



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

BETWEEN:

Ms C Wilson

Claimant

and

Cycle Training UK Limited

Respondent

ON: 22 January 2019

Appearances:

For the Claimant: in Person

For the Respondent: Ms A Smith, Counsel

JUDGMENT ON PRELIMINARY ISSUE

The disability discrimination claim is struck out for want of jurisdiction as, at the relevant time, the claimant was not disabled within the meaning of section 6 of the Equality Act 2010.

REASONS

1. The claimant brings a claim of disability discrimination against the respondent and in order to pursue that claim, she must qualify as a disabled person for the purposes of section 6 of the Equality Act 2010.
2. Section 6 provides that a person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities.
3. The relevant time for the purposes of determining disability is the date on which the alleged discriminatory act occurred. For our purposes that is the 8 January 2018.
4. The burden is on the claimant to prove that she meets the section 6 criteria.
5. Both parties made submissions on the issue and these have been taken into account.

Impairment

6. The claimant relies on a problem with her right knee as her qualifying disability, specifically, a torn ligament. That specific diagnosis is not mentioned in the claimant's medical notes, which refer to her symptoms without specifying a diagnosis. However, it is clear from a doctor's consultation on the 14 November 17, referred to in the medical notes, that the Claimant presented with knee pains (only the right knee is in issue now as the problem with the left knee resolved itself). It is not necessary for the purposes of section 6 for the impairment to have a name and I am satisfied from the physical symptoms described in the medical notes and by the Claimant that she had a physical impairment at the relevant time.

Long Term

7. In order for disability to be long term, at the relevant date it must have lasted for 12 months, have been expected to last for 12 months or for the rest of the person's life. The date the impairment is said to have arisen is 30 June 2017. The alleged discriminatory act or acts occurred, at the latest on 8 January 2018, the effective date of resignation. That is just over 6 months. The only way that this provision is satisfied is if the claimant can show that at the time, the condition was expected to last for 12 months or more.
8. It is not enough for her to say that was her belief. It requires medical evidence. Not retrospective evidence; contemporaneous evidence from a treating physician or other medic expressing such an opinion. Within the relevant period there was a telephone consultation and visit to the doctor's in November 2017 and a further visit on 4 December 2017 but no diagnosis or prognosis was given. At the hearing, the Claimant handed up a report from Guy's and St Thomas' Hospital dated 20.12.18 in support of her case. The problem with the report is that it relates to the position, as at the publication date and whilst at that stage the impairment would have lasted a year, that does not assist with whether that was the expectation back in January 2018. Given that even by December 2018, there was still no prognosis, it is difficult to see how any medic in January 2018, could have given an opinion on how long the claimant's condition would last. In those circumstances, I am not satisfied that the condition was long term.

9. However, if I am wrong about that, I have gone on to consider whether the condition had a substantial effect on normal day to day activities. In doing so, I have had regard to the Equality Act guidance on matters to be taken into account in determining questions relating to the definition of disability, as well as the EHRC Employment Code.
10. Appendix 1 of the EHRC Code provides guidance on the meaning of substantial and states that 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 exists among people. The appendix to the guidance provides examples of factors which it would be reasonable to regard as having a substantial adverse effect.
11. The claimant provided an impact statement and gave oral evidence about the day to day effect of her knee condition on her mobility since July 2017. She told the tribunal that the pain was variable and that she had flare ups of the knee on average, once a month, lasting for about 4 days. She found going up and down the stairs painful, slow and tiring, was unable to cycle for more than 10 minutes at a time, walking at normal pace, even to the bus stop at the end of her street, was a challenge and there were a range of household chores she was unable to do without difficulty. The Claimant used painkillers to control the pain.
12. I accept the Claimant's evidence and am satisfied that the effect of her knee condition on normal day to day activities was substantial. However, the whole of the section 6 definition has to be satisfied and as it is not, the disability claim fails for want of jurisdiction.

Employment Judge Balogun
Date: 4 February 2019