



EMPLOYMENT TRIBUNALS  
London Central Region

Heard by CVP on 30/6/2022

Claimant: Mr G Matthews

Respondent: CGI IT UK LTD

Before: Employment Judge Mr J S Burns

Representation

Claimant: Mr T Gillie (Counsel)

Respondent: Ms J Coyne (Counsel)

JUDGMENT

The Claimant was disabled by reason of long-Covid at all material times from 27/8/2020 but not before that date.

REASONS

1. This was a preliminary hearing to determine whether the Claimant was disabled by long-Covid at/during the relevant times which run from 17 June 2020 to 10 February 2021.
2. I heard evidence from the Claimant based on his impact statement dated 17/3/22. I found him to be a reasonably credible witness and what he said was largely supported by the medical evidence in the 373-page bundle of documents.
3. I received written and oral submissions on both sides and was referred to various authorities. Ms Coyne sent me a table setting out the Claimant's symptoms. I have considered all this material.
4. The onus of proof is on the Claimant and the standard of proof is on a balance of probabilities.

Law

5. Per section 6 Equality Act 2010, a person has a disability if they have a physical or mental impairment which has a substantial (which means "more than minor or trivial" per section 212) and long term adverse effect on his ability to carry out normal day to day activities. In assessing whether there is or would be a substantial effect, one disregards measures such as medical measures which are being used to treat it. Sch 1 para 5(1) and (2).
6. Normal day to day activities are activities such as walking, driving, typing and forming social relationships.

7. The effect is long term if it has lasted or is likely (*could well happen*) to last at least 12 months or for the rest of the person's life (Sch 1 para 2).
8. Under Section 6(5) EA 2010 The Secretary of State has issued 2011 issued guidance on matters to be taken into account in determining questions relating to the definition of Disability 2011.
9. The symptoms of the condition known as 'Long Covid' may fulfil the statutory test for disability. On 9 May 2022 the EHRC issued the following statement: "*Given that 'long Covid' is not among the conditions listed in the Equality Act as ones which are automatically a disability, such as cancer, HIV and multiple sclerosis, we cannot say that all cases of 'long Covid' will fall under the definition of disability in the Equality Act. This does not affect whether 'long Covid' might amount to a disability for any particular individual – it will do so if it has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This will be determined by the employment tribunal or court considering any claim of disability discrimination.*"

#### Findings:

##### The Impairment

10. The Claimant was infected by a virus in February and March 2020. He did not subsequently test positive for Covid19 subsequently. The Respondent submits that it is not shown that the Claimant ever had Covid19 and that his negative test suggests that he did not. However, I take judicial notice of the fact that Covid19 testing was not always reliable. The timing of his illness, (ie co-occurring with the pandemic spreading in the UK) and the symptoms he suffered then (fatigue, loss of voice, throat pain and breathing difficulties) make it more likely than not that Covid19 was the virus which infected him then.
11. From May 2020, onwards he reported various symptoms to medical professionals - initially his GP but then others to whom he was referred by the GP. The principal symptom was severe fatigue which has persisted throughout and continues to the present day. Other symptoms such as throat problems and dysphonia (loss of voice) were of shorter duration. He suffered insomnia and musculo-skeletal pain and weakness in his neck and left shoulder and loss of grip in his hands. The problems with his grip have been persistent and long term.
12. He went on sick-leave from work complaining of fatigue and sore throat from 26/6/20 to 8/11/20 when he started working again on a phased return - but doing so supported by medication and working from home. He had a relapse and went on sick leave again on 8/2/21 and was dismissed by the Respondent on 10/2/21. After dismissal his symptoms and problems have continued and he is currently (June 2022) receiving treatment from the NHS on its "long-Covid pathway".
13. The likelihood that the Claimant has long-Covid (which is shorthand for a tendency after catching Covid19 to suffer a variety of long-term or persistent symptoms as mentioned above) has been confirmed by various medical practitioners.
14. On 27/8/2020 Dr Paul Glynne, a specialist physician to whom the Claimant had been referred, wrote as follows; "*I strongly suspect Guy had COVID-19 infection in March. His fluctuating symptom deterioration thereafter is typical for post COVID symptoms. As you know we have seen a number of patients with functional dysphonia which presumably is a manifestation of COVID induced deconditioning. It will be exacerbated by insomnia*"
15. Another specialist Prof Vaz wrote on 7 September 2020 "*He certainly sounds like he may well have ended up with a COVID-19 infection in March and has incurred a functional dysphonia*

*as a result. There no doubt also has been a significant effect on his sleep pattern and some associated fatigue and myalgia symptoms”..*

16. Dr Paul Glynne on 8/2/21 wrote : *“Guy Matthews has suffered a symptom deterioration/flare triggered by sleep disruption and stress. These symptoms have all occurred following an acute illness in March 2020 presumed secondary to COVID-19 infection. The symptom complex would be consistent with a diagnosis with long-COVID although I did highlight that stress itself could trigger some of his symptoms”*
17. For these reasons I find that the Claimant has (and had) the impairment “Long-covid” since no later than May 2020.

Impact on day-to-day activities

18. These are detailed in the Claimant's impact statement. His various symptoms, and mainly his fatigue and musculo-skeletal pain and weakness, have prevented or substantially interfered with his ability to live an active life. Activities such as walking, shopping, gardening, playing sport and looking after his wife have all been affected. While he explained that he can walk a bit on some days, he will then suffer the consequences, by being exhausted and being unable to walk for many days following. If he does manual work this will trigger pain and exhaustion after a short time. He is unable to face travelling and on the one occasion he travelled into London in the last two years (to accompany his wife to a medical appointment) he was exhausted and cannot face doing so again.
19. Taken as a whole, I find that the long-Covid impairment had, and has, a substantial adverse effect on his ability to do day-to-day activities.

Long term and if so from when?

20. I find that the impairment started from March 2020 when the Claimant caught Covid19. If I am wrong about that it started in May 2020 when he started reporting fatigue and sore throat.
21. Hence it had not lasted 12 months by the time he was dismissed on 10/2/2021.
22. However, a person is disabled at any time not only if the impairment has lasted 12 months but if at that time it is likely to last for at least 12 months.
23. The question whether an impairment is likely to last at least 12 months must be answered not with the benefit of hindsight but on the basis of the facts and evidence available at the time, whether or not those facts and evidence was known to the Respondent.
24. As we can see from Dr Glynne's letter of 27 August 2020, by that date it was known in the medical profession that Covid19 was capable in some cases in generating ongoing symptoms.
25. I accept that it was early days then for making predictions about how long long-Covid could be, but I take judicial notice of the fact that, even before the arrival of Covid19, it was well-known not only by doctors but also by many members of the public that some viral illnesses can trigger long-term ill-health syndromes in some people. Chronic fatigue syndrome is an example of this. In August 2020 it would have been rash for a doctor to assume that this little-known new virus Covid19 could not also have long-term effects.
26. Whether the Claimant's health problems (and the consequential impact on his activities) *“may well last at least 12 months in all”* is not a matter which Dr Glynne mentioned in either of his letters, but I have concluded that if he or another similarly qualified doctor in possession of the facts had been asked to address that question on 27/8/2020, the answer would have been in the affirmative.

27. Such a doctor would have known then that Covid 19 can cause post-infection symptoms, and that by 27/8/2020 the Claimant, following a viral infection co-inciding with the onset of the pandemic, subsequently had been suffering fatigue and other post-viral symptoms for at least 4 months. I see no reason why such a doctor would have been willing then to discount the reasonable possibility that the effects would continue for at least another 8 months (as in fact we now know that they did).
28. Hence, I conclude that, as evidenced by the letter of 27/8/2020, the Claimant, from that date onwards but not before, satisfied the EA test for having a long-term qualifying impairment in the form of long-Covid19. This is my effective finding.
29. If I am wrong to have concluded that he was disabled from 27/8/2020 onwards, then I would find that he was disabled by 8/2/21. By then the Claimant had been suffering a substantial impairment for at least ten months and Dr Glynne's letter of 8/2/21 shows that on that day he had prescribed medication to address the Claimant's symptoms for one month with a request to the GP to renew the prescription after that, hence indicating that the problem was likely to continue for some time beyond that date.

J S Burns Employment Judge  
London Central  
30/6/2022  
For Secretary of the Tribunals  
Date sent to parties: 20/09/2022

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