



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104310/2023

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Held in Glasgow on 30 January 2024

Employment Judge L Doherty

10 **Mr Dejan Karadaglic**

**Claimant
Represented by:
Mr P Ward -
Counsel**

15 **Glasgow Caledonian University**

**Respondent
Represented by:
Ms J Forrest -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is that the claimant was a disabled person in terms of Section 6 of the Equality Act 2013 (the EQA) during the relevant period as a result of the impairment of Vertigo.

REASONS

1. This was a Preliminary Hearing (PH) to consider the issue of the claimant's disability status under the Equality Act 2013. Mr Ward, Counsel appeared for the claimant and Ms Forrest, solicitor, for the respondents.
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2. The claimant gave evidence on his own behalf and produced a bundle of documents.
3. It was agreed that the relevant period for the purposes of reaching a conclusion as to the claimant's disability status is the period from 17 January
30 to 13 March 2023 (the 'relevant period') when disability discrimination is alleged to have taken place.
4. It was confirmed at the outset of the PH that the impairments relied upon by the claimant are as follows:

- Type 2 diabetes;
- Claustrophobia;
- Vertigo;
- Depression/mental impairment;
- 5 • Hypertension; and
- Dyslexia.

Findings in fact

5. From the evidence before it the Tribunal made the following findings in fact.
6. The claimant, whose date of birth is 23 September 1971, was employed by
10 the respondents as a lecturer in Instrumentation and Electronic Engineering
from 2 July 2012, until his dismissal on 13 March 2013. The claimant obtained
a degree from Montenegro University, and a PhD from the University of
Oxford.

Vertigo

- 15 7. The claimant suffers from vertigo. He first reported symptoms of dizziness to
his GP in May 2014, which was a time of stress and anxiety for him. The
claimant was prescribed prochlorperazine maleate tablets for his symptoms,
however he did not react well to this medication. Although it stopped the
symptoms of vertigo, it made him feel detached from reality and he stopped
20 taking the medication.
8. The claimant had a severe attack of vertigo in October 2014, which resulted
in him being hospitalised overnight.
9. The claimant attended ENT dizziness clinics in May 2015. His attacks of
vertigo stopped by mid-2015.
- 25 10. The claimant experienced a new wave of vertigo attacks in early 2018, when
he also experienced tinnitus, stress and anxiety. On 2 March 2018 the
claimant attended his GP, who prescribed Betahistine dihydrochloride. The

claimant found that this prescribed medication was effective in controlling his symptoms of vertigo.

11. The claimant was diagnosed with high blood pressure on 20 March 2018.
12. The claimant was referred to OH in March and April.
- 5 13. The claimant suffered a further attack of vertigo in March 2019, when he was again prescribed Betahistine dihydrochloride.
14. The claimant's symptoms of vertigo improved and did not manifest themselves again until mid-2020. This was during the Covid lockdown and due to the state of the NHS, the difficulty of getting GP appointments, and following advise generally not to attend for treatment unless it was an
10 emergency, the claimant did not attend his GP. The claimant managed his symptoms by undertaking vestibular exercises.
15. The claimant suffered a further attack of vertigo in early 2022. He felt this was brought on by a number of stressors, primarily his workload, his mother's
15 diagnosis of cancer, and the Russian Ukrainian war. He did not attend his GP for treatment as there was a long queue for appointments. He did get a GP appointment but it was around 6 weeks after the attack, by which time he was travelling aboard. He managed the attack by vestibular exercises.
16. The claimant's attacks of vertigo usually last approximately 6 weeks. During
20 that time, he experiences feelings of sickness. He has problems in keeping balance while walking. He also has attacks of claustrophobia and agoraphobia. He cannot drive his car. He cannot travel on the underground as he cannot cope with the confined noisy spaces.
17. *Dyslexia*
- 25 18. The claimant has never had formal diagnosis of dyslexia. He feels there is an element of self-stigma to such a diagnosis which prevented him from seeking a diagnosis. He considers that he has been suffering from symptoms of dyslexia and dyspraxia for all of his life. The claimant considers he is generally

disorganised and clumsy. He believes these are symptoms of dyslexia and dyspraxia.

19. The claimant finds difficulty in making notes. He depends on technologies such as voice recording rather than writing things down. He has developed memory skills, and depends upon his memory. The claimant also takes photographs, for example of a whiteboard, which helps him recollect later what was said. When lecturing the claimant sometimes experiences difficulty in finding the appropriate word, even though he knows the word.

Depression/mental impairment

20. The claimant experienced mental health issues in his youth. At the age of 15 he contemplated suicide. He also experienced mental health issues when he was around 26/27 years of age when he was doing his military service.
21. Since his youth the claimant has been aware of his sensitivities to outside stimuli, which he considers greater than those experienced by others. He considers himself more easily irritated by people's behaviour than he believes others would be.
22. The claimant was absent from work for 27 September 22 to 18 October 2022 due to stress. He attended his GP. At that point, the claimant was facing disciplinary proceedings He was feeling overwhelmed at work, and he was experiencing personal stress.
23. The claimant's absence continued until 19 December 2022. His Fit Notes stated 'stress' was the reason for his absence.
24. The claimant returned to work on 19 December but did not return to teaching duties as he was undertaking research at that time.
25. The claimant was facing disciplinary proceedings and he was referred to OH by his employer on his return to work in order to assess his fitness for work and to engage in a formal work process.
26. As OH report was produced following a telephone consultation with the claimant dated 17 January 2023 which contained the following:

5 *“Following receipt of his GP report, I can confirm that Dr Karadagic was prediabetic in September 2021 but his blood results had significantly declined when checked in September 2022 and he was started on medication for Type 2 Diabetes following this. The GP’s findings and investigation results are in keeping with the employees reported symptoms of polydipsia (extremely thirst), polyuria (urinating frequently) and weight loss as per my last report. It was also noted that he struggled with fatigue and felt more easily agitated. In my opinion these are all factors which may have led to a decline in psychological health including sleep disruption. There have been significant*
10 *perceived work stress in recent months and personal stress.”*

27. The claimant attended his GP in February 2023, and was certified by him as unfit to work due to anxiety and depression in the period from 10 February 2023 to 31 March 2023. The claimant was facing internal disciplinary proceedings at work which he found stressful. He was feeling overwhelmed
15 at work, and he was experiencing personal stress as a result of personal family circumstances and the war in Ukraine.

28. The claimant was prescribed propranolol by his GP for his anxiety and depression. He was referred to counselling and completed a 16 week CBT counselling course, ‘No Hard Feelings’ commencing on 6 March 2023, an
20 completing in July 2023 which he found helpful.

29. The claimant did not continued to take the propranolol prescribed after it was initially as it caused him to be low in energy, and made undertaking physical exercise difficult, which is important to keep his diabetes under control.

30. The claimant suffered symptoms from his stress/ depression from September 2022 . His symptoms improved by March 2023. During the period from
25 September 2022 to March 2023 he suffered from low mood, and tiredness. His sleep was disturbed and he sometimes woke up suffering from anxiety and panic attacks.

31. The claimant was referred to occupational health. A telephone consultation
30 was undertaken, following which a report was produced dated 17 January 2023 which contained the following:

“Following receipt of his GP report, I can confirm that Dr Karadaglic was prediabetic in September 2021 but his blood results had significantly declined when checked in September 2022 and he was started on medication for Type 2 Diabetes following this. The GP’s findings and investigation results are in keeping with the employees reported symptoms of polydipsia (extremely thirst), polyuria (urinating frequently) and weight loss as per my last report. It was also noted that he struggled with fatigue and felt more easily agitated. In my opinion these are all factors which may have led to a decline in psychological health including sleep disruption. There have been significant perceived work stress in recent months and personal stress.”

Type 2 diabetes

32. The claimant was diagnosed with type 2 diabetes in October 2022, but had been prediabetic from September 2021. The claimant lost 15Kg in this period.
- 15 33. The claimant’s condition resulted in him suffering from recurrent infections, such as thrush or urinary tract infection which made him go to the toilet very often.
34. As a result of his condition the claimant is invited for annual diabetic eye screening. The claimant has attended thus screening and no eye damage has been diagnosed.
- 20 35. The claimant manages his condition quiet easily through diet and exercise. He avoids sugar. He does aerobic exercise three times per week, which he had also done prior to his diagnosis.
36. The claimant’s sleep is affected by his condition, which causes him to be tired.
- 25 He has not been prescribed medication for this, but he has consulted his doctor, who told him to try to be more relaxed and to do exercise, which he does.

Note on Evidence

37. The claimant's evidence in chief comprised his disability impact statement, which had been lodged with the tribunal before the hearing.

38. The Tribunal did not form the impression that the claimant in any way sought to mislead , however on some points his evidence was very general and comprised opinion. An example of this is that the claimants evidence about the effect that stress anxiety and depression which he said ..*affect his daily life in a number of way. One is that it puts me in low mood, which makes me much less effective at whatever I happen to be doing and also less productive at work. It complicated my relationships with students and colleagues, and most importantly, due to our hormonal ramifications, affects my health through obesity, and causing the dizziness, panic, attacks of vertigo, tinnitus, and worst of all, Diabetes type 2*

39. This did not explain how low mood and diminished effectiveness or productivity at work impacted the claimant's day to day activities; it was the claimants opinion that the hormonal ramifications caused the conditions he identified. There was no medical evidence before the Tribunal about the effect of stress on the claimant to the effect that it caused these conditions.

40. There was one credibility issue arising from the claimant's evidence, in that it was put to him by Ms Forrest, that he had not experienced attacks of Vertigo in 2021, 2022. This was suggested to him on the basis that he had not consulted his GP on those occasions.

41. The tribunal was satisfied that the claimant had suffered from vertigo on these occasions, as he spoke to in evidence, and as is noted in the findings in fact. In reaching this conclusion the tribunal takes into account the fact that he gave a credible reason for not attending his GP.

Submissions

42. Both parties made submissions which are dealt with below where relevant.

Consideration

43. The claimant has the burden of proof to establish disability status under the Equality act 2010.

44. The EQA at section 6 defines disability:

(1) *A person (P) has a disability if —*

5 (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.*

45. Supplementary provisions on disability status are contained in Schedule 1 to the EQA, and in the *Guidance on matters to be taken into account in determining questions relating to the definition of Disability (the Guidance)*, and the Equality and Human Rights commission Court of Practice and Supplement.

46. Schedule 1 (a) Part 1 to the EQA provides that:

“The effect of an impairment is long term if:

15 a) *it has lasted for at least 12 months*

b) *it is likely to last for at least 12 months or) it is likely to last for the rest of the life of the person affected”*

47. Impairment is to be given its *“ordinary and natural meaning...it is left to the good sense of the tribunal to make a decision in each case on whether the evidence available establishes that the applicant has a physical or mental impairment within the stated effects”* (*McNicol v Balfour Beatty (2002) IRLR 711 (para 17 and 19)*), referred to by Ms Forrest.

48. There is no need to establish a medically diagnosed cause for the impairment, but there must be a finding that there is an impairment.

25 49. In relation to normal day-to-day activities the Guidance provides:

“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.”

50. The Equality Act 2010 (Amendment) Regulations 2023, Regulation 6 adds
5 Schedule 1 of the Equality Act 2010 the following in respect of normal day to day activities:

(2) *References in the relevant provisions to a person's ability to carry out normal day-to-day activities are to be taken as including references to the person's ability to participate fully and effectively in working life on
10 an equal basis with other workers.*

51. Substantial means “more than minor or trivial”.

52. The adverse effect should be assessed having discounted any positive impact which is associated with any treatment regime.

53. The focus should be on what an employee cannot do or can do only with
15 difficulty, and not on what they can easily do.

54. Ms Forrest referred the Tribunal to *Ahmed v Metroline Travel Ltd UKEAT/0040/10, (paragraph 49)* in support of the proposition that whilst the general focus is on what they cannot do, if that is in dispute, it may be relevant to consider what they can do.

20 55. The Guidance, at B7, provides that account should be taken of how far a person can reasonably be expected to modify his behaviour, for example through use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day to day activities. The Guidance states that *“in some instances, a coping or avoidance strategy might alter the effects of the
25 impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability.”*

56. An impairment will have a long-term effect only if it has lasted for at least 12 months, the period for which it lasts is likely to be 12 months or it is likely to

last for the rest of the life of the person affected (*paragraph 2(1), Schedule 1*). The Guidance clarifies that “likely” means “could well happen”.

57. The Tribunal understands that the claimant’s position is that each of the impairments upon which he relies gives rise to disability status under the EQA. He also relies however on the cumulative effect of the impairments. It was submitted by Mr Ward that the accumulated effects are greater and meet the definition.

58. In considering whether the claimant meets the definition of disability there are 4 questions for tribunal. These are:

- (1) *Does the Claimant have a physical or mental impairment?*
- (2) *Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?*
- (3) *Is that effect substantial?*
- (4) *Is that effect long-term?*

59. The Tribunal considering each of the impairments relied upon and the effects of those, individually in order to determine whether it gave rise to disability status, and then considered the claimant’s submission as to cumulative effects of those impairments, in determining the question of disability status.

60. The Tribunal firstly considered each of the physical or mental impairment relied upon and the effects of the impairment..

61. Ms Forrest submitted that the claimant could not be permitted to rely upon any impairments other than those noted in the ET1. These were diabetes type 2; claustrophobia; vertigo; depression /and or some mental impairment; hypertension; and dyslexia.

62. No evidence was led about claustrophobia other than in connection with the impact of vertigo. Nor was any evidence led about the effects of hypertension. These did not comprise one of the headings under which the claimant gave evidence in his impact/ witness statement.

63. There did not appear to be any dispute between Mr Ward and Ms Forrest that the claimant could only rely on impairments of which notice have not been given. Mr Ward confirmed at the outset of the PH that he was not seeking to rely on any impairments beyond those identified in the ET1. The Tribunal is
5 unable to consider the claims of disability on the basis of impairments stammering, tinnitus, Meiners disease, or dyspraxia all of which are referred to in the Headings of the claimants impact statement. There was no notice that these were to be relied upon as impairments, and the Tribunal did not understand the claimant to be relying upon them as impairments and
10 therefore the Tribunal did not consider them as such, but it did consider the claimant's evidence on these matters to the extent that it amounted to evidence about the effects of the impairments upon which he did rely.

64. The Tribunal did not accept, as suggested by Ms Forrest, that it could not consider whether stress or anxiety as an impairment, on the basis that the
15 claimant had given notice of impairment or depression/some other mental impairment. It was satisfied that fair notice had been given in the ET1 that the claimant was relying upon a mental impairment.

65. It is agreed that the relevant period for establishing disability status is 17 January to 23 March 2023.

20 *Vertigo*

66. The Tribunal was satisfied that the claimant suffered from the impairment of Vertigo. The claimant's evidence on this was supported by his medical records.

67. The Tribunal firstly considered whether at some stage this impairment had a
25 substantial adverse effect on the claimant's ability to carry out normal day-to-day activities.

68. The Tribunal accepted that when the claimant had an attack of vertigo he experienced problems in keeping balance while walking, had attacks of claustrophobia and agoraphobia; and that he not could drive his car or travel
30 on the underground as he cannot cope with the confined noisy spaces.

69. The Tribunal was satisfied that walking, driving a car, and travelling by a form of public transport were day to day activities. It was also satisfied that the claimant having problems in keeping his balance while walking, not being able to drive, or travel on the underground amounted to a substantial adverse effect on the ability to carry out these activities
70. The tribunal accepted Ms Forrest's argument that travelling by bus was a reasonable coping strategy which removed this effect, but only so far as it removed the effect of not travelling by underground. It was not satisfied that it was a reasonable coping strategy which removed the adverse effect of not being able to walk or drive.
71. The Tribunal then considered if the impairment ceased to have such an effect and, if so, when?
72. There is a question here is whether this was a condition which was likely to recur. The Tribunal had regard to paragraph 2(2) (Schedule 1 of the EQA) which provides that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out day-to-day activities, it is to be treated as having that effect if that effect is likely to recur. The Guidance states that the likelihood of recurrence should be considered, taking all the circumstances of the case into account, including what the person could reasonably be expected to do to prevent the recurrence (para C9).
73. The Tribunal also had regard to the EAT *in Swift v Chief Constable of Wiltshire Constabulary [2004] IRLR 540*, (referred to by Ms Forrest) in which it was stated that there are four questions that should be asked:
- Was there at some stage an impairment which had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities? (para 20)
 - Did the impairment cease to have such an effect and, if so, when? (para 22)
 - What was the substantial adverse effect? (para 24)

- Is *that* substantial adverse effect likely to recur? (para 26)

74. The likelihood of the recurrence of a disability must be assessed at the date of the act of discrimination.

5 75. The Tribunal accepted that the claimant had suffered an attack of vertigo in 2022. This was the last occasion when he had experienced an attack. It accepted that on that occasion the claimant experienced the same symptoms and effect as he had during previous attacks and that included experiencing problems in keeping balance while walking and not being able to drive his car.

10 76. The Tribunal then considered if that substantial adverse effect likely to recur? (para 26). The tribunal considered what during the relevant period, was the likelihood of the claimant's condition recurring given what was known at that time.

15 77. The Tribunal did not have the benefit of expert medical evidence, or even a medical report dealing with this point, however as a matter of fact, it was satisfied that by the relevant period it was known that the claimant had suffered attacks of vertigo in May 2014, October 2014; early 2015; mid-2015, attacks in early 2018, stopping in March 2018; and attacks in early 2020; and 2022.

20 78. The Tribunal accepted the claimant's evidence on the effects of these attacks and was satisfied that the adverse effect of experiencing problems in keeping balance while walking, and the inability to drive occurred on each of those occasions.

25 79. The Tribunal did not accept Ms Forrest's submission that it was questionable if the claimant suffered these adverse effects, on the basis that he did not attend his GP in 2022-2023, and that he stopped taking his prescribed medication. The tribunal found the claimant's evidence was credible on this matter. It accepted his explanation that he stopped taking the medication because of the side-effects, which he described with some feeling and instead tried to manage his condition by exercise. The tribunal did not draw an inference from

the fact that he did not continue to take prescribed medication that he did not suffer from the effects described.

5 80. Taking into account the number of attacks, and the fact that the claimant had continued to suffer from attacks of vertigo over a 10 year period, and the fact that the attacks resulted in the same adverse effect on the claimant's abilities to carry out day to day activities on each occasion, the tribunal concluded that during the relevant period it 'could well happen' that the effect of the claimant's impairment would recur.

10 81. The effect of that conclusion is that the claimant's condition was to be treated as long-term, and the tribunal was satisfied that the claimant was disabled in terms of the EQA as a result of this impairment of vertigo.

Stress, anxiety and depression

15 82. The Tribunal was satisfied that the claimant had been diagnosed by his GP as suffering from stress, and from anxiety and depression. This is recorded in the fit notes which the claimant submitted to the respondents.

20 83. On the basis of the evidence the Tribunal concluded that that the claimant was diagnosed with stress in the period from 27September to 19 December 2022 and anxiety and depression from 10 February till 23 March 2023 and that both of these are capable of amounting to mental impairments. The tribunal did not accept Ms Forrest submission that it could not be concluded that the claimant did not have an impairment, because the claimant was suffering from situational stress. It not necessary to identify the cause of the impairment, but it is relevant to consider the effects suffered by the claimant in considering it he is disabled as a result of a the mental impairment of stress or anxiety and depression during the relevant period.

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30 84. The Tribunal then considered the what was the an adverse effect on the claimant's ability to carry out normal day-to-day activities. The claimant's evidence about this was given in very general terms. He considered that he was more sensitive to outside stimuli than others. He said that he reacted more emotionally and angrily if something wrong happened in his environment.

There was however, no evidence as to what this actually meant in terms of his ability to carry out day-to-day activities, and his assessment about his reaction to outside stimuli in comparison with people was subjective.

5 85. He said that his condition complicated his relationship with students and staff, but it was not explained what this meant in terms of impact on day to day activities.

10 86. The claimant's evidence was also that he suffered from low mood and that his sleep was disturbed and he was tired. He said that this made him less productive at work, but there was no explanation of how his low mood or diminished productivity impacted on his ability to carry out activities at work, or day to day activities, and there was no evidence about what activities was affected.

15 87. Under the Heading *Stammering* in his witness statement the claimant stated that '*Throughout my life I have learned to cope with stammering and minimise its impact. Thus, for instance, I avoid saying some words that can trigger stammering. However, sometimes usually when I am under stress and suffering anxiety my stammering gets worse and on occasion can be so bad that I am unable to produce sounds for to ten seconds.*' The claimant however did not give evidence that this was an effect that he experienced in the period
20 from September 2022.

25 88. The claimant's evidence about other conditions contained reference to certain times being times of stress or anxiety, but there was no evidence beyond those statement to allow the tribunal to reach a conclusion as to whether or how that that adversely impacted his ability to carry out his to day activities or if it did, or when or for how long he suffered any effects.

30 89. The Tribunal therefore did not conclude on balance the claimant had established that as a result of a mental impairment there was a substantial adverse effect on his ability to carry out day to day activities, and it did not conclude that the claimant was disabled in terms of the EQA by virtue of the impairment of stress/ anxiety/depression.

90. If the Tribunal is wrong about this, then in any event it that it concluded that the claimant suffered the effects as a result of his mental condition from September 2022 to March 2023; the claimant accepted in cross examination that his health had improved by March 2023. On that basis it could not be
5 said that during the relevant period that his condition has lasted or was likely to last 12 months.

91. The claimant said that he had experienced stress in the past . The first occasion was when he was 15 years of age at school when he contemplated suicide, and again when he was 21 years old and an undergraduate , and
10 lastly when he was 26/27 years old when doing Military service. The claimant is now 51 years old. There was insufficient evidence about the substantial effect of the stress he experienced, and when it cased to have that effect, in particular in that the last episode was 24 years ago, to allow the Tribunal to conclude that there was a substantial adverse effect which was likely to occur,
15 and to conclude that stress was a recurring condition.

Dyslexia

92. The claimant has never had a formal diagnosis of dyslexia. That of itself would not prevent the tribunal finding that the claimant had an impairment of dyslexia, on the basis of the substantial adverse effect which it found to exist.

20 93. The claimant's evidence on this was that he was disorganised, and generally clumsy which he believes these are symptoms of dyslexia and dyspraxia. There was no medical evidence to support this, and the tribunal could only regard this as opinion. Dyspraxia in not one of the pleaded impairments relied upon.

25 94. The claimant also said that he finds it difficult to make written notes and 'writing generally'. It was unexplained what 'writing generally' meant. In this context the claimant said he had received assistance from his legal team in preparing his witness statement.

30 95. The Tribunal considered that writing is a day-to-day activity, but was not persuaded that the claimant's evidence to the effect that he finds it difficult to

make written notes and difficulty in 'writing generally' was a sufficient basis upon which to conclude that he suffered from dyslexia which had an adverse effect on his ability to carry out a day to day activity. There was no evidence about what the difficulty he experienced in 'writing generally' actually was. Nor was there any evidence about how his difficulty in making notes impacted any activity. For example there was no evidence about how long it might take him to make written notes or write things down, or in what other way his activities were adversely impacted.

96. The position was similar in relation to the claimant's having difficulty sometimes in finding the appropriate word when lecturing. There was no evidence about how frequently this occurred, or if, or how it impacted the sense of what he was saying in the lecture, to allow the tribunal to reach a conclusion about how his difficulty in sometimes finding the appropriate word affected his activity of lecturing. The claimant provided an opinion that this difficulty was reflected in student reviews. However, the Tribunal did not have sight of these and there was nothing to suggest that they would have assisted in identifying the impact of the difficulty the claimant experienced.

97. The Tribunal also consider the cumulative effects of the difficulties. The Tribunal's focus is on what the claimant is not able to do or, however the fact that the claimant had such an impressive academic record and held a job as a lectures for a number of years, suggested that such affect as there was on the claimants abilities to write, make written notes or not find the right word when lecturing, was not substantial.

25 *Type 2 Diabetes*

98. There was no dispute that the claimant was diagnosed as having type 2 diabetes from October 2022, and the Tribunal was satisfied that that was properly regarded as an impairment.

99. It then considered whether this impairment had a substantial adverse effect on the claimant's ability to carry out day-to-day activities.

100. The claimant's evidence about this was that when non diagnosed he had suffered from recurrent infections, such as thrush or urinary tract infection which made him go to the toilet very often, sometimes at inconvenient moments. He also lost a considerable amount of weight.
- 5 101. The claimant no longer suffers those effects. He accepted in cross examination that he manages his condition quite easily through diet by and exercise. In his diet he avoids sugar. He does aerobic exercise three times per week, which he also did prior to his diagnosis.
- 10 102. B12 of the Guidance provides that an impairment that is the subject of treatment or correction 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 has to be read alongside paragraph B7 of the Guidance.
- 15 103. B7 requires account to be taken of how far a person can reasonably be expected to modify his behaviour to prevent or reduce the effects of an impairment and states that, in some cases, a coping or avoidance strategy might alter the effects of the impairment such that they are no longer substantial and the person would no longer meet the definition of disability.
- 20 104. The Tribunal was satisfied that avoiding sugar and continuing to exercise three times a week was a reasonable behavioural modification of the type contemplated in paragraph B7.
105. The claimant's evidence was that he manages his condition quite easily. There was no evidence to suggest that there was any adverse consequence to the claimant's health as a result of him not taking medication and in managing his condition in this way.
- 25 106. The Tribunal therefore concluded that the claimant managed his condition without medication and simply by adopting reasonable dietary modifications, and continuing with his previous exercise regime, and that these amounted to reasonable modifications as envisaged by B7 of the Guidance. The question of whether the condition has a substantial adverse effect should be
- 30 determined after taking those modifications into account.

107. A person who has a progressive condition as a result of which he or she has an impairment that has (or had) some effect on the ability to carry out normal day-to-day activities, but not a substantial effect, will be taken to have an impairment that has a substantial adverse effect if the condition is likely to result in such an impairment (paragraph 8(1) and (2) Schedule (1) to the EQA).
108. There was no evidence before the tribunal to suggest that the claimant's diabetes was a progressive or worsening condition, and there was no submission to that effect.
109. The Tribunal accepted the claimant's evidence that he sleep was affected, although it was unclear if this whether this is as a result of his diabetes.
110. The claimant's evidence in his impact statement is that:
- 'Diabetes type 2 also caused poor sleep, which again has obvious multiple negative effects of both physical and mental health, some of which I already mentioned. Another of course is tiredness and fatigue which in my case started in early 2022, under extreme stress due to overwork, and with the circumstances already said caused me to react to various stimuli in a way which is not natural to me if I did act in a generally unprofessional and wholly unacceptable way, that I suggest it was probably true due to my impairments.'*
111. There was no evidence about how his tiredness and fatigue impacted on his ability to carry out day-to-day activities.
112. On the basis of the evidence before it, the Tribunal could not conclude that the claimant's impairment of diabetes had a substantial adverse effect which was long-term, on his ability to carry out normal day-to-day activities.
- Cumulative effect of impairments*
113. B4 of the Guidance provides that: "A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities. For example, a minor impairment which affects physical co-ordination and an irreversible but minor injury

to a leg which affects mobility, when taken together, might have a substantial effect on the person's ability to carry out certain normal day-to-day activities. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long-term, see Section C.

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114. The tribunal did conclude that the claimant was disabled under Section 6 as result of the impairment of Vertigo. In relation to the other impairments relied was it unable to conclude how they substantially adversely impacted the claimants ability to carry out day to day activities, and looking at matters cumulatively did not assist in that regard.

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115. Paragraph C2 of the Guidance provides; *The cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect for the purposes of meeting the definition of a disabled person. The substantial adverse effect of an impairment which has developed from, or is likely to develop from, another impairment should be taken into account when determining whether the effect has lasted, or is likely to last at least twelve months, or for the rest of the life of the person affected.*

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20 **116.** There was no medical evidence to support the conclusion that the claimant's conditions were related to each other. There was no medical report before the Tribunal dealing with this, and although the claimant's medical records where lodged the Tribunal was not taken to any part of them which supported a link between his conditions. The claimant gave his own view on that matter, for example stating that stress was the main contributor to his diabetes, and that stress on occasion was a trigger for him suffering from vertigo. The Tribunal however was unable to rely upon that is sufficient evidence that his conditions were linked in order to consider the long term effect of cumulative impairments. The Tribunal did however conclude that there was a long term effect as a result of the impairment of Vertigo.

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117. Conclusion

118. For the reasons given above, the Tribunal was not satisfied that the claimant was disabled under the EQA as a result of dyslexia, diabetes 2, or stress/ anxiety/depression or Hypertension.

5 119. It was however satisfied that the claimant was disabled under Section 6 of the EQA on the basis of his impairment of vertigo.

L Doherty

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Employment Judge

23/02/24

Date

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Date sent to parties

26 February 2024