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Insights

HOW DO NEURODIVERSE EMPLOYEES MANIFEST STRESS? AN ASSUMPTION THAT REACHED THE EAT

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Summary

Does appearing outwardly confident mean a candidate is not experiencing stress? The EAT challenged that assumption in a recruitment case involving an autistic applicant.

Mr Bryce, who has Asperger's syndrome and dyslexia, was unsuccessful in an application for a team manager role. The Council knew about his disabilities and had made interview adjustments including allowing him the final interview slot of the day, extra time, and advance notice of the questions. The Council also agreed that it would refocus him or rephrase questions if he appeared forgetful or to have misunderstood a question.

Despite the adjustments, Mr B was unsuccessful in his application and later presented a claim for a) failure to make reasonable adjustments (asserting that the Council should have asked closed questions), and b) discrimination arising in consequence of his disability, both of which failed at the Employment Tribunal.

In respect of the latter claim (which is what we're interested in), Mr B asserted that his neurodiversity caused him to suffer stress and that this was the reason he was unsuccessful.

The Tribunal heard evidence from both Mr B and the interviewer on whether or not Mr B appeared stressed during the interview and, preferring the interviewer's account that Mr B appeared confident, appears to have concluded that Mr B was not stressed.

The EAT identified a problem with the Tribunal's finding on this point, stating that the ET was wrong to conclude (if this was its conclusion, it wasn't entirely clear) that Mr B was not stressed simply because he did not appear so. The ET had failed to consider whether someone with Autism Spectrum Condition and dyslexia might manifest stress differently from a neurotypical applicant.

This part of the claim has been referred back to a different Employment Tribunal to be reconsidered.

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Why appearances can mislead

Many neurodiverse people spend years learning to "mask" the manifestations of their condition, suppressing traits or adopting learned social behaviours to navigate a predominantly neurotypical world. That effort can be exhausting.

The practical lesson here is to avoid making assumptions about neurodivergent candidates' experiences based on neurotypical behaviours. Do not treat apparent confidence as evidence that they are not struggling.

An employer's duty to make adjustments is not limited to those requested by the candidate either. It must consider all reasonable adjustments which would alleviate their disadvantage.

This case does not require employers to abandon meaningful assessment. Nor does it make every competency-based interview unlawful. In the context of a request for closed questions, the Tribunal concluded that any adjustment *"which deprived an assessment method of any efficacy cannot be reasonable".*

What to do now

- **Discuss barriers, not just requests**: ask candidates what makes the assessment difficult and explore suitable adjustments rather than treating their initial suggestions as an exhaustive list. This may include clearer questions, preparation time, breaks and longer interview sessions.
- **Check the format:** the EAT noted there may be *"other and better ways to test the suitability of some candidates"* beyond standard competency-based interviews. Consider whether a practical task would enable a fairer assessment of the candidate's ability to meet the role requirements.
- **Brief the panel:** train interviewers and make sure that they are not relying on experience-based instincts which may be biased towards neurotypical employees.
- **Keep a record:** document adjustments considered, what was agreed, reasons for rejecting alternatives and the evidence supporting the selection decision.

Related capabilities

- Employment & Labor

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