



## EMPLOYMENT TRIBUNALS

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

“This has been a remote hearing not objected to by the parties. The form of remote hearing was by CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”

**Claimant**

Caleb Ellis

**Respondent**

v Chancellors Group of Estate Agents Ltd

## PRELIMINARY HEARING

**Heard at:** Watford (by CVP)

**On:** 22 July 2021

**Before:** Employment Judge Allott (sitting alone)

**Appearances:**

**For the Claimant:** In person

**For the Respondents:** Ms Jane Callan, Counsel

## JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was not disabled within the meaning of the Equality Act 2010 between 30 November 2019 and 31 July 2020.
2. Consequently, the claimant's disability discrimination claims are struck out as having no reasonable prospect of success.

## REASONS

1. This preliminary hearing was ordered by Employment Judge Anstis on 12 May 2021 for the purposes of determining whether the claimant was a disabled person at the relevant times for his claim and to give any further case management orders depending on the outcome of that decision.
2. The Equality Act 2010 defines disability as follows:

“6. Disability

- (1) A person (P) has a disability if:
  - (a) P has a physical or mental impairment, and
  - (b) The impairment has a substantial and long term adverse effect on P’s ability to carry out normal day to day activities.”

3. In addition I have the Guidance on the definition of disability (2011). In particular I note the following:-

“A7 It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition of which is excluded... What is important to consider is the effect of an impairment not its cause.

B12 Effects of treatment. The Act provides that where an impairment is subject to treatment or correction the impairment is to be treated as having a substantial adverse effect if but for the treatment or correction the impairment is likely to have that effect.”

4. Further, when addressing an individual’s ability to undertake day to day activities it is for me to concentrate on things that the claimant cannot do or can only do with difficulty.

5. I start with the medical evidence such as it is. I have the benefit of the GP records although it would appear that for the period between 30 December 2019 and 25 July 2020 the relevant GP records have been omitted.

6. The claimant had a serious road traffic accident shortly after midnight on 29/30 November 2019. He sustained multiple injuries including concussion.

7. The claimant attended at his GP surgery on 12 December 2019. The presenting problem was “anxiety with depression”. The history was described as follows:-

“Deterioration in mood in the last few weeks – triggered by mum’s poor health – terminal breast cancer. Complicated by recent RTA, admits to stress related to work as an estate agent.”

8. The claimant was placed on Citalopram at a modest dosage.

9. Thereafter, there is no medical entry in the GP records of relevance dealing with the claimant’s anxiety and depression. There is an entry for 15 December 2020 but the presenting complaint has been redacted and so I disregard that entry.

10. During his absence from work the claimant presented a series of fit notes, all of which describe the medical issue as being road traffic injuries.

11. I have a document dated 7 January 2020 from a senior mental health nurse at the Veterans Mental Health Transition Intervention and Liaison Service. This document does refer to a range of issues both physical and mental. In particular it refers to:-

- Anxiety which affects him physically
- Depression (worse after leaving the army and after cancer diagnosis)
- PTSD
- Avoidance
- Disturbed sleep

12. That letter sets out, in the opinion and plan section, that:-

“He is suffering with anxiety, depression and PTSD.”

13. Thereafter the claimant was referred to a talking therapies unit.

14. The claimant had regular welfare calls with the respondent. On 21 January 2020 he referred to driving being better. On 30 January 2020 he referred to wanting to come back to work sooner rather than later but that he was not up to it because he was distracted. On 10 February the claimant had a welfare meeting, he referred to his anxiety and depression and indicated that social situations took quite a lot of effort for him. On 12 March 2020 the claimant indicated in an email that he was very keen to return to work and interested in starting the role as property manager.

15. Following the termination of the claimant’s employment on 31 July 2020, the claimant clearly obtained alternative employment with David Lloyd Clubs. I have been provided with a postdated 2 August 2020 which indicates that the claimant was working as a swimming pool lifeguard at that time.

16. There is within the bundle a document dated 1 April 2021 from a consultant psychiatrist following an assessment which states:-

“Mr Ellis has been assessed by me and is presenting with symptoms of a mixed anxiety and depressive disorder.”

17. I note that that diagnosis by a consultant psychiatrist is from April 2021 whereas I am dealing with events between November 2019 and September 2020.

18. On the evidence that has been presented before me, I have come to the conclusion that the claimant did not have a mental impairment during the relevant time. I have taken into account the fact that the GP notes record depression and anxiety as the presenting complaint on 12 December 2019. Nevertheless, in my judgment, the reality in this case is that the claimant was suffering adverse reactions to life events and difficulties at work. This is corroborated by the GP entry which shows that the deterioration in his mood had only been for the last few weeks and was triggered by the claimant’s mother unfortunately being diagnosed with cancer and being complicated by the road traffic accident and stress related to work as an estate agent.

19. The claimant has never been formally diagnosed with PTSD nor indeed depression during the relevant period. Consequently, I have concluded that whilst the claimant may well have been suffering from stress, that was due to life events and not due to a mental impairment.

20. In any event, I do not find that the claimant's symptoms caused a substantial adverse effect on his ability to undertake day to day activities. In his impact statement the claimant has set out a range of matters that he invites me to consider. It is quite clear to me that the claimant was able to look after his basic hygiene, was able to leave the house and socialise and could eat. I accept that physical limitations are not part of his case and that he is presenting a case that he was lacking motivation due to the stress he was under. I have to make an assessment as to how debilitating his lack of motivation was. However, having assessed his self-described condition in the return to work interviews and the fact that the claimant got alternative employment at David Lloyd Clubs within days of his dismissal, I find that much of the alleged impact set out in his impact statement is exaggerated. The claimant clearly had to leave the house regularly to go and work at David Lloyd Clubs. Working as a lifeguard in a gym clearly would have brought him into contact with members of the public and other staff on a very regular basis. He returned to driving and accepted that this needed concentration. He attended face-to-face meetings. He was keen to return to work.
21. The claimant asserts that he was constantly fatigued, had memory problems, became socially withdrawn and couldn't concentrate and suffered from low mood. Given my finding that the claimant has exaggerated much of the alleged impact that can be tested by comparison with how he was coping at the time, so I approach this evidence with caution. He may have experienced some of these issues to a degree but not, in my judgment, to the extent that they had a substantial adverse effect on his ability to undertake day-to-day activities.
22. Consequently, I find that the claimant's stress did not cause a substantial adverse effect on his ability to undertake day to day activities.
23. I have considered whether any condition that the claimant had was long term. The condition only began on 30 November 2020. An earlier reference in the GP notes from 8 May 2018 refers only to 'low mood following medical discharge from the military in September 2017' and appears isolated. The condition was clearly related to his physical problems following the road traffic accident along with other life events. In my judgment it was not likely at that stage to have lasted more than twelve months.
24. Consequently, I find that the claimant was not disabled within the meaning of the Equality Act at all relevant times between 30 November 2019 and September 2020.

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**Employment Judge Alliott 2/8/21**

Sent to the parties on:

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For the Tribunal:

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