



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Denmark
Title:	Psychosocial disability
Date:	5 January 2018
Expert:	Pia Justesen
<u>Context</u>	
Issue at stake:	Whether a psychosocial impairment constituted a disability
Ground of discrimination:	Disability
Source:	Board of Equal Treatment, decision No. 10193 of 12 th October 2017
Field:	Employment
Applicable law:	Section 1, 2 and 7a of the Act on Prohibition of Discrimination in the Labour Market etc.

Content

Case: The claimant was working in a realtor's office from April 2016 until her dismissal in December 2016. During her employment, she was absent from her job a number of times because of her 16-year-old daughter who experienced seizures in school and at home. The claimant was the sole caretaker of her daughter.

In the previous summer of 2015, the daughter was diagnosed with social phobia, anxiety, obsessive-compulsive disorder and a long-term depressive reaction. There had been incidents of self-harm and suicidal thoughts. She had anxiety in social contexts and as examples it was difficult for her to pay a cashier in the supermarket or go outside the house by herself. The daughter had a tendency to be obsessed with putting her clothes in order according to colours and she was continuously sad.

During the summer of 2016, the daughter was doing much better. The medications were effective and she had more energy. In August 2016, the daughter had a good start of the school year and was more open towards the other students. In September 2016, the daughter started having anxiety attacks and seizures in school. She was more tired and her mood was increasingly worse. In October and November her condition deteriorated and she was hospitalized a number of times. Examinations ruled out that the seizures were epileptic and concluded that she got her seizures because of her psyche. As a result her schooldays were reduced to the minimum. In December 2016, the daughter still had substantial psychological difficulties. Throughout this period, the claimant took off a number of hours and days because she had to take care of her daughter.

The claimant argues that she was dismissed in December 2016 because of her daughter's disability, and that the dismissal thus amounted to discrimination on the ground of disability by association.

The decision of the Board: In its argument, the Board referred to case law from the Court of Justice of the European Union (CJEU) and stated that it was not a requirement

for a finding of discrimination on grounds of disability that the claimant had a disability herself.¹ If her daughter had a disability, it would be a possible case of discrimination by association. Thus, the question for the Board was whether the daughter had a disability encompassed by the Act on Prohibition of Discrimination in the Labour Market etc. Again, the Board referred to case law from CJEU and discussed whether the daughter at the time of dismissal had an impairment resulting in a long-term limitation of her functional capacities.²

The Board argued that the daughter since the summer of 2015 had experienced “psychological discomfort” but that she got better during the summer of 2016 because of medical treatment. The Board stated that she started getting seizures in September 2016 but at the time of her mother’s dismissal in December 2016, there was no prognosis for her illness. On that basis, the Board concluded that the claimant’s daughter at the time of dismissal did not have such long-term impairments that she had a disability encompassed by the Act on Prohibition of Discrimination in the Labour Market etc.

As a final note, based on medical information, the Board found that the “psychological discomfort”, which the daughter had experienced in the period from the summer of 2015 to the summer of 2016, did not result in such impairments that were encompassed by the Act.

The Board did not decide in favour of the claimant.

Key points of analysis: In the case, the Board focuses on experienced impairments since the last period of time where the daughter had been feeling good. This means that the Board really only considers the daughter’s conditions during the fall of 2016. Also because of the fact that there was no prognosis for the illness at the time of dismissal, the Board concluded that the impairments could not be characterized as long-term and thus did not constitute a disability.

I find it alarming that the Board seems to have limited understanding of how mental health issues and psychosocial disabilities may come and go. The decision makes one wonder what kind of mental health illness that will qualify as a disability encompassed by the Act.

Internet link source: <https://www.retsinformation.dk/Forms/R0710.aspx?id=195189>
The decision by the Board was only made public in December 2017.

¹ C-303/2006 (Coleman).

² C-225/11 and C-337/11 (Ring and Werge).