



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 G Smith

v

Respondent

Charles Wilson Engineers Ltd

Heard at: Watford (CVP)

On: 4 May 2021

Before: Employment Judge Alliott (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms Nicola Smyrl, Solicitor

JUDGMENT

1. The judgment of the Tribunal is that:

1.1 The claimant was disabled within the meaning of the Equality Act 2010 at all material times by reason of the following conditions:

Depression/anxiety
A prolapsed disc (L4/5)

REASONS

1. The claimant was employed by the respondent on 12 November 2018 as a generator service engineer. He was dismissed with effect on 13 March 2020, being paid one month pay in lieu of notice.

2. By a claim form presented on 12 June 2020 the claimant presented claims for unfair dismissal, failure to provide written reasons for dismissal, disability discrimination and arrears of pay. The claims for unfair dismissal and failure to provide written reasons for dismissal were not accepted by the Tribunal as the claimant does not have the necessary two years' qualifying employment.
3. Pursuant to an order of Employment Judge Loy, made on 27 October 2020, the claimant was required to provide details of what physical or mental impairment he relies upon, information concerning the alleged disabilities along with relevant documentation. The claimant has provided an impact statement dated 1 November 2020 and certain documentation. The claimant told me that he had requested his GP records on a number of occasions and has had considerable difficulty in obtaining them.
4. Pursuant to the directions of Employment Judge Loy the respondent notified the Tribunal on 24 November 2020 that it did not concede that the claimant was disabled within the meaning of the Equality Act 2010 and consequently this open preliminary hearing was ordered to be held.

The law

5. S.6 of the Equality Act 2010 defines disability as follows:
 - “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.”
 6. By reference to the guidance on the definition of disability (2011) the following have been taken into account:-
 - “A4 Whether a person is disabled for the purposes of the Act is generally determined by reference to the effect that an impairment has on that persons’ ability to carry out normal day to day activities.
 - A6 It may not always be possible, nor is it necessary, to categorise a condition as either a physical or 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.

Exclusions from the definition

A12 Certain conditions are not to be regarded as impairments for the purposes of the Act. These are:

- Addiction to, or dependency on, alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed);

Effects of treatment

B12 The Act provides that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect.”

7. Prolapsed disc

- 7.1 The claimant has given evidence that in 2003 he suffered a “slipped disc” – a prolapsed disc L4/L5. The short extract from the claimant’s GP notes refers to low back pain in 2003. A patient discharge letter dated 14 September 2018 refers to the claimant having chronic low back pain. I have a letter dated 13 January 2014 which refers to an MRI scan showing generalised degeneration changes and some disc bulging at L4/5. He had had a caudal epidural injection in 2013. The claimant was prescribed Meloxicam which is an anti-inflammatory for his back.
- 7.2 I find that in 2003 the claimant sustained a prolapse of his L4/5 disc. I find that the claimant was still suffering from that condition during the whole of his employment with the respondent. Consequently, I find that the physical impairment was long term.
- 7.3 The claimant told me of the effects that his slipped disc had on his day to day living. He had great trouble walking slowly and standing in a queue. He could not sit for long periods and lifting heavy items was problematic and he had to be cautious. When driving even moderate distances he found exiting the vehicle could only be accomplished after four or five minutes of therapeutic exercise. In my judgment those are normal day to day activities and I find that his slipped disc had a substantial adverse effect on his ability to undertake those normal day to day activities. Further I find that the adverse effect would have been greater but for the anti-inflammatory medication the claimant was taking. Consequently, I find that the claimant was disabled at all relevant times by reason of his prolapsed disc.

8. Depression/anxiety

- 8.1 It is quite clear to me that the claimant has had a long and often unhappy relationship with alcohol. The claimant says he was first admitted to a psychiatric hospital at the age of 18 in Edinburgh. The intention was to address his alcohol consumption.

- 8.2 The claimant's witness statement highlights various unfortunate incidents in the claimant's life including episodes of attempted suicide by firearm, self-harming with a scalpel and deliberate drug overdose.
- 8.3 As regards the claimant's more recent mental health, it is fair to say that the crises that the claimant has referred to in September 2018, March 2019 and January 2020 appear to have occurred in response to adverse life effects combined with abuse of alcohol. Obviously, addiction to alcohol is excluded as a disability. The claimant was keen to stress that his resort to alcohol was a form of self-medication prompted by his depression and, to a lesser extent, by his back pain. In addition, he has referred to addiction to codeine (an over-the-counter medicine) caused when he endeavoured to wean himself off tramadol (prescription drug) which he was taken for pain. I am not a medical man and discerning whether or not the alcohol abuse was a cause or an effect of the claimant's mental impairment is not within my competence.
- 8.4 I have a patient discharge letter dated 14 September 2018 from the emergency department of the Royal Berkshire Hospital. This reports the following:-

“Clinical information: 2/52 HX of not taking his regular meds for depression and chronic low pain.”

and

“He has a diagnosis of depression and prescribed Venlafaxine.”

- 8.5 Irrespective of the claimant's alcohol abuse, I find that the claimant had a diagnosis of depression prior to September 2018. Further I find that he was prescribed anti-depressants. Consequently I find that the claimant had the mental impairment of depression and that this was longstanding, ie had lasted more than 12 months.
9. The claimant told me of the effects of his depression/anxiety. These he described as avoidance, procrastination, low self-worth, a cycle of not feeling worthwhile and a tendency to use alcohol as a mood changer. He told me that the effects of these feelings were that he wouldn't go out, that he would avoid seeing people and that he wouldn't open emails/answer text messages. I find that the overall effect of his depression had a debilitating and adverse effect on his ability to undertake normal day to day activities and that this could be, on occasions, substantial. Further, given that the claimant was taking anti-depressant medication, that in the absence of that medication the effect of his depression would be more severe.
10. Consequently I find that the claimant was at all material times a disabled person within the meaning of the Equality Act 2010 by reason of depression/anxiety.

Employment Judge Alliott

Date:21/05/2021

Sent to the parties on: ..02/06/2021.

.....THY.....
For the Tribunal Office