



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE K ANDREWS

MEMBERS: Ms M Foster-Norman
Ms J Forecast

BETWEEN:

Miss D Thomas Claimant

AND

Ekaya Housing Association Respondent

ON: 26 April 2017

Appearances:

For the Claimant: Ms S Forsyth, Caseworker

For the Respondent: Mr R Rees, Consultant

JUDGMENT

The claimant was not disabled and therefore the claim of disability discrimination fails and is dismissed.

REASONS

1. In this matter the claimant complains that the respondent breached its duty to make reasonable adjustments to her computer to accommodate her sight impairment.
2. The respondent contests that the claimant was disabled at the relevant time and accordingly the Tribunal first dealt with that issue.

Evidence

3. We heard evidence from the claimant and also considered a bundle of documents that included a medical expert's report (dated 26 February 2017 by Mr K N Hakin, Consultant Ophthalmic Surgeon), GP records and the claimant's disability impact statement. The overall conclusion in the expert's report was that the claimant had a mild vision impairment at the

relevant time but that this did not amount to sight impairment. The GP records related to a period before the claimant's employment with the respondent.

Relevant Law

4. Section 6 and Schedule 1 of the Equality Act 2010 set out the provisions with regard to the meaning of disability. In addition, Guidance was issued in 2011 to assist Tribunals in determining whether a person meets that definition.
5. Section 6 says that a person has a disability if he has a physical or mental impairment and it has a substantial and long term adverse effect on his ability to carry out normal day to day activities. Substantial is defined as more than minor or trivial. Normal day to day activities is not defined but the Guidance suggests that they are things people do on a regular or daily basis. They can also include general work-related activities such as using a computer.
6. Schedule 1 says that the effect of an impairment is long term if it has lasted for at least 12 months, is likely to so last or is likely to last for the rest of the life of the person affected.
7. In determining whether an impairment has a substantial adverse effect on a person's ability to carry out day to day activities, measures to treat or correct the impairment are not taken into account if - but for those measures - it would have that effect. An exception to this is if the impairment is of a person's sight which is corrected by spectacles or contact lenses.
8. Section B of the Guidance deals with the meaning of substantial adverse effect. It states, inter alia, that the way in which a person carries out a normal day to day activity compared with someone who does not have the impairment should be considered. The appendix to the Guidance also sets out illustrative and non-exhaustive lists of factors which it would and would not be reasonable to regard as having a substantial adverse effect on normal day to day activities. The list of factors it would be reasonable to regard as having that effect includes difficulty operating a computer, for example, because of a visual impairment. The list of factors which would not be reasonable to regard as having that effect include an inability to read very small or indistinct print without the aid of a magnifying glass.
9. The question of disability has been distilled into four questions that a Tribunal should consider:
 - a. Did the claimant have a mental or physical impairment?
 - b. Did the impairment affect his ability to carry out normal day to day activities?
 - c. Was the effect substantial?

d. Was the effect long term?

10. Making that assessment is a question of fact and degree based upon the evidence that we have heard paying particular attention to what the claimant cannot do rather than what she can do (Goodwin v Patent Office 1999 ICR 302) and how the claimant carries out an activity compared to how she would do it if she were not impaired (Paterson v Metropolitan Police Commissioner UKEAT/0635/06). On the other hand, the fact that a claimant can only carry out activities with difficulty or pain does not establish a disability (Condappa v Newham Healthcare Trust 2001 All ER 38).

Findings of Fact

11. Having assessed all the evidence, both oral and written, we find on the balance of probabilities the following to be the relevant facts.

12. The claimant has worn glasses since childhood and her eyesight has deteriorated as she has aged. As part of her work history she had worked in other office environments using computers and dealing with usual levels of documentation without issue for a considerable period of time.

13. Her condition deteriorated in 2010 when she was diagnosed with a macular hole that required surgery and she then developed cataracts in 2013. She underwent operations in March and April 2015 on those cataracts. This inevitably resulted in a recovery period during which she was quite severely impacted with vision difficulties but these settled. She was prescribed stronger glasses and in July 2015 was discharged from the cataract clinic. Her own witness statement recorded that her sight had "improved massively" from when she had had cataract operation.

14. The claimant commenced employment with the respondent on 14 September 2015. Her work there required quite detailed work for a large proportion of the day on the computer. In summary the claimant's evidence was that as a result of this work she suffered headaches, had to lean forward to see what was on the computer screen and suffered eyestrain resulting from glare.

15. There was nothing in the medical report or documentation before us to confirm that the claimant suffered headaches although the expert report did say that prolonged work at a computer might result in symptoms of headaches. There was no evidence that she attended her GP complaining of headaches during her employment with the respondent. She told us that she self-medicated with paracetamol; this evidence was not challenged. We accept the claimant suffered from headaches but find that they were at the milder end of the spectrum.

16. The claimant's evidence about not being able to see the screen without leaning forward was not challenged by the respondent and we accept it. The claim of eyestrain was not supported by any medical evidence but again was not challenged and is consistent with the expert's report that says

eyestrain might result. The claimant confirmed that she did not attend her GP or her optician as a result of these difficulties.

Conclusion

17. We do find, as recorded in the expert's report, that at the time of her employment with the respondent the claimant had a physical impairment, namely mild vision impairment and any impact this had on her was long term.
18. The only normal day to day activity that this impairment impacted upon was her use of the computer at work. She did suffer headaches and eyestrain. We do not find that these were "trivial" but we do find that these were not "more than minor" as required by the definition of disability. We base this finding on the fact that during this period, notwithstanding her medical history, she did not attend her GP or optician in relation to either condition and self-medicated with paracetamol.
19. We have considered very carefully that in order to work on the computer the claimant had to lean forward to see what was on the screen. As mentioned above, difficulty operating a computer because of a visual impairment would usually be reasonable to regard as having a substantial adverse effect. We consider however the claimant's situation to be analogous to an inability to read very small or indistinct print without the aid of a magnifying glass which would not usually be reasonable to so regard. The process involved in both is essentially the same, namely expanding the size of the print, so that it is legible. Accordingly taking that guidance into account, we do not conclude that leaning forward to see what was on the screen amounted to a substantial adverse effect on normal day to day activities.
20. Accordingly we conclude that the claimant was not disabled at the time of her employment with the respondent and the claim can go no further. This decision is unanimous.

Employment Judge K Andrews
Date: 11 May 2017