



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr Sayed Yusuf**

**V London Borough of Brent – 1<sup>st</sup>**

**Yogini Patel – 2<sup>nd</sup>**

**Tony Kennedy – 3<sup>rd</sup>**

**John Dryden – 4<sup>th</sup>**

**Sandor Fazekas – 5<sup>th</sup>**

**Paideh Asgari – 6<sup>th</sup>**

**Diane Walker – 7<sup>th</sup>**

## PRELIMINARY HEARING BY CLOUD VIDEO PLATFORM

**Heard at: Watford**

**On: 30 March 2021**

**Before: Employment Judge Bedeau**

**Appearances:**

**For the Claimant: In person**

**For the Respondents: Mr P Lockley, counsel**

## RESERVED JUDGMENT

1. In a claim form presented to the tribunal on 28 April 2020, the claimant made claims against the seven respondents of: direct disability discrimination; discrimination arising in consequence of disability; failure to make reasonable adjustments; harassment; victimisation, detriments, and race discrimination. Precisely what is alleged against each respondent is unclear. He states that he suffers from lower back pain and groin pain, PTSD, anxiety, stress and depression.

2. In the combined response presented to the tribunal on 17 June 2020, the claims are denied. However, on 26 March 2021, the respondents admitted that the claimant's lower back and right groin pain are disabilities under the Equality Act.
3. On 2 November 2020, Employment Judge Ord ordered that the claimant serve a medical report on his claimed disabilities and their effects on normal day-to-day activities, by not later than 2 March 2021.

### **The issues**

4. On 15 November 2020, at the direction of EJ Ord, the case with listed for a preliminary hearing, in public, today, to determine the issue of whether the claimant was, at all material times, suffering from a disability or disabilities as defined by section 6, Schedule 1, Equality Act 2010.

### **The evidence**

5. I heard evidence from the claimant. In addition, the parties adduced three separate bundles of documents: bundle 1; bundle 2; and bundle 1A; the claimant's further medical evidence bundle "CFMEB"; and his skeleton argument which is a history of his medical treatment.

### **Findings of fact**

6. The claimant commenced employment with the respondent on 8 June 2015 as a Traffic Engineer working in the first respondent's Highways Infrastructure department.
7. The first respondent is a local authority. The second respondent was employed as a Senior Regulatory Manager. The third respondent is employed as a Team Leader, and was the claimant's line manager. The fourth respondent, is head of Highways and Infrastructure. The fifth respondent was the claimant's previous Team Leader. The sixth respondent is employed as the Principal Engineer, who checked the claimant's work. The seventh respondent is employed as a Human Resources Officer.
8. On 15 May 2016, the claimant was the victim of an unprovoked attack on a street by two unknown men. They were later arrested and charged with offences of violence, convicted, and sentenced to 2 years in prison.
9. Following violent the attack on him, he suffered from nightmares; was forgetful, he had short-term memory problems; on occasion he entertained suicidal thoughts; was unable to sit in a chair for very long and would have to reposition himself and stand for a short while, in order to ease the pain in his lower back and be comfortable. He told me that on the 8 July 2016, the first respondent's occupational health proposed psychotherapy. He attended one session but did not find helpful.
10. From his list of medical attendances, notes and diagnoses, it is recorded that on 20 July 2016, he was diagnosed as suffering from PTSD. In a letter dated 18 August 2017, by Mr Mohammed Farouk, senior clinical fellow at King's College Hospital sent to the claimants GP, it is stated that the claimant was feeling depressed and it was suggested that his doctor should "consider assessing his psychological status and get an opinion if you think it is appropriate." (claimant's further medical evidence bundle page 1)
11. In the document headed South London and Maudsley NHS Foundation Trust, dated 5 February 2018, that the claimant was unable to work due to

psychological and physical symptoms and not responding as expected to specialist treatment. The question was asked whether he would benefit from eye movement desensitisation therapy for PTSD. It is unclear who the author is of this document but it was in the nature of a referral to Southwark North Assessment and Liaison Team (CFMEB pages 3-4)

12. The claimant told me in evidence, and I do find this fact, that he took the memory test due to his low mood and depression.
13. In the occupational health report by Dr Roberto Ledda, to Mr Grant Ciccone, Occupational Health Advisor, dated 16 May 2018, about the claimant, the doctor wrote:

“I understand that he is currently off work due to both the current pain in the lower back/right hip and also the current psychological consequences of the assault of which you are already aware. He has just had an MRI scan of the lumbar spine but he is not clear on what the specific results are. We agreed that he would let me know the results. He is currently experiencing very negative thoughts and I believe that the psychological aspect is an important issue here, along with the current physical pain.

**Fitness to work on recommendations**

At present I consider him unfit to work mainly due to the psychological aspect. I advised him to obtain a second opinion as he is not satisfied by the current specialist input. He needs to understand exactly the specific lesions in the spine and at present the current uncertainty is affecting his psychological status. He may stay off work for some more weeks but his progress depends on having a clearer idea of the present physical spinal problem. I understand that you have discussed alternative sitting work and any solution can be discussed further once it is clear what lesions are present in his lumbar spine. (bundle1A p80)

14. It appears that the outcome of the referral was sent to the claimant's GP, Dr Rahman, on 2 August 2018, by Ms Laura Trendall, Community Practitioner. She wrote,

“We have reviewed the referral of Mr Sayed and on the basis of his MSE score and age, we do not feel this is suggestive of an organic cause of his memory loss symptoms and that his problems with mood, anxiety and likely to be the compounding factor. Therefore we will not be able to accept the referral at this time.” (CFMEB p8)

15. It seems that Ms Trendall was of the opinion that the claimant's memory loss was unrelated to the violent assault, such as a concussion, and more to do with his mental conditions.
16. In a report by Mr Ciccone, dated 8 August 2018, he referred to a telephone assessment on the claimant on 2 August 2018 during which the claimant informed him that he had taken a mini memory test conducted by his doctor. Although his long-term memory was good there were issues with his short-term memory and that he had been referred to a memory specialist for further assessment. (Bundle 2, p25-26)
17. On 11 February 2020, Talking Therapies Southwark, wrote to the claimant the following:

“This letter is to confirm our treatment decision following your initial consultation with me on 13 January 2020. You described symptoms of re-experiencing, avoidance and hyper arousal which are core characteristics of post-traumatic stress disorder.

We therefore decided it would be appropriate for you to attend our PTSD group workshop. The workshop starts at the end of April and runs for four consecutive weeks.

I look forward to seeing you there.” (Bundle 2, page 94)

18. The claimant was unable to attend the sessions because of the Covid-19 pandemic. He said that at the time he was having suicidal thoughts and thought about going to the top floor of the council building and jump. He had a book that helped to cope with his PTSD.
19. From the fit notes provided he was absent from work from 31 January 2018 to 28 March 2018 due to chronic pain; from 29 March 2018 to 3 June 2018, chronic pain; similarly from 4 June 2018 to 30 June 2018; from 26 April 2019 to 14 June 2019, stress related issues; from 1 July 2019 to 31 July 2019, stress at work; from 3 December 2019 he due to be off work indefinitely for plantar plantar fasciitis; from 10 to 24 December 2019, stress at work, plantar fasciitis and chronic pain; from 6 tom 31 January 2020, anxiety related to work stress; from 1 to 21 February 2020, severe work-related stress with anxiety; from 22 March to 21 April 2020, PTSD; similarly from 20<sup>th</sup> April to 29 May 2020; and the same from 1 to 30 June 2020. (Bundle1A 97-105)
20. In completing the questionnaire on the claimant's alleged disabilities for the purposes of Employment Tribunal proceedings, Dr Mukhtar, from the claimant surgery, wrote on 11 March 2021, that his impairments were chronic lower back pain, right groin pain, PTSD anxiety and stress. He demonstrated an inability to cope due to mental health challenges. His PTSD symptoms were that he was depressed and anxious consistent with his medical notes. (Bundle1, 61- 61)
21. There was very little medical evidence on the claimant's stress, anxiety, and depression. It seems that these are likely to be part of his PTSD which has been a consistent diagnosis.
22. The claimant told me that he is a native of Sudan and lives by himself. Following the unprovoked assault on him he has had nightmares; he is forgetful; and suffer from memory relapses; and occasionally, did entertain suicidal thoughts. I was satisfied that his short-term memory is impaired. He would worry about whether he had left a pan on the lit cooker; whether the door to his accommodation was locked; and whether he had left the iron on. On one occasion he had left a pan on on the cooker which activated the fire alarm. He has difficulty sleeping at times. These were not a behavioural pattern specific in time but has continued since the assault. I am further satisfied that these affected his normal day-to-day activities as he was unable to focus on issues. He regularly sees his attackers on the streets which causes him to fear being attacked again.
23. He was dismissed from his employment effective on 11 March 2021 due to capability.

### **Submissions**

24. I have taken into account the submissions by the claimant and Mr Lockley, counsel on behalf of the respondent. I do not propose to repeat their submissions herein having regard to rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended. In addition, I have taken into account the case of Igweike v TSB Bank Plc UKEAT/0119/19/BA, a judgment by HHJ Auerbach, at the Employment Appeal Tribunal, on setting out clearly the adverse effects on day to day activities.

### **The law**

25. Section 6 and Schedule 1 of the Equality Act 2010 defines disability. Section 6

provides:

- “(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.”

26. Section 212(1) defines substantial as “more than minor or trivial.” The effect of any medical treatment is discounted, schedule 1(5)(1).

27. Under section 6(5), the Secretary of State has issued Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011), which an Employment Tribunal must take into account as “it thinks is relevant.”

28. The material time at which to assess the disability is at the time of the alleged discriminatory act, Cruickshank v VAW Motorcast Ltd [2002] IRLR 24

29. In Appendix 1 to the Equality and Human Rights Commission, Employment: Statutory Code of Practice, paragraph 8, with reference to “substantial adverse effect” states,

“A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.”

30. Day-to-day activities includes work-related activities, Sobhi v Commissioner of Police of the Metropolis [2013] UKEAT/0518/12/BA.

31. In the Guidance on adverse effects on normal day-to-day activities, it states:

“D19. A person’s impairment may adversely affect the ability to carry out normal day-to-day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking in new knowledge, and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.”

31. The onus is upon the claimant to prove he or she, at the material time, was disabled.

32. I have also considered the case of Igweike v TSB Bank Plc UKEAT/0119/19/BA on adverse effects normal day-to- day activities.

## Conclusion

33. The claimant is a litigant in person and had difficulty understanding what was required of him in relation to adverse effects on normal day-to-day activities in respect of his PTSD.

34. I am satisfied, and it is not disputed, that he has been suffering from PTSD for some time since 20 July 2016. The impairment is long-term, in that, it has lasted

- for longer than twelve months. The question is whether it has had a substantial adverse effect on his ability to carry out normal day-to-day activities?
35. To have that diagnosis for so long, the most recent being on 11 March 2021, suggests that the claimant had been displaying symptoms consistent with it. In the Guidance D19, it states adverse effects on normal day-to-day activities can include a person remembering to do things and organising their thoughts.
  36. I do find that the claimant's short-term memory has been and continues to be affected. It is being unable to remember what he did in a comparatively short time. He gave as an example, leaving a pan on the fire on his cooker which activated the fire alarm. When he is consciously aware of things around him, he then would question whether he had locked his front door, or switched off the iron, or left something on on the cooker. These were not "one-offs" but regular occurrences with an impact on how he conducted himself on a daily basis making it difficult to focus on issues or on his work. He has nightmares and finds it difficult sleeping at times.
  36. I have come to the conclusion that he has been suffering from PTSD for at least five years and has displayed symptoms consistent with that diagnosis which have had adverse effects on normal day-to-day activities. The threshold is that the adverse effects must be more than minor or trivial and they are.
  37. Accordingly, having regard to section 6, schedule 1, Equality Act 2010, the claimant has been a disabled person suffering from PTSD since 20 July 2016.
  38. As the claims and issues are not clearly identified, I have decided that this case should be listed for a further preliminary hearing, but in private, on **26 July 2021 at 10.00am for 3 hours either in person at Watford Employment Tribunals, 3<sup>rd</sup> Floor, 51 Clarendon Rd, Watford, W D1 71HP, or by Cloud Video Platform**. At that hearing the Employment Judge will: clarify the claims against the respondent/s avoiding all references to settlement negotiations; consider any applications to amend; consider ordering the service of an amended response; and issue appropriate case management orders.
  39. The case is also listed for a full merits hearing, over **7 days**, from **Monday 21 – 29 March 2022**, before a full tribunal, that is, before an Employment Judge and two Non-legal Members, at **Watford Employment Tribunals**.

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Employment Judge Bedeau

4 April 2021

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Sent to the parties on:

21 April 2021  
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For the Tribunal:  
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