



EMPLOYMENT TRIBUNALS

Claimant: Mrs A S Khan

Respondent: Tesco Stores Ltd

Heard at: London South Employment Tribunal by video (CVP)

On: 5 September 2024

Before: Employment Judge Macey

Representation

Claimant: Mr Khan, husband

Respondent: Miss Gardiner, counsel

RESERVED JUDGMENT AND REASONS

At all relevant times, the claimant was disabled by reason of plantar fasciitis.

REASONS

ISSUES

1. The issues that were agreed at the start of the preliminary hearing on 5 September 2024 were:
 - 1.1. Did the claimant have a disability in respect of the impairment of plantar fasciitis as defined in section 6 of the Equality Act 2020 between late 2020 and 16 January 2022? The Tribunal will decide:
 - 1.1.1. It is agreed that plantar fasciitis is a physical impairment.
 - 1.1.2. Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
 - 1.1.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 1.1.4. Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - 1.1.5. It is agreed that the effects of the impairment are long-term.

PROCEDURE, BUNDLE AND EVIDENCE

2. For the claimant, the tribunal heard evidence from the claimant and there was a written witness statement for the claimant that was unsigned. Miss Gardiner had no objections to the unsigned written witness statement being used as evidence.
3. There was an agreed bundle for the preliminary hearing of 342 pages ("Bundle"). I have referenced pages of the Bundle in square brackets. The claimant's impact statement [250] was also unsigned and Miss Gardiner had no objections to Tribunal relying on the unsigned impact statement.

FACTS

4. The relevant facts are set out below.
5. The claimant commenced employment with the respondent on 27 November 2018. At the start of her employment, she was working in the clothing department of F&F. Her shifts were five to six hours long and she was standing for the entire shift with no opportunity to sit.
6. Sometime between 27 November 2018 and December 2019 the claimant started to experience pain in her feet. This pain was all round the foot, but most particularly in the arches of the foot and the back of the foot. The arches of her feet would be swollen and painful.
7. Starting sometime in 2019 (and continuing to 16 January 2022 and beyond) the claimant took over-the-counter medication of ibuprofen, paracetamol and sometimes aspirin as required to manage the pain. The claimant did not take the painkillers in the morning on waking.
8. The claimant took the painkillers as required but she was often taking the painkillers daily. When the pain was severe she would take paracetamol and ibuprofen together and sometimes would only wait three hours before taking another dose.
9. The claimant says that if she had not taken these painkillers to relieve the pain her feet would be painful, swollen, red and hot. She would be unable to put weight on her feet. Even if she needed the toilet she would still have to wait before going to the toilet until the pain relief started to work. The claimant did not present any detailed medical evidence to the Tribunal to support these assertions.
10. This pain became progressively worse during 2019 to the point that the claimant could only stand for one hour at a time before the pain became unbearable. This was the case both at work and at home. At home if she was standing up to cook, clean or doing the washing after an hour she would sit for 5 – 10 minutes before standing again.

11. On 17 December 2019 there was a WhatsApp exchange between the claimant and Theresa Karn [342] that supports the claimant's evidence that she was unable to stand longer than one hour by the end of 2019.

12. Ms Karn on 17 December 2019 sent the following message:

"Sorry to bother you but you are going to have to work clothing tonight as joanna is finishing at 5.45 and there is no one to cover thank you"

13. The claimant replied on the same date with the following message:

"Hi !Terresa, so to disappoint you but I won't be able to do shift on clothing bcoz my feet are hurting very badly from yesterday, its not about clothing its about any standing up work for long hours i can't do it. If it was for an hour or so tidy up I would've done it but not for 5hours. Sorry."

14. Ms Karn replied on the same date:

"You will need to do 5-6 until agency gets there"

15. The claimant replied on the same date:

"OK I'll do that."

16. Sometime between 27 November 2018 and 17 September 2020, on the advice of her doctor, the claimant requested to change department from F&F to relieve the pressure on her feet.

17. On 17 September 2020 the claimant wrote a letter to Mr K Chatwal at the respondent explaining that she had been moved to check-out [251]. In the letter she states the following:

"I started my job in Tesco Thornton heath in the F&F department. I liked working there and I was also till trained. After a year or so I developed problems with my feet and in light of the worsening foot condition I asked for change of department on doctor's advice to relieve pressure on my feet. I was moved to tills, however, I still wear the F&F uniform..."

18. The claimant was also exempted from the one aspect of the job on check-out that required standing. This was working in the self-service area of the check-outs.

19. In the claimant's GP records [236] it states that plantar fasciitis was an active problem from 10 November 2020.

20. In the disability impact statement [250] the claimant states that the pain is most severe in the morning and when going to bed at night. On waking up in

the morning the claimant must sit and wait five to six minutes before standing even if she needs to go to the toilet. Also, that pain can also occur during the day for which the claimant takes prescribed Naproxen or off the shelf painkiller, ibuprofen.

21. This is supported by the letter from the claimant's physiotherapist to her GP dated 17 February 2021 [251-252]. The letter states that the claimant's diagnosis is bilateral plantar fasciopathy. It further states:

"Ms Khan reports 1 year history of gradually worsening bilateral heel pain, She has no lumbar pain, no parasthesia or weakness. She reports her feet can be red and hot at times in medial arch.

Her pain occurs with standing long periods in the day and is significantly worse on initially weight bearing in the morning with her struggling to bear weight on her heels. Her sleep can be awoken 3-4 times a night but she denies any early morning stiffness of note.

She gets benefit from pain relief but has tried exercises along with insoles with no overall improvements..."

"... DH: Indapamide, Naproxen..."

"... Examination: As per physiotherapy face to face assessment 27th January 2021 it was documented; She had mild swelling in medial arch bilaterally. She had full ankle movement and tenderness over heel into medial arch on both feet.

***Plan:** Given no improvement with exercises we discussed management options such as shockwave therapy which we are not currently offering due to COVID-19 or possible injections with associated risks related to COVID-19.*

She would be open to shockwave therapy but given we have no date when this will be available she would like to consider injection therapy. As there is risk of plantar fascia rupture with injections she has been referred to St Georges for consideration of ultrasound guided injections."

22. I find that from at least February 2021 onwards the claimant was experiencing the difficulties described above in paragraph 20 on waking.

23. I also find that from at least February 2021 onwards the claimant was waking three to four times at night. In cross-examination the claimant explained that on waking in the night her feet would be hot and red and that she would sometimes have to roll an ice bottle under her feet or use a wet cloth. Further, that over the course of a night she would be awake in total one to two hours. I accept the claimant's evidence on this point.

24. I find that in February 2021 the claimant was still unable to stand for long periods.

25. I also find that at some point prior to 17 February 2021 the claimant had been prescribed Naproxen because the letter from the physiotherapist [252-253] mentions Naproxen under drug history. This is also supported by the medical

history questionnaire the claimant completed when she moved GP surgery to Wide Way Medical Centre [248 – 249]. In this questionnaire in the box requesting details of drugs and why they are been taken the claimant wrote “*Neproxin (foot pain)*”. The GP records [202] confirms the claimant was registered at Wide Way Surgery on 19 August 2021.

26. The medication record in the GP records from September 2021 onwards [202-204] show the claimant was prescribed Naproxen by Wide Way Medical Centre on 6 April 2022. I find that the claimant was not prescribed Naproxen between September 2021 and 5 April 2022.
27. I find that the physiotherapist [252-253] confirmed that the claimant benefitted from pain relief. Further in cross-examination the claimant confirmed that Naproxen and the over-the-counter medicines eased the pain when she took them and that when the pain was severe she was taking painkillers daily.
28. In her impact statement [250] the claimant states that she did receive electric shock wave therapy but that this did not make much difference to the condition.
29. The claimant’s electric shockwave therapy treatment took place sometime between February 2021 and 22 December 2022. This is supported by the letter dated 17 February 2021 from the physiotherapist to the claimant’s GP [252-253] and the letter dated 22 December 2022 from the claimant to Wide Way Medical Centre [214]. In the letter dated 22 December 2022 [214] the claimant wrote the following:

“...you will need to provide medical records from 2020 onwards, which have referrals to physiotherapists and then physiotherapist referral to Nelson Medical centre (Kingston road) where I received electric shock wave therapy treatment...”
30. The claimant says that after being a passenger in a car for more than one hour her feet become swollen, that she can drive a car for 30-35 minutes (and does not need to drive for longer because her husband will drive her). The claimant was not clear whether this is the case now at the time of the hearing or whether it was the case between late 2020 and 16 January 2022. There are no other documents which refer to driving and being a passenger in a car.
31. The claimant only walks for five to ten minutes. In respect of walking the claimant can walk to the local store five to ten minutes from her house, she has never attempted to walk more than 15 minutes because she does not want to experience the pain, but that she would like to be able to walk for longer in hot weather, for example. I accept the claimant’s evidence on these points.
32. The claimant also has type 2 diabetes and the respondent has accepted that the claimant’s impairment of type 2 diabetes is a disability under section 6 of the Equality Act 2010.

LAW

33. Disability is defined by section 6 EQA:

*(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. ...*

*(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.*

(6) Schedule 1 (disability: supplementary provision) has effect.

33. Paragraph 5 of Schedule 1 to the Equality Act 2010 states:

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if:

- (a) measures are being taken to correct it, and*
- (b) but for that, it would be likely to have that effect.*

(2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid.

34. Section 212 EQA defines 'substantial' as meaning more than minor or trivial.

35. In determining whether an adverse effect is substantial, a tribunal must compare the claimant's ability to carry out normal day-to-day activities *with the ability the claimant would have if not impaired* (**Paterson v Commissioner of Police of the Metropolis 2007 ICR 1522, EAT.**)

36. The focus should be on what the claimant cannot do, not on what they can do **Goodwin -v- Patent Office [1999] ICR 302.**

37. Guidance issued by the Secretary of State under section 6 (5) Equality Act 2010 can be taken into account by Tribunals. This Guidance is called "Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability" and I will refer to it as the Guidance.

38. Paragraph B4 of the Guidance states: An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.
39. Paragraph B7 of the Guidance states: 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. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.
40. Paragraph B9 of the Guidance states: Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would **not** be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability **it is important to consider the things that a person cannot do, or can only do with difficulty.**
41. Paragraph B12 of the Guidance states: **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. In this context, 'likely' should be interpreted as meaning 'could well happen'. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (**Sch1, Para 5(1)**). **The Act states** that the treatment or correction measures which are to be disregarded for these purposes include, in particular, medical treatment and the use of a prosthesis or other aid (**Sch1, Para 5(2)**). In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatments with drugs.
42. Paragraph B13 of the Guidance states: This provision applies even if the measures result in the effects being completely under control or not at all apparent. Where treatment is continuing it may be having the effect of masking or ameliorating a disability so that it does not have a substantial adverse effect. If the final outcome of such treatment cannot be determined, or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, it would be reasonable to disregard the medical treatment in accordance with paragraph 5 of Schedule 1.
43. Paragraph D3 of the Guidance states: 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 or using the telephone, watching

television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

44. The Appendix to the Guidance includes an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. This states: Whether a person satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case. That is, whether the substantial adverse effect of the impairment on normal day-to-day activities is long term. In the following examples, the effect described should be thought of as if it were the **only** effect of the impairment:

...

- a total inability to walk, or an ability to walk only a short distance without difficulty; for example because of physical restrictions, pain or fatigue...

45. The Appendix to the Guidance includes an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. This states: Whether a person satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case. That is, whether the substantial adverse effect of the impairment on normal day-to-day activities is long term:

...

- experiencing some discomfort as a result of travelling, for example by car or plane, for a journey lasting more than two hours.
- experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile...

46. Paragraph 9 of Appendix 1 to the EHRC Employment Code also provides guidance on the meaning of “substantial”: “Account should... be taken of where a person avoids doing things which, for example, causes pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.”

47. It is important to remember, however, that the EHRC Code of Practice and the Guidance are no more than that – useful guides to be taken into account, but not having the force of statute (**Elliot v Dorset County Council, UKEAT/0197/20/LA**).

48. The Employment Appeal Tribunal in **Aderemi -v- London and South Eastern Railway Ltd UKEAT/0316/12/KN** held that, in applying the definition of a person with a disability in section 6(1) of the Equality Act 2010, a tribunal had to consider, pursuant to paragraph (b), the adverse effect of the person’s

impairment on his ability to carry out normal day-to-day activities, focusing, not on what he could do, but on what he maintained he could not do as a result of his impairment; that the tribunal, having established that there was such an effect, then had to assess whether the effect was “substantial”, as defined in section 212(1) as “more than minor or trivial”; that the Act did not create a sliding scale between matters which were clearly of substantial effect and those which were clearly trivial, but provided that unless an effect could be classified as trivial or insubstantial it was necessarily substantial; that the tribunal had failed to use a comparative approach to look at what the claimant could not do because of his disability compared with that which he could do without it and had possibly excluded work activities, such as standing for lengthy periods of time, which, being common to different types of employment, could be classed as “normal”; and that the matter would be remitted for reconsideration.

49. Further at paragraph 32 Langstaff P stated:

“Before we deal with the consequence of our decision, we should record a further submission which was made to us by Mr Cross. He submitted that if we were to reject, as we have done, his argument that “activities” is in the plural and standing is a singular activity, he submitted that there were not enough people who will have to stand for long periods as part of their job for the Employment Tribunal to find that this was normal day-to-day activity under the Act. Standing for a long period for a particular purpose was not, he submitted, a feature of many jobs. In particular, we should have regard to the fact that the Claimant here had to maintain a visible presence which was a particular feature of his, although not of many jobs. We do not accept this. It falls foul of the problems of definition in description to which we have already adverted. If the problem is put simply, as being on one’s feet in a job for lengthy periods of time, then it is not difficult to think of very many jobs which would fit that description. The lay members in particular are concerned to make the point that this is the case in their industrial experience.”

50. In **Aderemi** the claimant could not stand for longer than 25 minutes and his shifts had been nine hours long. The Employment Appeal Tribunal remitted the case to the Tribunal and therefore the EAT did not decide whether this was a substantial adverse effect.

CONCLUSIONS

Did the impairment of plantar faciitis have a substantial adverse effect on the claimant’s ability to carry out day-to-day activities?

51. Following the approach in Aderemi I first considered whether the impairment of plantar faciitis caused an adverse effect on the claimant's normal day-to-day activities between late 2020 and 16 January 2022.
52. Firstly prior to late 2020 the claimant was no longer able to stand for more than one hour because of the impairment. This continued until at least February 2021 [252-253] and I conclude it has also continued beyond February 2021 up to 16 January 2022 (and beyond) based on the claimant's impact statement and the evidence presented during the preliminary hearing. In respect of household chores such as cooking, cleaning and doing the washing the claimant had to sit for 5-10 minutes after standing for one hour before she resumed her chores. This is an adverse effect on her ability to complete household chores.
53. Between late 2020 and 16 January 2022 the claimant also avoided work that would require her to stand for more than one hour without a break. This meant that prior to late 2020 she moved from the F&F department of the respondent on the advice of her doctor [251]. It also meant that in her job role at the checkout she did not undertake one aspect of the role that does require standing (manning the self-service checkout area). I conclude that this is an avoidance strategy employed by the claimant. It would not be reasonable to conclude that the claimant was not disabled because she had employed this avoidance strategy regarding what work she undertook between late 2020 and 16 January 2022. Not being able to undertake a job which required the claimant to stand for more than one hour without a break is an adverse effect.
54. Aderemi established that standing for lengthy periods which, being common to different types of employment, could be classed as "normal" and, therefore, standing for lengthy periods is a normal day-to-day activity.
55. At least from February 2021 the claimant was unable to walk immediately upon waking [252-253] because of the impairment. She had to sit and wait for at least five to six minutes even if she needed to go to the toilet. Going to the toilet is clearly a normal day-to-day activity and not being able to go the toilet when you need to would be an adverse effect.

56. The claimant also avoids walking longer than 15 minutes because she does not want to experience pain because of the impairment. The claimant has not attempted to walk more than 15 minutes so, she was unable to give evidence that she was unable to walk more than 15 minutes. On the evidence presented at the hearing in respect of not being able to stand for more than one hour I conclude on the balance of probabilities that between late 2020 and 16 January 2022 the claimant was also not able to walk for more than an hour. On the balance of probabilities insufficient evidence has been presented by the claimant to be able to conclude that she could not walk for more than 15 minutes. Walking is a normal day-to-day activity and being unable to walk for more than one hour is an adverse effect.

57. From at least February 2021 the claimant was being awoken up to three to four times a night because of the impairment. The total time the claimant was awake during the course of the night was one to two hours and she would need to roll an ice bottle on her arches or use a cold wet cloth on her arches before returning to sleep. Sleeping is a normal day-to-day activity and having sleep disturbance is an adverse effect on that normal day-to-day activity. The claimant did not present any evidence to the Tribunal about suffering fatigue during the day because of this sleep disturbance nor on any adverse effects caused by fatigue on other normal day-to-day activities.

58. The claimant does not drive for longer than 30-35 minutes, but again the claimant did not present evidence to the Tribunal that she could not drive longer than 30 – 35 minutes. The claimant's feet do become swollen after an hour when she is a passenger in a car. As the claimant's feet are swollen after an hour when she is a passenger I am able to conclude, on the balance of probabilities, that she is unable to drive after one hour. It was not clear from the claimant's evidence whether this was in fact the case between late 2020 to 16 January 2022 and there are no documents which reference driving or being a passenger in a car. On the balance of probabilities, therefore, I am unable to conclude that that the claimant could not drive for more than one hour and experienced swollen feet after an hour of being a passenger in a car between late 2020 and 16 January 2022.

Were these adverse effects substantial?

59. I now turn to whether the effects were more than minor or trivial.
60. I have concluded above that the claimant was unable to walk for more than an hour between late 2020 and 16 January 2022 (and beyond). Taking into account the Guidance and the list of non-exhaustive which, if they are experienced by a person, it would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities set out in the Appendix to the Guidance I conclude that this effect was not substantial. The list of factors includes experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile. On the other hand, the list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities include, a total inability to walk, or an ability to walk only a short distance without difficulty; for example because of physical restrictions, pain or fatigue.
61. No evidence was presented to the Tribunal about the pace at which the claimant walked, but I conclude that she would be able to walk more than a short distance in an hour.
62. In respect of the claimant being awoken three to four times a night I conclude that the adverse effect was not substantial. This is because the total time the claimant lost sleep over the course of the night was one to two hours. In addition, no evidence was presented to the Tribunal that the claimant suffered from fatigue during the day as a result of this sleep disturbance.
63. I also conclude that needing to wait five to six minutes before standing up on waking is not a substantial effect. Even taking into account the fact that the claimant has type 2 diabetes, waiting for five to six minutes before being able to walk to the toilet is not a substantial effect.
64. Turning to whether being unable to stand more than an hour without a break of five to ten minutes was a substantial effect I note Miss Gardiner's submissions on this point that there is only a small disruption to the claimant's ability to undertake household chores. The adverse effect on her ability to undertake household chores is, therefore, not substantial.

65. In Miss Gardiner's submissions she suggested that I should distinguish **Aderemi** on the basis that Mr Aderemi was unable to stand for longer than 25 minutes, the case was silent on whether a short break would enable Mr Aderemi to resume standing and because Mr Aderemi's job in that case required his visible presence at a ticket barrier for 9-hour shifts. The Employment Appeal Tribunal did not go so far as holding that Mr Aderemi had suffered a substantial adverse effect on his normal day-to-day activities, it remitted the case to the Tribunal for reconsideration.
66. In respect of Mr Aderemi being required by his employer to be a visible presence the Employment Appeal Tribunal rejected this as being a reason to not hold that the standing requirement in that job was not a normal day-to-day activity. Therefore, the fact Mr Aderemi was required to be a visible presence was not a relevant question for the Tribunal on reconsideration.
67. In respect of Mr Aderemi only being able to stand for 25 minutes when his shift was 9 hours long in **Aderemi** and the claimant in this case only being able to stand for one hour I do not consider that these are important distinctions given that the claimant's shift when she was working for F&F was much longer than one hour, being five to six hours in length.
68. The fact is that the claimant on her doctor's advice chose not to continue to do work that she physically was no longer able to do without experiencing substantial pain. I conclude that is not a reasonable lifestyle modification. I conclude that this was an avoidance strategy employed by the claimant to be able to continue her work at the respondent. Further between late 2020 and 16 January 2022 the claimant did not work in the self-service checkouts at the respondent because this would have required her to stand. This was another avoidance strategy employed by the claimant. The Guidance is clear that it would **not** be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person.
69. I, therefore, conclude that the claimant being unable to stand for more than one hour did have a substantial adverse effect on her ability to work in any job that required her to stand for more than one hour. Because she has chosen to avoid working in a job with a requirement to stand for more than one hour

prior to late 2020 and did not work in the self-service checkouts area between late 2020 to 16 January 2022 does not negate that substantial adverse effect.

If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

70. For completeness I am still going to address the part that any medication or treatment played in reducing the adverse effects of the impairment of plantar faciitis.

71. The claimant's evidence is that she was taking over-counter medicines of paracetamol and ibuprofen daily from 2019 and that when the pain was severe she would take paracetamol and ibuprofen together and would sometimes wait only three hours before taking another dose. The claimant was also prescribed Naproxen at some point before February 2021 and when the pain was severe she was taking Naproxen daily.

72. The claimant also had electric shockwave therapy sometime between February 2021 and 22 December 2022. This is supported by the letter dated 17 February 2021 from the physiotherapist to the claimant's GP [252-253] and the letter dated 22 December 2022 from the claimant to Wide Way Medical Centre [214].

Would the impairment of plantar faciitis have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?

73. Miss Gardiner submitted that I should disregard the electric shockwave therapy because the claimant in her impact statement [250] stated that this therapy did not have an impact on the plantar faciitis. I conclude that electric shockwave therapy did not reduce the adverse effects of the plantar faciitis.

74. Miss Gardiner submitted that I should also disregard the impact of the painkillers that the claimant took between late 2020 and 16 January 2022 because the claimant was taking these painkillers "as required" as opposed to taking them for a certain number of times each day. That this was distinct to a situation where the claimant was on a regular drug regimen such as someone who is prescribed anti-depressants.

75. Paragraph 5 of Schedule 1 to the Equality Act 2010 and the Guidance at paragraphs B12 and B13 make no such distinction. A Tribunal that neglects to address the part **any** medication plays in reducing the adverse effect of an impairment risks being found to have erred in law.
76. The claimant asserted that if she had not taken these painkillers she would have been unable to bear weight on her feet due to the pain and her feet would have been red and swollen. The physiotherapist in the letter dated 17 February 2021 also stated that the claimant benefitted from taking painkillers [252-253]. It is unfortunate that there is no detailed medical evidence supporting the claimant's assertion about what would happen if she did not take painkillers. In most cases this is needed for the Tribunal to have reliable evidence about the deduced effect of the medication. The statement by the physiotherapist that the claimant benefits from taking painkillers is insufficient evidence of the deduced effects of the painkillers. I am, therefore, unable to come to reliable conclusions about how the claimant would be without the painkillers.
77. For all the reasons above I conclude that claimant's impairment of plantar faciitis was a disability under section 6 of the Equality Act 2010 between late 2020 and 16 January 2022.

Employment Judge Macey
Date: 10 September 2024

Sent to the parties on
Date: 18 September 2024

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.