EAT confirms a loose causation test in claims for discrimination arising from a disability

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EAT confirms a loose causation test in claims for discrimination arising from a disability

In *Sheikholeslami v University of Edinburgh,* the EAT confirmed that a looser causation test was appropriate in determining whether unfavourable treatment had arisen from the claimant’s disability.

Section 15 of the Equality Act provides that an employer cannot treat an employee unfavourably because of something arising from their disability. By way of example, dismissing an employee with severe depression for appearing unenthusiastic at work could be discrimination arising from a disability. The treatment is not motivated by the depression,

it is motivated by the consequences of that depression. An employer may have a defence to discrimination arising from a disability if they can prove that the unfavourable treatment was a proportionate means of achieving a legitimate aim. If the employer did not know and could not be reasonably expected to know a worker had a disability, then section 15 is not engaged.

in *Sheikholeslami v University of Edinburgh,* the Employment Appeal Tribunal held that whether 'something' arises by consequence of a disability is a loose test, finding that the Employment Tribunal should have considered the links between the claimant's disability and her behaviours and said that there could still be a connection even if there was more than one link in the chain of causation.

The background

In 2007, Ms Sheikholeslami, the claimant, accepted a prestigious position as Professor and Chair of Chemical Process Engineering at the University of Edinburgh. She began to suffer from severe work-related stress and depression and became too ill to attend work.

The claimant raised a grievance for sex discrimination in 2010. A diversity review concluded that there were cultural problems at the School of Engineering. The claimant asked to be transferred from the School of Engineering, but her request was not accepted. The Employment Tribunal ('*ET*') found that the claimant became disliked and distrusted by the School of Engineering, whose staff believed that she had "over-egged" her grievance.

The claimant's health continued to suffer, and in 2012 she was dismissed on the grounds that her work permit had expired. The university had not sought to follow its own dismissal procedures or to extend the work permit on the basis that the claimant was not prepared to return to work.

The section 15 claim

The claimant bought claims for sex discrimination, a failure to make reasonable adjustments and that the University's failure to extend her work permit, failure to follow its own dismissal procedures and dismissal of the claimant was less favourable treatment arising from her disability.

The ET rejected her claims. The claimant's discrimination arising from a disability claim failed because, whilst the ET accepted that the University had not applied to extend the claimant's work permit because she refused to return to work, in its view, there was insufficient evidence to link her refusal to return to work with her disability (rather than her refusal being linked to the fact that she felt she had been badly treated).

On appeal, the EAT found that the ET had applied too narrow a causation test. The ET did not consider that there may be more than one link in the chain of causation between the reason for the dismissal and 'something' that had been caused by the claimant's disability.

Here it was the claimant's disability that caused her to be absent from the university and the perceived hostility of the claimant's colleagues was linked to the cause of her disability. The EAT found that because the claimant's disability, its cause and effects were all so interlinked, the ET should have considered whether her refusal to return was a consequence of her disability, which was a looser test. The EAT found, applying a looser test, that there was a link between the consequences of the claimant's disability and her dismissal.

What this case means

The case demonstrates that the test for whether an employee has been treated unfavourably as a consequence of their disability is a loose one, particularly where the disability

has been triggered by work and employers should think broadly about whether a disability could be linked with a reason for a dismissal.

BDBF are employment law specialists with expertise in claims by university professors. For more information please contact Senior Associate Rolleen McDonnell, (rolleenmcdonnell@bdbf.co.uk) on 020 3828 0350 or Senior Associate Samantha Prosser (samanthaprosser@bdbf.co.uk) on 020 3828 0373.

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