



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5

**Case No: 4104963/2024 Preliminary Hearing by Cloud Video Platform at  
Edinburgh on 28 November 2024**

**Employment Judge: M A Macleod**

10

**Tracey Ball**

**Claimant  
In Person**

15

**Insource Select Limited**

**Respondent  
Represented by  
Ms G White  
Trainee Solicitor**

20

25

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The Judgment of the Employment Tribunal is that the claimant was at the  
material time a disabled person within the meaning of section 6 of the  
Equality Act 2010, and that her claim of disability discrimination may  
therefore proceed.**

30

**REASONS**

35

1. The claimant presented a claim to the Employment Tribunal on 11 May 2024 in which she complained that she had been discriminated against on the grounds of disability.

2. The respondent submitted an ET3 response in which they resisted the claimant's claims.
3. At a Preliminary Hearing on 10 September 2024, the claimant confirmed that the disabilities she relied upon in these proceedings were; Attention Deficit Hyperactivity Disorder (ADHD); Autistic Spectrum Disorder (ASD) and Irritable Bowel Syndrome (IBS). On the basis that the respondent did not admit that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010, a Preliminary Hearing was listed to take place by CVP on 28 November 2024.
4. Following that Preliminary Hearing the claimant wrote to the Tribunal on 23 September 2024 to set out details of her conditions. In that email (produced in the bundle referred to below at p42), the claimant stated "I will not rely on IBS but do wish to rely upon ADHD, ASD."
5. The claimant appeared at the Preliminary Hearing on her own behalf, and Ms White appeared for the respondent.
6. A bundle of productions was presented to the Tribunal for the Hearing.
7. The claimant gave evidence on her own account at the Hearing.
8. Based on the evidence led and information provided, the Tribunal was able to find the following facts admitted or proved.

## Findings in Fact

9. The claimant was employed by the respondent from 4 March 2024 until 4 April 2024.
10. The claimant underwent an autism assessment on 12 March 2020, carried out by Catherine Steedman, National Director, Autism Initiatives, with the assistance of Kim Maxwell. A report was produced (46ff).
11. The outcome was said to be that they were satisfied that the information gathered during meetings met the criteria for ASD in DSM-5 and Asberger Syndrome in ICD-10. Information gathering meetings were held with Kim

Maxwell on 14 and 21 January and 4 February 2020, and Ms Steedman carried out additional meetings on 12 and 19 February 2020, including an ADOS-2 assessment on the latter date.

- 5 12. It was noted that the claimant had stated that from about 5 years old, the claimant felt different from others; that now she struggles with relationships at work, and requires explicit written instructions for her work activities in order to ensure that she completes tasks as required.
- 10 13. She has learned interaction with others by copying, which can leave her exhausted. She finds it difficult to understand others' intentions, which increases her vulnerability. It was noted that while her eye contact and non-verbal communication is good, she has practised this over time. She can find it difficult to understand what responses to give in different situations, meaning that she can misinterpret others or not react as would be typically expected. She has difficulty in recognising the build-up of emotions in herself and in others.
- 15 14. The claimant can become overly focused on hobbies, on calorie counting and was, at the time of the report, reported to be bulimic. She tends to engage in sensory seeking behaviour, such as twirling her hair, rubbing her forehead, picking at skin and nails; she is prone to speaking loudly and is unaware of her apparently high pain threshold.
- 20 15. Autism Initiatives made a number of recommendations in respect of further treatment, which the claimant was reluctant to take up. She has kept in touch with her GP, and spent more time with her family rather than with strangers. She has felt that in the past some people have taken advantage of her naivete.
- 25 16. The claimant was also referred to Dr Lesa Wright, Consultant Psychiatrist, who assessed her by video consultation on 3 February 2022. A report was subsequently produced dated 19 March 2022 (49ff).
- 30 17. After setting out the claimant's history, Dr Wright noted under "Mental State Examination":

5 *“Tracey was appropriately presented and well engaged in the appointment. Her speech was relevant, coherent and of normal flow. Her mood was subjectively ‘fine’ and objectively she came across as euthymic with appropriately reactive affect. There was no evidence of psychomotor agitation or retardation and we established reasonable rapport.”*

*There were no features of formal thought disorder nor was there any evidence of disorders of thought content. She did not express suicide intent and was orientated to time, place and person with good insight into her mental state.”*

10 18. Under “Impression and Recommendations”, Dr Wright noted:

15 *“based on the available information, Tracey does appear to meet a diagnostic criterion for adult ADHD. However, there is a differential diagnosis of Personality Disorder which cannot be ruled out entirely at this stage. It would be appropriate for a trial of treatment; however, as successful treatment of ADHD symptoms can have secondary beneficial effects on affective symptoms of personality disorder. I have contacted Tracey outlining the treatment and if she is agreeable I will issue a prescription for Xaggitin XL.”*

20 19. As recommended by Dr Wright, the claimant has avoided alcohol for the 6 months leading to this Hearing, especially given her history of self-medicating with alcohol and drugs.

20. She took Xaggitin XL for a month until April 2022, and her medication was altered. She was not, at the date of the Hearing, currently on any medication.

25 21. The claimant said that she found it difficult to pay attention by the end of each day, comparing it to a feeling of “burnout”. She was able to get up in the morning, though she tended to feel sluggish and found it difficult to wash herself. She continued to find it difficult to be around other people.

22. When she commenced work for the respondent, the claimant told them that she did not require any adjustments to be made for her in respect of her conditions.

### **Submissions**

5 23. Ms White made a short oral submission following the claimant's evidence, which was taken into consideration in the decision set out below. The claimant declined the opportunity to make a submission of her own.

### **Discussion and Decision**

10 24. The issue before the Tribunal in this Hearing is whether or not the claimant was a disabled person at the material time, within the meaning of section 6 of the Equality Act 2010. The material time is the period during which the claimant was employed by the respondent, namely 4 March 2024 until 4 April 2024.

15 25. The Tribunal had the evidence of the claimant, together with the two reports in relation to her diagnosis of ASD and ADHD. Those reports were produced in 2020 and 2022, and accordingly do not precisely record the claimant's condition as it appeared in that period when she was employed by the respondent.

20 26. In my judgment, the evidence leads to the conclusion that the claimant has been diagnosed as having ASD and ADHD, supported by Autism Initiatives and a Consultant Psychiatrist, and that those conditions still bear to have an effect upon the claimant up to and including the date of the Hearing. The effect which they have (and it appears that there is some overlap between the effects which these conditions have upon the claimant) are primarily  
25 related to the claimant's ability to carry out tasks and relate to people.

30 27. In particular, it is clear from the claimant's evidence that she requires to have tasks explained quite explicitly to her in order to enable her to carry them out; that she struggles to interpret others' interactions with her, and is capable of misunderstanding communications with her; that she struggles to interact successfully and naturally with others, so that it is the case that she

is misunderstood or misinterpreted by colleagues from time to time. Her ability to concentrate is impaired, it seems to me, as is her ability to learn or understand what she is told. She learns at a slower rate than others, and requires others to teach her in a particularly straightforward manner.

5 28. The evidence demonstrates, in my judgment, that the conditions from which the claimant suffers do have a substantial – that is, more than trivial – effect upon her ability to carry out normal day-to-day activities, such as, in this case, concentrating upon tasks, memorising information, and understanding instructions. The effect is an adverse one, reducing her capacity to carry out  
10 tasks assigned to her and thus be able to work with others in the workplace. It is also clear, in my judgment, that the effects upon her have been long-term. The claimant has been diagnosed with these conditions for over 2 years, and while she is able to manage her conditions, there is no evidence that she will ever be free of the effects of her conditions whether in or out of  
15 the workplace.

29. Accordingly, it is my judgment that the claimant in this case has proved that her conditions of ASD and ADHD both meet the definition of disability within the meaning of section 6 of the Equality Act 2010, at the material time, and that her claim of discrimination on the grounds of disability is permitted to  
20 proceed.

30. It is noted that the respondent continues to maintain that they did not know nor ought they reasonably to have known that the claimant was a disabled person within the meaning of the Act at the material time; and to deny that they discriminated against the claimant on the grounds of disability.

25

**Employment Judge: M A Macleod**  
**Date of Orders: 27 December 2024**

30

Date sent to parties

27/12/2024\_\_\_\_\_

I confirm that this is my Judgment in the case of Ball v Insource Select Limited and that I have signed the Judgment by electronic means.