Employee who admitted to shoplifting held to have a tendency to steal and was prevented from bringing a disability discrimination claim

[et_pb_section bb_built="1" background_color="#ffffff" fullwidth="on" custom_padding_last_edited="on|desktop" _builder_version="3.0.99" custom_padding_tablet="50px|0|50px|0" transparent_background="off" padding_mobile="off" custom_padding="|||" next_background_color="#000000" global_module="136"][et_pb_fullwidth_header global_parent="136" title="Employment Law News" _builder_version="3.0.99" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" background_layout="dark" title_font="||||||||" subhead_font="||||||||" background_color="rgba(255, 255, 255, 0)" button_one_text_size__hover_enabled="off" button_one_text_size__hover="null" button_two_text_size__hover_enabled="off" button_two_text_size__hover="null" button_one_text_color__hover_enabled="off" button_one_text_color__hover="null" button_two_text_color__hover_enabled="off" button_two_text_color__hover="null" button_one_border_width__hover_enabled="off" button_one_border_width__hover="null" button_two_border_width__hover_enabled="off" button_two_border_width__hover="null"

button_one_border_color__hover_enabled=”off”
button_one_border_color__hover=”null”
button_two_border_color__hover_enabled=”off”
button_two_border_color__hover=”null”
button_one_border_radius__hover_enabled=”off”
button_one_border_radius__hover=”null”
button_two_border_radius__hover_enabled=”off”
button_two_border_radius__hover=”null”
button_one_letter_spacing__hover_enabled=”off”
button_one_letter_spacing__hover=”null”
button_two_letter_spacing__hover_enabled=”off”
button_two_letter_spacing__hover=”null”
button_one_bg_color__hover_enabled=”off”
button_one_bg_color__hover=”null”
button_two_bg_color__hover_enabled=”off”
button_two_bg_color__hover=”null”
/][/et_pb_section][et_pb_section bb_built=”1″
admin_label=”section”
prev_background_color=”#000000″][et_pb_row admin_label=”row”
background_position=”top_left” background_repeat=”repeat”
background_size=”initial”][et_pb_column type=”3_4″][et_pb_text
use_border_color=”off” border_color=”#ffffff”
border_style=”solid” _builder_version=”3.17.6″]

EMPLOYEE WHO ADMITTED TO SHOPLIFTING HELD TO HAVE A TENDENCY TO STEAL AND WAS PREVENTED FROM BRINGING A DISABILITY DISCRIMINATION CLAIM

The EAT held that an employment judge had been justified to find that a Claimant who suffered from severe depression, post-traumatic stress disorder (“PTSD”) and associated amnesia, and who had left a shop without paying for his items

had a tendency to steal, which is an excluded condition under the Equality Act (Disability) Regulations ("the Disability Regulations"). Given that the excluded condition had been the cause of the Claimant's dismissal, the Claimant was prevented from bringing a disability discrimination claim.

The Disability Regulations outline several conditions that are expressly stated not to be impairments (and hence are not disabilities) for the purposes of the Equality Act, one of which is the 'tendency to steal'.

The Claimant, Mr Wood, formerly a police officer with 16 years service, worked as an anti-social behaviour officer for the Council. The Council's code of conduct required its employees to act with honesty and integrity and provided that breaches of the code (both work and non-work related) were serious and could result in disciplinary action leading to dismissal. The Claimant had left a branch of Boots without paying for several items. When caught, he concealed his Council ID and stated that he worked in security. He also signed an admission that he did not intend to pay for the items and was given a fixed penalty notice for disorder. Mr Wood was obligated to inform both the Council and police about this incident, but failed to do so.

During a vetting and clearance process two months later, Mr Wood's application was refused due to the penalty notice and he was refused entry into any police premises, which meant that he could not do his job. He also denied, when questioned, knowing about anything outside of work about which the Council should have been aware. When the theft incident was raised, Mr Wood recalled the incident, but denied any fault. He was subsequently suspended and thereafter dismissed.

Mr Wood issued a claim for unfair dismissal and disability discrimination. Joint expert evidence found that he suffered from severe depression, PTSD and associative amnesia.

The EAT dismissed the Claimant's appeal in which he argued that the employment judge had mistakenly found that he had a 'tendency' to steal as the incident was a one-off episode. The EAT held that Mr Wood had, in fact, always put forward his case on the basis that he had a tendency to do 'whatever the correct description is for what happened in Boots…' His case had been that this was not a one-off matter or isolated event, but part of his condition and a manifestation of his PTSD which recurs. Mr Wood's second argument that it was a mistake to find the incident to be stealing rather than forgetfulness without intent or dishonesty was not upheld. The EAT could clearly see why the judge had reached the conclusion that Mr Wood was dishonest, especially as he had signed a statement admitting to the theft of the items, his behaviour in the following days and his self-serving selective memory when discussing the incident with his line manager.

Wood v Durham County Council UKEAT/0099/18

[/et_pb_text][/et_pb_column][et_pb_column type="1_4″][et_pb_sidebar orientation="right" area="sidebar-1″ background_layout="light" remove_border="off" show_border="on" /][/et_pb_column][/et_pb_row][/et_pb_section]