5).

37. The guidance states:

**Section A – Definition of disability**

*A5. A disability can arise from a wide range of impairments which can be:*

...

*impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy; developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia; learning disabilities; mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post traumatic stress disorder, and some self-harming behaviour; mental illnesses, such as depression and schizophrenia;*

*A6. It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental*

*impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment, and vice versa.*

*A7. It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. For example, liver disease as a result of alcohol dependency would count as an impairment, although an addiction to alcohol itself is expressly excluded from the scope of the definition of disability in the Act. What it is important to consider is the effect of an impairment, not its cause - provided that it is not an excluded condition.*

*A8. It is important to remember that not all impairments are readily identifiable. While some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious, for example some mental health conditions and learning disabilities.*

### **Section B - Meaning of 'substantial adverse effect'**

*B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect. This is stated in the Act at S212(1).*

*The time taken to carry out an activity*

*B2. The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.*

*The way in which an activity is carried out*

*B3. Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.*

*Cumulative effects of an impairment*

*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.*

*B6. A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities.*

*Example - A person has mild learning disability. This means that his assimilation of information is slightly slower than that of somebody without the impairment. He also has a mild speech impairment that slightly affects his ability to form certain words. Neither impairment on its own has a substantial adverse effect, but the effects of the impairments taken together have a substantial adverse effect on his ability to converse.*

*B7. Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.*

...

*B9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability it is important to consider the things that a person cannot do, or can only do with difficulty.*

*B10. In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.*

*B11. Environmental conditions may exacerbate or lessen the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, how tired the person is, or how much stress he or she is under, may have an impact on the effects. When assessing whether adverse effects of an impairment are substantial, the extent to which such environmental factors, individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered. The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities.*

### **Section C – Meaning of 'long-term'**

*C3. The meaning of 'likely' is relevant when determining:*

- whether an impairment has a long-term effect;*
- whether an impairment has a recurring effect;*
- whether adverse effects of a progressive condition will become substantial; or*
- how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour.*

*In these contexts, 'likely', should be interpreted as meaning that it could well happen.*

### **Section D – meaning of 'day-to day activities'**

...

*D3. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social*

*activities. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.*

...

*D10. ... many types of specialised work-related or other activities may still involve normal day-to-day activities which can be adversely affected by an impairment. For example they may involve normal activities such as: sitting down, standing up, walking, running, verbal interaction, writing, driving; using everyday objects such as a computer keyboard or a mobile phone, and lifting, or carrying everyday objects, such as a vacuum cleaner.*

...

*D17. Some impairments may have an adverse impact on the ability of a person to carry out normal day-to-day communication activities. For example, they may adversely affect whether a person is able to speak clearly at a normal pace and rhythm and to understand someone else speaking normally in the person's native language. Some impairments can have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how such factors can have an adverse effect on normal day-to-day activities.*

*D18. A person's impairment may have an adverse effect on day-to-day activities that require an ability to co-ordinate their movements, to carry everyday objects such as a kettle of water, a bag of shopping, a briefcase, or an overnight bag, or to use standard items of equipment.*

...

*Example - A young man who has dyspraxia experiences a range of effects which include difficulty co-ordinating physical movements. He is frequently knocking over cups and bottles of drink and cannot combine two activities at the same time, such as walking while holding a plate of food upright, without spilling the food. This has a substantial adverse effect on his ability to*

*carry out normal day-to-day activities such as making a drink and eating.*

*D19. A person's impairment may adversely affect the ability to carry out normal day-to-day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking in new knowledge, and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.*

38. The time at which to assess the disability is the date of the alleged discriminatory act (**Cruickshank v VAW Motorcast Ltd 2002 ICR 729 EAT**).

39. The words used to define disability require a tribunal to look at the evidence by reference to four different questions (or 'conditions', as the EAT termed them):

- did the Claimant have a mental and/or physical impairment? (the 'impairment condition')
- did the impairment affect the Claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')
- was the adverse condition substantial? (the 'substantial condition'), and
- was the adverse condition long term? (the 'long-term condition').

**(Goodwin v Patent Office 1999 ICR 302 EAT).**

40. There should be a causative link between the condition or conditions, where they are identified, and symptoms that the condition or conditions produce (**Morgan Stanley International v Posavec EAT 0209/13**). It need not be a direct link (**Sussex Partnership NHS Foundation Trust v Norris EAT 0031/12**).

41. The term 'mental impairment' covers learning disabilities.



42. In **Dunham v Ashford Windows 2005 ICR 1584 EAT**, a case involving the condition of dyslexia, the EAT accepted that a Claimant is unlikely to establish a mental impairment solely on the basis of 'difficulties at school' or because he or she 'is not very bright'. Expert evidence as to the nature and degree of the impairment is required, although in a case involving learning difficulties, evidence from a doctor is not essential. Medical evidence is not required in every case, especially where there is appropriate expert evidence as to the type and nature of impairment.

43. The Respondent quotes the case of **Royal Bank of Scotland plc v Morris EAT 0436/10 (Morris)** and submits that this highlights the difficulties in making findings without medical evidence when dealing with mental impairments. In *Morris* it was the opinion of Mr Justice Underhill, that issues associated with mental impairments will often be too subtle to allow a tribunal to make proper findings without expert assistance.

44. The Respondent also quotes **Herry v Dudley MBC and Others UKEAT/0100/16**. This authority largely affirms **J** below.

45. In **J v DLA Piper UK LLP 2010 ICR 1052 EAT**, the EAT held that tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances.

46. If the impairment is not long-term, the next test is whether it is likely to be long-term. The relevant test then whether or not it "could well happen" (**SCA Packaging Limited (Appellants) v Boyle (Respondent) (Northern Ireland) [2009] UKHL 37**). The IDS Handbook on Discrimination states that "*establishing that the effect of dyslexia is long term will not normally be a contentious issue, since it will generally have been present from an early age, even if undiagnosed until later in life*".

47. In **Goodwin v Patent Office 1999 ICR 302**, EAT, concerning 'substantial' the EAT said *'What the Act is concerned with is an impairment on the person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook, but only with the greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts. Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves. Thus a person*

*whose capacity to communicate through normal speech was obviously impaired might well choose, more or less voluntarily, to live on their own. If one asked such a person whether they managed to carry on their daily lives without undue problems, the answer might well be “yes”, yet their ability to lead a “normal” life had obviously been impaired. Such a person would be unable to communicate through speech and the ability to communicate through speech is obviously a capacity which is needed for carrying out normal day-to-day activities, whether at work or at home. If asked whether they could use the telephone, or ask for directions or which bus to take, the answer would be “no”. Those might be regarded as day-to-day activities contemplated by the legislation, and that person’s ability to carry them out would clearly be regarded as adversely affected.’*

48. "Substantial" is defined in S.212(1) EqA as meaning 'more than minor or trivial' and unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial (**Aderemi v London and South Eastern Railway Ltd 2013 ICR 591**).

49. In **Paterson v Commissioner of Police of the Metropolis 2007 ICR 1522** the EAT held that in order to be substantial '*the effect must fall outwith the normal range of effects that one might expect from a cross section of the population*', but '*when assessing the effect, the comparison is not with the population at large... what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired*' although in **PP and anor v Trustees of Leicester Grammar School 2014 UKUT 520**, the Upper Tribunal's held that the statutory definition of 'substantial' in S.212(1) should be applied without any additional gloss.

## Conclusions

50. *Did the Claimant have a mental and/or physical impairment?*

51. I am satisfied on the balance of probabilities that the Claimant has dyslexia. I have little evidence other than the Claimant's word that this is the case. He has been unable to produce documentation from 2008 which he states was his diagnosis at secondary school. He has attempted to locate that. However, he has referred to support when discussing matters with Mr Nelson in May 2017 including support from New Beacon House on the Life, Work and Skills Programme. Mr Nelson has not queried whether or not the matter was fact and appears to have proceeded with an individual

recommendations report accepting the history as presented to him. The absence of expert evidence which indicates outcomes from tests is not helpful to the Claimant, but in my conclusion that mainly falls to be considered under the substantial condition. In my conclusion the Claimant has established, albeit only marginally, that on the balance of probabilities he has dyslexia.

52. *Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?*

53. I am satisfied on the balance of probabilities that the Claimant's condition affects his ability to carry out normal day-to-day activities. It affects his ability to read and write. I find the Claimant's description of taking longer to comprehend matters when reading and being poor at writing things down including in spelling consistent with commonplace understanding of learning difficulties including dyslexia.

54. *Was the adverse effect substantial?*

55. The Appellant has not established that on the balance of probabilities the adverse effect upon his reading and writing was substantial. I have no evidence on the degree to which the Claimant's condition affects his normal day-to-day activities. The evidence provided to me by the Claimant is vague. He refers to it taking longer than the average person to digest written information be it in work handover reports or when shopping. These are the only examples the Claimant gave when prompted. He has been on notice since the March case management hearing that he should set out in writing how his condition affects his ability to undertake normal day-to-day activities and has not done so. The only independent evidence I have concerning dyslexia in the case of the Claimant is Mr Nelson's recommendations. I do not consider this to be an expert's report which gives any assessment or prognosis concerning the Claimant's condition. There is no indication from the report that any assessment was made by Mr Nelson, or whether or not he is a competent person to undertake such assessments. He has made recommendations but the only references to the background information upon which those recommendations are made is commentary from the Claimant. The Claimant states that the college has his background information from his secondary school but there is no indication that they have it now, less so that any particular recommendations made by Mr Nelson were based upon another assessment undertaken earlier in the Claimant's life. I repeat that I am prepared to accept on the balance of probabilities that the Claimant has dyslexia but I find that the only evidence I have upon which to base findings in the Claimant's evidence of taking more time

to digest written information and struggling with writing and spelling. The Claimant's evidence concerning severity involves a comparison with an 'average person' which he has not been able to explain to me. His case involves a high degree of inability to deliver timely reports to his college but the evidence in this case leads me to conclude on the balance of probabilities that these delays were due to the Claimant failing to apply himself to his college work for a variety of personal reasons. However, there is no evidence that the reasons involved his condition. The Claimant's claim that his condition meets the substantial condition is simply not met, indeed not nearly met, on the evidence which he has presented to me today.

56. *Was the adverse condition long term?*

57. I do not consider this to be an issue in this matter. Whilst I cannot make a positive finding on the evidence in respect of the substantial condition, on the balance of probabilities he has dyslexia and this is more likely than not to have been a learning difficulty that he has had for life.

58. *Conclusion.*

59. The Claimant is not a disabled person for the purposes of the Equality Act 2010. The Claimant's claims are all dependent on him establishing this. None of his claims are well founded and are dismissed.

**Employment Judge  
Knowles**

17 May 2019

**Note**

**Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.**

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