

3. The Claimant then applied for an adjournment on 6 August 2019 on the basis that he was not available, without giving any reason other than to refer back to his dates to avoid. On 29 October 2019 Employment Judge Wright responded explaining he would need to evidence his unavailability, referring him to the Presidential Guidance on requesting a postponement and requesting a response in 7 days. The Respondent then objected to the request. All the Claimant did in response was to refer back to the original dates to avoid. Still no explanation for the unavailability was provided. The Respondent continued to object. The Claimant wrote further on 13 November 2019 saying prior to his email of 6 August 2019 a Clerk had told him the Tribunal would change the date. He still gave no reason for his unavailability.
4. The postponement request was refused by myself on 14 November 2019 as the Claimant had not said why he was unavailable. The decision was relayed by the Tribunal Clerk to the Claimant by phone. Still the Claimant did not offer a reason why he was unable to attend.
5. I reconsidered the matter at the outset when the Claimant did not attend. For the reasons above I decided to hear the matter in the Claimant's absence. I also note that there is no entitlement to have a hearing listed at the parties' convenience, even where parties have provided dates to avoid. I noted that in the Claimant's original dates provided there are long periods when he said he was unavailable which does raise the question as to what the reason is for the unavailability as routine commitments are not normally a reason for a postponement. The reason needs to be something more significant preventing attendance. The Respondent was not aware of any such reason.
6. The Respondent sought dismissal of the whole claim due to the Claimant's failure to attend under rule 47 Employment Tribunals Rules of Procedure but I considered this would be an excessive response in the circumstances. The Claimant had originally provided dates to avoid (albeit for the final hearing) which he had intended to mean that he was unavailable throughout November. He has made numerous applications for a postponement. He has been under the erroneous assumption that he is entitled to have a postponement because he had provided those dates to avoid. It would be going too far to dismiss the case completely. I considered the appropriate response was to hear the case in his absence.

Issue of disability

7. The preliminary hearing was listed to consider whether or not the Claimant was disabled at the relevant time. The alleged disability relied on is stress and anxiety (not the Claimant's hernia).
8. The Claimant has provided a schedule of allegations dating from May 2017. He was dismissed on 29 June 2018. He mentions one further allegation in July 2018. The relevant period at its longest is therefore May 2017-July 2018 (as set out in the Respondent's skeleton).
9. The definition of disability is in section 6 Equality Act 2010:
“(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".
10. Substantial is defined as more than minor or trivial. Long-term means it has lasted or is likely to last for at least 12 months. The burden of establishing that he meets the statutory test is on the Claimant.
 11. The Respondent provided a skeleton argument. There was a bundle of documents including the Claimant's disability impact statement dated 31 May 2019 (pp27-28), Occupational Health reports dated 20 February 2018 (pp33-36) and 23 April 2018 (pp 50-54), GP letters dated 5 June 2018 (p63) 14 May 2019 (p98), sick note for 28 June 2018 p 65, anxiety and depression questionnaire dated 2 July 2019 (p99-100).
 12. In his claim form the Claimant says the stress and anxiety started "around January 2018" however in the first Occupational Health report dated 20 February 2018 about the Claimant's hernia it states that he has no other relevant past medical history and that the Equality Act is unlikely to apply. Stress and anxiety is not mentioned.
 13. Stress and anxiety is mentioned in the OH report dated 23 April 2018. It states: "He does indeed report that he has experienced stress with the perception of the meeting being a disciplinary matter from his perspective... [He] in my opinion is experiencing reactive stress and anxiety due to perceived adverse circumstances in relation to his work....Although the stress appears to be related to his perceived adverse work circumstances and should resolve once these circumstances have also resolved." No further review was recommended. Although there is mention of the Claimant being covered by the Equality Act this is in respect of his hernia. The reference to the meeting is likely to be a reference to the meeting or meetings referenced in the letter dated 26 March 2018 (p41). The only sick certificate in respect of stress was dated 28 June 2018 backdated to cover 17 May 2018- 15 June 2018 and was not based on a contemporaneous examination. The Respondent says this was produced to address the Claimant's absence without authorisation.
 14. The Claimant has also produced the letter from his GP dated 14 May 2019 which appears therefore to have been prepared with this hearing in mind. It says that the Claimant had approached the GP for confirmation he had been seen at the surgery for work related stress. It says:

"[The Claimant] was seen on the 22/5/18 when he felt ready to return to work... On the 28/6/18 [the Claimant] attended surgery to report a dispute with his employer regarding his absence from work and that he had not returned to work because of a dispute regarding work related stress". The letter explains what the Claimant told the GP about the Occupational Health assessment on 23 April 2018. He requested and was provided a sick note for 17/5/18-15/6/18. It says a further medical certificate was issued for stress at work on 4/7/18 again backdated to cover the period 17/6/18-21/7/18. In my view it is notable, given that it is prepared with this hearing in mind, that it does not provide the GP's own assessment of ongoing and/or longterm stress and anxiety.
 15. The Claimant has provided a short impact statement about the effects of stress and anxiety on his life. There are no dates and it reads as a description of the

Claimant's current experience at the time of writing the report (signed 31 May 2019). It does not cover the relevant period. This is despite the Claimant having the Respondent's skeleton argument (a previous version) since 30 July 2019 and the fact that some guidance was given about the definition of disability and sources of information in the preliminary hearing dated 2 April 2019 and subsequent Case Management Order.

16. I agree that insufficient evidence has been provided by the Claimant to show that he meets the statutory test. At the time he had not had stress and anxiety for 12 months on his own case and there is no evidence provided that at that time he was likely to have it for 12 months or more.
17. Outstanding matters shall be addressed in a separate Case Management Order.

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Employment Judge Corrigan
Ashford
21 November 2019