



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr Paul Pearce-Couch

**Respondent**

v E-Zec Medical Transport Services Ltd

**Heard at:** Bury St Edmunds (by CVP)

**On:** 26 February 2021

**Before:** Employment Judge Cassel

**Appearances**

**For the Claimant:** Ms A Ludwig (Legal Advisor).

**For the Respondent:** Mr C Barr (Legal Advisor).

**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.

## JUDGMENT

The claimant was a disabled person at the relevant time in these proceedings and his claims under the Equality Act are to proceed to a substantive hearing.

## REASONS

**Background**

1. The sole issue for determination today is whether the claimant, Mr Paul Pearce-Couch was a person with a disability under the provisions of section 6 of the Equality Act 2010 when he commenced employment with the respondent on 25 November 2019.

2. Section 6 of the Equality Act defines disability in the following terms:-

“(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 Feasibility to carry out normal day-to-day activities.”

3. Guidance is provided under the 2010 Act which helps Tribunals to determine how to approach the individual constituents within the definition.

### **The Hearing Today**

4. I heard evidence today from the claimant, who gave evidence on oath and I was provided with two bundles of documents, one prepared by the claimant's representative and one by the respondent's representative. Having spoken to both representatives it was agreed that references would be made to the respondent's bundle which was slightly longer and contained more of the documentation than the claimant's and in total covered 76 pages. It also contained a number of statements including that of the claimant. I also received, among other documents, written submissions from Ms Ludwig for which I am grateful.

5. The claimant avers that he has a physical impairment. Within the written submission, reference is made to spinal stenosis which was diagnosed, or so it was said, in approximately 2016. The claimant, in his written statement refers to an injury he sustained while serving with the Royal Air Force some 35 years earlier which resulted in a degenerative lower back complaint for which he is receiving ongoing treatment. He referred to the diagnosis as having taken place four years earlier and describes the injury as a:

“Hardening of the channel in my spine by calcium. This essentially crushes the spinal cord, meaning that my spinal nerves are trapped. It affects my lower spine, meaning that I experienced sciatic pain in my lower back and down my right leg as a result of this I have problems standing for any period of time.”

6. In support of his claim various medical reports are contained within the bundle. These include medical notes, an assessment made by Dr Shoote, on 21 September 2018, who is a consultant at Ipswich Hospital as part of a Frailty Assessment Base Shared Care Plan. Within the report there is reference to an MRI scan which revealed “mild narrowing of spinal canal at L4/5”. There is also an assessment from the same day by Ms Smith-Creasy, a physiotherapist which suggested that he use a stick indoors and outdoors. There is a copy letter from the claimant's GP, Dr Le Roux, dated 28 August 2018 in which there is reference to a “long history of chronic low back pain”. There is also a patient summary from Ravenswood Medical Practice dated 22 January 2020 which referred to a prescription for co-dydramol to treat “low back pain”.

7. Within his statement the claimant also refers to asthma, a serious cardiac condition, type 2 diabetes and hypertension. He refers to a blue badge being issued approximately 16 years ago to attach to his car. He also describes how he cannot do any kind of twisting, has poor balance, has difficulty in lifting an inability to walk without severe discomfort and also that he receives a Personal Independence Payment and War Pension, which he has received for approximately 15 years.
8. The respondent does not accept that the claimant is a person with a physical disability. In giving evidence today the claimant was extensively cross-examined. Among the various and several areas of cross examination it was apparent that the respondent did not accept that spinal stenosis had been diagnosed as it was not specifically referred to within the medical reports, or at least any condition or finding was given that medical definition.
9. However I accept the submission made by Ms Ludwig that the general description of a narrowing of the spinal canal amounts to spinal stenosis, but in view of a number of matters that emerged while the claimant gave evidence perhaps the precise use of those words, whether correctly or incorrectly, although important, is not determinative of the issues which I have to decide.
10. The respondent also disputes the extent of the impairment. Apparently there is witness evidence, which was not relied upon but referred to, that the claimant was observed not using a stick when walking and it was suggested that he had exaggerated the extent of his impairment.
11. The respondent submits that little weight should be placed on the medical reports, such as they are, as they are quite old and in all the circumstances not particularly helpful. Ms Ludwig submitted that there were funding issues for the claimant and that up-to-date GP notes had been provided and that the evidence given by the claimant was entirely consistent with the reports and should be relied upon.
12. Reliance was also placed by the respondent on a medical report prepared by Dr Alex Smallwood, the Medical Director of the respondent. Ms Ludwig submitted that this evidence should be excluded as Dr Smallwood had never met the claimant nor had he physically examined him nor had he set out his expertise that he has in reaching his opinion that the claimant is not a disabled person. She added that he was not independent, had an interest in the outcome and that the report is fundamentally flawed and should be disregarded.
13. I heard submissions from Mr Barr that the report should be included in the evidence. I accept that submission but indicated that not having heard evidence from Dr Smallwood and bearing in mind that he had not been cross-examined, gave no indication of his expertise I would place limited weight on the document.

14. The respondent submitted that by looking at his old CV and photographs that were accessed on social media that he was attempting to mislead by having given the appearance of not having any disability. I reject that submission. It is not unusual for a person with a disability to seek to be treated as a person without a disability. The claimant gave perfectly reasonable explanations as to why photographs of him did not show him holding a walking stick and why he has described himself as he did in his CV. There was a further submission that he appeared to be self-diagnosing in that it was he, rather than his medical advisers, who referred to spinal stenosis. As detailed above, I accept the submission of Ms Ludwig that the dictionary definition is in similar terms to the manner of description in the medical reports.
15. In giving evidence today the claimant identified the various medical reports but more importantly confirmed that he had requested a printout of his patient summary which is exhibited at pages 56-58 of the bundle of documents and shows a printout from 22 January 2020.
16. I place considerable weight on this printout and note the following. Type 2 diabetes was first diagnosed in July 2002 and that over the years the diabetes, which is in common knowledge generally a progressive condition, was treated by an increasing number of drugs. An insulin substitute was prescribed on 20 August 2019. The claimant gave evidence, which I accept that his diabetes was becoming increasingly difficult to control and the assessment undertaken by the Department of Work And Pensions, which took place in December 2020 acknowledged the fact that he had had diabetic neuropathy for some time in his feet which affected his ability to move around and at the assessment, consistent with his evidence of early usage, he had used a walking stick.
17. He also gave evidence, which I accept that the referral in August 2018, detailed above, was following a fall or falls in the home which gave rise to concern and the recommendation that he used a walking stick indoors and outdoors.

## **Conclusions**

18. The Tribunal has to look at each part of the definition contained within section 6 of the Act to determine whether a person is a disabled person.
19. I do find that the claimant has an impairment. Within the medical notes there is ample evidence of the history of chronic low back pain and spinal stenosis. The claimant's evidence is that he also has diabetic neuropathy in his feet, that he has a high stepping gait because of his diabetic neuropathy and that if he did not use a walking stick he is liable to fall over. His evidence is entirely consistent with the medical evidence and I find that he has given a truthful account of his medical condition.

20. I find that the impairment is a substantial one. I have considered the guidance attached to the Equality Act at paragraph B3. In his statement at paragraph 10 he refers to the deteriorating condition in that he has difficulty walking any great distance, is in constant pain and cannot walk at all without severe discomfort. The assessment for his Personal Independence Payment is entirely consistent with that evidence. I also bear in mind Schedule 1 Part 1 at paragraph 5 to the Act entitled "Effect of medical treatment" and that I have to consider that an impairment is to be treated as having a substantial adverse effect on the person's ability to carry out normal day-to-day activities if measures are being taken to treat or correct it but for that, it would be likely to have that effect.
21. I must also consider whether the impairment is one that is long-term, whether it has lasted over 12 months. I note the diagnosis was made in approximately 2016. The impact of diabetes on him is described above, has lasted for a considerable period of time and bearing in mind that the condition with which he has been diagnosed is progressive, he was prescribed various drugs as accorded in the patient summary and he was in receipt of an insulin substitute in August 2019. He was clearly a disabled person at the relevant time, November 2019.
22. I have again considered the guidance at D4 and subsequent to determine whether his ability to carry out normal day-to-day activities is affected. Ms Ludwig in her submissions, points to the claimant's evidence in relation to his inability to lift the weight of a vacuum cleaner that he has difficulty getting in and out of the bath due to the condition of his legs and getting out of bed. He gave evidence of difficulty in dressing himself and stated that he needed help to put on his socks and shoes and underwear.
23. I find that the claimant does meet all of the definition under section 6 of the Equality Act 2010 and at the relevant time in these proceedings was a disabled person.

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Employment Judge Cassel

Date: 10 March 2021

Sent to the parties on: 19 March 21

For the Tribunal Office