When does workplace stress amount to a disability?

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Work-related stress which is the product of unhappiness with a particular situation may not of itself amount to a disability.

Mr Herry was employed as a design and technology teacher and part-time youth worker. From May 2010, Mr Herry was signed off work regularly and as of June 2011, he was signed off work entirely. Whilst the earlier absences were attributed to physical injuries, later GP certificates all referred to work-

related stress.

He brought Employment Tribunal proceedings against Hillcrest School and Dudley Metropolitan Council relating to 90 allegations over a 4 year period. Among them were allegations that Mr Herry had been discriminated against on grounds of his disabilities, which he claimed were dyslexia and stress/depression.

The Employment Tribunal had made adjustments to take into account Mr Herry's dyslexia, but found that he was not disabled at the time to which his allegations related. Neither his dyslexia nor his stress had substantial adverse effects on his ability to carry out day-to-day activities. The Tribunal took the view that Mr Herry's stress was "*very largely a result of his unhappiness about what he perceives to have been unfair treatment of him, and to that extent is clearly a reaction to life events*".

The Employment Appeal Tribunal similarly dismissed Mr Herry's disability discrimination claims. The Tribunal's decision to make adjustments had no bearing on whether either condition was a disability given how different long-running litigation is to Mr Herry's ordinary professional life. Also, medical evidence from the relevant time showed Mr Herry was taking no medication for his stress and Occupational Health had ruled him fit to work.

The EAT ruled that, on the facts, stress caused by being unhappy with a decision or colleague was not a mental impairment; Mr Herry could not therefore be disabled. This follows an earlier case, which ruled that tribunals should take particular care before finding that a mental impairment exists if the only manifestation of work-related stress was an unwillingness to return to work until an issue is resolved to the employee's satisfaction. This is a helpful decision for employers faced with the all-too-common problem of a prolonged employee absence prompted by the onset of a disciplinary or

grievance process.

Herry v Dudley Metropolitan Council and Governing Body of Hillcrest School UKEAT/0100/16 & UKEAT/0101/16

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