



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Prince-Ward

Respondent: Boots Management Services Limited

Heard at: Nottingham **On:** Thursday 6 February 2020

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimant: Mr N Brockley of Counsel

Respondent: Ms M Clarke, Solicitor

JUDGMENT

The Employment Tribunal Judge gave judgment as follows: -

The Claimant did suffer from a disability at the relevant time in accordance with section 6 Equality Act 2010.

REASONS

Background to this hearing

1. At a closed telephone Preliminary Hearing for case management conducted by my colleague Employment Judge Blackwell on 7 October 2019 the Judge ordered that this Preliminary Hearing should be conducted to determine an issue, namely whether Mrs Prince-Ward was disabled within the meaning of section 6 of the Equality Act 2010 (EQA).

2. The Employment Judge had ordered the Claimant to provide details of her medical records and an impact statement and the Respondents were to notify the Tribunal by 2 December 2019 whether they accepted that Mrs Prince-Ward was disabled within the meaning of the EQA.

3. By a letter of 2 December 2019, the Respondent's position was:

"It is unclear from the medical evidence provided by the Claimant whether each of the above conditions had been diagnosed (for example, medical reports in 2017 suggests the Claimant did not have trigeminal neuralgia as previously thought by other medical professionals) or whether the conditions asserted by the Claimant arose from/related to the same symptoms that she reported. It is also unclear whether the asserted

conditions have a long term and substantial adverse impact on the Claimant's day to day activities or why they have been grouped in the four groupings set out above."

4. As a result, the Respondent did not accept the Claimant's four asserted disabilities were disabilities at the material time.

5. After further correspondence it was clarified that the Respondent's disputes the Claimant's disability on the following basis: -

5.1 The medical evidence does not make clear that any of the conditions relied upon have been diagnosed.

5.2 The conditions relied upon arose from the symptoms that the Claimant reported;

5.3 The duration and effect of the (allegedly) disabling conditions upon which the Claimant relies and;

5.4 The (allegedly) disabling conditions are broken down into groups.

6. As Mr Brockley states in his submission I will have to have regard to section 6 of the Equality Act and schedule 1 and insofar as it may be relevant to the Guidance be taken into account in determining questions relating to the definition of disability 2011 ("the guidance").

The hearing today

7. I heard evidence from the Claimant and there was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

8. The Claimant's evidence consists of her disability impact statement at pages 225-231. I am satisfied that her statement is supported by the medical evidence comprising the GP patient record at pages 57 to 213 and the occupational health reports of various dates between 11 April 2016 and 14 December 2018, pages 214-224.

9. I am satisfied that the Claimant suffers from the following conditions: -

9.1 Benign paroxysmal positional vertigo, vestibular migraine, migraine with aura which she has suffered from since 2015.

This affects her morning activities such as getting out of bed, walking and getting dressed.

She also suffers from a sensitivity to light, sound and noise, smell, blurred vision, nausea, and weakness of her limbs.

On two occasions she has had to leave work early because of migraines and had to be taken home by a colleague. If her symptoms in respect of that are severe she needs assistance with basic chores including looking after her son.

She has been prescribed with Sumatriptan, Pizotifen and Betahistine Hydrochloride in respect of this condition.

9.2 Atypical facial pain, optical occipital neuralgia.

She was diagnosed with these conditions in 2017 and suffers severe pain to her face from time to time. It can affect her ability to focus and stay alert and causes general tiredness and fatigue and affects her sleep at night. It can also impact on her eating.

She has been prescribed Amitriptyline, Gabapentin, Pregabalin and Carbamazepine and wears a specialised teeth guard at night.

9.3 Reversal cervical lordosis, sternomastoid syndrome, cervicogenic headache.

This condition was diagnosed in July 2017 and comprises musculo-skeletal pain to the left side of neck, shoulder and arm. This affects her ability to undertake manual day to day activities because she is left handed. This affects her ability to write and typing and also undertaking chores.

She has received chiropractic and physiotherapist treatment including cervical manipulations and she takes over the counter medication for pain, heat therapy, acupuncture and uses meditational techniques to manage pain.

9.4 Anxiety.

She has suffered this condition since 2015 as evidenced from her medical report.

As a result of the conditions she has suffered indigestion, stomach inflammation and nausea. It also affects her concentration and she suffers from panic attacks, rapid heart palpitations, breathing difficulties and muscular weakness.

She has received treatment comprising Amitriptyline, Citalopram and Diazepam for these conditions and also has received counselling and practices mindfulness to cope with this.

Submissions

10. The Respondent's accept that the Claimant suffers from mental and physical impairments. They do not accept that the impairments have a long term substantial effect on her normal day to day activities.

11. Mr Brockley points out that there is no controverting evidence upon which the Respondent can rely to displace the Claimant's evidence that her ability to undertake normal day to day activities is affected. He says that although there have been difficulties over the diagnosis of the Claimant's conditions it is clear that these impairments do have a substantial long-term effect on her normal day to day activities.

The law

12. Section 6 EQA provides as follows: -

“(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.”

13. I have also referred myself to the guidance on matters to be taken into account in determining questions relating to the guidance issued by the Secretary of State under the Equality Act 2010.

14. Meaning of impairment is dealt with at A3 of the guidance which says: -

“The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness.”

15. As the guidance makes clear it is the effect that the impairment has on the person’s ability to carry out normal day to day activities which is determinative of whether the Claimant suffers from a disability in accordance within the meaning of the Act.

16. The meaning of substantial adverse effect is considered at paragraph B1 of the guidance. That says: -

“A substantial effect is one that is more than a minor or trivial effect.”

17. The meaning of long term effects is considered at C1 of the guidance. That points out:

“The act states that for the purpose of deciding whether a person is disabled a long-term effect of an impairment is one: -

- Which has lasted at least 12 months or;
- Where the total period for which it lasts from the time of the first onset it likely to be at least 12 months;
- Which is likely to last for the rest of the life of the person affected.”

18. It says that the act does not define what is to be regarded as normal day to day activity. It is not possible to provide an exhaustive list of day to day activities although guidance on the matter is given.

My conclusions

19. I am satisfied that the Claimant does suffer from the four impairments that she has described above and that each of these impairments have a long term substantial effect on her ability to undertake normal day to day activities again as described above.

20. I note that the Respondent's do not dispute that the Claimant suffers from these impairments. They could hardly do so bearing in mind the contents of the occupational health reports which I have referred to above.

21. In the most recent occupational health report from Christine Bridget at pages 222 to 224 the adviser confirmed that the Claimant had existing health issues causing her pain in her face, neck and shoulders and that she was also suffering from stress. The report refers to the treatment that she is receiving including physiotherapy.

22. Whilst the adviser confirmed the Claimant was fit to work she specifically dealt with the issue of stress saying that:

“The health-related symptoms of stress tend to develop over a period of time and they can be physical or psychological in nature and include palpitations, high blood pressure, gastric symptoms, headaches, migraines, depression, anxiety and worrying about things, over analysis of situations, inability to focus, lack of concentration and lack of confidence.”

23. I have no doubt therefore that having heard from Mrs Prince-Ward that she does suffer from mental and physical impairments which do have a substantial and long term adverse effect on her ability to undertake normal day to day activities.

Employment Judge Hutchinson

Date 2 March 2020

JUDGMENT SENT TO THE PARTIES ON

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