EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 1/9/2022

Claimant: Mrs S Mir

Respondent: OmniaMed Communications Ltd

Before: Employment Judge Mr J S Burns

Representation
Claimant: In person
Respondent Mr T Westwell (Counsel)

JUDGMENT

The Claimant was disabled by epicondylitis and arc syndrome during her employment with the Respondent.

REASONS

Introduction

1. I had to decide as a preliminary issue whether at all material times, (February to November 2021) the Claimant had a disability within the meaning of section 6 of the Equality Act 2010, the Claimant relying on epicondylitis (pain around the outside of the elbow) and arc syndrome (shoulder pain) as the relevant physical impairments.

2. She claimed in her ET1 that these conditions cause *"pain and weakness in her right arm including right hand and fingers.*" She explained that this was worsened by an injury at home on 2/6/21 caused by her trying to open a tin can using a ring-pull.

3. I was referred to a PH bundle of 155 pages. We had some difficulties with the bundle as various versions had been sent recently to the Claimant. I resolved this by referring to an earlier version of the consolidated bundle which the Claimant received a few days ago, and by allowing the Claimant to send me any additional documents she wanted to refer to. She was happy with this approach.

4. The Claimant also raised at the outset her concerns that the Respondent had not given disclosure of the Respondent's version of documents reflecting a "display screen equipment assessment" ("DSEA") filled in by the Claimant during the course of her work for the Respondent is 2021. The Respondent said it had nothing further to disclose in this regard. I decided to make an Order of Specific Disclosure about this (see separate CMO) but that it would be disproportionate to postpone the OPH today, particularly as the Claimant was able to refer me to her version of the document (for example page 132 of the bundle) and in any event the document appeared to go principally to the issue of knowledge of any disability rather than to the question whether the Claimant met the statutory definition.

5. In addition to the bundle I received some emails from the Claimant with some texts and other further extracts from the DSEA. I was also supplied with written skeleton arguments from each side and a Respondent's authorities bundle. I heard evidence on oath from the Claimant and

then received closing oral submissions. I have considered all of this.

6. At the Claimant's request I had two ten-minute breaks during the hearing as well as the lunch break.

7. In the bundle appeared a judgment in the Employment Tribunal in Bury St Edmonds dated 20/6/22 in case number 3307564 2020 in which the Claimant was held not to be disabled. That judgment refers to the period when the Claimant was employed by a previous employer namely Iqvia Ltd which the Claimant told me was from October 2019 to March 2020. In 3307564 2020 she had relied (in her unsuccessful claim to have been disabled), on the same impairments as she relies on in the instant claims. A different period is under examination in the instant claims, and the issue is to be considered afresh. However it is regrettable that the Claimant, contrary to her disclosure obligations in the instant litigation, failed to disclose this relevant document, which instead was found and disclosed by the Respondent's solicitors. There are no written reasons for this previous judgment and when I asked the Claimant, who was present when the oral reasons were given, for a summary, she was unwilling or unable to comply with my request.

Relevant law

8. Per section 6 Equality Act 2010, a person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities.

9. A claimant does not have to show why she has an impairment - but merely the fact that she does have one; Millar v Inland Revenue Com 2006 IRLR 112. The question is "*Is there something wrong with Applicant?*" The Applicant does not have to show that the underlying cause of her impairment is physical (rather than mental); College or Ripon v Hobbs 2002 IRLR 185

10. "Substantial' means "more than minor or trivial" (per section 212) and a limitation going beyond the normal differences which may exist between people.

11. In assessing whether there is or would be a substantial effect, one disregards measures such as medical treatment which are being used to treat it. Sch 1 para 5(1) and (2). However, 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 effects of an impairment on normal day to day activities.

12. Normal day to day activities are activities such as walking, driving, typing and forming social relationships.

13. The effect is long term if it has lasted or is likely to last 12 months or for the rest of the person's life (Sch 1 para 2).

14. Under Section 6(5) EA 2010 the Secretary of State has issued guidance on matters to be taken into account in determining questions relating to the definition of Disability.

15. C5 in the guide deals with recurring or fluctuating effects as follows "*If an impairment has had a substantial adverse effect on a person's ability to carry out normal day to day activities, but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred*."

16. C7 states "*It is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the long-term element of the definition is met. A person may still satisfy the long-term element of the definition even if the effect is not the same throughout the period. It may change: for example activities which are initially very difficult may become possible to a much greater extent. The effect might even disappear temporarily. Or other effects on the ability to carry out normal day-to-day activities may develop and the initial effect disappear altogether."*

17. D2 includes the following as an example of an indirect effect resulting in defined disability "*A man with osteoarthritis experiences significant pain in his hands undertaking tasks such as using a keyboard at home, peeling vegetables opening jars and writing".*

18. In the Appendix to the Guide the examples of factors which it would be reasonable to regard as having a substantial adverse effect include inter alia "*difficulty preparing a meal, for example because of restricted ability to do things like open cans or packages* …" and "*difficulty in picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage with one hand"*

    Findings of fact

    The period 31/12/2019 to 22/2/21

19. The Claimant started to experience relevant problems on 31/12/2019 and consulted with her GP about this on 13/1/2020 complaining of right arm pain which she attributed to her having helped her father at AE two weeks prior.

20. On 23/1/20 she complained to her GP that the problem was ongoing and that it was aggravated by cooking or lifting. By 20/2/2020 she said that the constant pain was gone but was still experienced when doing some movements - ie when cooking. The GP described the problem as "*golfer's elbow*".

21. The GP referred her to an NHS physiotherapy service and the period up to the end of August 2020 is summarised in the report of Michaella Cobb, an NHS Physiotherapist, dated 26/8/2020 as follows:

    "Mrs. Mir was referred by her GP for Physiotherapy Assessment of her R arm pain and decreased function and attended her first appointment on 11/03/2020.

    She reported at that time a current history of right arm pain since Dec 2019 which she attributed to occurring a few days after pushing a wheelchair and noted she had difficulties in using that arm in in activities of daily living (ADL), such as cutting vegetables.

    She reported she was currently taking Vit D, but otherwise no other medication, and had no other ill health.

    She stated she worked full time as a medical editor and was the main carer for her elderly parents.

    As previously stated her main concerns were the effects of her symptoms on her ADL and her expectations of treatment were to be able to use the arm more easily in everyday tasks.

Mrs. Mir described her R arm symptoms as a tight restricted pain at a level of 8-9/10 on the visual analogue scale that was brought on by activities such as cutting vegetables, lying on her right side or carrying heavy objects and eased by resting, massage or previously prescribed exercises. She did not report any difficulty sleeping, paraesthesia, numbness or a specific time of day when the pain was at its worse. She did not report neck pain.

On examination she had near full pain free active range of movement (AROM) of her cervical spine- except reporting a stretch sensation on stretch to opposite side flexion. Full pain free AROM shoulders, elbows, wrists and thumbs. Muscle strength of the Right shoulder, elbow and wrist were observed as 5/5 on oxford scale. R grip and opposition of thumb were noted as normal.

Thoracic Spine rotation was noted as stiff and was reduced bilateral (1/2 range of movement).

A diagnosis of myofascial tension was suggested and she was taught and issued a Home exercise programme of Upper limb, Thoracic and Cervical stretches.

Subsequent follow up appointment on 25/06/2020 was by telephone consultation due to Covid -19 pandemic restrictions.

Mrs. Mir reported at that time that she had still been getting a lot of pain in her affected arm and on noting swelling she had attended AE- who diagnosed an infection in her blood and prescribed antibiotics, which had since eased the swelling.

She also reported she remembered prior to the injury of her right arm that she had previously described, that she had increased her workload and had a lot of overuse of the right side, her dominant side, and wondered whether that had led to pain/injury from repetitive overuse and strain.

She stated she had not been able to do her exercise programme regularly as advised, as she had not generally been feeling well (wondering if perhaps she had had covid-19) and also having to look after her parents. She agreed to restart her exercise programme and a review was arranged for 09/07/2020 to assess her progress.

A telephone consultation on 09/07/2020 revealed although she was trying to comply with her exercise programme more often she was still unable to do as frequently as advised but that she had started a fitness class online set up through Kingston Carers so was trying to do more gentle exercise and movement in general. She reported as stress could aggravate her pains that she had also signed up to relaxation sessions.

She still noted occasional swelling into the lateral aspect of her R hand and little finger and was advised if she noted any general body swelling to consult her GP. She agreed to continue with her exercise programme and be reviewed in a further 2 weeks' time.

On her follow up telephone consultation on 29/07/2020 she reported that she had found chopping and cutting vegetables slightly easier and had been compliant with her exercises initially but currently had not been able to do as much as unwell with tonsils and aching muscles. She was advised on Covid-19 symptoms and urged to telephone her GP surgery for remote consultation if she developed any. She agreed to a progression in her exercise programme and additional strengthening exercises for Right upper limb was taught and issued by email to her. A further follow up appointment by telephone was arranged.

In her telephone follow up consultation 01/09/2020 Mrs Mir stated she had been able to manage her exercises and that the pain was now reasonable and more manageable although still getting aggravated by chopping vegetables or doing heavy duty work. She stated she was aware this pain is likely due to the overuse when caring for her parents

and from her work and previous injury but management with the exercises given and self-massage given helped her pains. She was also aware of relaxation techniques and mindfulness for her stress.

She stated she was happy to continue with her current management with her exercises and advice in order to self-manage her pain. She reported she was feeling better in herself from exercising and was advised to make sure she is taking time for herself to relax as it was important not to overdo it as this overuse can irritate the pain. She was happy to be discharged and if she had any further problems in the future to seek GP advice if symptoms were flaring up and not settling. "

22. As explained in M Cobb's statement and in the Claimant's oral evidence, the treatment up to the end of August 2020 was not actual physical physiotherapy but consisted in her talking to NHS physiotherapists remotely (because of Covid19 lockdowns) and her undertaking (apparently intermittently and inconsistently) *"a home exercise programme of stretches*."

23. The Claimant discharged herself from the NHS physio support in late August 2020 and started getting actual physiotherapy from a private physiotherapist (Jessal) on a fairly regular basis - once every 2 or 3 weeks or so - and she remained in receipt of this treatment from then on at all material times (except for the period between 5/8/21 and 27/10/21 when there was a gap in this treatment (which gap the Claimant attributed to Covid19 issues).

24. There is no statement from Jessal as to what the purpose and effect of his treatment was, but in her oral evidence the Claimant explained that it was "*exercises and manipulation of her neck shoulders and back for purposes of releasing her muscles*". She said that this treatment helped her to keep her arm pain at bay ("*to contain it*" was her phrase).

25. On 26/11/2020 the Claimant's GP recorded "*bilateral shoulder movement very limited - pt has been seen by physio in the past…muscle tenderness around shoulder joint"*

26. At the end of 2020 the Claimant's father died and she became pre-occupied by that.

27. The next relevant GP record is on 2/2/21 when the Claimant reported ongoing arm pain and "*tightness*" and the next on 16/2/2021 when she reported the same, saying it was aggravated by "*cutting food, stirring, working long hours and weight on her arm*". On examination she felt "*general heaviness and aching in both shoulders*". The notes state "*ongoing lateral epicondylitis R side … no red flags or overt neural symptoms*" but state that the Claimant reported "*fine dexterity – no problems*"

<u>The period from 22/2/2021 (start of employment with Respondent) up to 2/6/21 (date of kitchen incident)</u>

28. In her Emergency Contact Form completed for purposes of her employment on 3/3/21 the Claimant was asked by the Respondent to "*state any medical details which we should be aware of in the event of an emergency"*, but did not make any reference to problems with her arm or shoulder.

29. There are no further references to right arm issues in the GP notes until June 2021

<u>The period 2/6/21 (date of kitchen incident) to 2/11//21 (date of notice of termination of employment)</u>

30. The Claimant hurt herself while working in her kitchen at home on 2/6/2021. The Claimant's impact statement and oral evidence was that she was "*opening a tin can using a ring pull*".

31. The Claimant attended her GP on 2/6/21 and reported the incident and her hand pain to her line manager the same day and there were further text/email exchanges about this on 3/6/21, 7/6/21 and 14/6/21.

32. 14/6/21 the GP K de Wit wrote "*Please note that Mrs Mir presented on 2/6/21 to the surgery, having sustained an injury to fingers on her right hand while chopping with a knife in the kitchen". The pain has radiated up her arm towards her shoulder and is ongoing*".

33. I accept that in referring to "*chopping with a knife*" the GP letter is wrong in recording what the Claimant had said and that this does not reflect inconsistency on the Claimant's part.

34. In the following months the Claimant filled in some DSEA forms. On 2/7/21 she wrote for example "*Due to injury to my right hand/arm I get discomfort*". On 5/7/21 she wrote "*Due to injury hand is not used much. But when the mouse is used hand gets stiff and there is reduced movement in it. This stiffness travels up to arm and shoulder. The high level of pain has gone but the above discomfort is present".*

35. The GP notes for 7/7/21 state *"had epicondylitis last yr which didn't fully heal….was better with physio.."* On 21/7/21 they read "*pain is still present but reduced. still feeling tightness in her hand".* On 30/7/21 : "*had epicondylitis..seeing physio index finger hypersensitivity..neck pain and stiffness.."* On 26/8/21 : "*shoulder injury"*

36. On 27/8/21 the Claimant asked to reduce her working hours.

37. On 27/9/21 at work on a DSEA form the Claimant wrote "*Ergonomic mouse has been tried. It helped slightly but there is continued stiffness, sometimes more than others*."

38. On 5/10/21 she was signed off sick for work for a week. The GP note following a telephone consultation reads: "*had ongoing cervical radiculopathy - flare up over last couple of days - radiates to neck..tingling in hands and arm on/off. Right hands weaker and feels more stiff..paracetamol has helped..has tried physio in the past - has tried exercise which have helped."*

39. (With regard to the reference to paracetamol in the previous paragraph, the Claimant told me that she has taken paracetamol but only intermittently - for example she might have taken it one day in every 4 to 6 weeks, as she is averse to taking medicine.)

40. On 6/10/21, following a face to face consultation, the GP referred the Claimant to a musculo-skeletal specialist. The referral letter reads as follows: "*Thank you for reviewing Shaukia Mir, a 60 year old who has presented on multiple occasions over the past 6 months with cervical radiculopathy. She describes neck pain associated with right sided finger tingling and numbness, in the middle, ring and little finger specifically. She also describes shooting pain and recently has been feeling some weakness in her right arm and hand, which is new with this episode. For her job she is required to type and use the computer mouse, and feels in the last week this has been increasingly difficult and has required to take time off work. On examination she has no obvious muscle wasting or fasciculation. Her tone and reflexes are intact. She has altered sensation in her C7, C8 and T1 dermatones on her right upper limb compared to her left. She also has general weakness bilaterally but more noticeably on elbow extension and finger grip on her right side, power 4/5."*

41. On 25/10/21 in the DSEA form back at work the Claimant wrote: "*I have been using both hands to relieve discomfort on the injured side. This still leaves stiffness, but now the left side has become affected as well…*"

The period after 2/11/21 (the notice of termination of employment)

42. The Claimant told me that she had undergone an MRI scan of her neck/shoulder and an X-Ray in late 2021/early 2022 but these had not shown up the source of her problems.

43. She said she has continued to suffer problems with her arm and hand and the matter is still under investigation.

44. Amanda Clifford the NHS Orthopaedic Physiotherapy Practitioner to whom the Claimant had been referred, wrote on 17/11/2021 suggesting that the Claimant may have cervical spondylosis and that the Claimant had described "*not being able to sit for long or manage cooking or cleaning well. She has managed to drive here today for the first time in a long time. Her pain affects her sleep and her movements throughout the day*"

45. On 5/1/22 Dr Elizabeth Thorpe (an NHS GP) wrote *"She also has golfer's elbow that started in January 2020 and it seems to have been prolong(ed) until now."*

46. 13/5/22 Keval Panchal (NHS physiotherapist) wrote : '*Mrs Mir initially complained of epicondylitis – Tennis Elbow/ Golfers Elbow pains, and rotator cuff pains which originally occurred in December 2019. She was seen by the GP in January 2020, and by local physiotherapy in February 2020 to go through exercises, and conservative management, being seen up until September 2020. She was then reassessed in February 2021 and has subsequently still complaining of these pains. …Patients can complain of these issues frequently, and with tendonitis issues, these can vary in timeframe, and although being seen by the physio showed a good prognosis, if provoked and re:aggravated, these tendonitis based pains can take many months, if not causing chronic pain beyond a year. The pains mostly depend upon ceasing or reducing aggravating factors, and strengthening muscles and associated tendons to alleviate tendonitis issues. This can impact on day- to-day activities as many daily activities- causing repetitive strain injuries can reprovoke tendonitis type pains. …With respect to tendonitis type issues as mentioned above such as tennis elbow and rotator cuff pains, if problems do tend to persist, and conservative management in the form of physiotherapy and exercise programmes do not provide relief, then further investigation and possible interventions such as corticosteroid injection therapy, shockwave therapy could be explored. …Where symptoms may cease, strength based exercises can help prevent reoccurance of pains, but pains can reoccur if aggravating activities causing repetitive strain such as overhead lifting, typing, lifting as not modified. …Please see NICE guidelines for tennis elbow and rotator cuff injuries for further information. '*

47. On 13/6/22 Dr R Meade, an NHS GP wrote "*To whom it may concern: Many thanks for your consideration of this 61 year old patient who has recently attended the surgery with a number of different problems which are causing considerable distress and impact on her activities of daily living. She has been suffering with long standing but slowly worsening symptoms effecting both her arms which has resulted in great difficulty in performing everyday tasks and is causing a significant amount of mental anxiety and distress. She is currently awaiting to speak to a physiotherapist here at the practice regarding this and has been extensively investigated in hospitals with investigations including an MRI scan to try to determine the cause of this concerning symptom. More recently she is now developing a progressive jaw pain which is effecting her ability to eat. …She feels she is currently going to struggle to meet the needs required of her and would appreciate any understanding on your part with regards to mitigating circumstances as she is unable to perform her duties adequately."*

48. On 8/7/22 Dr Meade wrote; "*Thank you for reviewing this letter regarding the above named patient who has presented to the surgery a number of occasions now with multiple symptoms of epicondylitis, tendonitis and cervical radiculopathy. The symptoms have been causing her great discomfort since approximately 2020 and she has been seen here by physiotherapists on a number of occasions and has been seen in the community for the same issues. She often finds the symptoms are worse at night and has great difficulty of the cleaning and maintenance of her home. She is currently relying on analgesia and physio interventions to try and manage her symptoms although there seems to be no improvement in them. Blood tests have been requested and are pending. The end point of her symptom resolution is unclear."*

Conclusions

What is the impairment?

49. It has been claimed in the pleaded case as *epicondylitis* (pain around the outside of the elbow) and *arc syndrome* (shoulder pain).

50. Various medical professionals have used a variety of other terms to describe the impairment as follows:

51. Ms M Cobbe in 2020 described the condition as *myofascial tension* (this means persistent muscle pain after an injury).

52. Keval Panchal in his 13/5/22 report describes the same problem in January 2020 as "*epicondylitis – Tennis Elbow/ Golfers Elbow pains, and rotator cuff pains*". (Rotator cuff pains are pains in the group of tendons which keep the arm in the shoulder socket.)

53. In July 21 and in her sick note issued on 5/10/21 and in her referral letter also in October 21 the Claimant's GP described the Claimant's condition as *cervical radiculopathy*. (This means a "*pinched nerve*," and it occurs when a nerve in the neck is compressed or irritated where it branches away from the spinal cord. This may cause pain that radiates into the shoulder and/or arm, as well as muscle weakness and numbness).

54. Amanda Clifford called it *cervical spondylosis.* (This is neck pain caused by age-related 'wear and tear' to bones and tissues. The most common symptoms of cervical spondylosis are neck pain, stiffness and headaches. More rarely, it can trap nerves in the neck, leading to: pain radiating from the arm).

55. It is clear that the exact cause and proper classification of the impairment/s has not been found and is still being investigated.

56. The case law referred to in paragraph 9 above suggests that it is not essential for a claimant to identify the cause or the exact medical name or names for her impairments. What is necessary is that she prove that she has an impairment of some kind.

57. Applying this approach, it is clear that the Claimant does have an impairment namely a tendency to suffer pain and debility in her right hand, arm and shoulder. That tendency may have its origin in her cervical spine, in her shoulder or elbow, in her soft tissue such as nerves tendons and muscles, or in psychological or emotional factors or other functional overlay, or a combination of all or several of these. It is unnecessary for me to make a definitive finding about the exact and exhaustive medical name which should be applied to this.

58. I reject the Respondent's submission that the cause of the flare-up in June 21 was a new impairment unrelated to that which had been suffered up to that date. While the medical professionals have used different terms to describe the Claimant's impairment affecting her right shoulder, arm and hand, none of them have supported such a submission. On the contrary, the GP notes and the comments especially by Thorpe, Panchal and Meade suggest that there has been a continuing single impairment with different manifestations starting in early 2020, and continuing to the date of their reports.

59. Furthermore, the initial onset of the problem on 31/12/2019 and the flare-up on 2/6/21 both started with right hand arm pain triggered by the Claimant doing ordinary everyday tasks which a healthy 60 year old woman should not have problems with.

60. While the pleaded terms "*epicondylitis and arc syndrome*" may not completely cover the exact nature of the impairment, they suffice for present purposes and should be taken in these proceedings to refer to the whole of impairment described above.

<u>The effect of the impairment on the Claimant's ability to do day-to-day activities</u>

61. The Claimant's evidence in her impact statement suggests that she has experienced significant problems since January 2020 onwards and continuing. She stated the following: "*The activities that were severely impacted by disability, which would also be impossible without medical treatment (painkillers, massage, physiotherapy/prescribed exercise etc) are:i. Sitting with my right arm bent. ii. Typing on a computer.iii. Operating a mouse.b. Lifting everyday objects. c. Cooking (peeling, grating, chopping, stirring, moving pots and pans etc). d. Eating and drinking would be problematic (for example, gripping a cup of tea).e. Sleeping (the pain, untreated, would keep me up all night, and even with painkillers, I would toss and turn and wake up if I moved onto my right side). f. Using a telephone.g. Writing (I am right handed).h. All self-care (brushing my teeth, brushing my hair, washing, applying makeup, and getting dressed). i. Carrying my grandson. j. Driving. k. Opening doors. l Using the toilet. m. Using public transport.n. Socialising and mental tasks (the pain and lack of sleep leaves me irritable and exhausted). 32. To be clear, the above were the impacts of my disability from January 2020 and whilst they had fluctuated at different times, on 2 June till now I still experience these impacts'*

62. The Respondent criticised the Claimant's credibility, based mainly on the fact that the Claimant had not disclosed the Bury St Edmunds judgment referred to above, but also based on some minor discrepancies between details of the Claimant's account, and entries in the medical notes, one of which I have referred to already.

63. The Claimant lives with her husband and two adult children. Although she claims she has required assistance from them to carry out day-to-day activities, she did not call any of them to give evidence. She however is a litigant in person and told me she did not even think of doing so.

64. I have considered these points but I nevertheless find the Claimant to be a reasonably credible and reliable witness. Her description in her impact statement goes further and is more detailed than what she is recorded as having told her GP and physiotherapists in the documents reviewed above, but is nevertheless consistent with and corroborated by those records.

65. Although the Claimant appears to be a person who avails herself very regularly of the services of the NHS for a variety of complaints, including some of which (such as skin conditions, boils cysts etc) are irrelevant for present purposes, I find that she would not have consulted so regularly with her GP, physios, MSK specialists etc as well as incurring the expense of regular private physiotherapy session with Jessal over an extended period unless she was suffering significant adverse effects from her impairment.

66. I accept her evidence about the impacts of her impairment.

Long-term impact

67. I reject the Respondent's submission that the Claimant did not suffer a substantial adverse effect before June 2021.

68. I agree that the impact of the impairment has fluctuated. It started on 31/12/2019, had abated somewhat with the assistance of the NHS physio support and her home exercises in the Autumn of 2020, but worsened again at the end of 2020. During the first couple of months of her employment in 2021 it abated again, during which period the Claimant kept her symptoms at bay with the help of physio from Jessal, home exercises, occasional paracetamol and modifying her behaviour. However the problems and impact flared up again from 2/6/21 following the kitchen incident and were continuing when her employment ended.

69. As confirmed by the Guide, a fluctuating or recurring impact can be considered as long-term in certain cases. I find that this is such a case and that that the substantial adverse effect continued from January 2020 to the end of her employment with the Respondent .

70. This conclusion is reinforced by the fact that throughout, the Claimant was receiving and self-administering treatment to mitigate the effects; and had this not been the case, the impact would have been even worse.

Summary

71. I find that the Claimant has had the pleaded impairments since January 2020 causing a substantial adverse effect on her ability to do day-to-day activities and that this situation was long term in that it had lasted at least 12 months by the time the Claimant's employment with the Respondent started, and it then continued during the whole of that employment.

J S Burns Employment Judge
London Central
5/09/2022
For Secretary of the Tribunals
Date sent to parties: 05/09/2022