

Not in itself, according to the EAT in ***Walker v Sita Information Networking Computing Ltd***, but it may make it more likely that someone is disabled.

Mr Walker suffered from a very long list of health problems including asthma, diabetes, high blood pressure, chronic fatigue syndrome, bowel and stomach problems and anxiety and depression. He claimed he was disabled for the purposes of the Disability Discrimination Act 1995 (as it was then), but his employer challenged this. It argued that Mr Walker did not satisfy the first part of the definition of disability (a physical or mental impairment) because there was no obvious physical or mental cause for all of his symptoms. The main problem appeared to be his weight (he was over 21 stone), which was not a disability in itself. The doctor who examined Mr Walker for the purposes of the proceedings pointed out that his obesity would cause anyone to have problems breathing or walking.

At first instance the Tribunal agreed with Mr Walker's employer and held that because there was no identifiable physical or mental cause for his symptoms Mr Walker could not be said to be disabled for the purposes of the legislation. Not so, ruled the EAT. In its view the Tribunal got it wrong when it focused on the cause rather than the effects of Mr Walker's impairment. It said it is not necessary for disability discrimination purposes to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. In this case, you only had to look at Mr Walker's very long list of symptoms (all of which were accepted to be genuine) to see that he was "substantially impaired". The EAT did accept that the absence of an obvious cause might have evidential significance if the genuineness of the symptoms is in doubt, but that was not the case here.

When it came to Mr Walker's obesity, the EAT was not prepared to accept that obesity in itself constitutes a disability, but it conceded that it may make it more likely, as in Mr Walker's case, that someone is disabled. This is not that surprising, especially when you reflect on all the serious health issues that can flow from obesity, some of which will constitute disabilities in themselves.

With almost a quarter of adults classified as obese in the UK, it seems inevitable that employers will see more claims from employees seeking to argue that they are disabled for the purposes of the Equality Act 2010.

