



EMPLOYMENT TRIBUNALS

Claimant: Miss Claire Wilkinson

Respondent: Coventry University Students' Union

Heard at: Birmingham, by video (CVP) **On:** 11 January 2023

Before: Employment Judge Coghlin KC

Appearances

For the claimant: In person

For the respondent: Mr Mark Green, counsel

RESERVED JUDGMENT

The decision of the tribunal is that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 at the relevant times.

REASONS

The issue

1. This is a claim of disability discrimination. This hearing was listed by order of EJ Faulkner dated 22 July 2022, to consider one question, namely whether the claimant was disabled at the relevant time within the meaning of section 6 of the Equality Act 2010 (EA 2010).
2. The claimant was employed by the respondent between March and October 2021. The parties agree that, due to the relatively stable nature of the conditions in question, nothing turns on the precise start date or end date of the alleged acts of discrimination. In effect it is agreed that if the claimant was disabled in October 2021, she was disabled at all relevant times. There is no suggestion, and no evidence, that the effects of these conditions have either increased or diminished in the claimant's case since March 2021.
3. The claimant's alleged disability arises from two conditions, dyslexia and dyspraxia. It is agreed that these are lifelong conditions and that the claimant had them at all relevant times. It is agreed that the claimant had an impairment, which

had a long-term effect on her ability to carry out normal day to day activities. The only element of the statutory test (to which I will return below) which is in dispute is whether that effect was “substantial” within the meaning of the EA 2010. However, the question of disability still needs to be considered in the round.

The hearing

4. At the hearing before me, the claimant represented herself. The respondent was represented by Mr Green. I am grateful to them both for the helpful and courteous way in which they conducted the case.
5. I was provided with a bundle of documents running to 231 pages. Where I refer to page number, it will be a reference to pages in that bundle.
6. The claimant gave evidence, both by way of a written statement (pages 169-170), which she adopted as her evidence-in-chief, and by way of oral evidence, consisting of responses to questions from me, evidence given under cross-examination by Mr Green, and further explanatory evidence (effectively re-examination) which she gave at the end of her testimony.
7. I found the claimant to be an honest and frank witness.

The legal framework

8. Section 6(a) of the Equality Act 2010 provides that 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.
9. During the hearing there appeared to be no dispute about what the law is, but I was not referred to any case-law. Following the hearing I drew the parties’ attention to the recent analysis and summary of the law provided by HHJ James Tayler in **Elliott v Dorset County Council** [2021] IRLR 880 at paragraphs 16 to 62. This passage includes citation and discussion of other materials and authorities, notably **Paterson v Commissioner of Police for the Metropolis** [2007] IRLR 763, a decision of the EAT (Elias P presiding), and statutory guidance including the Equality Act 2010: Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (the “Guidance”).
10. The respondent confirmed that it accepted that this part of **Elliott** sets out an accurate statement of the law. I agree, and I proceed on that basis.
11. For her part, the claimant said that she did not consider that **Elliott** was correct. She took issue with the finding of the employment tribunal in that case that “the effect of [Mr Elliott’s] ‘reasonable adjustments’ to his own behaviour and attitude were that his impairment ceased to have any significant adverse impact on his ability to either do every day daily tasks or to carry out his professional obligations and work.” However, the decision of HHJ Tayler was to overturn the employment tribunal’s finding and to hold that the tribunal had been wrong to

find that the claimant in that case was not disabled. The claimant does not say she disagrees with the overall analysis of the law in paragraphs 16-62 of **Elliott**. In any event the decision in **Elliott** is binding upon me. I do not set out the full text of the **Elliott** decision here, but I have taken it into account, and will refer to particular points below.

The facts

12. The claimant has, and has always had, dyslexia and dyspraxia: the evidence shows, and it is agreed, that these are lifelong conditions. They were first diagnosed in a Diagnostic Assessment Report written by an educational psychologist, J A (Alex) Griffiths¹, on 5 September 2011, when the claimant was at university.
13. As set out in an appendix to a report by another educational psychologist, W Russell Calderwood, dated 1 August 2022, the British Dyslexia Association (BDA) defines dyslexia as

“a learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling. Characteristic features of dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed. Dyslexia occurs across the range of intellectual abilities. It is best thought of as a continuum, not a distinct category, and there are no clear cut-off points. Co-occurring difficulties may be seen in aspects of language, motor co-ordination, mental calculation, concentration and personal organisation, but these are not, by themselves, markers of dyslexia. A good indication of the severity and persistence of dyslexic difficulties can be gained by examining how the individual responds or has responded to well-founded intervention.”

In addition, “BDA acknowledges the visual and auditory processing difficulties that some individuals with dyslexia can experience, and points out that dyslexic readers can show a combination of abilities and difficulties that affect the learning process. Some also have strengths in other areas, such as design, problem solving, creative skills, interactive skills and oral skills.”

Medical evidence

14. Alex Griffiths’ report was before me, as was the more recent Diagnostic Assessment Report written by Mr Calderwood on 1 August 2022. I have read and taken into account those reports in full, and refer only to certain points which may be of particular significance.
15. The report of Alex Griffiths makes the following points:
 - a. The claimant has “specific learning difficulties revolving around slight weaknesses with working memory, considerable phonological processing issues and some slight dyspraxic tendencies.”

¹ I do not know his or her title.

- b. The claimant had sought an assessment because she “struggles with spelling and has problems with her organisational skills.... she often misreads assignment questions and regularly needs to re-read text a number of times to extract information accurately. Claire described her spelling as phonetical in nature and noted that she struggles to proof read her own work. She observed that her handwriting can deteriorate over time and this can affect examinations and note taking. Claire mentioned that she uses a variety of techniques to aid memory. Although not easily distracted by noise, Claire indicated that she can have difficulty concentrating for long periods of time. She is not a good time manager and would not describe herself as the most organised of people.”
- c. Alex Griffiths tested the claimant’s underlying ability by reference to the Wechsler Adult Intelligence Scale, and wrote: “The Wechsler scale is clearly indicating that Claire's abilities are, at least, in the mid average range and her visual and spatial abilities are, at least, in the high average range. Her literacy skills do not match these abilities and her ability to decode words, in particular, is a little problematic. Indeed, reading is a time consuming exercise for Claire. There was considerable evidence of phonological processing issues and anecdotal evidence from Claire supported this.”
- d. With regard to reading, “Claire's score on the word reading task was 81, which is within the below average range. She did not read very confidently and certainly demonstrated very weak word attack skills.” It was noted “she is a relatively slow reader and needs to re-read text several times, especially complex text. Reading is therefore a time-consuming and problematic exercise for her.”
- e. The claimant’s score on a spelling test was assessed as within the normal range, but phonological processing issues were identified. Her rate of writing in dictation was slow.
- f. Recommendations were made which included:
 - i. giving the claimant clear instructions and feedback in written form;
 - ii. that tutors should be as clear, selective and directive as possible in their suggestions for reading;
 - iii. that tutors should not require the claimant to read aloud in group situations without the opportunity to prepare adequately;
 - iv. that allowance should be made for difficulties which may arise in relation to: the preparation and organisation of her presentations; the structure and organisation of her written work including grammar, punctuation and sentence structure; spelling; handwriting speed; time management and prioritisation;

- v. slides and notes should be made available before lectures where possible;
- vi. additional time (25%) for written examinations;
- vii. that she should be given access to aids such as a recording device for use in lectures and seminars, and a computer system with word processing and support software to reduce the impact of literacy skills;
- viii. a structured diary system, which was described as “essential if Claire is to make the best use of her chosen course.”

16. The report of Mr Calderwood, dated 1 August 2022, was largely consistent with the earlier report of Alex Griffiths. It made the following points (among others):

- g. The claimant’s pattern of abilities in the present assessment showed enough consistency with the recognised definition of dyslexia.
- h. This diagnosis was consistent with the diagnostic outcome in the previous assessment report dated 5 September 2011 and with the lifelong difficulties which the claimant reported with core literacy skills, information processing, and auditory working memory.
- i. The previous assessment on 5 September 2011 had identified mild dyspraxic tendencies in the claimant’s profile. This was mirrored in the present assessment through her self-report and in her responses to a dyspraxia checklist.
- j. Testing showed that the claimant’s core literacy skills of word reading accuracy and written spelling were developed to a reasonable standard and that her word reading efficiency (or reading speed) was comparably accurate and fluent. However, there was evidence of residual pronunciation and spelling difficulties on less familiar words that are sometimes associated with dyslexia, for example miscuing syllables and spelling unfamiliar words phonetically.
- k. The claimant’s ability to extract meaning from text was well within the range of normal functioning, but the rate at which she responded seemed to slow as the complexity of content increased.
- l. Testing showed persisting and significant difficulties in the claimant’s ability to synthesise sounds to form words, maintain and manipulate phonic information in active attention, and in her ability to name letters and numbers in a quick and automatic manner. These types of challenges with phonological processing are clinical features of dyslexia and can affect a person’s capacity to produce spoken and written language quickly and accurately.

- m. Compared to the claimant's good verbal and non-verbal reasoning abilities, there were relative challenges in her ability to manipulate sequenced information (digits and letters) in auditory working memory and produce an accurate response. Also, her reliance on a visualisation strategy to retain new information she had heard may have masked the degree of underlying difficulty on these exercises. Challenges in auditory working memory are often associated with difficulties acquiring the skills of spoken and written language and are of diagnostic relevance when assessing for dyslexia.
- n. There was a "sizeable variance" between the claimant's non-verbal ability and her working memory scores. Her working memory ability, and her phonological processing ability were, respectively, in the low average and below average ranges. By comparison, her "general ability" score, based on selected measures not concerned with working memory and/or speed of information processing, was in the high average range (the top 19% for people in her age band).
- o. The claimant's reliance on self-taught coping strategies may have masked the degree of strain she experiences, or for colleagues to underestimate the challenges she can have when processing written or spoken language.
- p. Challenges with phonological processing will affect the claimant's ability to produce spoken and written language quickly and accurately. This would appear to be most evident when processing unfamiliar, multisyllabic words. Relative challenges in auditory working memory may affect her ability to receive and understand verbal directions for tasks, assimilate new information in telephone or video calls, and accurately record information from lectures and tutorials.
- q. There is some evidence that the claimant will take longer than most to extract meaning from complex text.
- r. With regard to dyspraxia, it was noted that holding a pen has always been difficult for the claimant, and a tight grip has left her with a callus on her middle finger. Learning to drive was particularly challenging for the claimant and she discontinued her last set of lessons in 2016. She told the author that she had also experienced challenges recalling and executing sequence operations involving motor movement, for example pin locks on doors. The author felt she was at risk of probably having a developmental co-ordination disorder (DCD).
- s. Recommendations were made which included:
 - i. a workplace assessment to explore the benefits of assistive software and strategies to support her in her job role;
 - ii. the use of text-to-speech and speech-to-text software;

- iii. the continued use of Grammarly;
 - iv. the use of a digital voice recorder or livescribe pen;
 - v. using Word formatted documents/ templates with prompts and headed sections could augment the claimant's reading, planning, report writing, and note taking;
 - vi. an additional 25% of time in any timed examinations or selection assessments, to assist with the claimant's slow rapid symbolic naming skills.
17. The respondent submitted that some of the recommendations made in the two reports appear somewhat generic and might not in practical terms say much about the claimant's individual position. There is some force in this: the reports do not in most cases spell out whether the recommendation is (at one end of the scale) strongly recommended or even virtually essential, or whether they are simply "nice to have" suggestions, or whether they lie somewhere in between those two extremes; and so in themselves most of the recommendations are not necessarily powerful evidence of the claimant's individual circumstances.
18. However the recommendations that extra time is required for assessments and the like, and specifically that 25% be given in this regard, is in a rather different category. There is no evidence before me that such a recommendation tends to be included as a matter of course in the assessment of everyone diagnosed with dyslexia and/or dyspraxia. I proceed on the basis that this recommendation represents a considered assessment on the part of the authors of each of these two reports as to the effect of the claimant's conditions on her ability to work in particular conditions, and, albeit doubtless in fairly broad-brush terms, of the magnitude of that effect in quantitative terms.

The claimant's evidence

19. The claimant's evidence establishes the following. For simplicity of expression I will use the present tense to describe the effects of her conditions, although strictly the question is the effects of those conditions at the time of the alleged discrimination, but as I have noted these are life-long conditions and there is no evidence that they have substantially changed since the time of the alleged discrimination. So where I use the present tense, that is intended to reflect the position not only now but also at the relevant times.
20. The claimant's symptoms of dyslexia include difficulty reading, issues with grammar and spelling, mispronouncing names or words, difficulties with processing information and taking an unusually long time to complete tasks that involve reading or writing. I address this in more detail below.
21. Her symptoms of dyspraxia include poor balance and hand-eye coordination when completing simple tasks, organisation and planning problems, and social awkwardness. On testing, Alex Griffiths noted that the claimant showed relatively weak skills on a range of gross motor co-ordination exercises.

22. The two conditions can cause fatigue and impact on the claimant's short-term memory.
23. It is hard for the claimant to differentiate between the two conditions. It is not necessary for her to do so in order to establish that her conditions amount (or more precisely amounted) to a disability, because it is not necessary to identify the medical cause of an impairment in order for it to constitute a disability, and because I have to consider the cumulative effects of the impairments.
24. The claimant has difficulties with **reading**. It is a time-consuming process for her. She does not avoid it altogether, but does so where there is an alternative means of obtaining the information.
25. Alex Griffiths' report is consistent with this, noting that (as of 2011), the claimant reported that she "often misreads assignment questions and regularly needs to re-read text a number of times to extract information accurately", and that she struggles to proof read her own work. On testing, her word reading score was found to be below average. She did not read very confidently and demonstrated very weak word attack skills. Although she was more capable than she believed, "her reading is very weak." When asked to read very easy, straightforward items, the claimant read at a rate of 140 words per minute, whereas the average person would be expected to read at around 170-200 words per minute. She was a relatively slow reader and needed to re-read text several times, especially complex text. Reading was therefore a time-consuming and problematic exercise for her.
26. Mr Calderwood's report (from 2022) paints a somewhat more positive picture, noting that the claimant's core literacy skills of word reading accuracy and written spelling were developed to a reasonable standard and that her word reading efficiency (or reading speed) was comparably accurate and fluent. However, there was evidence of residual pronunciation and spelling difficulties on less familiar words that are sometimes associated with dyslexia, for example miscuing syllables and spelling unfamiliar words phonetically. Her ability to extract meaning from text was well within the range of normal functioning, but the rate at which she responded seemed to slow as the complexity of content increased.
27. Testing also showed persisting and significant difficulties in ability to synthesise sounds to form words, maintain and manipulate phonic information in active attention, and in her ability to name letters and numbers in a quick and automatic manner. These types of challenges with phonological processing are clinical features of dyslexia and can affect a person's capacity to produce spoken and written language quickly and accurately.
28. Mr Calderwood said that there was evidence that the claimant takes longer than most to extract meaning from complex text.
29. The claimant adopts strategies to enhance her absorption of information contained in written form. For example if she were to receive a letter or other written information, her practice is to ask someone else to read through it and

explain it to her if she can, while looking at the written text herself; or she might read it through and then have a conversation about it; or she might need to read the information 2 or 3 times.

30. If she were sent written instructions on how to get to a particular location, she would lack the confidence to follow them, and to manage this would use the “Street View” function on Google Maps and virtually “walk” the route first.
31. She tries to read books, but cannot recall the last time she managed to finish one. Her preference is to listen to audiobooks, and she does them not as a simple preference but rather because she finds reading difficult.
32. She finds digital copy harder to read, so prefers to print hard copies to read from.
33. In addition to reading difficulties, the claimant has other difficulties with **processing information**. She struggles when information is provided to her other than in a clearly structured form, such as where she is expected to derive information contained in a number of different email or Teams chat messages. While she accepted that everyone might have some difficulty doing this, she considers that she takes longer to do this than someone without dyslexia. She struggles to cope, and can feel overwhelmed, when with back-to-back meetings or where inadequate time is given to process information. She finds that preparation for meetings takes her a lot longer than others.
34. Alex Griffiths’ report indicated that, on testing, the claimant’s Working Memory Index score was statistically significantly lower than her score on the Perceptual Reasoning Index. This indicated that she has specific difficulties in the areas of auditory processing, sequencing and memory.
35. Mr Calderwood noted that compared with the claimant’s good verbal and non-verbal reasoning abilities, there were relative challenges in her ability to manipulate sequenced information (digits and letters) in auditory working memory and produce an accurate response. Challenges in auditory working memory are often associated with difficulties acquiring the skills of spoken and written language and are of diagnostic relevance when assessing for dyslexia. He noted that her reliance on a visualisation strategy to retain new information she had heard may have masked the degree of underlying difficulty on these exercises.
36. The claimant has difficulties with **writing**, in relation to speed, spelling and grammar. She uses an app called Grammarly on her phone and her laptop which she uses to check her work. She also regularly asks for her from colleagues, family and friends to provide feedback, proof-read and help her to organise her written work.
37. Alex Griffiths’ report notes that the claimant reported having had spelling difficulties at school, and that she struggles to make good notes when, for example, spellings are dictated to her. On testing, her spelling was not as bad as she believed, but she had problems analysing words into their component parts, with examples being mis-spelling “anxiety” as “angxiety” and “enthusiasm” as

“entusianum”; she made a large number of errors on a “nonsense passage reading task”; and testing overall showed that she had phonological processing issues.

38. Mr Calderwood wrote that challenges with phonological processing will affect the claimant’s ability to produce spoken and written language quickly and accurately. This would appear to be most evident when processing unfamiliar, multisyllabic words.
39. The claimant developed **coping mechanisms** such as taking time to plan her time and her work in advance; asking for oral clarification when written text is unclear; and, as already mentioned, asking for help with reading and understanding text, and using technological aids such as Google Street View and Grammarly.
40. Mr Calderwood was of the view that the claimant’s reliance on self-taught coping strategies may have masked the degree of strain she experiences, or for colleagues to under-estimate the challenges she can have when processing written or spoken language.
41. However those coping strategies can fail when she is under stress. She finds that stress interacts with and worsens her conditions, such that she takes longer to complete basic tasks, she feels unable to process new information, and she finds it harder to understand written text. All of this can impact her to the extent that she skips activities such as sleeping and eating due to other tasks taking longer than they otherwise would. While she accepts that many other people may also struggle to operate as efficiently when under stress, she finds that others are a lot less affected than she is.
42. The claimant accepted that in other roles, before and since her employment with the respondent, she had coped much better. However, that is, on her evidence, because when she has the space to deploy her coping mechanisms – as has been the case in other roles – she does much better.
43. In cross-examination the claimant was taken to a grievance letter which she wrote on 14 December 2021, following the end of her employment with the respondent. In that letter she described various difficulties which she said she had encountered in her workplace, and the effects which those were having on her, such as burn-out and mental health issues. It was put to her that she did not, in that letter, ascribe those difficulties to her alleged disability of dyslexia and dyspraxia, but rather to the way that the respondent went about doing things, such as by holding back-to-back meetings or meetings at short notice. I do not accept that the letter makes no reference to her alleged disability. Her letter made explicit reference to her difficulty in processing information. It refers explicitly to an alleged failure to make reasonable adjustments, which was a reference to her alleged disability, of which the respondent was aware and which the claimant did not need to expressly spell out in her letter.

Analysis and conclusions

44. It is for the claimant to prove, on the balance of probabilities, that she was disabled within the meaning of the Equality Act 2010. This means establishing that she has a physical and mental impairment which has a long-term substantial adverse effect on her ability to carry out normal day-to-day activities (I shall refer to a substantial adverse effect on the claimant's ability to carry out normal day to day activities as "SAE" for short).
45. Although the existence of an impairment and a long-term adverse effect has been conceded by the respondent, I have considered the question of disability in the round, but with a particular emphasis on (1) whether there was an adverse effect and if so (2) whether it was substantial.
46. There are difficulties of proof in a case such as this. I would have been much assisted by the provision of an expert report produced for the purpose of this litigation and addressing relevant questions on the issue of disability, but there is no such report and I have had to do the best I can with the evidence provided to me. There are inherent difficulties in the claimant demonstrating, particularly by way of concrete examples, things which have, for as long as she can remember, been part of her make-up, and which are in many ways hard to quantify and to measure in a real-world setting. From time to time in her evidence she compared herself with others in particular respects, for example when comparing the time which she might take to prepare for a meeting or to absorb a particular amount of information with the time which others might take to do these things. In these instances it was difficult for her to give concrete examples and to quantify the degree of difference. However I accept that her evidence on these points truly reflects her lived experience of her condition, experienced over many years and indeed for as long as she can remember. It is entirely consistent with, and in most respects supported by, the evidence of the psychologists who assessed and reported on her. I therefore accept the broad thrust of her evidence.
47. The bar for establishing a "substantial" adverse effect on normal day-to-day activities is set relatively low, in that the statutory test regards an effect which is more than minor or trivial as being substantial.
48. I bear in mind that when considering whether the claimant's impairments have an SAE, I must consider together the effects of both conditions, and their effects on different activities (see the Guidance at B4-B6). This is particularly important in respect of conditions such as dyslexia and dyspraxia, which have effects on a wide range of aspects of a person's life, and on a wide range of activities.
49. I must focus not on what the claimant can do – she is obviously intelligent and has many abilities – but on what she cannot do, or can do only with difficulty. It is possible to be both high-achieving and also to be disabled by dyslexia, even in cases where dyslexia is only diagnosed in adulthood: **Paterson** is an excellent example of this.
50. When assessing whether there is an SAE, the essential comparison that I must make is not with the population at large. Rather it is to compare the way in which the claimant in fact carries out the activity in question and how she would carry it out if not impaired: **Paterson** at para 27; **Elliott** at para 43.

51. The claimant's ability to carry out a number of day-to-day activities has, in my judgment, been adversely affected, and in a manner which is more than minor or trivial. The use of the written word, and the need to process information, pervade everyday life so deeply that it is difficult to attempt a comprehensive list of very specific activities. Fortunately that is not necessary because, as Elias J put it in **Paterson**, "the act of reading and comprehension is itself a normal day-to-day activity." I accept, on the basis of the evidence before me, that the claimant's impairments created a substantial adverse effect on her ability to carry out that activity.
52. It is possible to break that broadly-described activity down further, into individual activities which themselves are normal day-to-day activities. Although as I have said a comprehensive list would be difficult, such activities include: reading a book; reading a set of written instructions; reading written material in a host of other situations; understanding instructions; deriving information from emails and other sources including in particular electronic sources such as emails and Teams chats but also in other formats; reading information from a screen; preparing for a meeting; undergoing a test or assessment (which is a normal day-to-day activity: see **Paterson** at para 66); and producing and proof-reading written material. There is, in my judgment, an adverse effect, which is more than minor or trivial, on the claimant's ability to carry out each of these activities. She can do them, but she can do them only with difficulty, and often to a less high standard and taking a longer time to do them. When taken together, the cumulative effects of these effects is all the greater.
53. I am able to reach this conclusion based on the evidence before me, comparing the way in which the claimant in fact carries out the activities in question with how she would carry them out if not impaired, and without undertaking any comparison with people other than the claimant. It is clear, on the evidence before me, that the claimant's impairments have the requisite SAE.
54. That said, if I do draw a broad comparison with people in (to use HHJ Tayler's expression at paras 38 and 46 of **Elliott**) a similar section of the population to the claimant but without her disability, I am led to the same conclusion.
55. The respondent argues that the coping mechanisms which the claimant has developed and used have had the effect of rendering any effect, which would otherwise be an SAE, to the point where it can no longer be regarded as "substantial". The respondent relies on paragraph B7 of the Guidance:
- "Account should be taken of how far a person can reasonably be expected to modify his or her 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. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability."

56. The respondent also points to arrangements made by the claimant's previous and subsequent employers, in which roles the claimant has found it much easier to succeed.

57. I do not accept those submissions. As paragraph B7 of the Guidance goes on to say, "In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities."

58. I consider that, viewed overall, there remains an SAE, notwithstanding the coping mechanisms employed by the claimant. There are a number of reasons for this conclusion.

59. First, the coping mechanisms which the claimant has developed are not, in my judgment, of the sort which paragraph B7 contemplates (such as avoiding "extreme activities or situations"). As HHJ Tayler observes in Elliott at para 59, on an overview of the relevant part of the Guidance,

"it is clear that where a person has an impairment that substantially affects her/his ability to undertake normal day-to-day activities the person is unlikely to fall outside the definition of disability because they have a coping strategy that involves avoiding that day-to-day activity. This part of the guidance is concerned generally with avoidance of things that are not a component of normal day-to-day activities."

60. The coping mechanisms which the claimant has developed, such as avoiding reading books, do not in my judgment involve the avoidance of things which are not components of normal day-to-day activities.

61. Second, and even if I were wrong about the first point, even with her coping mechanisms in place and working, I consider that there is an SAE, albeit one that is less pronounced than the effect would be without those mechanisms.

62. Third, the claimant's evidence, which I accept, is that when under stress her coping mechanisms can break down. This situation is addressed by paragraph B10 of the Guidance:

"In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment."

63. As Elias J said in **Paterson**,

"There are also certain provisions which deal with coping strategies. In some cases they will prevent the impairment having adverse effects, but only where they can be relied on in all circumstances."

64. Here, it is clear, on the evidence, that the claimant's coping mechanisms cannot be relied on in all circumstances. This strengthens my conclusion that they do not prevent the claimant's impairments from having an SAE.
65. Finally, as I have said, the respondent also points to how the claimant has succeeded in workplaces before and after her employment by the respondent. This does not assist the respondent. The claimant's point, which I accept, is that those employers' ways of working accommodated her disability. As HHJ Tayler observed in **Elliott**, the fact that an impairment ceases to have a substantial effect on a person's workplace day-to-day activities because a reasonable adjustment is in place, does not mean that the person ceases to be disabled. (This is not to say that I have reached a conclusion that the respondent failed in a duty to make reasonable adjustments; it was not my function to do so at this preliminary stage, and I have not done so).
66. My focus in the above analysis has been on effects which appear broadly to stem from the claimant's dyslexia as opposed to her dyspraxia. Of the two conditions on which she relies, dyslexia appears to be the more prominent in its effects, at least for present purposes. However there may be some overlap between the two. Taken alone, the degree of physical clumsiness and discomfort holding a pencil, and so forth, which the evidence describes, would not reach the threshold of being a disability. But the effects of dyspraxia which the claimant describes are not disputed, and they do have some effect on her. In some ways they overlap with and can be hard to distinguish from the effects of her dyslexia. I would have reached the conclusion that the claimant was disabled even without these effects. However they contribute, albeit in a relatively minor way, to the overall picture of the claimant's disability.

Conclusion

67. For these reasons I conclude that the claimant was a disabled person at the relevant times.

Employment Judge Coghlin KC

2 February 2023