



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE MORTON

**BETWEEN:**

Mr C Afari Claimant

AND

Mitie Limited Respondent

**ON:** 24 June 2019

## Appearances

For Claimant: In person  
For Respondent: Mr N Singer (Counsel)

## **JUDGMENT**

The Claimant was a disabled person by reason of hypertension with effect from his diagnosis on 17 August 2018.

### **WRITTEN REASONS PRODUCED PURSUANT TO A REQUEST BY THE RESPONDENT AT THE HEARING**

#### **Introduction**

1. By a claim form presented on 22 October 2018 the Claimant presented to the tribunal a number of claims, including claims of disability discrimination under the Equality Act 2010 ("Equality Act"). The Respondent resisted all the claims and did not accept that the Claimant was disabled for the purposes of s6

- Equality Act. An open preliminary hearing was listed to deal with that question.
2. At the hearing the Claimant gave evidence on his own behalf and called no other witnesses. He had prepared an impact statement and I was referred to a bundle of documents. In reaching my decision I relied on:
    - 2.1 The Claimant's disability impact statement, written in April 2019;
    - 2.2 The Claimant's oral evidence - I found him to be a credible witness and it was clear that his early diagnosis of severe hypertension and the side effects of the medication he has been prescribed have caused him considerable distress;
    - 2.3 His medical records - the notes accompanying the diagnosis in August 2018 were at page 80;
    - 2.4 A report from his doctor prepared for the preliminary hearing and dated May 2019;
    - 2.5 The report of the Respondent's own occupational health adviser, written in October 2018;
    - 2.6 The statutory guidance on matters to be taken into account when determining questions relating to the definition of disability
    - 2.7 The cases to which Mr Singer referred me.

**The issues for the hearing and the relevant law**

3. The issue for the preliminary hearing was whether during his employment the Claimant was a disabled person within the meaning of s6 Equality Act 2010 ("Equality Act") that is whether he had a physical or mental impairment that had at the material time a substantial and adverse long term effect on his ability to carry out day to day activities. I had regard to the test articulated in *Goodwin v The Patent Office [1999] IRLR 4* and the matters referred to in paragraph 2 above.
4. The impairment that the Claimant relies on is hypertension. Mr Singer did not dispute that hypertension is a physical impairment but he submitted that there was not enough evidence of the Claimant's condition having met the statutory definition at the material time. In particular he submitted that at the time of the events giving rise to the Claimant's claims it could not be said that the Claimant had a condition whose effects were likely to be long term.
5. The question of whether a condition is long term is governed by Schedule 1, Part 1, paragraph 2 Equality Act. The adverse effect of an impairment will be regarded as 'long-term' if:
  - 5.1 it has lasted at least 12 months, or
  - 5.2 the total period for which it lasts, from the time of the first onset, is likely

to be at least 12 months, or

5.3 it is likely to last for the rest of the life of the person affected.

**The evidence and my conclusions**

6. In my judgment there was sufficient evidence in this case that the Claimant had a condition that was likely to last more than 12 months. The Claimant's hypertension was severe – it was described in the fit note dated 17 August 2018 as 'excessively high'. The medical notes of the same date state that the Claimant was advised to go to A&E straight away if he experienced any symptoms. The Claimant's own evidence, which I have no reason to doubt, was that his doctor described his hypertension as life threatening and he was made very fearful by the diagnosis as the sole breadwinner in a young family. When the Claimant saw the Respondent's own occupational health adviser two months later, the adviser noted that those with hypertension are likely to need to take medication for the rest of their lives and told the Claimant that he must keep taking his medication. That report also noted that the condition was not stable and that the Claimant had recently had to have his medication dose increased.
7. The test of likelihood when considering the likely duration of a condition for the purposes of the test in Schedule 1, Part 1, paragraph 2 Equality Act was set out by the then House of Lords in *SCA Packaging Ltd v Boyle* [2009] UKHL 37. The test is met if it "could well happen" that a condition would last more than 12 months. The evidence clearly suggests that it was likely at the time of the Claimant's hypertension was diagnosed that the condition would be likely to last more than 12 months. In October 2018, when the Claimant saw the Respondent's occupational health adviser, that adviser clearly stated that the Claimant would have a lifelong need to take medication. That must also have been the case from the point of diagnosis. Hence in relation to the long term nature of the hypertension in my judgment the test was met as soon as the condition was diagnosed in August 2018.
8. Mr Singer also submitted that it was not possible to determine from the evidence whether the effects relied upon by the Claimant arose from his hypertension or from depression, which was not a pleaded condition. Having considered the evidence and the severe nature of the hypertension the Claimant was experiencing it seemed to me that this was something of a red herring. The Claimant may well have been experiencing a range of symptoms and some of those might have arisen from depression. It may be that the depression interfered with his ability to carry out normal day to day activities. But the important issue from the perspective of the statutory test was not whether there was more than one physical or mental impairment in play, but whether the condition the Claimant relies on – hypertension - itself met the statutory test. This involved considering not only whether the effects of the condition on his ability to carry out normal day to day activities were substantial and long term, but also what the effects of the hypertension would have been if the Claimant had not taken his medication.
9. Despite Mr Singer's submission that there was insufficient medical evidence

of what might have happened in those circumstances, I do not think that more medical evidence was necessary for me to determine the point. The Claimant was advised that untreated, the condition could lead to very serious consequences such as stroke or even death. The concern of his medical advisers to control the condition was shown by the increase in medication and the introduction of a second medication when the condition did not stabilise. The effect on the Claimant's ability to carry out normal day to day activities without his medication could have been catastrophic. Hence whether or not some of the day to day difficulties the Claimant was experiencing arose from the condition of hypertension, it is clear from the evidence that the hypertension, without medication, could have had very serious consequences for his health.

10. In my judgment the statutory definition was met on the facts of this case from the time of the Claimant's diagnosis with hypertension in August 2018. The Claimant's impact statement and the medical evidence however make no reference to the condition having arisen prior to this date. There will also be related questions concerning the Respondent's knowledge of the Claimant's disability which will need to be resolved at the final hearing of the case.

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Employment Judge Morton

Date: 15 July 2019