



EMPLOYMENT TRIBUNALS

Claimant: Rosemary Charles

Respondents: 1. London Underground Ltd
2. Alexandra Crook
3. Ann-Marie Costigan

Heard at: East London Hearing Centre **On:** 20 April 2022

Before: Employment Judge O'Brien sitting alone

Representation:

Claimant: In person

Respondent: Ms I Ferber of Counsel

JUDGMENT

The judgment of the Tribunal is that

1. The claimant was at all material times disabled as defined in s6 of the Equality Act 2010.

REASONS

1 ***This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are set out below. Both parties were content with the way in which the hearing was held.***

2 On 10 May 2021, the claimant presented a claim for disability discrimination, and on 18 June 2021 presented consequential complaints of victimisation against all three respondents. The respondents resist all of the claims. In particular, it is not accepted that the claimant is disabled within the meaning of the Equality Act 2010.

3 Employment Judge Siddall held a telephone preliminary hearing on 23 November 2021. Judge Siddall gave directions for resolution of the disability issue at an open preliminary hearing, if not by agreement. This was that hearing.

THE HEARING

4 I heard evidence from the claimant, based on a written disability impact statement, which was included within a joint bundle of some 201 pages. Each party made oral submissions before I gave my decision orally. These are the written reasons requested by the respondent at the hearing. I apologise for the delay in providing them.

THE LAW

5 Section 6 of the Equality Act 2010 (EA) defines disability as a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. An effect of an impairment is long-term if it has lasted for or is likely to last for at least 12 months or is likely to last the rest of the affected person's life. 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 treated as continuing to have an effect if the effect is likely to recur. The effect of medication is to be disregarded when assessing the effects of an impairment. 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.

6 Ms Ferber confirmed in submissions that the only element of the definition which the respondent challenged after evidence was whether the claimant's menorrhagia and/or polycystic ovary syndrome (PCOS) had a substantial adverse effect on normal day-to-day activities.

FINDINGS OF FACT

7 In order to determine the issues as agreed between the parties, I made following findings of fact, resolving any disputes on the balance of probabilities. I should note that the claimant struck as a straight forward witness who did her best to assist my inquiry. It was not suggested that she was trying to mislead me, and I found her to be a reliable witness.

8 The claimant is a woman whose date of birth is 10 January 1970. Her medical history as detailed in her GP records shows, amongst other things, a diagnosis of essential hypertension on 24 November 1997 (and later) and menorrhagia on 2 March and 18 May 2006. At this time, the claimant was prescribed norethisterone, which it was agreed was medication to control menstrual bleeding.

9 An ultrasound scan on 4 April 2006 observed cystic areas on or around the ovaries. Whilst not apparently recorded as such on the medical records at that time, an entry dated 30 July 2008 confirms that the claimant had a previous diagnosis of polycystic ovary syndrome (PCOS). The GP also prescribed the claimant with norethisterone again, as she had complained on that date of having been bleeding for 3 ½ weeks.

10 The notes record essential hypertension as an active problem but not menorrhagia or PCOS. The claimant presently has a repeat prescription for amlodipine, which she accepted was blood pressure medication, but none for her menorrhagia or PCOS. The claimant's explanation, which I accept, is that she had previously tried norethisterone but that it had caused bloating and that she had discussed with her GP prioritising control of her hypertension. She did not see the point therefore of going back to the GP to complain about

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conditions for which she did not wish to take the treatment offered. That said, the claimant's GP issued a MED3 on 18 June 2019 citing amongst other things menorrhagia.

11 The claimant described in her impact statement and oral evidence the symptoms she has experienced with menorrhagia and PCOS. These in a nutshell are heavy and prolonged menstrual bleeding, often for two weeks of a cycle and sometimes lasting for weeks, and the spontaneous escape of clear fluid. Sanitary products are often inadequate to contain the bleeding and other fluids. These symptoms she explained have worsened over the last 5 years with the approach of menopause.

12 As a result, when experiencing these symptoms the claimant would avoid taking trips to the shops or otherwise walk anywhere that toilet or changing facilities were unavailable. She would have her daughter go shopping for her. Twice a month on average, the claimant's sleep is interrupted when her sanitary products fail to protect her sufficiently. The symptoms regularly result in interruption of the claimant reading, watching television or conversing with others. Discomfort and fatigue significantly impact on the claimant's concentration and enjoyment of life.

13 These are all substantial adverse effects on the claimant's normal day to day activities. Consequently, for the reasons given I find that the claimant is disabled within the meaning of s6 of the Equality Act 2010.

14 The claimant confirmed that she was likely to call one witness in addition to giving evidence herself. The respondents were likely to call three witnesses. I agreed to list the matter for a 4 day final hearing by CVP over the period **14-17 November 2023**.

15 With the agreement of the parties, I gave the directions attached.

Employment Judge O'Brien
Dated: 29 June 2022