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PRESS RELEASE

£125,000 for Woman In Settlement Of Landmark Discrimination Case

Elizabeth Boyle, a Warrenpoint woman whose case under the Disability Discrimination Act was the subject of a landmark House of Lords ruling, has agreed a settlement with her former employer, SCA Packaging Limited, for a sum of £125,000. The settlement was made without admission of liability by the company, in respect of claims Ms. Boyle had brought alleging discrimination on grounds of disability, sex, victimisation and unfair selection for redundancy.



The case has clarified the law, increasing protection from discrimination to people with a range of health conditions where symptoms can be managed or may fluctuate. This could include conditions such as diabetes, multiple sclerosis and epilepsy.

Commenting on the settlement, Ms Boyle said, “This has been a nine year battle that caused so much stress to me and my family. However, because of the ruling made in my case, other disabled people can benefit too.”

Elizabeth Boyle suffered from hoarseness and loss of voice caused by vocal nodules. She was employed by SCA Packaging Limited as a stock controller at their Warrenpoint factory, and had had difficulties with her vocal chords since 1974. Her condition required surgery, speech therapy and a strict management regime to ensure the problems did not recur. This involved limiting the use of her voice, staggering telephone calls, avoiding smoky, dry or dusty atmospheres, speaking quietly, reducing background noise, and maintaining high hydration levels.

At a time when Ms. Boyle was following her health management regime rigorously and was symptom free, her employer sought to remove a partition separating her office from a stock control room.

“I had worked hard to minimise the symptoms of my condition,” Elizabeth Boyle said, “so I was very upset when changes were proposed by management to my working arrangements which I felt might undermine the very strenuous efforts I had made to protect my voice and safeguard my health.”

Ms Boyle believed that the increased noise levels would have a substantial adverse effect on her health and in October 2001 she began proceedings under the Disability Discrimination Act alleging discrimination on grounds of her employer’s failure to make reasonable adjustments for her disability.

In May 2002, after 33 years service, she was made redundant and, arising from this decision, she subsequently brought further proceedings alleging breaches of the Disability Discrimination Act, including victimisation, and of the Sex Discrimination Order. She also claimed she was unfairly dismissed.

“This is the conclusion of a case in which the Court of Appeal made a significant ruling, subsequently upheld by the House of Lords, which changed the previously accepted interpretation of the word ‘likely’ when used in the Disability Discrimination Act. This has broadened the protection afforded to people under that Act,” Eileen Lavery, Head of Strategic Enforcement in the Equality Commission said.

“The change is particularly important for people with conditions which can be controlled by treatment or medication; or fluctuating conditions which, even though they have temporarily ceased to have an adverse effect, are likely to recur. People with such conditions could include those with, for example, diabetes, epilepsy, rheumatoid arthritis or multiple sclerosis.”

“The legal distinctions being contested in a case such as this can appear very narrow,” Eileen Lavery said. “They do, however have great importance to disabled people in that

it will be easier for claimants to establish that they are entitled to the protection conferred by the Disability Discrimination Act.”

Notes

Implications for Disability Discrimination law.

If a person is accepted as being a “disabled person” under the terms of the Disability Discrimination Act, their employers must in certain circumstances make “reasonable adjustments” for them. If they do not meet the definitions in the Act, no such requirement is made of the employer.

The Act specifically includes protection for people suffering from conditions whose disabling impact is concealed from operation or public view so long as they are controlled by management regimes or medication. In addition, the legislation includes in its definition of disability circumstances where, even though an impairment has ceased to have a substantial adverse effect on a person, it is “likely to recur”.

The decision by the Court of Appeal, upheld by the House of Lords, centred on the meaning in this context of the phrase “**likely**”. Where it had previously been held to mean that the substantial adverse effect was “**more probable than not**”, this new interpretation now establishes that it should be read in the sense of “**could well happen**”.

Under the previous interpretation, an employer could possibly decide to take no steps to accommodate special measures being followed by the employee, unless the risk of recurrence of her condition could be shown to be more probable than not. This ruling means that it is sufficient to establish that, were a person’s treatment regime to be disrupted, disabling effects could well recur. This would then carry with it a requirement of reasonable adjustment on the part of the employer.

Sequence of events

- When this case was initially brought before the Industrial Tribunal the Respondents (SCA Packaging Limited) contested the issue of whether or not Ms. Boyle was a disabled person under the terms of the Disability Discrimination Act.
- The Tribunal ruled that she was and the respondents requested them to state a case on this to the Northern Ireland Court of Appeal.
- The Court of Appeal ruled in favour of Ms. Boyle in October 2008. The Respondents appealed this decision to the House of Lords.
- In July 2009 the House of Lords upheld the decision of the Court of Appeal and referred the matter back to the Industrial Tribunal for hearing and decision.
- All matters were settled between the parties in March 2010.