



EMPLOYMENT TRIBUNALS

Claimant: Mr Chris Smith

Respondent: Marr Corporation Limited t/a T2 Group

Heard at: By video

On: 11 June 2021

Before: Employment Judge Webb

Representation

Claimant: In person

Respondent: Mr N Henry (Legal Consultant)

JUDGMENT

1. At the material time, the Claimant was disabled within the meaning of the Equality Act 2010.

REASONS

Introduction

1. The Claimant was employed by the Respondent, Marr Corporation Limited t/a T2 Group, a company that provided apprenticeships, as a Personal Development Manager from 25 June 2018 to 12 May 2020. Early conciliation started on 09 August 2020 and ended on 08 September 2020. The Claim form was presented on 05 October 2020.

Claims and Issues

2. The Claimant has brought claims against the Respondent for automatic unfair dismissal and a failure to comply with the duty to make reasonable adjustments with regard to workload and hours of work.
3. The issues to be decided at this preliminary hearing, agreed by the parties, were as follows:

3.1 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?

3.1.1.1 Did he have a physical or mental impairment: anxiety

and/or depression?

3.1.1.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

3.1.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

3.1.1.4 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?

3.1.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

3.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

3.1.5.2 if not, were they likely to recur?

The Hearing

4. The Claimant represented himself and gave evidence. The Respondent was represented by Mr Henry, who asked questions of the Claimant.
5. In making my decision I also considered the documents from an agreed 236-page bundle of documents which the parties introduced in evidence.

Preliminary Matters

6. At the start of the hearing Mr Smith suggested that there were documents missing from the bundle: documents that related to meetings he had with the Respondent's HR department between 13 February 2020 and 02 April 2020.
7. Mr Henry in response stated the his client had provided him with all the relevant documents and had confirmed with him that there were no further documents available and that in any event there was sufficient information in the bundle for me to decide the issues before me today.
8. I agreed that there was sufficient information in the documents to make a decision on the issue before me. Any postponement of the case would, in those circumstances, merely delay the matter and that continuing with the hearing would be fair and just in all the circumstances.

Findings of Fact

9. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed bundle of documents.

10. Mr Smith was employed by Marr Corporation from 25 June 2018 to 12 May 2020.
11. In his evidence Mr Smith told me that in June 2019 he began to suffer from anxiety resulting in panic attacks. He described his symptoms as being unable to concentrate and focus for long periods of time. He described being unable to sleep properly, being sick and tearful. Mr Smith said he suffered from becoming physically sick and agitated in the presence of large groups of people. He said that the symptoms prevented him from attending family events and visiting hospital to be with his son. Mr Smith described controlling these symptoms himself through neurolinguistic programming techniques, diverting his thoughts to alleviate the anxiety. Mr Smith explained he had previously suffered with anxiety and had learnt this technique to help deal with the symptoms.
12. I accept that Mr Smith began suffering these symptoms as a result of his condition in June 2019 as he has described. I find his account of becoming unwell is supported by his email to Nigel Stephenson sent on 5 July 2019 (page 116). I accept that Mr Smith was self-treating at that stage by using neurolinguistic programming techniques because of his detailed description of his self-treatment. I find that this self-treatment further supports that he was suffering from anxiety from June 2019. I also consider that his account is supported by him subsequently attending his GP and his formal diagnosis and treatment.
13. I find that without the neurolinguistic programming technique Mr Smith's symptoms would have continued and become worse more quickly. I find this to be the case because even with those techniques Mr Smith's condition became worse leading him to attend his GP for more specialised assistance.
14. Mr Smith attended his GP in February 2020 having decided that his condition had reached a stage where he was no longer able to function properly. By that point he felt in need of medication or other outside help with his mental health.
15. Mr Smith was provided with a sick note on 13 February 2020 to 27 February 2020 (page 132) for acute stress reaction resulting in symptoms of anxiety, and prescribed medication to treat his condition. He was issued a further fit note on 27 February to 5 March (page 135) for mixed anxiety and depressive disorder, again on 05 March 2020 to 19 March 2020 (page 138) and final fit note on 19 March 2020 to 02 April 2020 (page 146).
16. In evidence Mr Smith explained his doctor had provided fit notes for 2-week periods as she wished to reassess his condition at 2 weekly intervals. I accept this to be the case as it is supported by the length of the fit notes. He returned to work on 03 April 2020 but continued to take medication for his condition.
17. On return to work Mr Smith had meeting with HR representative of the Respondent at which his working hours were discussed and it was recorded that they would be monitored to ensure they were appropriate, the record of that meeting is at page 153 of the Bundle.

Law

18. A person has a disability if they have a physical or mental impairment and it has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities (section 6(1) Equality Act 2010).
19. The effect of an impairment is long term if it has lasted 12 months, it is likely to last 12 months, or is likely to last for the rest of the life of the person effected (paragraph 2(1) of Schedule 1 to the Equality Act 2010).
20. An impairment is to be treated as having a substantial adverse effect if measures are being taken to treat it and but for the measures, it would have that effect (paragraph 5(1) of Schedule 1 to the Equality Act 2010).
21. In his submissions Mr Henry for the Respondent said that I should not consider the impairment to have had a substantial effect on the Claimant before February 2020 as that was when he was provided with a fit note from his GP. The letter from his Doctor at page 59 of the bundle confirmed this to be the case. He submitted further that on the evidence before me I am not able to conclude that the impairment had lasted for 12 months, or was likely to last 12 months at the date of the events the Claimant complains of. He asked me to consider that in any event the Claimant returned to work.
22. In response Mr Smith made clear that he went back to work but with an agreement to monitor his hours, his condition was still there.

Conclusions

23. I have considered the facts as I have set out above and the submissions of the parties in reaching my conclusions on the issues before me. I have also taken into account the 2011 Statutory Guidance on matters to be taken into account in determining questions relating to the definition of disability.
24. *Did the Claimant have a physical or mental impairment: anxiety and/or depression?*
25. I have found that in June 2019, the claimant was suffering from symptoms of anxiety. I conclude that from June 2019 the Claimant was suffering from anxiety and did have a mental impairment.
26. *Did it have a substantial adverse effect on his ability to carry out day-to-day activities?*
27. I have found the symptoms Mr Smith complained of from June 2019 prevented him from concentrating and sleeping. I have found that he had difficulty in being in places with crowds, including the hospital while his son was an inpatient. These are normal day-to-day activities that he was unable to perform and I have concluded that his impairment did have a substantial adverse effect on his ability to carry out day-to-day activities.
28. I further conclude that from 13 February 2020 to 03 April 2020 the Claimant's impairment was preventing him from working and was having a substantial adverse effect on his ability to perform day-to-day activities.

29. *If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*
30. I have already concluded that the impairment was having a substantial adverse effect on the Mr Smith. However, I have found that he was self-treating his impairment by using neurolinguistic programming techniques until he visited his GP in February 2020. I conclude therefore that Mr Smith was taking measures to correct his impairment from June 2019.
31. *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?*
32. I have already concluded that the impairment was having a substantial adverse effect on the Mr Smith. I have found that he was self-treating his impairment until February 2020. I further conclude that were he not self-treating for his impairment the effect on his ability to carry out day to day activity would have been more substantial.
33. I have further found that Mr Smith was prescribed medication by his GP to treat his impairment and was provided with fit notes for a period of 7 weeks. I conclude that, without the treatment provided by his GP, Mr Smith's impairment would have continued to have a substantial adverse effect on his ability to carry out day to day activities.
34. *Were the effects of the impairment long-term? Did they last at least 12 months, or were they likely to last at least 12 months or if not, were they likely to recur?*
35. I have found that Claimant's condition was having a substantial adverse effect on his ability to carry out day-to day activities from June 2019. I conclude that at the date of the events in question the impairment had not lasted 12 months. However, I have found that on return to his employment the Claimant was still taking medication for his condition and his employer had agreed to monitor his hours to ensure they were appropriate. In light of this I conclude that at time of the event in question the impairment was likely to last at least 12 months.
36. *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?*
37. In light of the above I conclude that the Claimant did have a disability as defined in section 6 of the Equality act 2010 at the time of the is the claim is about.

Employment Judge Webb

Date: 17 June 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON 18 June 2021

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FOR THE TRIBUNAL OFFICE Mr N Roche