



EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

Claimant: Ms Shukri Jama-Yusuf

Respondent: LHR Airports Ltd

RECORD OF AN OPEN PRELIMINARY HEARING

Heard at: Watford by CVP

On: 25 January 2021

Before: Employment Judge Alliott (sitting alone)

Appearances

For the claimant: In person, assisted by her sister Sulekha

For the respondent: Mr Jason French-Williams, Solicitor

JUDGMENT

The judgment of the tribunal is that:

1. At all materials times since 2008 the claimant has been a disabled person within the meaning of the Equality Act 2010 by reason of the following disability: dyslexia with some symptoms associated with dyspraxia, dyscalculia and dysgraphia.

REASONS

1. The claimant was employed by the respondent from 16 January 2017 until her dismissal on 14 December 2018. By a claim form presented on 11 March 2019 the claimant brings complaints of disability discrimination. The unfair dismissal claim stands to be dismissed as the claimant does not have the requisite two years' qualifying service.
2. The disability identified in the claim form is dyslexia. At a preliminary hearing before Employment Judge Bloch QC on 16 January 2020 the disability relied upon by the claimant was recorded as: "four types of learning impairments: dyslexia, dyspraxia, dyscalculia and dysgraphia. Case management orders were made for the claimant to provide further information concerning her claims as well as disclosure and an impact statement on the disability issue.
3. The claimant has provided further information and an impact statement. Notwithstanding the direction for disclosure on the disability issue to include medical notes, reports, etc., the claimant has not disclosed her GP records. The claimant suggested she had difficulties in obtaining these but the fact of the matter is that she has had a year to do so and they are not available.
4. The respondent accepts that the claimant has the physical/mental impairment of dyslexia. The respondent does not accept that the claimant has been diagnosed with dyspraxia, dyscalculia and dysgraphia. Irrespective of diagnosis, the respondent does not accept that the claimant's medical conditions substantially adversely affect her ability to undertake normal day to day activities. Obviously enough I have the Equality Act 2010, the schedule thereto and the guidance on the definition of disability (2011). In this case the respondent accepts that dyslexia is a physical and/or mental impairment and that it is long term, albeit that the severity may change over time.
5. From the guidance I take the following propositions:-
 - "A4. Whether a person is disabled for the purposes of the Act is generally determined by reference to the effect that an impairment has on that person's ability to carry out normal day to day activities."
 - "A8. It is important to remember that not all impairments are readily identifiable. While some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious, for example some mental health conditions and learning disabilities."
 - "Meaning of "normal day to day activities"

D2. The act does not define what is to be regarded as a "normal day to day activity". It is not possible to provide an exhaustive list of day to day activities, although guidance on this matter is given here and illustrative examples of when it would and would not be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day to day activities are shown in the appendix.

D3. In general, day to day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation...”

- “Appendix

Factors which it would be reasonable to regard as having a substantial adverse effect on normal day to day activities

- Persistent and significant difficulty in reading or understanding written material where this is in the person’s native written language, for example because of a mental impairment, or learning disability, or a visual impairment...”

6. The claimant has disclosed a Needs Assessment Report by Brunel University following a referral from the Thames Valley University where the claimant was in her third year of a business studies course. This report is dated 29 April 2008, ie some nine years before the claimant was employed by the respondent. The report quotes from a psychological report on the claimant as follows:-

“Shukri was assessed on 4 January 2008 by Tim Harper, Chartered Educational Psychologist. The report stated, “Shukri’s scores on a cognitive assessment (WAIS-111 (UK)) indicates that she is functioning within the below average range on verbal comprehension and perceptual organisation, but with some significantly specific difficulties in reading and spelling. This suggests that she has some specific learning difficulties (dyslexia) as well as general learning difficulties, which account for her extreme difficulties in reading and spelling. Most of her reading and spelling mistakes are of a phonic nature.

Shukri also finds it difficult to read for prolonged periods. Her writing lacks focus and precision and Shukri feels that she would benefit from some study support in this area. Shukri also has some difficulty with mathematical concepts and calculations.”

And

“In conclusion, the report noted, “There are significant differences between either working memory or perceptual organisation indices and Shukri’s visual processing speed. Shukri finds working with shapes and angles difficult and working with short term memory especially difficult. Seen together with her severe problems with reading and spelling, Shukri has some general learning difficulties and at the same time some underlying specific learning difficulties of a dyslexic nature. Her difficulties with orientation and sequencing are typical of dyslexics. The fact that she found it hard to learn to read and write Arabic would also not have been a good foundation for learning to read and write English.”

7. I accept that this report relates to the claimant’s condition ten years prior to the relevant times for this case. It may be that, as a general proposition, dyslexia can change over time, although I had no specific evidence before me to that effect. Nevertheless, I take the psychological assessment as indicating that the claimant had the mental/physical impairment of dyslexia with some associated problems, that this could be characterised as severe and that it had a significant impact on her learning at that stage. Further, that dyslexia is a permanent condition.

8. The claimant has submitted two letters from her GP, one dated 3 June 2020 and one dated 11 January 2021. The second of these contains the same wording as the first but with some additions. The second letter reads as follows:-

“I am this lady’s GP. I am writing this letter in support of her tribunal. I can confirm that she has various disabilities with communication and written work due to dyslexia, which would affect her performance at work and doing tests. This trauma problem is permanent and includes dyscalculia.

A clinical psychologist report has confirmed that for any tests, she needs 25% extra time and a separate room and any training materials to be provided in advance.

Any instructions must be given clearly and ensure that she has understood. This condition has an adverse effect on her day to day struggles to understand written/verbal instructions and needs more time than most people. It is considered to be a mental disability. She would struggle with engaging face to face with people, managing her budget, doing journeys, reading and understanding signs, symbols and words.”

9. Whilst this GP letter does provide some support for the claimant, I observe that it could be read as merely indicating the sort of symptoms that a GP might expect from someone with dyslexia rather than a positive assertion that these symptoms are actually being experienced by the claimant.
10. The claimant has put in an impact statement. In that statement the claimant refers to suffering anxiety and depression for the last ten years or even longer, that she has been prescribed anti-depressants and uses such terms as clinical depression and anxiety and floats the concept that she may have bipolar disorder. I have no medical evidence before me in the form of a report or even the claimant’s GP records to corroborate these assertions. It is for the claimant to present relevant evidence in order to establish that she has a disability or disabilities if more than one. I find that the claimant has not established that she suffered from these alleged disabilities at the relevant time.
11. When assessing the claimant’s impact statement I have therefore had to concentrate on what effect on day to day activities the dyslexia may have had as opposed to the problems the claimant says are associated with her alleged depression/anxiety. Further the impact statement has to be treated with some caution as the claimant told me that it had been prepared for her by someone else. Parts of it read as if it is advancing possible symptoms associated with dyslexia rather than those symptoms which have actually been suffered by the claimant. For example, a part of it refers to dyslexia causing someone to stammer and a section is entitled “Stammering and Dyslexia”. However, the claimant was unfamiliar with stammering or stuttering as a concept and did not know what it was.
12. No evidence has been placed before me that the claimant has been diagnosed with dyspraxia or dysgraphia. The only reference to dyscalculia is in the GP’s letter. I find that she has not been diagnosed with any of those three conditions.
13. I find that the claimant does have severe dyslexia which causes her a substantial adverse effect on her ability to read and write. I find that that is both on paper

and on a computer. I find that reading and writing both on paper and on a computer are normal day to day activities. The claimant clearly can read and understand what she reads but this may take longer than usual and the time taken to undertake tasks is something I have taken into account. In her impact statement the claimant refers to difficulties counting and dealing with change when shopping, errors telling time and difficulties in her sense of direction. Further she has referred to bumping into things. I find that the claimant exhibits symptoms that might be associated with dyspraxia, dyscalculia and dysgraphia stemming from her dyslexia. Cumulatively I find that these add to her disability of dyslexia.

14. I do not find that the claimant has established a substantial adverse effect in her ability to communicate orally. While she may have some difficulties, I do not regard these as being substantial. The claimant was cross-examined for in excess of one hour and presented as confident and articulate. When assessed by the Department for Work and Pensions in December 2020 over a range of issues, the following is recorded:

“Communicating verbally

You can express and understand verbal information unaided. This gives you a score of 0”

15. In closing, in answer to the question what other day to day activities of the claimant were adversely affected, the claimant’s sister suggested “eating, hygiene and keeping her living quarters in a habitable state”. It was suggested this was on the basis of the claimant’s depression and anxiety. As indicated above I have found that the claimant has not established that she has a mental impairment of depression and/or anxiety. Issues relating to eating, hygiene and keeping her living quarters in a habitable state are not, in my judgment, attributable to her dyslexia.
16. For the aforesaid reasons I find that the claimant was disabled at all material times by reason of dyslexia.

Employment Judge Allott

Date: 26 February 2021

Sent to the parties on:

03 March 2021

For the Tribunal: