

## Obesity and disability

*Walker v Sita Information Networking Computing Ltd* [2013] UKEAT/0097/12/KN [2013] EqLR 476, February 8, 2013

### Introduction

Mr Walker (W), an obese man suffering from various symptoms, appealed against the judgment of the ET which had found that he was not disabled. The key factor in the ET's decision was its finding that there was no identifiable cause of W's impairment. The EAT's decision addressed the correct approach to establishing disability and set out guidance as to obesity and disability.

### Facts

W weighed 21 and a half stone and suffered from a large number of health problems including asthma, diabetes, high blood pressure, chronic fatigue syndrome, bowel and stomach problems, anxiety and depression. These conditions gave rise to various symptoms including various pains, bowel symptoms, shortness of breath, constant fatigue and poor concentration, the genuineness of which were not challenged by the respondent.

The occupational health specialist who examined W for the purposes of the claim said there was no evidence of any pathological cause of W's conditions, apart from, to some degree, his obesity. W claimed he was disabled for the purposes of the Disability Discrimination Act 1995 (DDA).

### Employment Tribunal

The ET accepted that W suffered from functional overlay compounded by obesity. However, because there

was no identifiable physical or mental cause for his symptoms, the ET found that W was not disabled for the purposes of the DDA.

### Employment Appeal Tribunal

W appealed against the ET's findings as to disability. In a relatively short judgment, the EAT accepted the majority of the submissions made on W's behalf. The EAT stated that when considering whether an individual is disabled a tribunal must concentrate on whether he has a physical or mental impairment. As a result of the unchallenged evidence before the ET, the EAT found that on any view, W was substantially impaired and had been for a long time.

The EAT then went on to criticise the ET's approach of considering it necessary to identify a physical or mental cause in order to establish a physical or mental impairment. The EAT confirmed:

*The question is whether the individual has the impairment, and whether the impairment may properly be described as physical or mental. The Act does not require a focus upon the cause of that impairment.*

The EAT did recognise that a lack of an apparent cause may be of significance, but this is of evidential, rather than legal, significance:

*Where an individual presents as if disabled, but there is no recognised cause of that disability, it is open to a tribunal to conclude that he does not genuinely suffer from it. That is a judgment made on the whole of the*

*evidence. The effect of it, if made, is that there is no such impairment as the litigant claims.*

This, however, did not impact on W as there was no challenge to his account of what he suffered.

It was also put forward on W's behalf that obesity is a clinically recognised condition which in itself would justify a finding of disability. The EAT disagreed, but did say that whilst obesity does not render a person disabled of itself:

*...it may make it more likely that someone is disabled. Therefore on an evidential basis it may permit a tribunal more readily to conclude that the individual before them does indeed suffer from an impairment, or for that matter, a condition such as diabetes, if that diabetes is such as to have a substantial effect upon normal day to day activities. It may also be relevant evidentially to ask whether the obesity might affect the length of time for which any impairment was to be suffered.*

This did not affect the main findings of the EAT, and as a result of the above the EAT allowed the appeal and substituted a finding that W was disabled for the purposes of the DDA.

### **Implications for practitioners**

This is a helpful judgment insofar as the EAT clearly confirms that it is not a legal requirement to identify the cause of an impairment in order to establish that an individual is disabled. However, claimant practitioners will need to be aware that if an impairment does lack an identifiable cause, this could create evidential problems if the existence of the impairment is in dispute.

This case will also be of interest to those advising in relation to obese employees regardless of which side they act for. Whilst the EAT found that obesity itself is not a disability, it did say that obesity may make it more likely that someone is disabled. As such, whilst it should not be assumed all obese employees are disabled (which itself could damage the employment relationship) obesity mixed with other health issues should prompt consideration as to whether an employee is disabled.

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