



EMPLOYMENT TRIBUNALS

Claimant: Ms A E Jung

Respondent: Amnesty International Limited Respondent

Heard at: London Central **On:** 1 February 2023
(via CVP)

Before: Employment Judge Havard

Representation:
Claimant: Ms E Banton, Counsel
Respondent: Ms R Bhatt, Counsel

JUDGMENT

1. The Tribunal finds that the Claimant is a disabled person within the meaning of section 6 of the Equality Act 2010.

REASONS

Introduction

1. The case was listed for a one-day preliminary hearing remotely via CVP to determine whether, during the relevant period of 27 April 2022 to 9 August 2022, the Claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of mental impairments of work-related stress and anxiety.

Documents

2. I had been provided with the following in advance of the hearing:
 - (i) a Preliminary Hearing Bundle (pages 1-148) together with an index;
 - (ii) a statement from the Claimant's husband, Mr Henry Willink, dated 31 January 2023;
 - (iii) a Skeleton Argument prepared by Ms Banton on behalf of the Claimant;
 - (iv) a Skeleton Argument prepared by Ms Bhatt on behalf of the Respondent;

- (v) *Herry v Dudley Metropolitan Council [2017] ICR 610*
- (vi) *Elliott v Dorset Council [2021] IRLR 880.*

Evidence and Submissions

- 3. I heard oral evidence from the Claimant and her husband. I also listened to oral submissions from Ms Banton and Ms Bhatt.

Preliminary Matter

- 4. The Claimant had produced a statement from her husband, Mr Willink, but this had only been served on the Respondent yesterday despite a direction having been made that such evidence should have been served in August 2022.
- 5. Ms Bhatt objected to the statement being admitted into evidence, indicating that it was far too late. Ms Bhatt also maintained that the content of the statement offered very limited assistance as it was all written in the present tense regarding what Mr Willink would say about the Claimant's current mental state.
- 6. Ms Banton apologised that the statement had only been sent at 3 pm yesterday afternoon. However, the solicitors currently acting for the Claimant had only come on to the record three days ago and had worked very quickly to produce and serve the statement. She invited me to take account of the relevance of the content of the statement and weigh that against the prejudice which may be caused to the Respondent. Ms Banton maintained that little or no prejudice would be caused to the Respondent and it provided important background.
- 7. I concluded that, whilst it was wholly unsatisfactory that the statement had only been served yesterday, and whilst it was not the fault in any way of the Respondent that the Claimant had been required to transfer her instructions to a new firm of solicitors, I took into consideration the overriding objective and that the statement, which I had read, was relatively short. It was evident that Ms Bhatt had had the opportunity to read it as she had commented on its relevance. On balance, I ordered that the statement should be admitted into evidence.
- 8. At that stage, I asked Ms Bhatt whether she would like me to put the matter back so that she could have further time to prepare any questions she may have for Mr Willink. However, Ms Bhatt confirmed that she was ready to proceed and did not need any further time.

Findings of Fact

- 9. On 14 March 2005, the Claimant commenced her employment with the Respondent as a Research and Campaign Assistant on a fixed-term contract.
- 10. On 1 July 2005, the Claimant received a permanent contract in a job role described as Campaigner.
- 11. On 1 January 2018, her role was upgraded to that of Senior Campaigner. Whilst there had been periods when the Claimant has worked full-time, at the date of termination of her employment by the Respondent on 8 May 2022 to take effect on 9 August 2022, she was working 21 hours per week.

12. As at the time of her dismissal, therefore, the Claimant had been working for the Respondent for over 17 years. The Claimant was involved in issues related to circumstances in Belarus and Ukraine and she is a Russian-speaker.
13. It was not challenged, and I find, that, in her thirties, the Claimant suffered from anxiety.
14. The circumstances which have given rise to the Claimant's claims that she is suffering from a disability relate to decisions that she alleges the Respondent to have made with regard to the status of Alexei Navalny ("AN").
15. Whilst there is some dispute between the Claimant and the Respondent with regard to the status of AN prior to 7 May 2021 and also the definition of a Prisoner of Conscience ("POC"), it is agreed, and I find, that, on 7 May 2021, the Respondent took the decision to reinstate AN as a POC.
16. At the time this decision was taken, the Claimant confirmed that she was the only Muslim working within her team at the Respondent. Having listened carefully to her give evidence, I am satisfied that the Respondent's decision to reinstate AN's POC status had a profound effect upon the Claimant who alleged that the decision was taken by the Respondent despite what she described as AN's, "advocacy of racist violence towards Muslims." Furthermore, the Claimant's profound disagreement with the Respondent's decision was not shared by any other member of her team who either remained silent or indicated that they supported the decision.
17. Shortly after the decision was taken, the Claimant felt symptoms of stress and anxiety, and she accessed the Respondent's Assistance Programme; she attended six counselling sessions.
18. Again, having listened to the Claimant give her evidence which was supported by that of her husband, Mr Willink, I find that the Respondent's decision caused the Claimant to suffer from anxiety, stress and a sense of isolation; the Claimant maintained that she was unable to return to work as a result of the effect of the Respondent's decision in respect of AN and did not return to work prior to her dismissal.
19. The Bundle of Documents contained a number of Statements of Fitness for Work and correspondence from the Claimant's GP. The first Statement of Fitness for Work is dated 9 June 2021 (page 126) and matches the entry in the GP records (page 123), confirming a diagnosis of "stress and anxiety" and "Work-related stress", with the doctor confirming that the Claimant was not fit for work for a period of two months.
20. The GP records (pages 120-123) set out the chronology of the various consultations between the Claimant and her GP over the ensuing months.
21. The consultations took place on:
 - 27 August 2021
 - 30 September 2021
 - 23 November 2021
 - 26 February 2022
 - 25 May 2022

9 June 2022.

22. Save for the consultation on 27 August 2021, which appears to have taken place in person, the consultations took place by telephone.
23. The diagnoses in the GP notes and the Statements of Fitness for Work are consistent, namely "stress and anxiety work related stress".
24. However, on 8 December 2021, the Claimant attended an assessment by Dr Cooper, a Consultant Occupational Health Physician, on a referral by the Respondent. Once again, this assessment took place by telephone.
25. Dr Cooper stated that the Claimant had emphasised, "*in no uncertain terms that she is not ill or sick*" and that she did not sound particularly anxious. Whilst it is not known whether Dr Cooper had access to the Claimant's medical history in terms of GP notes and medical records, it is stated in the report that there was nothing relevant in her past medical history and concluded that she was essentially fit to work. Dr Cooper concluded with the opinion that the Claimant did not have a disability as described in the Equality Act 2010 but recognized that this was a legal, as opposed to a medical, decision.
26. Whilst the content of the Occupational Health Report conflicts with the diagnoses consistently provided by the Claimant's GPs, the fact remained that the Claimant did not feel able to return to work due to the anxiety and stress from which she was suffering.
27. Even though the Claimant consulted her GP on a regular basis and was diagnosed, in the period June 2021 – June 2022 with stress and anxiety and work-related stress, the Claimant accepted that, at no stage, had she been prescribed medication for her condition. This was out of choice on her part as she described herself as someone who was not an adherent to allopathic treatment unless, for example, she sustained a broken bone or an injury or illness of that sort. The Claimant would use other means and remedies to control her anxiety such as meditation and herbal remedies.
28. Indeed, linked with this approach, the Claimant confirmed that, in August 2020, she had registered to study for a professional diploma in yoga which she had intended to pursue alongside her employment with the Respondent. It is a two-year course which started in April 2021 and therefore it is continuing. The Claimant stated that the pastoral support she has received from the course providers had been excellent. It involves a series of modules as well as sitting four exams over a period of two years. The exams last three and a half hours and are very intensive and complex. However, the course is conducted online and the exams are taken remotely.
29. Indeed, the Claimant confirmed that, in February 2022, at a preliminary hearing, dates for the substantive hearing of her claims were fixed but she subsequently discovered that the hearing clashed with one of the exams in her course. The Claimant asked for a postponement but the Respondent objected and the Tribunal refused her application. It was then suggested that the substantive hearing clashed with Eid but again this was not considered a sufficient reason for the hearing to be postponed. Ultimately the hearing was postponed as the Claimant provided a letter from her GP stating that she was not fit to attend the hearing due to rising levels of severe anxiety and stress.
30. In that same letter dated 20 June 2022 (page 125) Dr Michael Calais wrote as follows:

"I can confirm she has recently been suffering from rising levels of severe anxiety and stress, which is affecting her sleep, and interfering with her normal day-to-day activities and ability to function as usual. She has had numerous appointments at this surgery regarding this, and has been signed off work until at least August (see copy of current Fit Note attached)".

31. Whilst the letter relates primarily to whether or not the Claimant was fit to attend a hearing, it referred to the doctor's diagnosis of severe anxiety and stress, the consequent problems with sleep, the effect on normal day-to-day activities, and the Claimant's ability to function as usual. The primary reason for the Claimant attending the consultations with her GP was to enable her to provide the Respondent with the necessary evidence with regard to her condition. The GPs were consistent in the diagnoses they provided.
32. The Respondent had reduced the Claimant's salary by 50% and then, from January 2022, had stopped paying her completely. The Claimant's husband is a teacher and the loss of the Claimant's income which had been a steady source of funds into the household for some 17 years, was very significant. The Claimant stated that they have no savings and they do not make ends meet.
33. Despite that fact, and despite the fact that the Claimant, as a Russian-speaker, may have been able to secure employment, she has not felt able to do so. She has not applied for a single job and recently turned down an opportunity to work on a project relating to events in Ukraine.
34. The Claimant maintained this was the case despite an entry in the GP notes dated 25 May 2022 which says, *"She doesn't feel safe working there, feels able to work elsewhere"*. The Claimant confirmed that she had no recollection of saying these words to her GP which related to a telephone consultation and it may have amounted to a misunderstanding on the GP's part. In any event, as stated, the Claimant has not felt able to work anywhere despite opportunities to do so and despite the severe financial consequences for her family.
35. I had read the accounts of both the Claimant and her husband with regard to the effect that her stress and anxiety has had since May 2021, and continues to have, upon her daily existence and I then listened carefully to what they both had to say when questioned in the course of the hearing.
36. Their evidence was consistent and I did not consider that they attempted to embellish or exaggerate their accounts. It was suggested to Mr Willink that his statement was effectively written in the present tense and therefore was not relevant to the circumstances that existed since May 2021. However, he confirmed that the change in the Claimant's behaviour has manifested itself since the *"Navalny decision"* and that she is *"very different and shows no sign of coming out of that"*. He stated that the use of the present tense, *"is just a manner of speaking"*.
37. I accepted the evidence of Mr Willink and the Claimant that, prior to May 2021, the Claimant was a very confident person who was committed to her role at the Respondent. She was also a very sociable person and that she had a very busy and active social life. The Claimant has three sons and both she and Mr Willink would share responsibilities relating to the children, to include activities such as taking their sons to football after school.

38. However, both the Claimant and Mr Willink described how the Claimant's behaviour has changed since May 2021. The Claimant's sleep is often interrupted by her waking, feeling very stressed and she will have to adopt meditation to reduce the feelings of panic. However, this leads to her feeling very tired during the day and she is often forgetful about her responsibilities, particularly with regard to the children. Mr Willink said that he often had to cover much more with regard to the children as the Claimant will often not feel well enough or would forget that she was needed to look after the children.
39. The Claimant stated that, since May 2021, she has felt much greater isolation, and that she feels nervous and self-conscious professionally and socially; she has become increasingly withdrawn.
40. I accept Mr Willink's evidence when he says that, by contrast to her previous approach as a confident and sociable person with a very busy and active social life, *"I have noticed she has withdrawn a great deal into herself and rarely goes out and makes excuses, beyond the financial, as to why she can't. Some of her closest friendships have been impacted. This has been saddening and difficult to see."* It has also impacted on her relationship with her wider family with whom she has less frequent contact, wishing to keep to herself.
41. Indeed, she has found that she can quickly overreact to even the smallest 'trigger' which leads to her shouting at her children or a friend or her husband and Mr Willink said that it had caused their relationship to be strained. I accept the description provided by the Claimant and her husband of the affects that her diagnosed condition of stress and anxiety has had since May 2021, and continues to have, on her day-to-day life and activities.

The Legal Principles

42. The legal test that I must apply is set out in section 6 of the Equality Act 2010. The onus is on the Claimant to establish that she has a physical or mental impairment and she must show that the impairment has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.
43. In reaching my decision, I have taken account of the Code of Practice on Employment and the Guidance on the definition of disability.
44. The effects which a person may experience must arise from a physical or mental impairment and the term 'impairment' should be given its ordinary meaning.
45. A substantial adverse effect is described as, *"something which is more than minor or trivial. The requirement that in effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people."*
46. In the appendix, there is a 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.
47. Included within that list is the following:

"persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder".

48. Further guidance is found under paragraph B7 which is entitled "Effects of behaviour" and which 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 affects of impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the affects 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."

49. It is also important to note that I must consider what the claimant cannot do as opposed to what she can do.
50. In support of their arguments, I have also been referred to two decisions of the EAT in particular.
51. On behalf of the Respondent, Ms Bhatt has referred me to *Herry v Dudley Metropolitan Council [2017] ICR 610*.
52. On behalf of the Claimant, Ms Banton has referred me to the decision of *Elliott v Dorset County Council [2021] IRLR 880*.
53. I refer to both decisions when reaching my conclusions below.

Conclusions

54. Based on my findings of fact, I conclude that, since May 2021, the Claimant's ability to carry out normal day-to-day activities has been impaired.
55. I have found that prior to May 2021, the Claimant was committed to her work at the Respondent, where she had been employed for in excess of 17 years. She was a confident individual, both in her professional and private life, and she was also very sociable, with a social life described as very busy and active.
56. Since May 2021, or certainly June 2021 when the first statement of fitness to work was issued, she has lost her confidence, become more isolated, and has suffered from stress and work-related anxiety due to the decision taken by the Respondent to reinstate AN as a POC.
57. As well as not being able to return to the Respondent, she has also not felt able to look for any other source of employment. Furthermore, she has withdrawn into herself and rarely goes out socially, making excuses why she cannot do so. I conclude that this represents a persistent wish to avoid people and that she developed significant difficulty in taking part in normal social interaction. This has had an adverse impact on both her friendships and also on her family life. She has become forgetful and short-tempered and, as stated, this has impacted her relationship with her children and her husband.

58. I am satisfied that the Claimant has established that such an impact is substantial i.e. it is more than minor or trivial. I am also satisfied that it is long-term.
59. In reaching my conclusions, I have taken fully into account the content of the occupational health report in December 2021 but I refer not only to the GP records but also the letter from the GP of 20 June 2022, which falls within the relevant period.
60. I also refer to my findings in respect of the entry in the GP notes on 25 May 2022 where it states, "*she doesn't feel safe working there, feels able to work elsewhere*". I am satisfied that the effect has been such that the Claimant has not looked to work elsewhere as she has felt unable to do so as a result of stress and anxiety despite the consequences for herself and her family.
61. Reliance was placed by the Respondent on the fact that the Claimant was capable of carrying on with her diploma course in yoga. It was suggested that it was significant that the Claimant was able to sit exams which were three and a half hours long and described as very complex. I remind myself that it is important to concentrate on what the Claimant cannot do rather than what she can do. Further, a distinction can be drawn between the Claimant suffering from stress and work-related anxiety which prevents her from returning to her place of work and an office environment, and studying on an online course where exams are taken remotely.
62. In relying on the decision in *Herry*, the Respondent maintained that the decision of the Respondent to reinstate AN to POC status amounted to an adverse life event and therefore any consequent effect on the Claimant of such a decision cannot amount to an impairment.
63. However, this is not a case where it was suggested that the decision to reinstate AN was taken in order to, in some way, treat the Claimant poorly or to single her out in any way. Taking account of the Claimant's commitment to the Respondent and all that it stands for, and her belief as to the appropriateness of the Respondent's decision, I am satisfied that the decision (which, whilst not relevant to the issues on which I must decide, the Respondent may have been perfectly entitled to make), had a profound effect on the Claimant for the reasons outlined in my findings.
64. Consequently, I do not agree that this case is entirely analogous to the decision in *Herry*.
65. In saying so, I consider it is important to quote some passages from that decision. The extracts are necessarily of some length taking account of the guidance to be taken, and the distinctions to be drawn.
66. At paragraph 54 of *Herry*, the EAT quoted a paragraph from the Judgment of Underhill J in the decision of *J v DLA Piper UK LLP [2010] ICR 1052*. Whilst this includes a discussion on whether conditions described as "depression" will amount to impairments, Underhill J states:

"The first point concerns the legitimacy in principle of the kind of distinction made by the Tribunal, as summarised in para 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as 'clinical depression' and is unquestionably an impairment within the meaning of the Act. The second is

not characterized as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – 'adverse life events'. We daresay that the value of validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians... and which should in principle be recognized for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most lay people, use such terms as "depression" ("clinical" or otherwise), "anxiety" and "stress". Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para 40(2) above, a Tribunal starts by considering the adverse effect issue and finds that the Claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering "clinical depression" rather than simply a reaction to adverse circumstances: it is a common-sense observation that such reactions are not normally long-lived".

67. The EAT in *Herry* then went on to say at paragraphs 55 and 56 as follows:

"55 This passage has, we believe, stood the test of time and proved of great assistance to employment tribunals. We would add one comment to it, directed in particular to diagnoses of "stress". In adding this comment, we do not underestimate the extent to which work-related issues can result in real mental impairment for many individuals, especially those who are susceptible to anxiety and depression.

56 Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction; but in the end the question whether there is a mental impairment is one for the employment tribunal to assess."

68. As stated, I have made findings of fact based on the evidence of not only the diagnoses of the GPs but also, and perhaps more particularly in terms of the substantive and long-term effect, the evidence of the Claimant and her husband. I find that, with regard to the adverse effect from which the Claimant has suffered, this is, "over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction...".

69. I refer to what is said by the EAT in *Herry* [55] "*We would add one comment to it, directed in particular to diagnoses of "stress". In adding this comment, we do not underestimate the extent to which work-related issues can result in real mental impairment for many individuals, especially those who are susceptible to anxiety and depression.*" This supports the conclusion that it is recognised that the work-related issue surrounding the Respondent's decision can result in a real mental impairment such as that suffered by the Claimant.
70. It is worth noting that part of the rationale in the case of *Herry* was that there was "*little or no evidence that his stress had any effect on his ability to carry out normal activities*" [72]. However, I have found that there is sufficient evidence to support a conclusion that the adverse effect on the Claimant's ability to carry out normal day-to-day activities was both substantial and long-term.
71. I have also considered what was said by the EAT in the case of *Elliott* and paragraph B7 of the Guidance, and I find that it was not reasonable to expect the Claimant to adopt coping mechanisms which amounted to withdrawing from either her professional or social life, or to make substantial adjustments to the way in which she would be able to return to work, such as working alone or not receiving group emails from work colleagues, in order to avoid episodes of stress and anxiety.
72. I also do not accept that there is a significance in the fact that the Claimant has at no stage received any medication for her stress and work-related anxiety. The Claimant has made it clear that, in order to control her symptoms, she has resorted to meditation and other herbal remedies as she is not an adherent to allopathic medicine. In any event, as is stated in paragraph B12 of the Guidance, "*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.*"
73. For these reasons, I find that, during the relevant period, the Claimant was suffering from mental impairments, namely work-related stress and anxiety and that the impairments had an adverse impact on her ability to carry out normal day-to-day activities which was both substantial and long-term.
74. I therefore find that the Claimant was disabled within the meaning of section 6 of the Equality Act 2010 during the relevant period.



Employment Judge R Havard
Dated: 20 February 2023

JUDGMENT SENT TO THE PARTIES ON
28 February 2023
For the Tribunal: *Melanie*