



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Y Bereket

**Respondent:** Bolt Court Chambers Limited

**Heard at:** London Central via CVP      **On:** 25 September 2024

**Before:** Employment Judge Clark

## **Representation**

**Claimant:** In person

**Respondent:** Miss E Godwins - Solicitor

# RESERVED JUDGMENT

1. The claimant was a disabled person for the purposes of the Equality Act 2010 as at 14 December 2023.

# REASONS

1. This preliminary hearing was listed to determine whether the claimant qualified as a disabled person at the time of her dismissal by the respondent on 14 December 2023. At a preliminary hearing on 11 June 2024, the claimant withdrew her claims for unfair dismissal, unpaid wages and notice pay, but claims of a failure to make reasonable adjustments for disability and discrimination arising from disability remained. It is the claimant's case that the respondent should have made reasonable adjustments to enable her to work from home and that she should not have been dismissed for her absence from work from 25 October 2023 to 14 December 2023.

## Conduct of the Hearing

2. For the purposes of this hearing, the Tribunal took account of the contents of a bundle of documents prepared by the respondent, a printout of the claimant's GP notes and an impact statement from the claimant. The claimant gave oral evidence and was cross-examined by Miss Godwins. Both parties made oral

submissions at the end of the hearing.

3. The conduct of the hearing was affected by both parties' oversights in delivering documents. The start of the hearing was delayed as the bundle of documents had not been received by the Tribunal. In the course of the lunch break (after her oral evidence had finished), the claimant provided a print out of her GP's notes to the Tribunal. These were then sent to Miss Godwin at the start of the afternoon and she was given some time to read them and then prepare questions for the claimant on them. The claimant was recalled to give evidence accordingly.
4. Aspects of the claimant's impact statement addressed contentious factual issues which would be more relevant to the final hearing. The Tribunal explained to the parties that findings of fact would not be made in relation to these issues and that there was no need for cross-examination to address them.

### The Issues

5. The only issue for decision by the Tribunal was whether the claimant qualified as a disabled person for the purposes of the Equality Act 2010 at the time of her dismissal on 14 December 2023 and the respondent's refusal to allow the claimant to work from home. The disabilities relied upon by the claimant are anxiety and depression. Following receipt of the medical evidence, the respondent accepts that these conditions had a substantial adverse effect on the claimant's ability to perform day to day activities from 25 October 2023 to 14 December 2023 (the period of the claimant's sickness absence), but does not accept that this effect was long-term.

### The Law

6. The law that the Tribunal has to apply is contained in the Equality Act 2010 section 6 which defines a disability as a "*physical or mental impairment,*" which has a "*substantial and long-term adverse effect on [the Claimant's] ability to carry out normal day-to-day activities;*" The burden lies on the Claimant to prove that she is disabled.
7. Schedule 1 of the 2010 Act provides that the effect of an impairment is "long-term" if:
  - (a) It has lasted for at least 12 months,
  - (b) It is likely to last for at least 12 months, or
  - (c) It is likely to last for the rest of the life of the person affected.

2(2) *If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.*

8. Guidance was issued on matters to be taken into account in determining questions relating to the definition of disability in 2011. Normal day to day activities include at D3: *"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."* It can include work-related activities like interacting with colleagues. *"Substantial"* in this context means *"more than minor or trivial"*. Examples are provided in an appendix to the Guidance as to what would be regarded as a substantial adverse effect on day to day activities. These include *"persistent general low motivation or loss of interest in everyday activities"* and *"persistent difficulty in concentrating."*
9. The effect of medical treatment is ignored in the assessment of whether an impairment has a substantial effect on the ability of a person to carry out normal day to day activities (section 5 of Schedule 1). The word *"likely"* in the context of determining disabled status has been held to mean, *"could well happen"* by the House of Lords in *SCA Packaging Ltd v Boyle* [2009] UKHL 37. This is now reflected in the Guidance at section C3. This is, therefore, a lower threshold than more likely than not or the balance of probabilities.
10. Section C4 of the Guidance sets out as follows:  
*"in assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances of the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).*

### Factual Background

11. The claimant worked for the respondent Barristers Chambers as an assistant practice manager from 21 June 2022 to 14 December 2023. She commenced sick leave on 25 October 2023 and did not return to the workplace from that point. The claimant had a difficult relationship with the Chambers Director, Mr Forjour, and it is clear that interactions with him were a source of stress to her. The Tribunal makes no findings about the rights or wrongs of these interactions, but the claimant's attribution of her stress is potentially relevant to the likely duration of her condition.
12. The claimant was first diagnosed with anxiety and depression on 27 October 2023 but she now believes that she has always suffered from these conditions. In her impact statement she suggests they became prominent during 2017 whilst she was a student when she also experienced a particularly stressful family issue. At that point she says she would be in bed for days on end and exhausted and feeling anxious. The claimant, who is of Eritrean heritage, explained that there were

cultural reasons why she did not seek medical help for symptoms she now associates with anxiety and depression, although her University recognised her family situation as a reason for not requiring her to undertake certain assessments at that time.

13. In the summer and autumn of 2022 the claimant experienced symptoms of nausea and stomach pains, together with headaches and difficulties in focusing. She had intermittent time off work as a result. Whilst the online form completed by the claimant prior to a GP's appointment alluded to symptoms consistent with anxiety and depression, the GP's primary concern was that the claimant might have experienced carbon monoxide poisoning at work. This turned out not to be the case and the medical evidence (from Dr Perera dated 13 August 2022) suggests that the symptoms were likely to have been caused by a virus. The claimant had some on-going digestive issues, but the medical evidence does not suggest that these were in any way linked to her mental health. The claimant perceived that Mr Furjour was unsupportive of her ill health and says this increased her anxiety around him and caused her to zone out when he was around. She also described having suicidal thoughts at that time connected to going into work, thinking it would be a way out, albeit the claimant explained it was not something she would have done. When asked why she did not resign if she was feeling so bad about her work, she said it was her first corporate job and she did not want to be a "quitter".
14. The claimant sought medical treatment at the end of October 2023 having experienced a significant increase in anxiety on her return from a months' holiday in Eritrea. She felt a release of pressure whilst on holiday, which disappeared on her return to work. As well as feelings of dread, sadness and tiredness, the claimant described lacking focus and going blank. She left work on 24<sup>th</sup> October 2023 feeling unwell with a headache and nausea and couldn't stop crying when she got home, experiencing feelings of panic and breathlessness. The claimant visited her GP on 27<sup>th</sup> October 2023 and was diagnosed with depression and anxiety.
15. The claimant was issued with fit notes indicating that she would not be able to work from 25 October 2023 to 10 November due to "*low mood*" and then from 10 November to 3 December 2023 by reason of "*mixed anxiety and depressive disorder*". A further fit note dated 24 November 2023 was issued lasting from 24 November 2023 to 31 December 2023 noted that the claimant was "*awaiting psychological intervention*" and the recorded conditions were: "*mixed anxiety and depressive disorder & stress at work*".
16. At a consultation with her GP on 24 November 2023 the claimant explained that her mood had picked up since being off work and that she had "*realised how much of a stressor her employer has been.*" The claimant told the GP that she was doing much better in herself when she had no contact with her boss or work and that she would "*rather get hit by a bus than go into work as [her boss] would understand more than a MH issue.*". The claimant was prescribed with Sertraline, which she took for around a month starting in November, but she found it affected her ability to interact with friends and family, so she stopped taking it.
17. On 6 December 2023 the GP notes suggest that the claimant was still experiencing

anhedonia and was not doing much. An assessment report of Leonard Boss, Trainee Psychological Wellbeing Practitioner at South Islington iCope dated 4 December 2024 suggested that the claimant presented with symptoms of severe anxiety and severe low mood. The claimant was also referred for CBT, which took place after her dismissal.

18. Prior to her employment with the respondent, the only reference in the claimant's medical records to a possible non-physical ailment was in February 2021, when the claimant referred herself for CBT group therapy for difficulties in sleeping. At the point at which she was discharged from the course of CBT, her therapist apparently observed that she had displayed moderate symptoms of low mood and anxiety. The claimant was not made aware of this at the time, but the observation is included in her GP notes. Notwithstanding this observation, she was discharged from the iCope therapy service at the same time.
19. When asked about the impact of her conditions on her ability to function, the claimant explained that she spent a lot of time in bed, albeit she could not sleep. She lost her appetite and had difficulties in concentrating. She found it difficult to be around people and struggled socially. In the early days of her illness, her family looked after her and she did not leave the house.

### Submissions

20. In hindsight, the claimant considers she has suffered from depression and anxiety throughout her life. It was a combination of the cultural stigma attached to mental health difficulties and the fact that she didn't have the word to articulate her condition prior to October 2023, which prevented her from seeking medical advice. What she previously regarded as personality traits, she now understands to be symptoms of a mental health condition.
21. The respondent submits that the claimant's condition does not satisfy the temporal requirement under section 6 of the Equality Act 2010. For the period 25 October 2023 to 14 December 2023, it was accepted that the claimant's condition had a substantial adverse effect on her ability to perform day to day activities, but this state of affairs had not lasted for 12 months and were not likely to do so projecting forward. The Tribunal is invited to find that the claimant exaggerated her symptoms prior to October 2023 and that it is implausible that the claimant would not have sought medical attention or resigned from her job were the effect of it on her mental health so extreme. At the point where her symptoms were serious, she did visit her GP. Questions about the claimant's mental health were raised in her GP notes in 2021 and 2022 in the context of her sleep issues and stomach problems, so these would have been addressed by the GP had they been regarded as medically significant. The claimant's reaction to a family crisis in 2017 or to difficulties in her relationship with her boss were normal emotional reactions to events. As to the substantial effect continuing for 12 months, in light of the fact that the primary stressor (her work) had been removed, the Tribunal cannot be satisfied that this was likely.

### Conclusions

22. The relevant time for the purposes of the Tribunal's decision about the claimant's disabled status is 14 December 2023, the date on which the claimant suggests reasonable adjustments should have been made to her work to allow her to work from home. It is also the date of her dismissal for reasons related to her incapacity, which forms the subject matter of her claim under section 15 of the Equality Act 2010. The Tribunal accepts (as does the respondent) that the effects of the claimant's conditions (depression and anxiety) on her ability to undertake day to day activities were significant throughout the period of her sickness absence. There were particular impacts on the claimant's ability to socialise, to focus/concentrate on tasks and take pleasure in every day activities.
23. As at 14 December 2023, the claimant had been diagnosed with depression and anxiety since 25 October 2023, a period of around 7 weeks. There is no need for a claimant to receive a particular diagnosis in order to qualify as a disabled person, but the potential significance of the diagnosis, is that the effects of the conditions were such that the claimant felt unable to work and sought medical help. Both these factors are indicators of the severity of her symptoms at this time.
24. To be satisfied that the impairment was a long-term one as at 14 December 2023, the Tribunal would need to find that it had lasted for at least 12 months or that it was likely to last for at least 12 months. Looking backwards, the degree of certainty required is higher than projecting forwards. Whilst the claimant might be right that she was suffering from anxiety and depression prior to 25 October 2023 (or on her case, all her life), the Tribunal would need to be satisfied that those impairments had a substantial adverse effect on her ability to carry out normal day to day activities historically. The Tribunal takes judicial notice of the fact that anxiety and depression can be long term conditions. However, symptoms of mild depression or mild anxiety might not satisfy the test in section 6, particularly given that anxiety and sadness are routinely experienced human emotions.
25. The Tribunal accepts that there remains a degree of stigma attached to mental health conditions and has no reason to doubt the claimant's evidence that this was particularly the case culturally for her. However, once the claimant's symptoms became more serious, she did seek medical advice and treatment and was unable to work. It is a reasonable inference, therefore, that the claimant's day to day activities were not as adversely affected by a mental impairment prior to the autumn of 2023.
26. The claimant makes specific reference to some incidents in her impact statement, which she suggests were manifestations of anxiety and depression: she says she spent a number of days in bed in 2017 at a time of family crisis; she was anxious about security after a workplace burglary; she had time off work in August 2022 and into the autumn of 2022 with gastric symptoms and described having intrusive thoughts about being hit by a car during 2023. The Tribunal accepts the claimant's account of her feelings and intrusive thoughts and does not find that she has deliberately exaggerated her symptoms for the purposes of this claim. There were aspects of her evidence which could have been embellished for impact (for instance, in relation to suicidal ideation), but it was not.

27. In relation to the family crisis and the burglary, in the absence of medical evidence, the Tribunal cannot be satisfied on the balance of probabilities that the claimant's response to them were the result of an impairment rather than a temporary reaction to what were undoubtedly stressful life events. There is no medical evidence which links claimant's recurring stomach problems (which started in August 2022) to a mental health condition. The hospital put the symptoms down to a virus and they were treated by gastric medication.
28. The claimant was very upset when she perceived that Mr Forjour that was questioning whether she was genuinely ill in August 2022. That perception coloured her attitude to him and their interactions for the remainder of her employment. She told her GP in November 2023 that she had thought that it would be better to have been hit by a bus so that she had a physical injury rather than a mental health condition, because her boss would have understood that. The claimant also explained in her impact statement that she had had similar thoughts about being hit by a car or being in a bus crash so that she did not need to attend work in the course of 2023, prior to her sick leave and diagnosis in October 2023. Whilst these were clearly extreme and worrying thoughts, the claimant was not suggesting that she was considering acting on them. The Tribunal does not have the expertise to conclude that such thoughts were indicative of an impairment rather than an internal expression of a strength of feeling. In conclusion, the Tribunal is not satisfied that the claimant had suffered from mental impairments which had a substantial adverse effect on her ability to perform day to day activities for at least 12 months prior to December 2023 or indeed that she did so in 2017 and the effect has now reoccurred.
29. It is common ground that from 25 October 2023, the claimant was suffering from a mental impairment that had a substantial adverse effect on her ability to perform day to day activities. Whilst the evidence suggests that she felt better for having no contact with work, as at 6 December 2023 she was nonetheless experiencing anhedonia and her GP was contemplating extending her fit note (which ran out at the end of December 2023). The duration of the fit notes got progressively longer, starting at around 2 weeks, rising to 3 and then on 24 November 2023 to around 5 weeks in length. An assessment report of Leonard Boss, Trainee Psychological Wellbeing Practitioner at South Islington iCope dated 4 December 2024 suggested that the claimant presented with symptoms of severe anxiety and severe low mood and that a course of CBT treatment was needed. This was the case in spite of her feeling better for attending work.
30. There is no medical evidence which specifically addresses the likelihood of the claimant's anxiety and depression having a long term substantial effect on her ability to undertake day to day activities. That is quite often the case in a claim of disability discrimination. The Tribunal has to do the best it can with the evidence available, bearing in mind that it should not always be necessary for a claimant to incur the cost of a specialist medical report purely for the Tribunal proceedings.
31. As set out above, anxiety and depression can be long term conditions and the absence of the particular stressor for the claimant (attending her workplace) had not resulted in an immediate recovery for her. The Tribunal is not entitled to look at what in fact happened after the relevant date to inform its decision on the

likelihood of a continuation of a substantial adverse effect and that includes the consequences of the alleged unlawful act (dismissal). As at the relevant date (14 December 2023), the claimant had been referred for a course of treatment (CBT), which had not started, she was in the middle of a 5 week fit note with the prospect of the fit note being extended "*if felt needed*". She had been diagnosed with "severe" anxiety and depression by her GP and those diagnoses had been confirmed by a specialist as recently as 6 December 2023. Taking these facts together and applying them to the correct test, the Tribunal is satisfied that the substantial adverse effect on the claimant's day to day activities, could well have continued for a further 10 months. As such, the Tribunal is satisfied that the claimant qualified as a disabled person at the time of her request to work from home and when the decision to dismiss her was taken by the respondent.

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Employment Judge Clark

3 October 2024

Date \_\_\_\_\_

JUDGMENT SENT TO THE PARTIES ON

16 October 2024

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FOR THE TRIBUNAL OFFICE