

Toward True Equity: A Call for Further Revisions to the ADA

By Jamie Fleshman, SPT

I awoke on August 8, 2019 unaware that the day would end in a sudden disruption to my able-bodied status. I would smash a 15-year clean-driving record into tiny fragments like my humerus, and nerve damage following surgery to repair that fragmentation would leave me functionally amputated from the elbow down on my dominant arm.

Able-bodied existence in this world is fragile and impermanent. In a moment, a life—and the experience of it—can be permanently altered. I went from playing collegiate level sports to asking my mom for help in the shower. The 30 minutes it usually took me to get out the door in the morning grew to an hour, if I even bothered to leave the house at all. I had to ask my classmates for help with notetaking, as typing was now an overwhelming and tedious endeavor with one hand. With these and countless other changes, I felt the fear of falling behind in school, in the social circles of which I was an active member, and in life generally.

I am an otherwise healthy 30-year-old woman with ample support and access to resources from friends and family to aid in my functional recovery. But many thousands of Americans struggle to obtain even the most basic necessities that would help address their

disability and increase their participation in our society as it is currently constructed.

How can we, as a nation, render these types of obstacles obsolete and finally ensure true equity of access, and of opportunity, for those experiencing disability in America?

The ADA: Its Accomplishments and Continuing Challenges

This July will mark the 30th anniversary of the passing of the Americans with Disabilities Act (ADA). The civil rights law was originally designed to tackle not only the aforementioned issues of public accessibility and services, but also the major issue of discrimination in the workplace for those with disabilities. Considered a win for disabilities rights advocates at the time, the ADA also had the opportunity to address the gaping unemployment rate divide between those with disabilities and those without. However, in light of compliance issues and narrowing court interpretations that chipped away at the law's original intent over the

course of 20 years, a revamp of the law was vitally necessary by the time Congress passed the ADA Amendment Act (ADAAA) in 2008.

Primarily intended to address the shortcomings and vague language of the original ADA, the ADAAA has now been in effect for 12 years. Although the amendment has been successful in refocusing litigation more often in favor of disabled plaintiffs,³ a great amount of work remains to be done in the areas of employment and general societal acceptance of disability.

CURRENT CHALLENGE: OUR MILITARY VETERANS

The shifting demographic landscape in America since 2008 may guide the need for yet another iteration of the law in the near future. As one example of a unique 21st-century challenge, America has seen a dramatic rise in disability rates among veterans. Twenty years of war in the Middle East has resulted in nearly double the number of veterans claiming a disability than in any other collective era of war (41% to 25%, respectively).¹ In 2018, 54% of unemployed veterans with disabilities were in the prime employment category of 25 to 54 years of age. Employment is a major topic that still pervades conversations surrounding the impact of the ADAAA. The untapped potential of disabled veterans could be an avenue to address the act's disparities moving forward.

EMERGING CHALLENGE: OUR AGING BABY BOOMERS

Another issue facing not only the ADAAA's provisions but also many other facets of healthcare is the aging US population. By 2030, all baby boomers will officially be at least 65 years of age. According to the 2017 Disability Statistics Annual Report, the

disability rate for Americans aged 65 years and older was 35.2%, compared to 10.6% for those aged 18 to 64 years.⁴ In concert with better life-preserving technologies, this statistic points to a period of time in the future where a massive proportion of the American population may be considered disabled. This new reality has the potential to put major pressure on public infrastructure and accessibility if adjustments are not considered in advance of the problem.

A NEW PERSPECTIVE: ENVIRONMENT AS THE KEY DISABLING FACTOR

Notable author and women's studies professor Alison Kafer addresses disability issues in her book *Feminist, Queer, Crip*. In describing a better approach to conceptualizing disability within a political/relational model, she writes that "the problem of disability is located in inaccessible buildings, discriminatory attitudes, and ideological systems that attribute normalcy and deviance to particular minds and bodies. The problem of disability is solved not through medical intervention or surgical normalization but through social change and political transformation."^{2(p6)} In other words, disability is not so much a condition that someone has, as it is a status layered on an individual by society. Their status is based on their ability to participate in a society that is physically constructed from a specific point of view.

By the logic of Kafer's model, then, future regulatory actions should amplify the need for infrastructural changes based on the perception of environmental barriers as the actual disabling feature of an individual. It is not the veterans who come back broken or the aging adults who no longer fit into society. It is the accommodations within the workplace and in public areas that are inadequate to meet the needs of a variety

of human experience and ability. It is the houses and store fronts that have been built with arbitrarily-sized doors, with one type of access versus many. It is the shared environment that is constructed on a daily basis for a certain set of abilities in mind, prioritized over others.

There is no doubt that the ADA and ADAAA have made great strides over the past 30 years toward increasing visibility and laying the groundwork to foster an equitable work environment for individuals with disabilities. However, the work is not yet finished. I look forward to a day in the future where shattering my humerus could be seen as a painful but minor inconvenience and not the removal of my access to participation in society.

References

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About the Author



Jamie Fleshman is a second-year Doctor of Physical Therapy student at Emory University School of Medicine in Atlanta, Georgia. She will also begin the Master of Public Health program at Rollins School of Public Health at Emory in August 2020 as a dual degree path. Jamie served in the United States Navy as a Mandarin Chinese linguist for eight years, and it was during this time that she began to appreciate the role physical health and wellness played in maintaining her own mental and emotional health. With this in mind, she finished her service with the military and moved to Oregon to pursue a Bachelor of Science in Human Physiology at the University of Oregon. During her undergraduate career, Jamie discovered a passion for social justice and the humanities through a secondary focus in Women's and Gender Studies. This led her to seek out the dual DPT/MPH program at Emory, where she hopes to acquire the skills necessary to implement community-based rehabilitation programs for vulnerable populations. Writing and photography have always been creative outlets for Jamie, and she aims to use these skills in combination with her knowledge of the human body to highlight the multiplicity of human experience around us.