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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E Nii Larbi

**Respondents:** (1) Thurrock Council  
(2) Lisa Preston

**Heard at:** East London Hearing Centre

**On:** Thursday 20 February 2020

**Before:** Regional Employment Judge Taylor

## Representation

**Claimant:** In person  
**Respondent:** Mr S Cheves, of Counsel

## JUDGMENT ON A PRELIMINARY HEARING

The Judgment of the Tribunal is that the claimant was not a disabled person as defined in section 6 and Schedule 1 **Equality Act 2010** at the relevant times.

## REASONS

1. The claimant is employed by Thurrock Council which is a Unitary Local Authority. He has worked as a Civil Enforcement Officer since his employment started on 24 May 2016. He presented a claim on 29 June 2019. In that claim he said the respondent had discriminated against him on the grounds of race, sex and disability.

2. This is a preliminary hearing to decide whether the claimant is a disabled person within the meaning of the Equality Act 2010. (The 'disability question'.)

### The background

3. In his claim form the claimant explained the background to his claim. It begins with an assault on him that occurred on 12 September 2018, while the claimant was carrying out his work duties. The claimant reported the incident to the police and wrote an incident report which he gave to his employer. The claimant states that following the assault he was unable to work 'due to the nature of the assault'.

4. He visited the minor injuries unit and his GP and from that date he was absent

from work on sick leave until he returned to work on the 30 October 2018. On his return to work he was in pain and taking pain killers. He was weak, drowsy and experiencing sharp pains. He felt unsafe walking or driving in the carrying out of his duties and asked to work in an office instead.

5. The claimant was told that no suitable office work was available. He was required, after a short time, to return to his usual patrolling duties.

6. Although the claimant claims he was discriminated against because of his disability he had not expressly identified what that disability was. The claimant was required to do so for the purpose of these proceedings. Eventually, after two preliminary hearings (1 November 2019 and 13 January 2020), the claimant described his impairment as:

*'a post-trauma physical impairment. His case is that the impairment causes pain when walking (from his foot and knee) and chest pain and from time to time when leaning over. The pain causes the claimant's stress and leads to his body becoming itchy causing the claimant discomfort.'*

7. The actual trauma being the assault on him by a member of the public on 12 September 2018.

8. The respondent disputes that the claimant is disabled. It also denies that it has discriminated against the claimant in any way. The respondent had not seen any medical evidence or other evidence supporting the claimant's claim to be a person who is disabled.

9. By the date of the preliminary hearing held on 13 January 2020, the claimant had presented a second claim form to the Tribunal on 25 December 2019. That claim was given the case number 3203127/19. At this hearing the claimant explained that the claims and allegations made in the second case concern allegations of a continuation of the respondent's alleged discriminatory treatment, but arise out of same facts and issues raised in the first claim. Therefore, the Tribunal ordered that the two cases should be joined together and the final hearing of the claims will be heard together.

10. For the claimant's claim of disability discrimination to be permitted to proceed to a final hearing, the Tribunal must decide the preliminary matter of whether he has or had a disability and, if he did, whether the claimant had a disability at all of the relevant times.

### **The issues**

11. The question for the Tribunal to decide at this preliminary hearing is:

Was the claimant a disabled person as defined in section 6 and Schedule 1 Equality Act 2010 at all of the relevant times?

### **The relevant time**

12. Whether there is an impairment which has a substantial adverse effect on normal day-to-day activities must be assessed at the date of the alleged discriminatory act. The same period is to be used when assessing whether the impairment has a long term effect.

13. The claimant claims that the discriminatory act began on 30 October 2018 when he informed the respondent that he was not able to carry out his work duties on foot or by vehicle, because of the 'post-trauma pain' and also drowsiness he experienced due to the strong prescribed medication he was taking for the pain caused by the injury. The claimant first informed the respondent that his skin was itchy on 24 October 2019, which was well after the assault in September 2018 he relies on as being the act that caused him to experience trauma. The claimant claims there was a continuing act of disability discrimination from that date because the respondent has never made reasonable adjustments for him on his return to work on 30 October 2018. The claimant also relies on the same assault giving rise to the post-trauma physical impairment in support of his second claim, case number 3203127/19.

14. Based on the claimant's allegations and for the purpose of this preliminary hearing the relevant time is assessed from 30 October 2019 to 29 June 2019 in respect of the first claim and May 2019 (the date of second assault) to December 2019 (when the claim from was presented) for the purposes of the second claim. It follows that the decision on the disability question applies to both claims.

### **The Hearing**

15. The claimant attended the preliminary hearing in person and represented himself. The respondent was represented by Mr Cheves, of Counsel.

16. The claimant confirmed that he relies on 'a post-trauma physical impairment' as being a disability as defined by the Act. His case is that the impairment causes pain when walking (from his foot and knee) and chest pain and from time to time when leaning over. The pain causes the claimant stress and leads to his body becoming itchy causing the claimant discomfort.

17. The claimant had prepared a witness statement on the question of disability, addressing what he relied on as his impairments (A155-159). When asked the claimant said that he had not read his witness statement recently. To refresh his memory the claimant read his statement before being cross-examined by Mr Cheves.

18. Mr Phil Carver, Strategic Lead Environmental Enforcement Community Protection, attended the hearing to give evidence on behalf of the respondent. Mr Carver produced a witness statement comprising of six pages (which was not included in the bundle). He had line managed the claimant as an interim measure during the period January to July 2018 and after that he continued to manage the claimant (and his peers), mainly in relation to sick leave and other matters. Mr Carver was cross-examined by the claimant.

19. The respondent had prepared a file of documents comprising of 182 pages. Reference is made to these documents in the reasons set out below. The claimant separately wrote down for the Tribunal the numbers of all the documents in the file he considered were relevant to the disability question. These documents were taken into consideration when arriving at this decision.

### **The applicable law**

20. The definition of disability has a number of different elements for a Tribunal to consider when arriving at its decision on whether a person has a disability.

21. The starting point is Section 6 of the **Equality Act 2010**, which says that a person has a disability if:

*(a) he has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.*

*The meaning of 'substantial'*

22. There is a general interpretation section in the **Equality Act** and at section 212(1) it says that 'substantial' means 'more than minor or trivial'.

*The meaning of 'long-term'*

23. Long-term impairment also has a particular meaning. A long-term impairment is one that has lasted 12 months or is likely to last 12 months or is likely to recur.

24. Whether an impairment is long-term must be considered as at the date of the alleged discrimination. (Long-term impairment is not to be considered as at the date of the Tribunal hearing (**McDougall v Richmond Adult Community College** [2008] ICR 431 CA).

*Guidance on matters to be taken into account in determining questions relating to disability*

25. Guidance has been issued by the government under section 6(5) of the **Equality Act** concerning the definition of disability in the Act. Any tribunal which is determining for any purpose of the **Equality Act** whether a person is a disabled person has to take into account any aspect of this Guidance which appears to it to be relevant.

*The meaning of substantial adverse effect*

26. In deciding whether a claimant is disabled within the meaning of the Act, it is necessary to consider what 'substantial adverse effect' means.

27. This is considered in Part B of the Guidance. Paragraph B2 says that the time taken by a person with an impairment to carry out normal day-to-day activity should be considered when assessing whether the effect of the impairment is substantial, it should be compared with the time it might take a person who did not have the impairment to complete the activity.

28. Paragraph B3 states that another factor to be considered when assessing whether the fact of an impairment is substantial is the way in which the person with that impairment carries out normal day-to-day activities.

29. Paragraph B4 gives guidance that an impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

30. Paragraph B6 says that a person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken

of whether the impairments taken together have a substantial effect overall on the person's ability to carry out normal day-to-day activities.

31. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long-term.

32. Paragraph B7 says that account should be taken of how far a person can reasonably be expected to modify his behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities.

33. The Tribunal must consider the question of impairment as if the person is not taking medication or in the absence of measures controlling it.

#### *The meaning of normal day-to-day activities*

34. Paragraph D2 reminds us that the Equality Act does not define what is to be regarded as 'normal day-to-day activity'. Paragraph D3 says that in general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or shift pattern.

#### **Findings of fact**

35. After hearing the claimant's evidence, the evidence from Mr Carver, and having read the documents referred to the Tribunal in the evidence, the Tribunal makes the following findings of fact on the issue of whether the claimant is a person with a disability.

#### **Chest pain post trauma**

36. The claimant is employed by Thurrock Council as a Civil Enforcement Officer. His employment started on 24 May 2016. The claimant's duties include day-to-day patrolling and engaging with members of the public dealing with parking contraventions. He carried equipment such as hand-held terminals, body cams and radio. He walked a significant distance per day and also stood for long periods. He drove a vehicle occasionally to carry out his duties (A40).

37. The claimant was carrying out his duties on the 12 September 2018 when he was attacked by an unknown member of the public. The attacker gave the claimant a single blow to the right side of his chest with a solid object, a hand held cordless screwdriver. (A11).

38. The incident on 12 September 2018 happened at about 10:30am. The claimant was examined at the local minor injuries unit that afternoon at about 1.25pm. On examination at the site of the injury it is recorded that the assault left nil bruising, nil inflammation, nil deformity and nil tenderness and as having full sensation. (A11).

39. The claimant was advised to visit his GP if he had any concerns later on (A1l). The claimant's medical records show that he telephoned his GP's surgery later that same evening at 19.13 to report he felt a sharp chest pain when breathing in. He was booked for an appointment at the GP surgery and was seen and examined there the following day.

40. On examination on 13 September 2018 at the surgery the claimant was found to have tenderness over the 5<sup>th</sup> to 7<sup>th</sup> rib over the right side of his chest and the front of his chest. He was advised to take paracetamol or other pain killers if needed (A1l). He was not prescribed any pain killers.

41. The claimant contacted his GP surgery over the next few days by telephone and in person, reporting on-going chest pain when breathing in. It is recorded that an electrocardiogram (ECG) medical test (for heart) was carried out on 15 September, the results of which were normal (A1m).

42. The claimant was examined again on 19 September 2018 with the claimant reporting that he was still in pain and not responding to his own pain killers. The claimant was worried that he might have a fracture. A chest x-ray was recommended and the claimant was told to continue taking his own pain killers (A1m).

43. It was the claimant who said he could not work and who requested a 'sick note' (Statement of Fitness for Work) at the examination on 19 September 2018. He was provided with a form MED 3 (sick certificate) by his GP indicating he was not fit for work with a diagnosis of 'chest pain post-trauma' (A21) and not fit to work from 12 to 26 September 2018. Considering the certificate and the corresponding medical records there is no record of any physical symptoms that the claimant said he had being verified by the GP's own assessment (A1m). A x-ray was booked.

44. On 25 September 2018 the claimant telephoned the surgery to request an extension to his Fitness for Work certificate, giving as his reason that he was still experiencing chest pain. The Statement of Fitness for Work certificate was issued until 10 October 2018 without a further physical examination of the claimant by his GP (A1m).

45. The claimant repeated his request for an extension of the certificate on 10 October and it was extended to 16 October 2018, again without further physical examination (A1m).

46. The claimant was examined on 16 October and some tenderness over the chest wall was recorded. His Fitness for Work certificate was extended to 29 October, with the diagnosis 'chest pain post trauma' (A1m). (It was noted that he had knee sprain although there was no swelling.)

47. The respondent arranged for the claimant to be examined by an Occupational Health practitioner for the purpose of providing an Occupational Health report on his return to work. The claimant was examined on 19 October 2018 (A 31-36). On that occasion the claimant recorded improvement to his chest pain but complained that he now had knee pain. He said his physical symptoms were improving although on this occasion he expressed concerns about his psychological health. The Occupational Health practitioner recommended a phased return to work, avoiding prolonged walking during the first week, with a return to full duties at the start of the second week. The Occupational Health

practitioner concluded it was not likely that claimant's condition would be covered by the Equality Act and concluded that he was not a suitable candidate for redeployment on medical grounds.

48. The claimant returned to his usual duties on 30 October 2018, although he was allocated to office work for 2 days, which he carried out. The claimant would have liked office based work for longer but he was informed that none was available.

49. The claimant did not return to his GP concerning chest pain and did not attend any physiotherapy.

50. Unfortunately, the claimant was assaulted for a second time on 8 May 2019. The assault took place while he was carrying out his employment duties. The next medical record of chest pain concerns that second incident, about seven months after the first. In a telephone call to his GP the claimant reports chest pain. He was examined on the same day. The entry records that on examination no chest wall tenderness was found and his chest was clear, suggesting no evidence of breathing difficulties and there had been no recent injury or trauma to the chest. The claimant complained to his GP of ongoing pain for the next few days, that period ending with Fitness to work certificate being provided stating that he was not fit for work for the period 22 May to 28 May 2019 (A1p).

51. It is not until 7 November 2019 that the claimant complains of chest pain again (A1q). There is no record of the claimant reporting that the pain had been continuous for over a year at this appointment. No new assault had occurred and it is not clear what the source of this sudden onset of chest pain was. The Tribunal notes that his GP offered no treatment to him for it.

52. The claimant gave evidence that there is a history to his chest pain and that first experienced chest pain after a car accident in 2015. He still suffers pain from the 2018 injury and difficulty breathing at the same time that the pain starts. He experiences a sharp pain when leaning forward, a tightness in his chest, back pain and a problem with walking. He says the pain is intermittent but has continued since the date of the injury on 12 September 2018.

53. The claimant's evidence of continuous chest pain is not supported by any of the medical evidence presented by him.

### **Body Itching**

54. The claimant gave evidence that he also suffered body itching which happens to him when he is depressed, stressed or in pain. He explained that he sometimes finds the condition unbearable. Asked when this first occurred the claimant gave evidence that he was depressed following a tragic family death that occurred in 2011 and he has had body itching intermittently since that time. He received counselling and has seen his GP but has had no diagnosis from a medical practitioner about what the reason or cause of this body itching condition is.

55. The claimant gave evidence that although the itching did not begin with the assault on September 2018, the trauma triggered the condition.

56. The claimant's evidence on this matter was not accepted by the Tribunal. There is

no evidence at all of the itching returning and affecting him when he was assaulted in September 2018 or later as a consequence of the assault.

### **Knee pain and foot pain**

57. The claimant gave evidence that he developed difficulty in walking in early November 2018 and about right knee sprain or strain that occurred in February 2019. He also reported that it was not able to drive due to ongoing issues relating to his leg in February 2019.

58. The onset of knee pain began one month after the chest trauma. It is not apparent from the claimant's MED 3 certificates or his medical notes that knee or leg pain had any causal link to the assault affecting his chest. They all record that the claimant had chest pain post trauma.

### **Depression**

59. The claimant gave evidence that he has depression. However, this was not the impairment he relied on in this case and is not a relevant consideration at this hearing.

### **Day-to-day activities**

60. The claimant returned to work on 30 October 2018 approximately six weeks after the assault that occurred on 12 September 2018. His normal duties included day-to-day patrolling and engaging with members of the public dealing with parking contraventions. He carried equipment such as hand-held terminals, body cams and radio. He walked a significant distance each day, about 10 kilometres and also stood for long periods. He drove a vehicle occasionally to carry out his duties.

61. When the claimant returned to work on 30 October 2018 and also did a variety of office-based duties for a few days. Mr Carver also gave evidence, which the Tribunal accepted that the claimant's ability to discharge his duties as a Civil Enforcement Officer was unaffected by the injury sustained in the assault. Mr Carver recalled that the claimant had some difficulty when walking for too long but generally he had no difficulty completing the physical aspects of the job. The claimant was advised by Mr Carver that if he could not do the work, then he should take sick leave. The claimant did not need to take time off on sick leave at that time and continued working, fulfilling all of his duties, right up until November 2019.

62. The claimant did not disagree that he could carry out all of his normal duties when he returned to work. However, he requested office duties because he was struggling to walk and would sometimes limp. He linked this to the chest injury post-trauma, but there is nothing to support his claim that his leg and knee pain had anything to do with the chest pain post trauma. He was diagnosed with a knee sprain. The claimant claimed that because of the itching he cannot cook or prepare or eat hot meals or take a warm bath. He gave evidence that the pain in his knees, chest and heel are intermittent but sometimes prevent him from socialising. This account of the effect of his post-trauma impairment having an effect on his ability to carry out day-to-day activities was not supported by any of the contemporaneous medical or other records provided by the claimant and was not accepted by the Tribunal.



## The submissions

63. **The respondent submitted** that the claimant put his disability as being *post trauma*. With regard to the chest pain there was an altercation between him and a member of the public in September 2018. The medical records show that immediately after the altercation he was seen, but there was no more reference to the chest pain between 19 October and 8 May 2019 when unfortunately, he was involved in a second altercation and there was a further assault. The claimant was referred to Occupational Health about analgesia and strain to his groin. By the time the claimant was seen by Occupational Health he had recovered from this. 16 May was a second occasion when he reported chest pain. Between 16 May and 7 December 2018 there were no further references to problems with his chest. The claimant had by this time returned back to work on full duties. These two periods of chest pain, were self-limiting in nature. If the claimant has chest problems these were not part of his claim for post trauma disability.

64. The knee problem began a month after the assault, in November 2018 and there is no further reference to this until February 2019. However, the claimant was signed as fit to return to work in October 2018. The claimant was continuously at work until May 2019 when he had a short period of absence following the second assault. In February 2019 the claimant alleges that he cannot drive and is struggling to walk and is referred to the Occupational Health physician. The claimant declined to attend or progress the Occupational Health referral and it therefore did not proceed. He was absent from work following the May 2019 incident but had returned by 26 June 2019, when he attended a back to work meeting. There is a hiatus in his medical records then. In November 2019 an x-ray shows his knee to be normal. The claimant says the knee pain occurred from time to time. The trauma occurred in September 2018 and there were no further problems with his knee until the end of 2019. These complaints only arise when the claim to the employment tribunal is made.

65. As for the foot pain, this was first raised in 23 October 2019 over a year after the assault in September 2018, and five months after the second incident. There is nothing to suggest that the foot pain is as a result of the trauma. It is unclear what the extent of the problem is but during 2018 and 2019 the claimant was undertaking full duties of a Civil Enforcement Officer which involved walking up to 10 to 15 miles a day.

66. The first reference to the claimant suffering itching is in October 2019 over a year after the September 2018 incident. He was able to perform his duties before and after the incident, undertaking his normal tasks. There is no evidence of traumatic physical impairment being linked to the itchiness.

67. None of the four physical elements are of sufficient severity or longevity to fall within the definition of disability.

68. When considering the question of disability the Tribunal must decide whether the claimant has a disability at the relevant time for the first claim these are 21 November 2018 onwards, January 2019 and 15 February 2019. For the second claim, doing the best the respondent can, the alleged acts of discrimination are said to have taken place in May, August, October, and November 2019.

69. **The claimant submitted** that he has chest pain which first started in 2015 when he had a car accident. The chest pain was ongoing. It comes and it goes. The claimant

had chest pain after the assault incident and the severity reduced up to December 2018. The issue reappeared in January 2019 and he took pain relief. It occurred again in May 2019 after the second assault. Therefore, there are no medical records because he took painkillers when he needed them. He continues to have chest pain up to the present day.

70. Knee pain began with a motor accident that occurred in 2015. He had knee pain in September 2018 which is ongoing. He had an x-ray which showed that his knee had normal wear and tear. The knee pain is continuing. The second assault did not have an effect on this.

71. The foot pain started shortly after the knee pain in 2015. It can be serious enough for him to begin limping.

72. The itching is a pre-existing condition. His body reacts when he is under stress and the trauma of the incident made it worse. The itching has been at the medical records from 2017 has been related to stress. There is also an entry for depression in 2017.

73. It is right to say that he did not co-operate with Occupational Health in 2019, but this was because his manager did not follow the correct process.

### **The Tribunal's Conclusions**

74. The Tribunal considered whether the claimant had, as described by him, 'a post-trauma physical impairment at the date of the alleged discrimination on his return to work in October 2018. His case is that the impairment causes pain when walking (from his foot and knee) and chest pain and from time to time when leaning over. The pain causes the claimant's stress and leads to his body becoming itchy causing the claimant discomfort.'

75. The claimant was assaulted by a blow to his chest on 18 September 2018. The Tribunal accepted that the medical evidence supports the claimant's contention that after the assault in September 2018 he experienced tenderness over the 5<sup>th</sup> to 7<sup>th</sup> rib, tenderness over his sternum and that the chest pain he experienced at that time was as a direct consequence of the assault. The Tribunal therefore finds that the claimant had chest pain post-trauma in September 2018. He was assaulted for a second time in May 2019 and experienced chest pain occurred as a result of that incident as well. The claimant had time off from work, certified by his GP for several weeks after each episode. The Tribunal accepts that given he was assessed as requiring time off of work to recover that the 'chest pain post trauma' was on each occasion substantial, that is 'more than minor or trivial'.

76. The claimant also relies on the pain in his foot and knee and his body becoming itchy causing him discomfort as being related to the chest injuries and therefore being 'post trauma'. There was no evidence to support his contention that this additional collection of conditions was in any way related to the assaults on his chest. They were not reported to the minor injuries unit when he attended in September and there was no evidence to support his contention that they were in any way related to the assault. The knee pain is recorded as having begun a month after the first assault, in November 2018 and there is no further reference to knee pain until February 2019. The knee and foot pain are recorded in November 2019 as a likely consequence of the substantial amount of walking the claimant does as part of his duties. The claimant walked about 10 kilometres a day when at work and it is unsurprising if he occasionally has a strain or a sprain as recorded in his medical notes. The claimant provided no convincing evidence that the

effect of the assault to his chest either in September 2018 or in May 2019 were in any way physically related to his knee and foot pain.

77. It also recorded that when under strain the claimant reports his body became itchy, causing him discomfort. However, there is no medical evidence that the itching was caused or brought on by the assault on him in September 2018. It was not reported contemporaneously. There is nothing that might support the claimant's contention.

78. By failing to show that the knee or foot pain and itching are related to the trauma following the assault, the Tribunal finds that the claimant has failed to establish that he has the post-trauma physical impairment as he contends he has for the purpose of these proceedings.

79. The Tribunal then focused on whether even disregarding the other impairments he contended the 'chest pain post trauma' physical impairment itself satisfied the definition of disability. The burden of proof is on the claimant to show that he satisfies this definition. A person has a disability if he has 'a physical or mental impairment' which has a 'substantial and long-term adverse effect on his ability to carry out normal day-to-day activities'.

80. The Tribunal then considered whether the chest pain was a long-term impairment, that is one that has lasted 12 months or is likely to last 12 months or is likely to recur.

81. The contemporaneous medical reports shown to the Tribunal provided evidence that the trauma following these assaults lasted a number of weeks before being resolved and were short-term. On examination on 12 September 2018 at the minor injuries unit the claimant was found to have muscular pain and was told to take over-the-counter pain killers, Ibuprofen or Nurofen, for any physical symptoms. Although he reported continuing chest pain, there was no medical evidence of ongoing chest pain, following the assault in September 2018, after 10 October 2018. This is consistent with the medical examination recorded on 12 September 2018. The claimant gave evidence that the second episode of chest pain in May 2019 was related to the September incident, but that suggestion was not supported by the contemporaneous medical evidence or other evidence either. There is no record of chest pain after 20 May 2019. The Tribunal finds no evidence that a single blow to his chest that took place in May 2019 was in any way related to a single blow that happened in September 2019. The Tribunal finds therefore that the claimant recovered from the physical effects of the assaults a few weeks after each occasion. The pain having been resolved without further medical care required or needed within weeks the Tribunal finds that the 'chest pain post trauma' was not long term.

82. The Tribunal therefore finds that the chest pain post-trauma that occurred in September 2018 and May 2019 was not long-term and the impairment did not satisfy the statutory definition of a disability.

83. Having arrived at that conclusion, and although not strictly necessary to do so, the Tribunal considered the effect of the 'chest pain post trauma' on the claimant's ability to carry out normal day-to-day activities. It is permissible to consider what a claimant did at work in assessing this.

84. The undisputed evidence before the Tribunal was that the claimant continued to fulfil his duties from October 2018 until his absent on sick leave from November 2019, with

only limited periods of sick absence following the assaults. Many of the duties undertaken by the claimant during the course of his work are normal day to day activities, such as walking, driving, reading, writing, carrying items. The claimant carried out these activities fully, and has not satisfied the Tribunal that his ability to do so was substantially adversely affected once he returned to work after the chest pain post trauma.

85. The Tribunal concludes having considered all of the evidence that claimant did not have a disability as defined in section 6 of the Equality Act 2010 at the relevant time.

86. This decision does not affect the claimant's remaining claims of sex and race discrimination. These claims will proceed to a hearing.

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**Regional Employment Judge Taylor**  
**Date: 12 March 2020**

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE