



THE EMPLOYMENT TRIBUNAL

Claimant

Respondent

v

Ms Veronique Muhammed

School Food Matters

Heard at:

London South Employment Tribunal by CVP

On:

16 November 2023

Before:

Employment Judge Martin

Appearances

For the Claimant:

In person (with her mother for support)

For the Respondent:

Mr Conley – Solicitor

RESERVED JUDGMENT

The Judgment of the Tribunal is that the Claimant is a disabled person as defined by s6 Equality Act 2010

RESERVED REASONS

1. By a claim form presented on 4 July 2022 the Claimant brought claims of disability discrimination. The Respondent conceded that the Claimant was disabled in relation to spina bifida, but did not concede disability in relation to a mental impairment affecting her cognitive abilities. This hearing was listed to consider this.
2. The Claimant was born with Spina Bifida and Hydrocephalus (water on the brain). She had a shunt fitted to her head head to control her Hydrocephalus. As a result of she says she always had problems with my concentration and memory, which has been diagnosed as cognitive difficulties.
3. I had before me a bundle of documents compiled by the Respondent which included the pleadings, the Claimant's disability impact statement, a report from 2003, the Claimant's application to the Respondent for employment and

interview notes. These were all referred to by the Respondent during the hearing.

4. I read the Claimant's witness statement. I noted that parts of the statement relate to her spina bifida and I discounted those parts as not being relevant to the issue I had to determine, namely whether her cognitive impairments amounted to a disability. I also discounted parts which related to what she says were acts of discrimination as this was not relevant to what I need to determine.
5. In her statement the Claimant describes the issues she has had since birth. This includes issues she had at school which included being distracted, having poor attention and executive functioning as misunderstood as being emotional, lazy, and depressed. When she was 15 she was seen by Dr Joanna Iddon a Neuropsychologist who produced a report on 23 October 2003. The Claimant was diagnosed with cognitive difficulties caused by Hydrocephalus.
6. As a result of this report the Claimant attended a placement at a residential school that offered teaching, learning, professional nursing care, therapy advice and guidance which helped her to cope with her cognitive functioning.
7. The Claimant described the effect of her cognitive difficulties as affecting all aspects of her life including having to mentally prepare to do morning activities like washing, cleaning her teeth and so on. She described in her statement and in her oral evidence that making a cup of tea can present challenges and she has to plan the steps involved in advance. She says she needs support from her caregivers to remind her to do personal things and plan how long a particular task may take.
8. The Claimant also described getting brain fog, being forgetful and 'absent'. She said that how she is can vary from day to day or hour to hour, but the difficulties are always there and constant.
9. The Claimant acknowledged what she could do, she described herself as having adequate intelligence to hold conversations and enjoying humour. She can read, write, and use the telephone and is currently undertaking a degree with the Open University in Business Management and Accounting. She described the adjustments that have been made to enable her to do this course.
10. She also described that at work she can use a computer and prepare written documents whilst being able to keep to a schedule but one she became familiar with the processes. She says it take her longer to become familiar.
11. In cross examination the Claimant was asked about the application form and interview notes which were in the bundle. The Claimant said that in relation to the application form, she was effectively putting her best foot forward, as she wanted the job. She said that if she had put in the form that she had a

cognitive impairment then it would go against her. Her practice is not to put it into the form, but to raise it at interview in a way that was hopefully positive for her, namely with how she could work that would mean she could do the work required. It was put to her that what she had put on this form contradicted the evidence she gave about how her impairment affects her normal day to day activities. I have considered this document carefully and the positions of both parties. On balance I find that this application form (and what happened at the interview) did not reflect the way the impairments affected the Claimant. I accept that she did not want to put obstacles in her way given that she considered that with her working practices and adjustments from her employer she could do the work.

The Law

12. The law is as follows:

“a person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities”.

13. In **Goodwin v Patents Office [1999] ICR 302** the EAT gave guidance on the proper approach to adopt when applying the Disability Discrimination Act 1995 provisions. This guidance is still relevant when deciding matters under the Equality Act 2010. The guidance requires a Tribunal when determining disability to look at the evidence by reference to 4 different questions or conditions.

- a. Did the Claimant have any other mental or physical impairment?
- b. Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?
- c. Was the adverse effect substantial?
- d. Was the adverse condition long-term?

14. In **Wigginton v Cowrie and others t/a Baxter international (A partnership)** the EAT held that these four questions should be dealt with sequentially and not together.

15. In **Cruickshank v VAW Motorcast Limited [2002] ICR 729** the EAT held that the time to assess the disability is the date of the alleged discriminatory act.

16. In **Richmond Adult Community College v McDougall [2008] ICR 431** the Court of Appeal held that the date of the discriminatory act is also the material time when determining whether the impairment has a long-term effect.

17. The burden of proof is on the Claimant to show that she has satisfied the definition.

18. Turning to the four elements of the definition:

- a. An impairment can be physical or mental. There is no requirement for the impairment to have a specific diagnosis.
- b. The words "substantial adverse effect" is defined in section 212(1) Equality Act as meaning "more than minor or trivial". Whether a particular impairment has a substantial effect is a matter for the Tribunal to decide. The focus should be on what the Claimant cannot do, or can only do with difficulty as set out in **Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19 EAT**.
- c. Appendix 1 of the EHRC Employment Code states that "normal day-to-day activities are activities that are carried out by most men and women on a fairly regular and frequent basis, and gives examples of walking, driving, typing and forming social relationships. Account should be given of how far the activities are carried out on a normal frequent basis. The guidance emphasises that in this context, "normal" should be given its everyday meaning. In **Goodwin v Patent Office** the EAT considered that there was no need to specify what constitutes a day-to-day activity on the basis that, whilst it is difficult to define, it is easily recognised. In this case the ET stressed that the enquiry is focused on normal daily activities, not on particular circumstances.
- d. Paragraph 2(1) of schedule 1 of the Equality Act 2010 says that the effect of impairment is "long-term" if it:
 - has lasted for at least 12 months;
 - is likely to last released 12 months; or
 - is likely to last the rest of the life of the person affected.

"Likely" in this context has been defined by the House of Lords in the case of **SCA Packaging Ltd v Boyle [2009] ICR 1056** as something that is a real possibility in the sense that it "*could well happen*" rather than something that is probable or "*more likely than not*".

My Conclusions

19. I have considered the documentation and evidence very carefully. I find that the Claimant was a disabled person by reason of her cognitive impairments at the relevant times.
20. Taking the four tests in turn. I find that the Claimant has a mental impairment that being her cognitive functioning caused by hydrocephalus. This was not disputed by the Respondent.
21. I considered whether the impairment affected the Claimant's ability to carry out normal day-to-day activities at the relevant time. The Claimant said that she was able to do things like make a cup of tea, attend to her personal care,

cook and so on but that she could only do so with difficulty. She described how it took her a long time to understand new processes, whether that was work related processes or for example following a recipe. It is not necessary for the impairment to remove the ability to do something, it is also relevant if the impairment makes doing something more difficult. This was not disputed by the Respondent.

22. The focus of the Respondent's submission was whether there was a substantial adverse effect. It submitted there was not. It pointed to the application form for the job which sets out what the Claimant was able to do in relation to her work. I accept the submission that this contradicts the evidence the Claimant has put forward. However, I accept what the Claimant says about why she put such a positive slant on her application form. I find that this does not represent how her impairment affects her day to day activities.
23. I also accept that the only report before me is from 2003 when the Claimant was fifteen years old and that it was produced in order to assess her educational needs. However, the Claimant says that the impairments she has are life long, and I find that although she has developed strategies for coping with the effects of her impairment, the effects of the impairment are more than minor or trivial and are substantial.

Employment Judge Martin
Date: 17 November 2023

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