

**Vocational Rehabilitation Counselors' Knowledge and Practices of Reasonable  
Accommodations to Increase Employment of Persons with Disabilities**

by

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## **Abstract**

Americans with disabilities face unemployment rates that are unacceptably high (Krooks, 2011). This high unemployment rate is caused, in part, by employment discrimination against persons with disabilities (EEOC, 2007). The main protection against employment bias against individuals with disabilities in the private sector is the Americans with Disabilities Act (ADA). The major tool for increasing employment opportunities for persons with significant disabilities is arguably reasonable accommodation. Reasonable accommodation is a great equalizer. The failure to provide reasonable accommodation to individuals with spinal cord injury, paralysis and related neurological conditions is arguably a clear reason many of these persons have not been able to obtain employment. With proper accommodation, persons with significant disabilities can secure, retain and advance in employment. VR counselors' possible lack of sufficient knowledge and related practices may be a factor in retention, securement or advancement in employment of those with significant disabilities. The purpose of this study was to identify the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for individuals with disabilities and identify elements that contribute to reasonable accommodations. The lack of information on knowledge and practices can be measured through a survey of a random sample of vocational rehabilitation (VR) counselors and consumers throughout the various local VR offices in Alabama. In addition, a survey of case law on employer failure to reasonably accommodate can disclose the primary factors that are obstacles to successful receipt of accommodations by individuals with

disabilities. The information from counselor and consumer surveys as well as case law data, can be used to create a decision making tree for reasonable accommodation requests. The results of this study revealed that perceptions of counselors' knowledge of reasonable accommodation vary greatly from an acceptable or desired level of knowledge. Likewise, counselors' perceptions of their effectiveness in their practices of reasonable accommodations varied greatly from an acceptable or desired level of effective practice. There was a statistically significant difference in counselors' perception of practices related to workplace reasonable accommodations between counselors who had 30 or more years of experience as a counselor and those who had fewer than nine years of work experience. There was no statistically significant difference in counselors' perception of practices related to workplace reasonable accommodations based on gender differences and age groups. There was no statistically significant difference in counselors' perception of practices related to workplace reasonable accommodations based on ethnicity. Qualitative analysis of case law revealed the following reasons for an employer's failure to reasonably accommodate individuals with disabilities (not in order of importance):

1. Failure to prove disability,
2. Employee's failure to request specific accommodation or communicate needs adequately,
3. Employee's failure to prove "qualified individual with a disability" status,
4. Employee's failure to accept offered reasonable accommodations and understand process, and
5. Employer's failure to engage in interactive process or communicate effectively with employee with a disability.

The major recommendation was annual training for VR counselors on workplace reasonable accommodations.



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## Table of Contents

Abstract.....	ii
Acknowledgements.....	v
List of Tables .....	xi
List of Figures.....	xii
CHAPTER 1. INTRODUCTION .....	1
Statement of the Problem.....	6
Purpose of the Study .....	6
Research Questions.....	7
Null Hypotheses.....	7
Significance of the Study.....	8
Assumptions of Study.....	9
Limitations of the Study.....	10
Definition of Terms.....	10
Chapter Summary .....	13
CHAPTER 2. REVIEW OF THE LITERATURE .....	14
Introduction.....	14
Background: Social and Economic Factors .....	16
Literature Review.....	18
ADA History/Background .....	18

Definition of Disability .....	18
Sutton Trilogy/Mitigating Measures .....	20
Toyota v. Williams.....	21
Barnett v. U.S. Airways .....	22
ADA Amendments Act.....	23
Definition of Physical or Mental Impairments .....	24
Substantial Limitation.....	25
Major Life Activity.....	27
Title I Requirements/Coverage .....	28
Definition of Qualified Individual with a Disability.....	29
Definition of Reasonable Accommodation.....	30
Interactive Process and Reasonable Accommodation .....	32
ADA Legislative History on Determination of Reasonable Accommodation.....	34
Definition of Essential Functions.....	35
Definition of <i>Undue Hardship</i> .....	36
Definition of Direct Threat .....	37
Case Analysis/Survey of Applicable Case Law and Statutes .....	38
Background.....	38
Case Sample Size.....	40
Analysis and Implications of ADA Cases .....	42
Failure to Prove Disability (a required element of reasonable accommodation).....	43

Employee’s Failure to Request Specific Accommodation or Communicate Needs Adequately .....	43
Employee’s Failure to Prove “Qualified Individual with a Disability” Status.....	44
Employee’s Failure to Accept Offered Reasonable Accommodations and Understand Process .....	46
Employer’s Failure to Engage in Interactive Process or Communicate Effectively with Employee with a Disability.....	46
Conclusion .....	48
Summary .....	49
<b>CHAPTER 3. METHODS AND PROCEDURES .....</b>	<b>51</b>
Introduction.....	51
Purpose of the Study .....	51
Design of Study.....	52
Population and Sample .....	52
Source of Data.....	52
Instrumentation .....	52
Validity and Reliability of the Research Instrument.....	54
Data Collection Procedures.....	54
Data Analysis Procedures .....	55
Summary .....	57
<b>CHAPTER 4. RESULTS OF THE STUDY .....</b>	<b>58</b>
Introduction.....	58

Table 2 .....	64
Table 3 .....	65
Summary.....	67
CHAPTER 5. CONCLUSIONS, IMPLICATIONS AND RECOMMENDATIONS.....	68
Introduction.....	68
Summary of the Purpose of the Study .....	68
Summary of the Research Procedure.....	69
Implications.....	70
Recommendations.....	72
Limitations .....	78
Conclusion .....	79
Summary.....	79
REFERENCES .....	80
APPENDIX A – AUBURN UNIVERSITY INSTITUTIONAL REVIEW BOARD (IRB)	
FORM .....	86
APPENDIX B – LETTER OF CONSENT.....	98
APPENDIX C – RESEARCH INSTRUMENT .....	101

## List of Tables

Table 1	Sample Demographics .....	62
Table 2	Knowledge Item Statistics .....	64
Table 3	Practice Item Statistics.....	65

## List of Figures

Figure 1: Elements that Contribute to Successful and Effective Reasonable Accommodations..41



## CHAPTER 1. INTRODUCTION

Employment in the primary labor market is a necessary prerequisite for any American, including those persons with disabilities, to realize the American dream (Martin, 2001). Yet, many Americans with disabilities do not reach their full potential in employment due to employment discrimination (EEOC, 2007). Nearly two-thirds of individuals with disabilities who want to be employed remain unemployed (Harris Poll, 2004). Stated differently, only 33.5 percent of persons with disabilities are employed compared to 76.3 percent of people without disabilities (Cornell University, 2012; Erickson & Lee, 2014). Similarly, “sixty-six percent of working-age disabled [sic] persons, who are not working say that they would like to have a job” (H. Rep. 101-485(II), p. 7) as noted in the ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream (2006, p. 50). “Translated into absolute terms, this means about 8.2 million people with disabilities want to work but cannot find a job” (H. Rep. 101-485 1990, p. 7, as noted in ICD Survey, pp. 47–50). “According to a Louis Harris Poll, the majority of those individual[s] with disabilities not working and out of the labor force must depend on insurance payments or government benefits for support” (H. Rep. 101-485(II), 1990, p. 7). The same poll disclosed that “large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled [sic] people” (H. Rep. 101-485(II), 1990, p. 7).

A 2010 Kessler Foundation/National Organization on Disability (NOD) survey of employment of people with disabilities disclosed that little progress has been made in closing the employment gap between those with and without disabilities since the enactment of the ADA (Kessler Foundation/NOD, 2010). The same survey also revealed that two thirds of surveyed employers stated that a lack of qualified job candidates with disabilities is a major or minor reason they have not hired more people with disabilities (Kessler Foundation/NOD, 2010). This would appear to indicate that better application for reasonable accommodation by individuals with disabilities would assist in increasing their employment since accommodation enables them to perform major job tasks. In 1995, nearly two thirds of employers (64%) reported that they hired a person with a disability compared to only fifty-six percent (56%) of employers in 2010 (Kessler Foundation/NOD, 2010).

This low unemployment rate has drawbacks. “Discrimination against persons with disabilities ... costs the United States, state and local governments, and the private sector billions of dollars in unnecessary expenses resulting from dependency and non-productivity” (H. Rep. 101-485(II), 1990, p. 5). Justin Dart (1990) aptly stated regarding discrimination and segregation against individuals with disabilities and their loss of self-reliance:

...and that are driving us inevitably towards an economic and moral disaster of giant, paternalistic welfare bureaucracies. We already [are] paying unaffordable and rapidly escalating billions in public and private funds to maintain ever-increasing millions of potentially productive Americans in unjust, unwanted dependency (H. Rep. 101-485(II), 1990, p. 13, as noted in Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101-37, p. 65)

Thus, “discrimination makes people with disabilities dependent on social welfare programs rather than allowing them to be taxpayers—and consumers” (H. Rep. 101-485(II), 1990, p. 13).

The unemployment rate of persons with disabilities is unacceptably high. Americans with disabilities face unemployment rates that are unacceptably high (Krooks, 2011). This high unemployment rate is caused, in part, by employment discrimination against persons with disabilities (EEOC, 2007). The main protection against employment bias against individuals with disabilities in the private sector is the Americans with Disabilities Act (ADA). The major tool for increasing employment opportunities for persons with significant disabilities is arguably reasonable accommodation. Reasonable accommodation is a great equalizer. The failure to provide reasonable accommodation to individuals with spinal cord injury, paralysis and related conditions is arguably a clear reason many of them have not been able to obtain employment. With proper accommodation, persons with significant disabilities can secure, retain and advance in employment. This lack of knowledge can be measured through a survey of a random sample of vocational rehabilitation (VR) counselors and consumers throughout the various local VR offices in Alabama. In addition, a survey of case law on employer failure to reasonably accommodate can disclose the primary factors that are obstacles to successful receipt of accommodations by individuals with disabilities. The information from counselor and consumer surveys as well as case law data can be used to create a decision-making tree for reasonable accommodation requests.

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who want to be employed remain unemployed (Harris Poll, 2004). Stated differently, only 33.5 percent of persons with disabilities are employed compared to 76.3 percent of people without disabilities (Cornell University, 2012; Erickson & Lee, 2014). Similarly, “sixty-six percent of working-age disabled [sic] persons, who are not working say that they would like to have a job” (H. Rep. 101-485(II), p. 7) as noted in the ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream (2006, p. 50). “Translated into absolute terms, this means about 8.2 million people with disabilities want to work but cannot find a job” (H. Rep. 101-485(II), 1990, p. 7, as noted in ICD Survey, pp. 47–50). “According to a Louis Harris Poll, the majority of those individual[s] with disabilities not working and out of the labor force must depend on insurance payments or government benefits for support” (H. Rep. 101-485(II), 1990, p. 7). The same poll disclosed that “large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled [sic] people” (H. Rep. 101-485(II), 1990, p. 7).

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Thus, “discrimination makes people with disabilities dependent on social welfare programs rather than allowing them to be taxpayers -and consumers” (H. Rep. 101-485(II), 1990, p. 13). Many employers continue to deny jobs to qualified applicants with disabilities based on stereotypes (EEOC, 2007). These discriminatory actions still exist despite passage of the Americans with Disabilities Act (ADA) in 1990 as well as the passage of the ADA Amendments Act (ADAAA) in 2008.

The ADA became law to eliminate pervasive discrimination against individuals with disabilities in all aspects of American society including employment. Yet, as noted previously, the unemployment rate of people with disabilities is unacceptably high based on the number or

percentage of those who are unemployed. The courts have interpreted the ADA in a very restrictive manner that has narrowed its coverage to the extent that persons with conditions that are corrected with medication or assistive devices have no protection against discrimination (See *Sutton* trilogy). Indeed, employers have won 100% of ADA employment cases in the Eleventh Circuit Court of Appeals within the last six years (Albright, 2006). On a national level, employers have won 97% of employment cases brought under Title I of the ADA (Albright, 2006).

The result of the *Sutton* and *Toyota* decisions has been to place many qualified individuals with disabilities into a Catch 22 position. Many whose disability is severe enough to be covered by the ADA are found by potential employers to be unqualified or to have a disability which is too severe to enable them to work.

### **Statement of the Problem**

Vocational rehabilitation (VR) has as its mission to find jobs for eligible persons with disabilities. However, there is a mismatch or disconnect between the knowledge and practices of VR Counselors and their consumers with respect to reasonable accommodations. Therefore, the focus of this study is the lack of information related to vocational rehabilitation counselors' workplace knowledge and practices about reasonable accommodations for individuals with disabilities and the specific elements of successful and effective reasonable accommodations.

### **Purpose of the Study**

The purpose of this study is to identify the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for individuals with disabilities and identify elements that contribute to reasonable accommodations.

## **Research Questions**

The following research questions were formulated for this study:

1. To what extent do vocational rehabilitation counselors perceive themselves as knowledgeable about reasonable accommodations in the workplace?
2. To what extent do vocational rehabilitation counselors perceive themselves as effective in their practices related to reasonable accommodations in the workplace?
3. To what extent is there a difference in counselor perceptions and practices related to reasonable accommodations in the workplace for individuals with disabilities based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity?
4. What are the primary reasons that reasonable accommodations are not made?
5. What are the elements that should be included in a decision-making model for reasonable accommodations for employment of eligible individuals with disabilities?

## **Null Hypotheses**

The following null hypotheses will be tested at the .05 level of significance.

- Ho<sub>1</sub>: There is no statistically significant difference in counselor perceptions of their knowledge about reasonable accommodation and a hypothetical test value.
- Ho<sub>2</sub>: There is no statistically significant difference in counselor perceptions of their practices related to reasonable accommodations in the workplace and a hypothetical test value.
- Ho<sub>3(a-d)</sub>: There is no statistically significant difference in the combined scores of knowledge and practices related to reasonable accommodations in the workplace based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity.

## **Significance of the Study**

The unemployment rate of people with disabilities remains unacceptably high (Krooks, 2011), (Kessler Foundation/NOD, 2010). Reasonable accommodation is one possible strategy or method to increase employment opportunity for individuals with significant disabilities. A major resource for finding jobs for eligible persons with disabilities is vocational rehabilitation services, which are delivered through vocational rehabilitation counselors. This researcher believes that vocational rehabilitation counselors may lack knowledge of reasonable accommodations and have insufficient practices in the area of reasonable accommodations. A study which measures vocational rehabilitation counselor knowledge and practices in reasonable accommodations can disclose areas where improvement is needed. In addition, a review of relevant case law can reveal the obstacles to successful receipt of reasonable accommodations. From this analysis of case law, a decision making tree will be developed to assist vocational rehabilitation consumers in their request of workplace reasonable accommodations. Discovery of areas of improvement in reasonable accommodations knowledge and practices combined with the creation of a decision making tree can lead to better employment outcomes for individuals with disabilities through greater utilization of reasonable accommodations.

As the unemployment rate for individuals with disabilities continues to be unacceptably high compared to those without disabilities (Krooks, 2011), there is a need for effective interventions to remedy this disproportionate joblessness. Reasonable accommodations as a great equalizer for employment of persons with disabilities may be one solution to their inability to obtain work. The Americans with Disabilities Act (ADA) only protects qualified individuals with disabilities who can perform the major job tasks or essential functions with or without accommodation. However, case law under the ADA involving reasonable accommodations of



those with significant neurological impairments shows a trend favoring an employer's denial of job accommodations due to the employee with a disability's failure to meet all elements in the burden of proof. (*Hays v. Clark Products, Inc.*, 2008 WL 5384300 (S.D. Ind. 2008) (unpublished) (quoting *Mobley v. Allstate Ins. Co.*, 531 F.3d 539, 545 (7<sup>th</sup> Cir. 2008) (quoting *EEOC v. Sears, Roebuck & Co.*, 417 F. 3d 789, 797 (7<sup>th</sup> Cir. 2005)); see also, *Enica v. Principi*, 544 F.3d 328 (1<sup>st</sup> Cir. 2008). Such items include disability, qualified status, and identification of specific, effective accommodations, among other areas identified previously (*Dillon v. Roadway Express*, 129 Fed.Appx. 893, 2005 WL 994915 (5<sup>th</sup> Cir. 2005), *Lloyd v. Hardin County, Iowa*, 207 F.3d 1080 (8<sup>th</sup> Cir. 2000), *Dumolt v. Peters*, 2009 WL 113596 (W.D. Okla. 2009)). This study will identify knowledge and practices needed by vocational rehabilitation counselors to provide reasonable accommodations for employment of individuals with a disability. Moreover, development and implementation of an effective reasonable accommodation model to use as a tool would not only benefit applicants and current employees with disabilities, but also employers who need good employees and vocational rehabilitation (VR) counselors who assist unemployed job applicants with disabilities.

This study can potentially lead to development of interventions to increase reasonable accommodations knowledge and practices of vocational rehabilitation counselors. These interventions could result in increased employment for those with significant disabilities. This is significant since the unemployment rate of individuals with disabilities remains unacceptably high (Kessler Foundation/NOD, 2010; Krooks, 2011).

### **Assumptions of Study**

The following assumptions apply to the study:

1. Counselors will understand the items in the questionnaire.

2. Counselors will respond truthfully to the questionnaire.
3. Both counselor knowledge and practices are necessary to identify requirements necessary to fulfill the vocational rehabilitation mission of employment of eligible persons with disabilities.

### **Limitations of the Study**

The following limitations apply to the study:

1. The extent to which participants understand the meaning of reasonable accommodations.
2. The extent to which responses from the sample of vocational rehabilitation counselors are representative of all vocational rehabilitation counselors in Alabama.
3. The extent to which this research instrument is valid and reliable to identify knowledge and practices of vocational rehabilitation counselors.
4. The extent to which an adequate number of vocational rehabilitation counselors will respond to the questionnaire.
5. Limited to generalizations of knowledge and practices of vocational rehabilitation counselors in Alabama.

### **Definition of Terms**

**Direct threat:** A significant risk of harm to the health or safety of others that cannot be eliminated by reasonable accommodation (42 U.S.C. Section 12111(3) (Rothstein, 2006, p. 159).

**Disability:** With respect to an individual, the term “disability” means (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment; or (c) being regarded as having such an

impairment (42 U.S.C. § 12102(2); see also 29 C.F.R. § 1630.2(g). *EEOC v. Sara Lee Corporation*, 237 F.3d 349, 352 (4<sup>th</sup> Cir. 2001).

**Essential functions:** The ADA regulations define essential functions as “the fundamental job duties of the employment position of the individual with a disability.... this does not include marginal functions (29 C.F.R. Section 1630.2(n) (1)” (Rothstein, 2006, p. 128).

**Interactive Process:** It means employees with disabilities who request reasonable accommodation and employers work together to choose suitable accommodations (Job Accommodation Network [JAN], 2016).

**Physical or mental impairment:** a physical or mental impairment (what people typically think is a disability) means

1. [a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
2. [a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 29 C.F.R. § 1630.2(h); see also S. Rep. No. 116, 101st Cong., 1st Sess. 22 (1989) [hereinafter Senate Report]; H.R. Rep. No. 485 pt. 2, 101st Cong., 2d Sess. 51 (1990) [hereinafter House Education and Labor Report]; H.R. Rep. No. 485 pt. 3, 101st Cong., 2d Sess. 28 (1990) [hereinafter House Judiciary Report]).

**Qualified individual with a disability:** “Qualified individual with a disability is defined as ‘individual with a disability who, with or without reasonable accommodation, can perform the

essential functions of the employment position that such individual holds or desires” (42 U.S.C. Section 12111(8), Yell, 2006, p. 162).

**Reasonable accommodation:** “In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” There are three categories of reasonable accommodations:

- i. modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- ii. modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- iii. modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. (EEOC, 2002)

**Substantially limits:** The term substantially limits, as defined by the ADA, means:

- i. Unable to perform a major life activity (“functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (29 C.F.R. § 1630.2(i)) that the average person in the general population can perform; or
- ii. Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the

condition, manner, or duration under which the average person in the general population can perform that same major life activity (EEOC, 2002).

**Undue hardship:** “Undue hardship is defined as “an action requiring significant difficulty or expense.” 42 U.S.C. 12111(10); (Rothstein 2006 p. 165); see also 29 C.F.R. Section 1630.2(p).

**Vocational rehabilitation counselor:** An individual who is trained to assist eligible individuals with disabilities to find employment (Martin, 2001).

**Vocational rehabilitation client:** An individual who has a physical or mental impairment that is a substantial impediment to employment and who is found eligible for vocational rehabilitation services (Martin, 2001).

### **Chapter Summary**

This chapter presented an introduction or background of employment issues facing Americans with disabilities as well as a statement of the problem, purpose of the study, research questions, null hypotheses, and information about methods and procedures, which included data collection procedures, data analysis procedures, and definition of terms.

## **CHAPTER 2. REVIEW OF THE LITERATURE**

Chapter One provided an introduction or background of employment issues facing Americans with disabilities as well as a statement of the problem, purpose of the study, research questions, null hypotheses, and information about methods and procedures, which included data collection procedures, data analysis procedures, and definition of terms.

### **Introduction**

Americans with disabilities face unemployment rates that are unacceptably high (Krooks, 2011). This high unemployment rate is caused, in part, by employment discrimination against persons with disabilities (EEOC, 2007). The main protection against employment bias against individuals with disabilities in the private sector is the Americans with Disabilities Act (ADA). The major tool for increasing employment opportunities for persons with significant disabilities is arguably reasonable accommodation. There have been many charges filed with the Equal Employment Opportunity Commission (EEOC) and lawsuits in federal courts on an employer's failure to reasonably accommodate (EEOC, 2007). The purpose of this literature review is to study the effectiveness of reasonable accommodation in terms of increasing employment for individuals with disabilities. This research will analyze approximately 21 Eleventh Circuit Court of Appeals (Georgia, Florida, and Alabama) cases and 273 cases in all federal courts (including the U.S. Supreme Court) that address reasonable accommodation as it applies to persons with spinal cord injury, paralysis, or related neuromuscular disabilities like multiple sclerosis and

cerebral palsy. A sample of these cases will be analyzed in depth to detect trends that led to the failure to reasonably accommodate.

The researcher has selected cases involving those with spinal cord injury, paralysis and related conditions since these types of disabilities are very significant and cause substantial barriers to employment which can be effectively removed by the provision of reasonable accommodation under the ADA. The failure to provide reasonable accommodation to individuals with these types of disabilities is arguably a clear reason many of them have not been able to obtain employment. Therefore, the analysis of failure to accommodate cases involving these conditions should disclose a pattern of obstacles to accommodation that can be dissected and formed into a framework or model for successfully requesting reasonable accommodation. Specifically, the barriers in the selected cases can be organized into obstacle variables to which a systematic paradigm for their removal can be applied.

Based on the researcher's own experience as a trial attorney, cases in the Eleventh Circuit Court of Appeals were selected since that court is a moderate judiciary among the various federal appellate courts. Its decisions are well reasoned, balanced, and easily followed throughout the United States.

The researcher hypothesizes that overly strict interpretations of reasonable accommodation by the courts has led to unsuccessful employment outcomes for people with disabilities. A search of the Westlaw database in the Eleventh Circuit and all federal courts using key words "reasonable accommodation" or "accommodation" and "spinal cord injury" or "paralysis" has yielded these cases. In addition, a Shepard analysis of *Conopco v. Willis* and *Holbrook v. City of Alpharetta, GA*, and other seminal case law should disclose further relevant reasonable accommodation cases. The researcher seeks to use an analysis of these cases to

create a paradigm or framework for making reasonable accommodation a more effective tool or instrument in the employment of those with significant disabilities. A recording tool may be created to analyze these cases in terms of factors around reasonable accommodation such as (a) cost, (b) communication of need, (c) effectiveness, (d) disruption to other employees, (e) morale of other workers, (f) request for accommodation, (g) documentation of need for accommodation, (h) safety (direct threat), and (i) other related items.

### **Background: Social and Economic Factors**

Employment in the primary labor market is a necessary prerequisite for any American, including those persons with disabilities, to realize the American dream (Martin, 2001). Yet, many Americans with disabilities do not reach their full potential in employment due to employment discrimination (EEOC, 2007). Nearly two-thirds of individuals with disabilities who want to be employed remain unemployed (Harris Poll, 2004). Stated differently, only 33.5 percent of persons with disabilities are employed compared to 76.3 percent of people without disabilities (Cornell University, 2012; Erickson & Lee, 2014). Similarly, “sixty-six percent of working-age disabled [sic] persons, who are not working say that they would like to have a job” (H. Rep. 101-485(II), p. 7) as noted in the ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream (2006, p. 50). “Translated into absolute terms, this means about 8.2 million people with disabilities want to work but cannot find a job” (H. Rep. 101-485(II), 1990, p. 7, as noted in ICD Survey, pp. 47–50). “According to a Louis Harris Poll, the majority of those individual[s] with disabilities not working and out of the labor force must depend on insurance payments or government benefits for support” (H. Rep. 101-485(II), 1990, p. 7). The same poll disclosed that “large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that



individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled [sic] people” (H. Rep. 101-485(II), 1990, p. 7).

A 2010 Kessler Foundation/National Organization on Disability (NOD) survey of employment of people with disabilities disclosed that little progress has been made in closing the employment gap between those with and without disabilities since the enactment of the ADA (Kessler Foundation/ NOD, 2010). The same survey also revealed that two thirds of surveyed employers stated that a lack of qualified job candidates with disabilities is a major or minor reason they have not hired more people with disabilities (Kessler Foundation/NOD, 2010). This would appear to indicate that better application for reasonable accommodation by individuals with disabilities would assist in increasing their employment since accommodation enables them to perform major job tasks. In 1995, nearly two thirds of employers (64%) reported that they hired a person with a disability compared to only fifty-six percent (56%) of employers in 2010 (Kessler Foundation/NOD, 2010).

This low unemployment rate has drawbacks. “Discrimination against persons with disabilities ... costs the United States, state and local governments, and the private sector billions of dollars in unnecessary expenses resulting from dependency and non-productivity” (H. Rep. 101-485(II), 1990, p. 5). Justin Dart (1990) aptly stated regarding discrimination and segregation against individuals with disabilities and their loss of self -reliance:

...and that are driving us inevitably towards an economic and moral disaster of giant, paternalistic welfare bureaucracies. We already [are] paying unaffordable and rapidly escalating billions in public and private funds to maintain ever- increasing millions of potentially productive Americans in unjust, unwanted dependency (H. Rep. 101-485(II),

1990, p. 13) as noted in Testimony before House Subcommittees on Select Education and Employment Opportunities, Ser. No. 101–37, p. 65)

Thus, “discrimination makes people with disabilities dependent on social welfare programs rather than allowing them to be taxpayers – and consumers” (H. Rep. 101-485(II), 1990, p. 13).

## **Literature Review**

### **ADA History/Background**

In the original version of the ADA, Congress reported that there were 43 million Americans with disabilities (Yell, 2006). It further found that discrimination against persons with disabilities continued in the following areas: (a) employment, (b) housing, (c) public accommodations, (d) education, (e) transportation, (f) communication, (g) recreation, (h) institutionalization, (i) health services, (j) voting, and (k) access to public services (Yell, 2006, p. 157, 42 U.S.C. Section 12101). “The primary purpose of the ADA is to provide a clear and national mandate for the elimination of discrimination against individuals with disabilities” (Yell, 2006, p. 158). Despite this national mandate and central purpose contained within the ADA, large numbers of individuals with disabilities remain unemployed (42 U. S.C. Section 12101(a) et seq. 2000).

### **Definition of Disability**

For decades, people with all types of disabilities have experienced employment discrimination. To foster widespread protection against this workplace prejudice, it is necessary to define disability clearly and broadly to cover a substantial number of individuals who encounter disability-based bias. Another significant reason for a clear definition of disability is the frequent inability to readily determine disability. Stated differently, disability, unlike other

protected classes, may not be easily proven or apparent like race or sex. Disability is often invisible or without any outward indicia such as some mental illnesses.

The definition of disability as originally enacted by Congress on July 26, 1990 was intended to be extremely broad in scope in order to facilitate the helpful provisions of the ADA (EEOC, 2009). With respect to an individual, the term “disability” means (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, or (c) being regarded as having such an impairment (42 U.S.C. § 12102(2); see also 29 C.F.R. § 1630.2(g). *EEOC v. Sara Lee Corporation*, 237 F.3d 349, 352 (4<sup>th</sup> Cir. 2001). A person must meet the requirements of at least one of these three criteria to be an individual with a disability under the Act.

The first part of the definition covers persons who actually have physical or mental impairments that substantially limit one or more major life activities. There is not an exhaustive listing of all major life activities (EEOC, 1995). They include walking, working, eating, sleeping, breathing, social interaction with others, thinking, talking, among other items (EEOC, 1995). The focus under the first part is on the individual, to determine if he/she has a substantially limiting impairment. To fall under the first part of the definition, a person must establish three elements:

- (1) that he/she has a physical or mental impairment
- (2) that substantially limits
- (3) one or more major life activities.

The second and third parts of the definition cover persons who may not have an impairment that substantially limits a major life activity but who have a history of, or have been misclassified as having, such a substantially limiting impairment, or who are perceived as having

such a substantially limiting impairment. The focus under the second and third parts is on the reactions of other persons to a history of an impairment or to a perceived impairment. A history or perception of an impairment that substantially limits a major life activity is a “disability.” These parts of the definition reflect a recognition by Congress that stereotyped assumptions about what constitutes a disability and unfounded concerns about the limitations of individuals with disabilities form major discriminatory barriers, not only to those persons who presently have disabilities, but also to those persons either previously classified or termed disabled, misclassified as previously classified or termed disabled, or mistakenly perceived to have a disability. To combat the effects of these prevalent misperceptions, the definition of an individual with a disability precludes discrimination against persons who are treated as if they have a substantially limiting impairment, even, if in fact, they have no such current incapacity (EEOC, 1995).

### **Sutton Trilogy/Mitigating Measures**

The broad definition of disability under the ADA was narrowed by the U.S. Supreme Court in the *Sutton* trilogy, which consists of the following cases: (1) *Sutton v. United Airlines*, (2) *Murphy v. United Parcel Service (UPS)*, and (3) *Kirkingburg v. Albertson’s*. Each of these involved physical impairments that were corrected by medications, assistive technology or changes in behavior. In particular, *Sutton v. United Airlines* concerned twin sister airline pilots with visual impairments who wanted pilot jobs at United Airlines. That company required that all of its pilots have 20/20 vision without use of eyeglasses or contacts. The sisters could see within normal ranges, but only with use of eyeglasses. They claimed they had ADA disabilities since without their glasses they were substantially limited in the major life activity of seeing.

Likewise, *Murphy v. UPS* concerned a truck mechanic who had high blood pressure. He could not obtain a CDL due to his blood pressure problems. He was terminated by the company due to his failure to get a CDL. He claimed disability discrimination based on his high blood pressure and ability to repair trucks. Finally, in *Kirkingburg v. Albertson's*, a truck driver with monocular vision was terminated for safety reasons. He argued that he learned to compensate for a lack of depth perception due to his ability to see only out of one eye through behavior modification.

In the *Sutton* trilogy, the U.S. Supreme Court held that in determining disability, the effect of mitigating or corrective measures on substantial limitations must be considered. More clearly, a person who wears eyeglasses which correct his or her vision to 20/20 would not have an ADA disability since there would be no substantial limitation in the major life activity of seeing with use of the eyeglasses (*Sutton v. United Airlines*, 527 U.S. 471, 1999; *Murphy v. U.P.S.*, 527 U.S. 516, 1999; *Kirkingburg v. Albertsons*, 527 U.S. 555, 1999). By considering any attempt to overcome disability like common corrective measures, the Supreme Court penalized people with a wide range of disabilities. Those taking medicine, using assistive technology like prosthetic devices, or even changing behavior that positively impacted the limitations caused by impairments were no longer covered by the ADA (*Sutton*, 1999).

### **Toyota v. Williams**

*Toyota*, 534 U.S. 184, 197 (2002), like the *Sutton* Trilogy, narrowed ADA coverage by limiting disabilities that substantially limited activities of central importance in life (*Toyota*, 2002). *Toyota* involved an assembly line worker with carpal tunnel syndrome who claimed ADA disability status based upon an inability to grasp certain objects and reach above her shoulders. She admitted to being able to cook, clean, mow the grass and to do other related manual task major life activities. Based upon these facts, the Supreme Court in *Toyota* restricted

“major life activities” to be activities of central importance in life. They are life functions that every person must be able to perform to survive. The limitations claimed by the *Toyota* employee were not found to be significant since they were not primarily important to one’s survival, such as individual activities of daily living (IADL).

Both the *Sutton* trilogy and *Toyota* cases led to the passage of the ADA Amendments Act (ADAAA) of 2008. They involved bad factual scenarios (ones involving conditions that are not significant impairments) that led to court decisions that adversely impacted many with substantial disabilities by excluding them from ADA coverage from an unwarranted narrowing of the definition of disability. Due to the negative implications of these rulings, Congress enacted the ADAAA to overturn them.

### **Barnett v. U.S. Airways**

Although *Barnett v. U.S. Airways*, 535 U.S. 391 (2002) did not limit the ADA definition of disability (unlike *Sutton* or *Toyota*), it resolved the conflict between consistently enforced seniority policies and the ADA duty to resign to a vacant position. *Barnett* involved an employee with a back injury who asked for reassignment to a vacant mail room position. However, another employee with greater seniority requested this position under the terms of the collective bargaining agreement (CBA). There was a conflict between the terms of the CBA and the ADA duty to reasonably accommodate through reassignment. The U.S. Supreme Court held that consistently applied seniority policies trump or overrule the ADA duty to reassign.

The EEOC regulations clarify that reassignment should only be used as an accommodation where all accommodation attempts on the current job have failed (EEOC, 2002). Additionally, reassignment does not require that the employee compete with other employees for the open position (EEOC, 2002). The employer is not required to maintain the current wages of

the employee being reassigned unless it does so for other workers (EEOC, 2002). Reassignment, thus, becomes very important to keeping those individuals with disabilities on the job when they are not able to do the current job with reasonable accommodation. It is probable that the high unemployment rate of individuals with disabilities may be caused in part by being unable to maintain existing employment after worsening of a disability through aging or related factors.

### **ADA Amendments Act**

The ADA Amendments Act (P.L. 110-325) became law on September 25, 2008 and became effective on January 1, 2009. It reverses the *Sutton* and *Toyota* decisions. Recent EEOC guidance clarifies the ADAAA as follows: The Act emphasizes that the definition of disability should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis (EEOC, 2009; Sisson & Martin, 2010).

The Act makes important changes to the definition of the term “disability” by rejecting the holdings in several Supreme Court decisions and portions of the EEOC’s ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA (EEOC, 2009; Sisson & Martin, 2010).

The Act retains the ADA’s basic definition of disability as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. However, it changes the way that these statutory terms should be interpreted in several ways. Most significantly, the Act:

- directs EEOC to revise that portion of its regulations defining the term “substantially limits”;

- expands the definition of “major life activities” by including two non-exhaustive lists:
  - the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
  - the second list includes major bodily functions (e.g., “functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions”);
- states that mitigating measures other than ordinary eyeglasses or contact lenses shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- changes the definition of “regarded as” so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is regarded as disabled if he or she is subject to an action prohibited by the ADA (e.g., failure to hire or termination) based on an impairment that is not transitory and minor;
- provides that individuals covered only under the “regarded as” prong are not entitled to reasonable accommodation. (EEOC, 2009)

### **Definition of Physical or Mental Impairments**

As stated previously, the ADA defines disability broadly. The definition of physical or mental impairment reflects this broad definition by its comprehensive nature. More precisely, a physical or mental impairment (what people typically think is a disability) means



- (1) [a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- (2) [a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 29 C.F.R. § 1630.2(h); see also S. Rep. No. 116, 101st Cong., 1st Sess. 22 (1989) [hereinafter Senate Report]; H.R. Rep. No. 485 pt. 2, 101st Cong., 2d Sess. 51 (1990) [hereinafter House Education and Labor Report]; H.R. Rep. No. 485 pt. 3, 101st Cong., 2d Sess. 28 (1990) [hereinafter House Judiciary Report]).

This regulatory definition does not set forth an exclusive list of specific impairments covered by the AD; instead, the definition describes the type of condition that constitutes an impairment (EEOC, 1995).

### **Substantial Limitation**

Not all impairments are disabilities. The ADA under the first prong of disability restricts coverage to those impairments that significantly restrict major life activities. Otherwise, there would be no meaningful way to ensure protection against disability discrimination to those who need it most. The term substantially limits, as defined by the ADA, means:

- (i) Unable to perform a major life activity that the average person in the general population can perform; or
- (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the

condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

- (i) The nature and severity of the impairment;
- (ii) The duration or expected duration of the impairment; and
- (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of working—

(i) The term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of “working”:

- (A) The geographical area to which the individual has reasonable access;
- (B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs);  
and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes). (29 C.F.R 1630.2 (j))

### **Major Life Activity**

In short, major life activities are one gateway to coverage under the ADA. For an impairment to be a disability under the ADA it must substantially limit a major life activity. It is, therefore, a critical element in proving an ADA disability. EEOC regulations define the term “major life activities” to mean “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working” (29 C.F.R. § 1630.2(i); see also Senate Report at 22; House Education and Labor Report at 52; House Judiciary Report at 28).

This list is not an exhaustive list of all major life activities. Instead, it is representative of the types of activities that are major life activities (EEOC, 2009). Specific activities that are similar to the listed activities in terms of their impact on an individual's functioning, as compared to the average person, also may be major life activities. Thus, as the interpretive appendix to the regulations notes, “other major life activities include, but are not limited to, sitting, standing, lifting, [and] reaching” (29 C.F.R. pt. 1630 app. §1630.2(i)). Mental and emotional processes such as thinking, concentrating, and interacting with others are other examples of major life activities.

(c) Judicial Interpretations — Courts interpreting the Rehabilitation Act of 1973 also have found that other activities constitute major life activities. Such major life activities include

sitting and standing (*Oesterling v. Walters*, 760 F.2d 859, 861, 36 EPD Par. 35,201 at 37,485, 1 AD Cas. (BNA) 722, 723 (8th Cir. 1985)); and reading (*Pridemore v. Rural Legal Aid Society*, 625 F. Supp. 1180, 1183-84 (S.D. Ohio 1985) (mild cerebral palsy affected, but did not substantially limit, plaintiff's ability to read)); see also *DiPompo v. West Point Military Academy*, 708 F. Supp. 540, 549 (S.D.N.Y. 1989). (EEOC, 1995).

### **Major Bodily Functions**

Major bodily functions were added by the ADA Amendments Act (ADAAA) to expand the reach of major life activities and, consequently, broaden the ADA definition of disability (P.L. 110-325). In some cases, a restriction of a major bodily function is very limiting, but it did not fit neatly or easily into a major life activity. The ADAAA clarified that a substantial limitation of a major bodily function is enough to get coverage as a disability under the ADA. The ADAAA adds a list of “major bodily functions” that are included within major life activities as a subset of them. They are as follows: (a) immune system, (b) normal cell growth, (c) digestive, (d) bowel, (e) bladder, (f) neurological, (g) brain, (h) respiratory, (i) circulatory, (j) endocrine, and (k) reproduction (P.L. 110-325 Section 3(2)(B)).

### **Title I Requirements/Coverage**

Title I of the Americans with Disabilities Act of 1990 (the “ADA”) requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship (EEOC, 2002); *Sara Lee Corporation*, 237 F. 3d at 353, citing 42 U.S.C. Section 12112(b) (5) (A). See also 28 C.F.R. Section 41.53 (1998) (“A recipient [of federal funds–Section 504] shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped (sic) applicant or employee unless the recipient can demonstrate that the

accommodation would impose an undue hardship on the operation of the program”). Stated differently, the ADA includes within the term “discriminate” the failure to make reasonable accommodations to the known physical or mental impairments of an otherwise qualified individual with a disability unless there is an undue hardship (*Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1161 (10<sup>th</sup> Cir. 1999), citing 42 U.S.C. Section 12112(b) (5) (A); see also, *Lucas v. Grainger, Inc.*, 257 F.3d 1249, 1255 (11<sup>th</sup> Cir. 2001); *Earl v. Mervyns, Inc.*, 207 F.3d 1361, 1365 (11<sup>th</sup> Cir. 2000)).

An employee’s burden of proof in a failure to accommodate case is very heavy. To win on a claim of failure to accommodate, an employee with a disability must prove the following:

1. he/she is a qualified individual with a disability;
2. the employer was aware of her disability; and
3. the employer failed to reasonably accommodate the disability.

*Hays v. Clark Products, Inc.*, 2008 WL 5384300 (S.D. Ind. 2008) (unpublished) (quoting *Mobley v. Allstate Ins. Co.*, 531 F.3d 539, 545 (7<sup>th</sup> Cir. 2008) (quoting *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 797 (7<sup>th</sup> Cir. 2005)); see also, *Enica v. Principi*, 544 F.3d 328 (1<sup>st</sup> Cir. 2008) (to prove failure to accommodate under the Rehabilitation Act, the employee must also show that the request for accommodation was “sufficiently direct and specific” in order to give the employer notice of the need for accommodation.

### **Definition of Qualified Individual with a Disability**

The term “qualified” like “disability” is a gatekeeper term as a person with a disability must be qualified in order to claim protection from employment discrimination under the ADA just as an individual must have a disability to be covered by the ADA: “Qualified individual with a disability is defined as ‘individual with a disability who, with or without reasonable

accommodation, can perform the essential functions of the employment position that such individual holds or desires” (42 U.S.C. Section 12111(8), Yell, 2006, p. 162). “Under the ADA, an employer may not ‘discriminate against a qualified individual with a disability because of the disability of such individual” (*Gibson v. Walmart Stores, Inc.*, 182 F.3d 917, 918 (6<sup>th</sup> Cir. 1999)). As this case illustrates, the limitation of protection against employment discrimination to those who are qualified emphasizes that the ADA’s employment provisions do mandate hiring of person solely because of disability status, but they must be able to do the major job tasks.

### **Definition of Reasonable Accommodation**

Reasonable accommodation is a great equalizer that often leads to employment of people with disabilities as contended by this researcher (Martin, 2011). It is defined very broadly since it is determined on a case-by-case basis (EEOC, 2002). “In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” There are three categories of reasonable accommodations:

- i. modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- ii. modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

- iii. modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities (EEOC, 2002).

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- changing tests, training materials, or policies;
- providing qualified readers or interpreters; and
- reassignment to a vacant position.

(*Smith*, 180 F.3d at 1161, citing 42 U.S.C. Section 12111 (9); see also 29 C.F.R. Section 1630.2(o) (Rothstein, 2006, p. 165))

A modification or adjustment is “reasonable” if it “seems reasonable on its face, that is, ordinarily or in the run of cases”; this means it is “reasonable” if it appears to be “feasible” or “plausible.” An accommodation also must be effective in meeting the needs of the individual. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally, a reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of

employment that employees without disabilities enjoy (EEOC, 2002). There is no ADA duty for a court to consider a claim of failure to accommodate if disability is not proven (*Dillon v. Roadway Express*, 129 Fed.Appx. 893, 2005 WL 994915 (5<sup>th</sup> Cir. 2005), citing *Blanks v. Southwestern Bell Communications, Inc.*, 310 F.3d 398, 402 (5<sup>th</sup> Cir. 2002. “We conclude that Blanks is not entitled to ADA protection, hence, we need not decide whether [Southwestern Bell] failed to reasonably accommodate him...’).

The employer, not the employee, gets to choose the accommodation. More clearly, the Appendix to the ADA Title I regulations states as follows:

The accommodation, however, does not have to be the “best” accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated ... [T]he employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation that is easier for it to provide. *EEOC v. Argo Distribution, LLC*, 2009 WL 95257 (5<sup>th</sup> Cir. 2009), quoting 29 C.F.R. pt. 1630, App. Section 1630.9

### **Interactive Process and Reasonable Accommodation**

The EEOC suggests that employers use the interactive process to assist in the determination of effective reasonable accommodations (Job Accommodation Network [JAN], 2016). In its simple terms interactive process means employees with disabilities who request reasonable accommodation and employers work together to choose suitable accommodations (JAN, 2016). Although the interactive process is not required by the ADA (*Frazier-White v. Gee*, \_\_\_ F.3d \_\_\_ (11<sup>th</sup> Cir. 2016)), employers who use it show good faith in trying to meet ADA requirements (JAN, 2016). It starts with a request for accommodation by the employee with a disability (JAN, 2016).



The interactive process is vital to effective accommodation of individuals with disabilities. Consequently, the federal regulations implementing the ADA anticipate an interactive process that includes participation by both the employer and employee. *Davoll, et.al v. Webb*, 194 F.3d 1116, 1132 FN8 (10<sup>th</sup> Cir. 1999), (quoting *Templeton v. Neodata Servs., Inc.*, 162 F.3d 617, 619 (10<sup>th</sup> Cir. 1998) (quoting *Beck v. University of Wisconsin Bd. of Regents*, 75 F.3d 1130, 1135 (7<sup>th</sup> Cir. 1996)).

The determination of an effective reasonable accommodation may require the employer to start an informal, interactive process with the qualified employee with a disability who needs the accommodation. The interactive process should set out the specific limitations resulting from the disability and possible reasonable accommodations that could surmount those limitations (*Smith*, 180 F.3d at 1171, quoting 29 C.F.R. Section 1630.2(o) (3)).

Courts have consistently ruled that employers do not have to accept all accommodation requests by the employee as he or she must show that rejected ones would have been effective in enabling the worker to perform the major job tasks. For example, in *Fjellestad v. Pizza Hut of America, Inc.*, 188 F.3d 944, 954 (8<sup>th</sup> Cir. 1999), the court emphasized ... “that by requiring the employer to engage in the interactive process, we do not hold that any particular accommodation must be made by the employer. The employee still carries the burden of showing that a particular accommodation rejected by the employer would have made the employee qualified to perform the essential functions of the job” (*Lloyd*, 207 F.3d at 1084).

An employee requesting accommodation does not have to use any magic words, but he/she must use words that are adequate to convey to the employer that he is asking that the disability be accommodated (*Lowery v. Hazelwood School District*, 244 F.3d 654, 660 (8<sup>th</sup> Cir. 2001), citing *Wallin v. Minnesota Dep’t. of Corr.*, 153 F.3d 681,689 (8<sup>th</sup> Cir. 1998)). Thus, the

employee bears burden of communicating to the employer that he/she is requesting a disability accommodation when asking for a transfer to a different position. The employee must ask for a particular accommodation in order to receive one. More precisely, the employee's request for accommodation must be "sufficiently direct and specific" to provide employer with notice of disability-related need. "In general ... it is the responsibility of the individual with a disability to inform the employer that an accommodation is needed" (*Kvorjak v. Maine*, 259 F.3d 48, 54 (1<sup>st</sup> Cir. 2001), citing *Reed v. LePage Bakeries, Inc.*, 244 F.3d 254, 261 (1<sup>st</sup> Cir. 2001), citing EEOC Interpretive Guidance, 29 C.F.R. Pt. 1630, app. at Section 1630.9. See also, *Willis v. Conopco*, 108 F.3d 282, 285 (11<sup>th</sup> Cir. 1997) (Court held that employer's failure to engage in interactive process with employee does not automatically prevent employee from losing on summary judgment since employee must still show that a reasonable accommodation could have been made).

Both the employer and the employee with a disability who requests accommodation share in the responsibility to communicate the need for it and the details of the particular accommodation. "An employee's request for reasonable accommodation requires a great deal of communication between the employee and employer ... both parties bear responsibility for determining what accommodation is necessary" (*Kvorjak*, 259 F.3d at 58-59, citing *Criado v. IBM Corp.*, 145 F.3d 437, 444 (1<sup>st</sup> Cir. 1998) (quoting *Bultemeyer v. Fort Wayne Cmty. Schs.*, 100 F.3d 1281, 1285 (7<sup>th</sup> Cir. 1996)).

#### **ADA Legislative History on Determination of Reasonable Accommodation**

There is a clear indication in the legislative history that Congress wanted employers and employees with disabilities to collaborate in discovering reasonable accommodation (Autry, 2004). Senate Report No. 101-116 iterates that "employers first will consult with and involve

the individual with a disability in deciding the appropriate accommodation” (Autry, 2004, S.Rep. No. 101-116, at 65 (1990)). The report later lists four informal steps to determine appropriate reasonable accommodation (Autry, 2004, *id.* at 66-67). Among these steps is identifying barriers and then naming possible accommodations (Autry, 2004, *id.*). The Senate report further provides that “[t]he expressed choice of the applicant or employee shall be given primary consideration unless another effective accommodation exists that would provide a meaningful equal employment opportunity” (Autry, 2004, *id.*).

### **Definition of Essential Functions**

The determination of essential functions is the central inquiry in deciding not only whether one is qualified for a job, but also the accommodations that are necessary. More clearly, the ADA requires that qualified individuals with disabilities be accommodated so that they can perform essential functions (EEOC, 2002). In other words, accommodations are tied to essential job functions. The ADA regulations define essential functions as “the fundamental job duties of the employment position of the individual with a disability.... this does not include marginal functions (29 C.F.R. Section 1630.2(n) (1)” (Rothstein, 2006, p. 128). The following factors should be considered in the determination of whether a job duty is essential:

1. The position exists to perform the essential function,
2. There are a limited number of employees among whom the function can be distributed,
3. The job function is highly specialized, and/or
4. The person is hired due to his or her expertise to do the function (29 C.F.R. Section 1630.2(n)(2), (Rothstein, p. 128).

The following evidence can be weighed in this determination:

1. Employer's judgment,
2. Written job descriptions prepared before hiring,
3. Amount of time spent to perform function,
4. Consequences of not mandating that employee do function,
5. Collective bargaining agreement terms, or
6. Work experience of incumbents in the position (29 C.F.R. Section 1630.2(n)(3),  
(Rothstein, p. 128)

Besides the above factors that can be weighed in determination of essential functions, it is important to define them in terms of the basics of the job. Thus, an essential function is a fundamental job duty of the position at issue (*Kvorjak v. Maine*, 259 F.3d 48, 55 (2001), citing *Ward v. Mass. Health Research Inst., Inc.*, 209 F.3d 29, 34 (1<sup>st</sup> Cir. 2000)).

#### **Definition of *Undue Hardship***

Undue hardship is one of the major defenses or reasons that an employer would not have to provide an accommodation. It is based on financial and non-financial factors (EEOC, 2002). “‘Undue hardship’ is defined as “an action requiring significant difficulty or expense” (42 U.S.C. 12111(10); (Rothstein 2006 p. 165); see also 29 C.F.R. Section 1630.2(p)). Undue hardship is to be measured based on the following factors:

1. The nature and cost of the accommodation,
2. The overall financial resources of the facility involved in providing the accommodation;
3. The effect or impact on operation of the facility,
4. The overall financial resources of the covered entity;
5. The overall size of the business including number of employees,

6. The number, type, and location of facilities,
7. The type of operation of the entity, including the composition, structure, and function of the workforce, and
8. The geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity (42 U.S.C. Section 12111(10); (Rothstein 2006, pp165-166); 29 C.F.R. Section 1630.2(p) (2)).

According to a survey conducted by the University of Iowa Law, Health Policy, and Disability Center (2006) in partnership with the Job Accommodation Network (JAN) of the employers who gave cost information related to accommodations they had provided, 167 out of 366 (46%) said the accommodations needed by employees and job applicants with disabilities *cost absolutely nothing*. Another 165 (45%) experienced a one-time cost. Only 25 respondents (7%) said the accommodation resulted in an ongoing, annual cost to the company and 2% said the accommodation required a combination of one-time and annual costs; however, too few of these employers provided cost data to report with accuracy (Loy & Batiste, 2006). Of those accommodations that did have a cost, the typical one-time expenditure by employers was \$500. When asked how much they paid for an accommodation beyond what they would have paid for an employee without a disability who was in the same position, employers typically answered around \$300 (Loy & Batiste, 2006).

### **Definition of Direct Threat**

Like undue hardship, direct threat can also be a limitation on the employer's duty to reasonably accommodate. An accommodation that poses a safety risk to the employee or other employees may be rejected by the employer (EEOC, 2002). The ADA defines "direct threat" as a significant risk of harm to the health or safety of others that cannot be eliminated by reasonable

accommodation (42 U.S.C. Section 12111(3) (Rothstein, 2006, p. 159). The federal regulations define direct threat as a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation (29 C.F.R. Section 1630.2(r)).

In *Chevron U.S.A. Inc. v. Echazabal* (536 U.S. 73, 2002), the U.S. Supreme Court held that employers may have as a qualification standard that employees not pose a direct threat to themselves or others. *Chevron USA Inc.* involved an employee with Hepatitis C who was a contract worker. When a permanent position came open, he applied for the job. Since this job like the contract position also involved exposure to toxic chemicals, Chevron denied him the job since it believed that he would be harmed by the noxious substances. The Court found in favor of Chevron, despite the similarity of the two positions and ruled that employers are free to include in their job requirements that applicants not pose a substantial risk of harm to not only other employees, but to themselves as well when they are performing the essential functions of the job.

Determination of whether an individual poses a direct threat to himself or others under 42 U.S.C. Section 12111(3) shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence (29 C.F.R. Section 1630.2).

### **Case Analysis/Survey of Applicable Case Law and Statutes**

#### **Background**

Many employers continue to deny jobs to qualified applicants with disabilities based on stereotypes (EEOC, 2007). These discriminatory actions still exist despite passage of the

Americans with Disabilities Act (ADA) in 1990 as well as the passage of the ADA Amendments Act (ADAAA) in 2008.

The ADA became law to eliminate pervasive discrimination against individuals with disabilities in all aspects of American society including employment. Yet, as noted previously, the unemployment rate of people with disabilities is unacceptably high based on the number or percentage of those who are unemployed. The courts have interpreted the ADA in a very restrictive manner that has narrowed its coverage to the extent that persons with conditions that are corrected with medication or assistive devices have no protection against discrimination (See *Sutton* trilogy). Indeed, employers have won 100% of ADA employment cases in the Eleventh Circuit Court of Appeals within the last six years (Albright, 2006). On a national level, employers have won 97% of employment cases brought under Title I of the ADA (Albright, 2006).

The result of the *Sutton* and *Toyota* decisions has been to place many qualified individuals with disabilities into a Catch 22 position. Many whose disability is severe enough to be covered by the ADA are found by potential employers to be unqualified or to have a disability which is too severe to enable them to work.

To address these problematic scenarios, the ADA Amendments Act of 2008 contains the following provisions:

1. Addition of a rule of construction to the definition of disability, which prohibits courts from considering whether a person uses mitigating measures or considering whether the manifestations of an impairment are “episodic, in remission, or latent” when determining if a person has an impairment. (Section 4)
2. Prohibition of discrimination on the basis of disability. (Section 5)

3. Protection against reverse discrimination claims by clarifying that discrimination “on the basis of disability” means discriminating against an individual with a disability (42 U.S.C. § 12112(b)). (Section 6)
4. Clarification that employers remain free to argue that a particular applicant or employees does not have the requisite qualifications for the job (i.e., is not a “qualified individual with a disability”) (42 U.S.C. § 12113(a)). (Section 5)

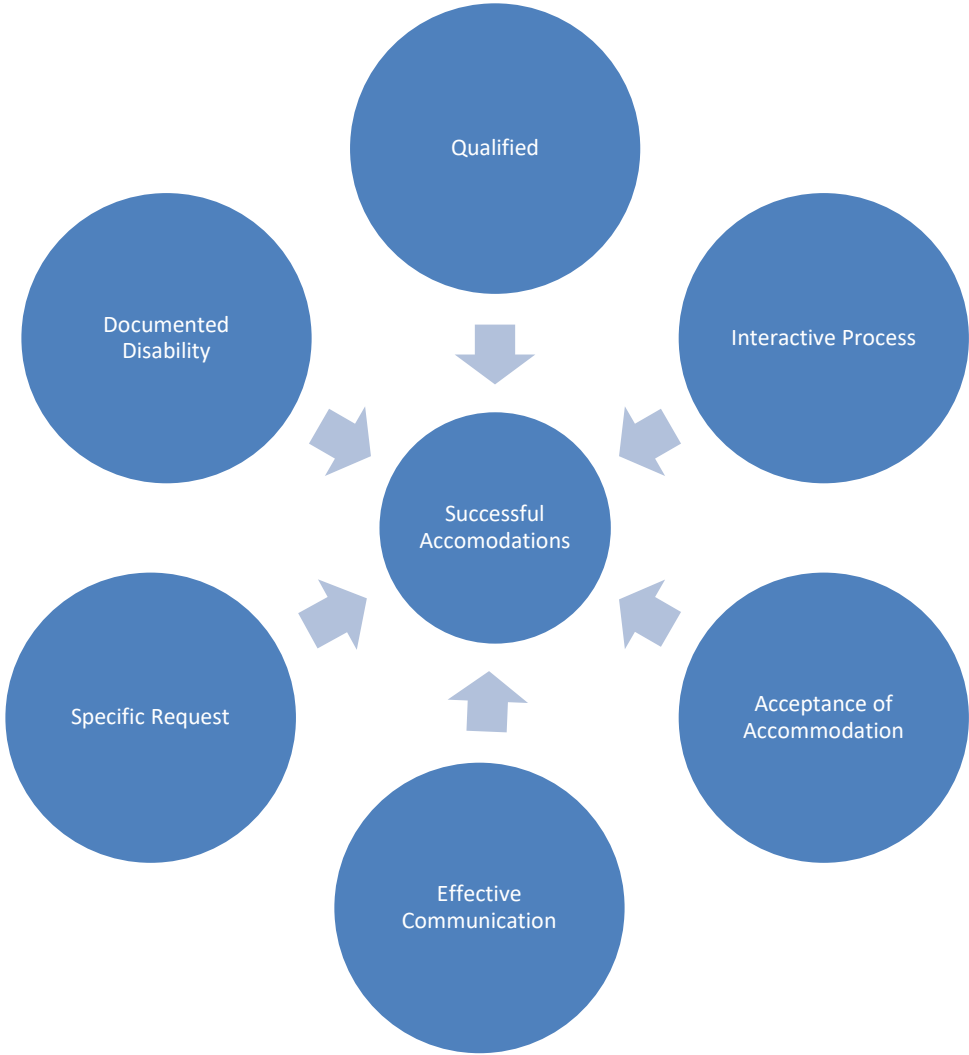
However, the ADA Amendments Act of 2008 does not contain any additional provisions strengthening a qualified individual with a disability’s right to reasonable accommodation. It clarifies that there is no duty to accommodate those having only as regarded as having a disability (P.L. 110-325). The main impact of the ADAAA appears to be its bolstering of the definition of disability. Likewise, it makes proof of disability by an individual claiming ADA protection easier and, consequently, will shift the courts’ focus from examination of evidence of disability to the merits of the claims involving failure to reasonable accommodation.

### **Case Sample Size**

Case research was done using the *Westlaw* all federal courts database and the following key words of “reasonable accommodation” or “accommodation” and “spinal cord injury” or “paralysis.” Over 200 cases were identified and reviewed through this research. Twenty-one (21) cases were evaluated using the variables listed below: Cases that involved a failure to reasonably accommodate claim by persons with neurological impairments were selected for evaluation since such impairments are significant and the level of unemployment for these individuals tends to be high. In addition, there can be no doubt that successful accommodation of these individuals is necessary to enable them to be employed. This evaluation has revealed trends that can be utilized to create a schematic that shows elements for successful reasonable



accommodation so that workplace accommodation more effectively results in employment for qualified individuals with disabilities as noted in Figure 1.



*Figure 1: Elements that Contribute to Successful and Effective Reasonable Accommodations*

## **Analysis and Implications of ADA Cases**

All Americans deserve equal opportunity in employment. The ADA, when passed in 1990, was meant to ensure that qualified individuals with disabilities would be employed at the same rate as their peers without disabilities. Sadly, this equal opportunity at employment in the primary labor market has not become a reality for almost two thirds of persons with disabilities (Kessler Foundation/NOD, 2010). Extremely narrow interpretations of the ADA definition of disability by courts are largely the reason the ADA's employment provisions have been ineffective at eliminating discrimination against persons with disabilities (NCD, 2004). In addition, failure to reasonably accommodate decisions such as those in the Eleventh Circuit Court of Appeals and other federal courts in the last several years show a clear trend of employees with disabilities losing such cases.

An analysis of more than 200 cases in all federal courts in the United States addressing failure to reasonably accommodate cases (under the ADA and Rehabilitation Act) for persons with spinal cord injuries and related disabilities involving paralysis showed that employers won the majority of these cases (this tracks the ABA annual survey of ADA cases) due to an employee's (a) failure to prove disability, (b) request accommodation adequately or communicate needs, (c) establish they are a qualified person with a disability status, (d) accept offered accommodations and understand reasonable accommodation, and (e) employer's failure to engage in interactive process or communicate effectively with employee with a disability. It does not appear that undue hardship was a substantial factor that caused the employer to deny reasonable accommodation. The following twenty-one (21) cases were selected from the above-stated 200 cases and analyzed under the following dominant (prevailing) parameters and

variables which serve as guidelines for model recommendations on reasonable accommodation by identifying trends.

### **Failure to Prove Disability (a required element of reasonable accommodation)**

In particular, the first group of cases analyzed involved a failure to prove disability. This flaw in the burden of proof led to the court's denial of the reasonable accommodation claim. Representative cases demonstrated this flaw in various ways. In *Dillon v. Roadway Express*, 129 Fed.Appx. 893, 2005 WL 994915 (5<sup>th</sup> Cir. 2005), a pick-up and delivery driver claimed temporary paralysis and difficulty walking as disabilities. He requested permission to leave work if stress levels became too high and leave to make doctor's appointments. The court never considered the merits of his reasonable accommodation requests since he failed to prove that his conditions were disabilities under the ADA. In *Fornes v. Osceola County Sheriff's Office* 2005 WL 2012285 (M.D. Fla. 2005), an employee with Gullian-Barre syndrome and paralysis of the legs and arms did not prove disability under the ADA. The claim for failure to reasonably accommodate was denied by the court due to failure to prove disability under the ADA. The merits of the claim were never considered by the court even though there appeared to be a failure to engage in the interactive process due to a lack of communication. Likewise, in *Greene v. UPS*, 125 F. Supp. 2d 517 (M.D. Ga. 2000), the court denied the reasonable accommodation claim of an employee with a spinal cord compression injury due to failure to establish disability under the ADA.

### **Employee's Failure to Request Specific Accommodation or Communicate Needs**

#### **Adequately**

The next set of cases analyzed concerned the employee's failure to request a specific accommodation or otherwise communicate needs adequately. In *Dumolt v. Peters*, 2009 WL

113596 (W.D. Okla. 2009), the court denied the reasonable accommodation claim of an employee with a spinal cord injury. This worker sought temporary leave. In reaching its ruling in favor of the employer, the court found that the employee did not request accommodation and that there was no evidence showing a request for a period of temporary leave. In *Lowery v. Hazelwood School District*, 244 F.3d 654 (8<sup>th</sup> Cir. 2001), the court overruled a claim for reasonable accommodation for rehire or transfer to another position due to the lateness of the request. It was made after suspension and, thus, determined to be an 11<sup>th</sup> hour request for reinstatement, not accommodation. In contrast, in *Gibson v. Walmart Stores, Inc.*, 182 F.3d 917 (6<sup>th</sup> Cir. 1999), the court did not find in favor of either the employer or employee on a claim for reasonable accommodation and remanded the case to the lower court. The employee with paralysis from a stroke did not specify the type of accommodation that would allow him to continue his work as a loss prevention associate. In *Jovanovic v. In-sink-erator Division of Emerson Electric Company*, 201 F.3d 894 (7<sup>th</sup> Cir. 2000), the court found that the employer's delay in providing accommodation did not violate an employee with asthma and Barrett's esophagus' ADA rights. Likewise, in *McClellan v. Case Corporation, Inc.*, 314 F. Supp. 2d 911 (S.D. ND 2004), the court determined that the employee's failure to communicate expert vocational rehabilitation and physical therapy opinions during interactive process harmed his reasonable accommodation claim. The employer had acted in good faith, unlike the employee, by having its medical consultant investigate.

### **Employee's Failure to Prove "Qualified Individual with a Disability" Status**

In this line of cases, the employee's reasonable accommodation claim failed due to lack of proof on status as a qualified individual with a disability. In *Lloyd v. Hardin County, Iowa*, 207 F.3d 1080 (8<sup>th</sup> Cir. 2000), the worker with a spinal cord injury admitted that he could not

perform heavy, physical labor of the job. He requested job restructuring as a reasonable accommodation, but it would eliminate one or more of the essential functions of the job. The employee was also not qualified since he could not prove that he could perform the essential functions of the job with or without reasonable accommodation. Similarly, the employer won in *Ebbert v. DaimlerChrysler Corporation*, 128 Fed. Appx. 263, 2005 WL 851444 (3<sup>rd</sup> Cir. 2005) since the employee with a spinal cord injury could not show that he was qualified. This was upheld despite the employer's total failure to engage in the interactive process or meet with the employee to individually analyze his abilities. In *Altendorfer v. Kroll Ontrack, Inc.*, 2006 WL 1314318 (D. Minn. 2006), the employee with a spinal cord tumor lost his claim against the employer for failure to reasonably accommodate due to an inability to show that he could do the job. He requested unpaid leave with no specified return date and requested full time work at home. The employer proved that job duties required his physical presence at work. In *Lara v. State Farm*, 2003 WL 22149667 (D. Kan. 2003), a fire claims representative with a broken back that resulted in a permanent spinal cord injury asked to be excused from climbing on roofs as a reasonable accommodation. The court ruled for the employer finding that the employee was not qualified since roof climbing was an essential function of the job. Also, the worker was not qualified for the positions to which he requested reassignment. In *McLean-Nur v. N.Y.C. Depart. of Transportation*, 2000 WL 297176 (S.D.N.Y. 2000), the employee with a spinal cord injury was found unqualified since he could not perform heavy lifting tasks and was given all possible accommodations. Finally, in *Hays v. Clark Products, Inc.*, 2008 WL 5384300 (S.D. Ind. 2008), the employee with multiple sclerosis lost her claim for reasonable accommodation since she could not prove she was qualified. She offered no evidence that she could perform the essential functions of the job with or without reasonable accommodation.

## **Employee's Failure to Accept Offered Reasonable Accommodations and Understand Process**

In this group of cases, the employee's failure to accept reasonable accommodations offered by the employer and to understand the accommodation process caused rejection of claim by the court. The employer gets to choose the accommodation, but it must be effective for the employee. In *Vande Zande v. State of Wisconsin Department of Administration*, 44 F.3d 538 (7<sup>th</sup> Cir. 1995), the worker with paraplegia sought to work at home or install a computer there. The employer offered to allow her to work at home but not full time. She also requested that a kitchen sink be lowered, but employer offered her use of a bathroom sink. She acknowledged that her state employer made numerous accommodations, but she sued for failure to accommodate. The court sided with the employer finding the offered accommodations sufficient. In *Koffler v. Hahnemann University*, 1986 WL 7841 (E.D. Pa. 1986), the court ruled for the employer on similar grounds. In particular, a medical doctor with back problems that limited his ability to walk and spinal cord compression rejected accommodations offered by the employer which included a motorized wheelchair and personal assistance. Work from home, a different standard of attendance, and creation of a new position with only those duties he could still perform were accommodations requested and which the court found unreasonable.

## **Employer's Failure to Engage in Interactive Process or Communicate Effectively with Employee with a Disability**

The last group of cases analyzed concerned the employer's failure to engage in the interactive process. In all but one of these cases, the employer lost. In *Stone v. City of Mount Vernon*, 118 F.3d 92 (2<sup>nd</sup> Cir. 1997), a firefighter with paraplegia sought reassignment to a job that did not require fire suppression, a position that was open and available. There was poor

communication with the employee. The employer's undue hardship defense was rejected by the court. In *O'Dell v. Department of Public Welfare of Commonwealth of Penn.*, 346 F.Supp. 2d 774 (W.D. Pa. 2004), a case worker with quadriplegia sought return to work. Vocational Rehabilitation (VR) helped with the accommodation process, but the employer did not act in good faith in the interactive process since there was a sixteen-month delay in the employee's return to work. In *Branson v. West*, 1999 WL 1186420 (N.D. Ill. 1999), employee with spinal cord injury sought use of service animal to retrieve items and open doors at Veterans Administration (VA) hospital. Employer suggested power chair and assistant. The employer's failure to communicate with employee led to court's permanent injunction against employer. In *Smith v. Midland Brake, Inc.*, 180 F.3d 1154 (10<sup>th</sup> Cir. 1999), an employee with chronic dermatitis on his hands assembled air valve components of air brakes and asked for reassignment. His company took the apparent position that reassignment was not available since the employee admitted he could not do his current position (admitting that he was not a qualified individual with a disability to which the ADA limits the right to reasonable accommodations such as reassignment); the employee provided notice of his condition and its effect on his performance in his current job; employee communicated desire for reassignment by expressing a desire to return to work by asking "Have you found some work for me to do?" Based on these facts, the employee overcame summary judgment, and the case was remanded. In contrast, *Kvorjak v. Maine*, 259 F.3d 48 (1<sup>st</sup> Cir. 2001) was an employer win. An individual with spina bifida, employed as a claims adjudicator, requested work at home on a full time permanent basis based on a letter from a doctor stating that commuting everyday would be detrimental to his health. The employer did not engage in an interactive process and failed to communicate. The court even noted that the state employer's behavior was not ideal, noting that a "face-to-face

discussion might have allowed a more complete understanding of the needs and issues on both sides and avoided appellant's understandable sense of frustration and ill treatment." "Appellant, too, however, must bear some responsibility for adequate communication." The employee initially stated that he would accept any accommodation that would result in his continued employment, but the record showed he later rejected any option besides work at home. The employer also successfully contended that the employee was not qualified, as no evidence showed that the employee could perform essential functions of the position at home.

In these 23 cases (sample), employers won 18 out of the 23 cases or 78%, and employees won 4 out of 23 cases or 17%, with one case being a draw due to no side clearly winning.

### **Conclusion**

As the unemployment rate for individuals with disabilities continues to be unacceptably high compared to those without disabilities, there is a need for a model intervention to remedy this disproportionate joblessness. Reasonable accommodation as a great equalizer for employment of persons with disabilities may be one solution to their inability to obtain work. The ADA only protects qualified individuals with disabilities who can perform the major job tasks or essential functions with or without accommodation. However, case law under the ADA involving reasonable accommodation of those with significant neurological impairments shows a trend favoring an employer's denial of job accommodations due to the employee with a disability's failure to meet all elements in the burden of proof. Such items include disability, qualified status, and identification of specific, effective accommodations, among other areas identified previously. The researcher's proposed model may address the deficits in obtaining reasonable accommodation by the employee with a disability.



Development and implementation of an effective reasonable accommodation tool would not only benefit applicants and current employees with disabilities, but also employers who need good employees and vocational rehabilitation (VR) counselors who assist unemployed job applicants with disabilities. Further research will be needed to ascertain the effectiveness of the proposed tool and the knowledge level of VR counselors in securing reasonable accommodation.

### **Summary**

Americans with disabilities face unemployment rates that are unacceptably high (Krooks, 2011). This high unemployment rate is caused, in part, by employment discrimination against persons with disabilities (EEOC, 2007). The main protection against employment bias against individuals with disabilities in the private sector is the Americans with Disabilities Act (ADA). The major tool for increasing employment opportunities for persons with significant disabilities is arguably reasonable accommodation. Reasonable accommodation is a great equalizer. The failure to provide reasonable accommodation to individuals with spinal cord injury, paralysis and related neurological conditions is arguably a clear reason many of them have not been able to obtain employment. With proper accommodation, persons with significant disabilities can secure, retain and advance in employment. VR counselors' possible lack of sufficient knowledge and related practices may be a factor in retention, securement or advancement in employment of those with significant disabilities. This lack of knowledge and practices can be measured through a survey of a random sample of vocational rehabilitation (VR) counselors and consumers throughout the various local VR offices in Alabama. In addition, a survey of case law on employer failure to reasonably accommodate can disclose the primary factors that are obstacles to successful receipt of accommodations by individuals with disabilities. The

information from counselor and consumer surveys as well as case law data, can be used to create a decision making tree for reasonable accommodation requests.

## **CHAPTER 3. METHODS AND PROCEDURES**

### **Introduction**

The focus of this study was the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for individuals with disabilities. Chapter 1 provided an introduction and background information related to employment issues facing Americans with disabilities, as well as a statement of the problem, purpose of the study, research questions, null hypotheses, overview of methods and procedures, assumptions of the study, limitations, and definition of terms. Chapter 2 presented a review of the research and literature that included an introduction on employment issues of individuals with disabilities, a background on economic and social issues facing individuals with disabilities, ADA legislative history and background, information on the ADA Amendments Act, survey of applicable case law and statutes, and discussion of barriers to reasonable accommodations for employees with disabilities. This chapter includes an introduction, restatement of the purpose of the study, and the design of the study to include population, instrumentation, data collection procedures, and data analysis procedures.

### **Purpose of the Study**

The purpose of this study was to identify the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for individuals with disabilities and to develop a schematic that shows the essential elements that contribute to successful and effective reasonable accommodations.

## **Design of Study**

The design of the study includes quantitative and qualitative analyses. This was a survey research study to explore vocational rehabilitation (VR) counselor perceptions of their knowledge and practices relating to workplace reasonable accommodation for individuals with disabilities. The dependent variable was VR counselor's knowledge and practice scores on the "A Survey of Counselor Knowledge and Practices Related to Reasonable Accommodations" questionnaire. Independent variables were (a) years of experience, (b) age group, (c) gender, and (d) ethnicity. Case law served as the basis from which essential elements were identified.

## **Population and Sample**

The target population for this study was VR counselors who served persons in Alabama with neurological impairments like spinal cord injury and cerebral palsy. This study took place in VR offices located throughout the state of Alabama. All of the VR counselors serving the target population were asked to complete a questionnaire about their perception of reasonable accommodation knowledge and their practices in facilitating accommodations, as well as demographic information.

## **Source of Data**

A random sample of vocational rehabilitation counselors with a general caseload from the 14 units in Alabama was selected. Each unit has seven to nine counselors. A table of random numbers was used to select 75 percent of the counselors from each unit.

## **Instrumentation**

The data were gathered using a 38-item questionnaire. Twenty-two (22) of the items addressed counselor knowledge regarding reasonable accommodation, and eleven (11) of the

items were related to counselor practices for reasonable accommodation. Four (4) of the items concerned demographic information related to age group, gender, years of service, and ethnicity.

All items were scored on a four-point Likert-type scale. The instrument included items related to vocational rehabilitation counselors' perceptions of their knowledge such as the meaning of reasonable accommodation, undue hardship, and types of accommodations. Items related to knowledge of definitions of reasonable accommodation and undue hardship and examples of each were included. For example, sample knowledge items are item #11: "How knowledgeable are you about essential functions?" and item #13: "How knowledgeable are you about direct threat?" These items were scored as follows: 4 = very knowledgeable, 3 = knowledgeable, 2 = somewhat knowledgeable, and 1 = not at all knowledgeable. Responses were summed across the four response categories for each item. Higher scores indicated more knowledge, and lower scores indicated less knowledge.

In addition, items related to vocational rehabilitation counselor perceptions of effectiveness of their practices related to reasonable accommodations were included. Examples of items about practices are item #16: "How often do you discuss reasonable accommodations with a consumer?" and item #25: "How often have you successfully assisted a consumer in obtaining reasonable accommodation?" These items were scored on a four-point Likert-type scale as follows: 4 = always, 3 = nearly always, 2 = sometimes, and 1 = never. Scores for vocational rehabilitation counselor practices were summed across the four response categories for each item. Higher scores indicated a favorable and higher frequency of practice, and lower scores indicated less favorable and lower frequency of practice.

## **Validity and Reliability of the Research Instrument**

The instrument was validated by a panel of experts consisting of two vocational rehabilitation counselors, a unit supervisor in a VR office, and a researcher. The panel reviewed the instrument to examine item clarity, completeness, and accuracy. A hard copy of the instrument was delivered by the researcher who asked panel members to complete their review and comments within 5 business days and return the questionnaire via hand mail to the researcher. No suggestions for changes to items on the instrument were made. The panel also reviewed the instrument for directions to respond to the items, organization of items, and overall appearance. After panel approval, the researcher prepared the final copy of the instrument for delivery to participants.

Cronbach's alpha was computed for scale reliability. Items related to knowledge of reasonable accommodations yielded a reliability of .77; items related to practices resulted in a reliability of .78, and the total scale with all knowledge and all practice items yielded a .86 reliability. Individual scale reliabilities, as well as overall reliability were acceptable.

## **Data Collection Procedures**

Permission to conduct the study was obtained from the Institutional Review Board for Human Subjects at Auburn University. A copy of this permission is in Appendix A. Participants were provided an information letter prepared by the researcher. The letter gave information about the researcher, the survey instrument, risks of the study, participation being on a volunteer basis, and the confidentiality of the data being collected during the study. Contact information for the researcher and the major professor was provided for any questions about the study. A copy of the information letter is in Appendix B.

The researcher prepared individual survey packets for each of the participants. Each packet included the information letter for participants and the 38-item “A Survey of Counselor Knowledge and Practices Related to Reasonable Accommodation” questionnaire. Packages were distributed to VR offices where supervisors administered the questionnaire to counselors at each respective office.

The researcher delivered copies of the questionnaire to VR unit supervisors during a VR Council meeting. Prior to distribution of the survey packets, each supervisor read the statement of the purpose of the study and the instructions to the participants. Participation in the study was on a volunteer basis, and this information was highlighted in the instructions. Participants were instructed to return all questionnaires in the original envelope. VR counselors who did not want to participate in the study were asked to return the survey package uncompleted. The researcher received all of the completed and uncompleted questionnaires in unmarked envelopes via interagency state mail service.

### **Data Analysis Procedures**

The analysis was completed by using IBM-SPSS (version 23) for Windows. Participants’ responses to the questions were entered into an SPSS spreadsheet by the researcher and checked for any errors in data entry. Descriptive statistics were calculated for the first two research questions. The first research question was as follows: To what extent do vocational rehabilitation counselors perceive themselves as knowledgeable about reasonable accommodations in the workplace? The second research question was stated as: To what extent do vocational rehabilitation counselors perceive themselves as effective in their practices related to reasonable accommodations in the workplace? The third research question was: To what extent is there a difference in counselor perceptions and practices related to reasonable accommodations in the

workplace for individuals with disabilities based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity?

Three null hypotheses were developed to guide the analyses. Ho<sub>1</sub> was: There is no statistically significant difference in counselor perceptions of their knowledge about reasonable accommodation and a hypothetical test value. Ho<sub>2</sub> was: There is no statistically significant difference in counselor perceptions of their practices related to reasonable accommodations in the workplace and a hypothetical test value. A one sample t-test was used to test the first and second null hypotheses.

Ho<sub>3(a-d)</sub> was: There is no statistically significant difference in the combined scores of knowledge and practices related to reasonable accommodations in the workplace based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity. The third null hypothesis was tested using inferential statistical procedures for each part of the hypothesis.

Research questions 4 and 5 were analyzed as qualitative data to identify common themes for reasons that reasonable accommodations are not made and aspects that influence decision-making for reasonable accommodations in the workplace. A decision-making model for reasonable was developed and was based on elements that prevent successful and effective reasonable accommodations. Qualitative analysis of case law revealed the following reasons for employer's failure to reasonably accommodate individuals with disabilities (not in order of importance):

1. Failure to prove disability,
2. Employee's failure to request specific accommodation or communicate needs adequately,
3. Employee's failure to prove "qualified individual with a disability" status,



4. Employee's failure to accept offered reasonable accommodations and understand process, and
5. Employer's failure to engage in interactive process or communicate effectively with employee with a disability.

### **Summary**

This chapter discussed the methodology to be employed in this study. The sources of data, data collection procedures, VR counselor responses in the selected VR offices, privacy and confidentiality of the VR counselors on whom data were collected, instrumentation, and the method of data analysis were presented. The results of the analysis are presented in Chapter 4.

## **CHAPTER 4. RESULTS OF THE STUDY**

### **Introduction**

This study has been designed to identify the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for individuals with disabilities. Chapter 1 provided an introduction and background information on employment issues facing Americans with disabilities as well as a statement of the problem, purpose of the study, research questions, hypotheses, information about methods and procedures, which included data collection procedures, data analysis procedures, assumptions of the study, limitations, and definition of terms. Chapter 2 presented a review of the literature that included an introduction on employment issues of individuals with disabilities, a background on economic and social issues facing them, ADA legislative history and background, information on the ADA Amendments Act, Title I coverage and requirements, ADA legislative history on determination of reasonable accommodation, case analysis/survey of applicable case law and statutes, and discussion of barriers to reasonable accommodations for employees with disabilities. Chapter 3 discussed the design of the study, sources of data, data collection procedures, instrumentation, method of procedure, and VR counselor perception of knowledge and practices on reasonable accommodations in the workplace for individuals with disabilities.

This chapter presents the results of the study to identify VR counselor knowledge and VR counselor practices about reasonable accommodations in the workplace for individuals with disabilities.

Descriptive statistics on the sample are provided. Descriptive data were calculated using SPSS (version 23) for the total sample of 94 participants. Frequency counts were calculated for gender, age, years of experience and ethnicity. Most counselors were in the 31 to 40 age group (N = 32). The fewest counselors were in the under 30 age group (N = 12). Twenty males and 73 females participated in the study. One participant did not indicate gender. Most counselors had zero to nine years of work experience (N = 44); five counselors had 30 or more years of work experience. Twenty-seven of the counselors claimed African American and 49 claimed White as their ethnicity. Two counselors marked “other” as their ethnicity; and 15 preferred not to answer. Three research questions were developed to guide the statistical analyses in this study. Null hypotheses were tested at the .05 level using one-sample t-tests. The findings are presented for each of the research questions and corresponding null hypothesis.

The first research question was: **To what extent do vocational rehabilitation counselors perceive themselves as knowledgeable about reasonable accommodations in the workplace?** The null hypothesis ( $H_{01}$ ) associated with this question was: There is no statistically significant difference in counselor perceptions of their knowledge about reasonable accommodation and a hypothetical test value.

A one-sample t-test procedure was used to test the first null hypothesis ( $H_{01}$ ). Results revealed a t-value of -8.63 ( $t(88) = 8.63, p = .00$ ). Therefore, one must reject the first null hypothesis and claim that there is a statistically significant difference ( $\alpha = .05$ ) between the observed scores (mean = 2.54) for knowledge and the test value (3.00) related to knowledge of reasonable accommodations. This t-value and probability level represent a very large effect size (Cohen’s  $d = .92$ ). This means that VR counselors’ mean score is nearly one standard deviation lower than the hypothesized mean. In other words, perceptions of counselors’ knowledge of

reasonable accommodations vary greatly from an acceptable or desired level of knowledge. The 95% confidence interval ranges from -.5661 to -.3542.

The second research question was: **To what extent do vocational rehabilitation counselors perceive themselves as effective in their practices related to reasonable accommodations in the workplace?** The null hypothesis associated with the second research questions was: There is no statistically significant difference in counselor perceptions of their practices related to reasonable accommodations in the workplace and a hypothetical test value.

A one-sample t-test procedure was used to test the second null hypothesis ( $H_{02}$ ) Results revealed a t-value of -5.61 ( $t(88) = 5.61, p = .00$ ). Therefore, one must reject the second null hypothesis and claim that there is a statistically significant difference ( $\alpha = .05$ ) between the observed scores (mean = 2.47) for practices and the test value (3.00) related to VR counselors' perceptions of their effectiveness in their practices of reasonable accommodations. This t-value and probability level represent a medium effect size (Cohen's  $d = .59$ ). This means that VR counselors' mean score is .59 of a standard deviation lower than the hypothesized mean. In other words, counselors' perceptions of their effectiveness in their practices of reasonable accommodations vary greatly from an acceptable or desired level of effective practice. The 95% confidence interval ranges from -.7114 to -.3391.

The third research question was: **To what extent is there a difference in counselor perceptions and practices related to reasonable accommodations in the workplace for individuals with disabilities based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity?** The null hypothesis ( $H_{03(a-d)}$ ) for the third research question was stated as follows: There is no statistically significant difference in the combined scores of

knowledge and practices related to reasonable accommodations in the workplace based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity.

A one-way analysis of variance procedure was conducted to test  $H_{03a}$  for differences in the mean scores for the combined dependent variables of knowledge and practices for years of service worked in rehabilitation counseling. The independent variable was years of service in rehabilitation counseling with four levels: 0 to 9; 10 to 19, 20 to 29, and 30 or more. The overall F test was statistically significant,  $F = 3.05$ ,  $p = .03$ . The partial eta squared was .10, which was a small effect size; however, since the Bonferroni procedure was used to control for Type I error and adjust for multiple comparisons, the p-value was a reasonable probability that differences in years of service exist. Therefore,  $H_{03a}$  was rejected and follow-up tests were conducted to ascertain pair-wise differences among the means. Pairwise comparisons revealed statistically significant differences ( $p = .026$ ) between counselors who had 30 or more years of work experience as a counselor ( $N = 5$ , mean = 110.0) and those who had fewer than nine years of work experience ( $N = 42$ , mean = 82.71).

The F test for statistically significant differences between age groups ( $H_{03b}$ ) was not statistically significant ( $F = .320$ ,  $p = .81$ ). Therefore,  $H_{03b}$  was retained and one must conclude that the mean scores among the age groups are similar. Gender differences were evaluated using the independent samples t-test. The t statistic (.46) was not statistically significant ( $t_{(83)} = .46$ ,  $p = .65$ ). Therefore,  $H_{03c}$  was retained and one must conclude that the mean scores between males and females are similar.

A one-way analysis of variance procedure was conducted to test  $H_{03d}$  for differences in the mean scores for the combined dependent variables of knowledge and practices for ethnicity. The independent variable was ethnicity with four levels: African American, White, other, and

prefer not to answer. The Bonferroni procedure was used to control for Type I error and adjust for multiple comparisons. The overall F test was not statistically significant,  $F = 1.33$ ,  $p = .27$ , and the partial eta squared was .047, indicating almost negligible effect of ethnicity on the combined scores of VR counselor knowledge and practices. Therefore,  $H_{03d}$  was retained and no further tests were interpreted. Tables 1, 2, and 3 display mean scores, standard deviations, and minimum and maximum values for each of the variables.

Table 1

*Sample Demographics*

	N	Mean	S.D	Lower Bound	Upper Bound
<b>Years of Service</b>					
0-9	42	82.71	15.83	76.68	88.75
10-19	23	83.87	11.51	75.71	92.03
20-29	15	88.67	16.47	78.56	98.77
30 or more	5	110.00	59.93	92.50	127.51
Total	85	85.68	20.38		
<b>Gender</b>					
Male	17	83.65	18.93	-13.59	8.50
Female	68	86.19	20.83	-13.31	8.22
Total	85	84.92			

(table continues)

Table 1 (continued)

	N	Mean	S.D	Lower Bound	Upper Bound
<b>Age Group</b>					
17-30	12	86.08	17.39	74.20	97.97
31-40	31	84.61	15.24	77.22	92.01
41-50	18	89.94	32.77	80.23	99.66
51 or older	23	84.22	16.09	75.63	92.81
Total	84	85.86	20.44		
<b>Ethnicity</b>					
Black	25	91.48	28.62	83.42	99.54
White	44	82.77	13.48	76.70	88.85
Other	2	98.00	31.11	69.50	126.51
Prefer Not to Answer	14	82.71	19.24	71.95	93.49
Total	85	85.68	20.38		

Table 2

*Knowledge Item Statistics*

Items	N	Mean	S.D.
Reasonable Accommodation (RA)	86	3.40	.49
Importance of RA for job	86	3.53	.53
Types of Job RA	86	3.16	.55
Right to Request Interview RA	86	3.09	.64
What Consumer Must Say or Do	86	3.41	3.29
Limitations on Employer to RA	86	2.92	.64
Interactive Process	86	2.41	.80
Undue Hardship	86	2.86	.80
Undue Hardship Factors	86	2.43	.81
Essential Functions	86	3.31	.64
Direct Threat	86	2.59	.80
Safety	86	2.93	.78
Forced to Take Medicine	86	2.28	.79
Job Restructuring as RA	86	2.52	.79
Modification of Policy	86	2.58	3.42
Which Policies to Modify	86	2.36	2.30
Attendance as Essential Function	86	3.12	.83
Waiver of No Fault Attendance	86	2.05	.78
Non-financial Factors	86	2.26	.86
Agency's RA Worksheet	86	2.33	.96
Eliminate Essential Function	86	2.33	1.30
Essential Functions Prove	86	2.83	.71



Table 3

*Practice Item Statistics*

Items	N	Mean	S.D.
Assistance in Interactive Process	86	1.94	.87
Discussion of RA with Consumer	86	3.07	.78
Receive Training	86	2.20	.65
Assist Consumer Obtain Document	86	3.05	3.39
Assist Consumer Obtain RA	86	2.58	.87
Assist Consumer with Job Restructuring	86	2.12	2.31
Utilize Modification of Policy	86	1.79	.86
Perceive RA Request Reasonable	86	3.00	.74
Perceive Know RA	86	2.51	.63
Perceive Consumer Understand Role	86	2.36	.70
Perceive Consumer Understand What Included	86	2.35	.63
Perceive Consumer Understand Limit on RA	86	2.79	3.36

The fourth research question was: **What are the primary reasons that reasonable accommodations are not made?** The fifth research question was: **What are the elements that should be included in a decision-making model for reasonable accommodation for employment of eligible individuals with disabilities?** There were no null hypotheses for questions four and five.

Research questions 4 and 5 were analyzed as qualitative data to identify common themes for reasons that reasonable accommodations are not made and aspects that influence decision-making for reasonable accommodations in the workplace.

Qualitative analysis of case law revealed the following reasons for employer's failure to reasonably accommodate individuals with disabilities (not in order of importance):

1. Failure to prove disability,
2. Employee's failure to request specific accommodation or communicate needs adequately,
3. Employee's failure to prove "qualified individual with a disability" status,
4. Employee's failure to accept offered reasonable accommodations and understand process, and
5. Employer's failure to engage in interactive process or communicate effectively with employee with a disability.

Further analysis of case law showed the following elements (see Figure 1) to be included in a decision-making model for effective reasonable accommodations:

1. Disability
2. Qualified person with a disability status
3. Request for accommodation
4. Acceptance of effective accommodation
5. Knowledge and understanding of accommodation process
6. Interactive process
7. Effective communication.

## **Summary**

This chapter presented a restatement of the research questions and hypotheses. Statistical procedures to test each hypothesis were discussed along with findings. Findings revealed statistically significant differences for years of service, knowledge of reasonable accommodations, and practices of reasonable accommodation. Findings revealed no statistically significant differences for age groups, gender, and ethnicity. Analysis of case law showed reasons for unsuccessful reasonable accommodations and elements for a decision-making model for reasonable accommodation. An overview of this study, summary of results, limitations, implications, conclusion, recommendations for practical applications, and summary are presented in Chapter 5.

## **CHAPTER 5. CONCLUSIONS, IMPLICATIONS AND RECOMMENDATIONS**

### **Introduction**

Chapter 1 provided an introduction and background information on employment issues facing Americans with disabilities as well as a statement of the problem, purpose of the study, research questions, hypotheses, information about methods and procedures, which included data collection procedures, data analysis procedures, assumptions of the study, limitations, and definition of terms. Chapter 2 presented a review of the literature that included an introduction on employment issues of individuals with disabilities, a background on economic and social issues facing them, ADA legislative history and background, information on the ADA Amendments Act, Title I coverage and requirements, ADA legislative history on determination of reasonable accommodation, case analysis/survey of applicable case law and statutes, and discussion of barriers to reasonable accommodations for employees with disabilities. Chapter 3 discussed the design of the study, sources of data, data collection procedures, instrumentation, method of procedure, and VR counselor perception of knowledge and practices on reasonable accommodations in the workplace for individuals with disabilities. Chapter 4 presented the results of the study to identify VR counselor knowledge and VR counselor practices about reasonable accommodations in the workplace for individuals with disabilities.

### **Summary of the Purpose of the Study**

The purpose of this study is to identify the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for

individuals with disabilities. The purpose is further delineated by the research questions listed in Chapter 1 and Chapter 3.

### **Summary of the Research Procedure**

The analysis was completed by using IBM-SPSS (version 23) for Windows. Participants' responses to the questions were entered into an SPSS spreadsheet by the researcher and checked for any errors in data entry. Descriptive statistics were calculated for the first two research questions. The first research question was: To what extent do vocational rehabilitation counselors perceive themselves as knowledgeable about reasonable accommodations in the workplace? The second research question was stated as: To what extent do vocational rehabilitation counselors perceive themselves as effective in their practices related to reasonable accommodations in the workplace? The third research question was: To what extent is there a difference in counselor perceptions and practices related to reasonable accommodations in the workplace for individuals with disabilities based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity?

Three null hypotheses were developed to guide the analyses:

- $H_{01}$  was: There is no statistically significant difference in counselor perceptions of their knowledge about reasonable accommodation and a hypothetical test value.
- $H_{02}$  was: There is no statistically significant difference in counselor perceptions of their practices related to reasonable accommodations in the workplace and a hypothetical test value. A one sample t-test was used to test the first and second null hypotheses.

- $H_{03(a-d)}$  was: There is no statistically significant difference in the combined scores of knowledge and practices related to reasonable accommodations in the workplace based on (a) years of service as a counselor, (b) age group, (c) gender, and (d) ethnicity. The third null hypothesis was tested using inferential statistical procedures for each part of the hypothesis.

Research questions 4 and 5 were analyzed as qualitative data to identify common themes for reasons that reasonable accommodations are not made and aspects that influence decision-making for reasonable accommodations in the workplace. A decision-making model for reasonable was developed and was based on elements that prevent successful and effective reasonable accommodations. Qualitative analysis of case law revealed the following reasons for employer's failure to reasonably accommodate individuals with disabilities (not in order of importance):

1. Failure to prove disability,
2. Employee's failure to request specific accommodation or communicate needs adequately,
3. Employee's failure to prove "qualified individual with a disability" status,
4. Employee's failure to accept offered reasonable accommodations and understand process, and
5. Employer's failure to engage in interactive process or communicate effectively with employee with a disability.

### **Implications**

As the unemployment rate for individuals with disabilities continues to be unacceptably high compared to those without disabilities, there is a need for a model intervention to remedy

this disproportionate joblessness. Reasonable accommodation as a great equalizer for employment of persons with disabilities may be one solution to their inability to obtain work. The ADA only protects qualified individuals with disabilities who can perform the major job tasks or essential functions with or without accommodation. However, case law under the ADA involving reasonable accommodation of those with significant neurological impairments shows a trend favoring an employer's denial of job accommodations due to the employee with a disability's failure to meet all elements in the burden of proof. Such items include disability, qualified status, and identification of specific, effective accommodations, among other areas identified previously. The researcher's proposed model may address the elements in obtaining reasonable accommodation by the employee with a disability.

Development and implementation of an effective reasonable accommodation tool would not only benefit applicants and current employees with disabilities, but also employers who need good employees and vocational rehabilitation (VR) counselors who assist unemployed job applicants with disabilities. Further research will be needed to ascertain the effectiveness of the proposed tool and the knowledge level of VR counselors in securing reasonable accommodation.

The research results outlined in Chapter 4 demonstrate that VR counselors need annual training on workplace reasonable accommodations as their perception of reasonable accommodations varied greatly from an acceptable or desired level of knowledge. Similarly, VR counselors' perceptions of their effectiveness in workplace reasonable accommodations practices varied greatly from an acceptable or desired level of effectiveness in such practices. This finding would further support the implication that VR counselors need annual training on reasonable accommodations in the workplace.

Annual training for VR counselors on workplace accommodations is critical especially for counselors with fewer than 9 years of service. This implication is supported by the finding that revealed statistically significant differences ( $p = .026$ ) between counselors who had 30 or more years of work experience as a counselor ( $N = 5$ , mean = 110.0) and those who had fewer than nine years of work experience ( $N = 42$ , mean = 82.71) in counselors' perceptions of knowledge and practices related to reasonable accommodations in the workplace for individuals with disabilities.

The annual training should target all counselors with fewer than 9 years of work experience as a counselor. This belief or implication is indicated by the finding that there was no statistically significant difference in counselors' perceptions of knowledge and practices related to reasonable accommodations in the workplace based on age group, gender, or ethnicity.

A qualitative analysis of case law revealed that consumer knowledge of workplace reasonable accommodation is low. In addition, qualitative case law interpretation revealed that workplace reasonable accommodations involved a very technical, legal process that must be followed closely for a consumer to successfully receive them. From these findings, it follows that consumers would benefit by greater VR counselor intervention in the form of detailed counseling and guidance on successfully securing workplace reasonable accommodations.

### **Recommendations**

The following recommendations are based on the quantitative analysis of counselors' responses to the questionnaire:

1. VR counselors should receive annual training on workplace reasonable accommodations to increase the likelihood that they clients will become successfully employed,
2. This training should include the following elements:



- Documentation of disability,
- Meaning of *qualified individual with a disability* and how to successfully prove it,
- Meaning of the *interactive process* and how to successfully engage it,
- Requesting *reasonable accommodations*, and
- Common barriers to reasonable accommodation such as *undue hardship*.

The following recommendations are based on the qualitative analysis of case law:

**1. The employee requesting reasonable accommodation should fully document disabilities.**

The employer's duty to reasonably accommodate does not arise unless it has direct or indirect knowledge of an employee's covered disabilities. The employee must provide documentation of a disability that is sufficient to meet the ADA or Rehabilitation Act definition of disability. Both laws have the same definition of disability (1992 Amendments to Rehabilitation Act; ADA Amendments Act ("ADAAA") P.L. 110-325 Section 3). As noted above, "disability" is defined as (1) a physical or mental impairment that substantially limits a major life activity, (2) a record of such impairment or being regarded as having such impairment (42 U.S.C. Section 12111).

Many of the cases discussed previously were decided prior to the ADAAA. To the extent the court in these cases relied on the *Toyota* or *Sutton* decisions to find no disability, those decisions would be overruled. However, the ADAAA does not obviate the need to prove disability, nor does it render meaningless the strategies discussed within this paper to make reasonable accommodation more effective in securing employment for individuals with disabilities such as full documentation of a disability. With most reasonable accommodation requests there is not an obvious link between the disability and the accommodation sought; that

is, spinal cord injury and working at home. Documentation of disability should specifically establish that the physical or mental impairment of an employee substantially limits at least one major life activity. The ADAAA clarifies that one only needs to show substantial limitation in one major life activity to be covered by the law. Besides providing evidence of the substantial limitation, documentation of the disability should also link the accommodation to limitations imposed by the disability.

The most common form of documentation provided is a medical opinion from a physician. Employees should obtain opinions from treating physicians with appropriate board certification(s) in the field of the employee's disability. Physicians should be instructed to use wording in opinion letters that mirrors key terms in the ADA or Rehabilitation Act, not isolated medical jargon that does not fit within applicable legal terminology. For example, a physician's opinion that a worker occasionally has trouble ambulating would not be useful for proving a substantial limitation in the major life activity of walking. A better statement by the doctor would be that an employee is substantially limited in the major life activity of walking since he cannot walk normal distances daily as the average person, or even more precisely the individual cannot walk 200 feet without tiring.

**2. Employers should sincerely engage in interactive process at the earliest possible moment, and the employee, vocational rehabilitation counselor and other professionals should educate employers on the benefits of the interactive process.**

The interactive process should be seen by the employer as a "win-win" situation, not an opportunity to rid itself of an employee with a disability. It is an excellent opportunity to facilitate communication between an employee and employer on available accommodations that

will enable a good worker to stay on the job or become employed. Poor communication inevitably leads to a failure to accommodate litigation. Thus, good faith use of the interactive process will not only prevent lawsuits, but also result in retention of qualified employees that enhances the bottom line of a company.

### **3. The employer should streamline the interactive process.**

Failure to reasonably accommodate cases typically involve employers who have complex procedures or policies for the provision of accommodation. Specifically, ADA committees are set up within businesses or companies to review and decide all requests, and there is usually a long reasonable accommodation form. While this may appear to be a logical choice from a consistency perspective, it may actually result in an overly burdensome and lengthy process that prevents granting a reasonable accommodation to a qualified individual with a disability, so that he or she can perform the essential functions of his or her position. In the business world, there is an adage that time is money. Delaying a worker's productivity thus costs an employer money. A process that impedes timely provision of reasonable accommodation should be avoided. In addition, unreasonable delay in providing an accommodation often leads to litigation.

An efficient and effective process for granting accommodations should include the following:

- Notice to the employee of the process
- Identification of specific information needed such as:
  - Medical documentation of disability with language conforming to the ADA or Rehabilitation Act terminology of disability
  - Linkage of disability to accommodation request
- Minimum time lines established for accommodation decisions

- Simplified accommodation form
- ADA Committee made up of supervisor, employee and accommodation specialist like rehabilitation engineer.
- An accommodation policy should have a list of resources for identifying possible accommodations. This should enable the employer and employee to exhaust all available accommodation solutions. (See Appendix B)

**4. The employee should make a clear, unmistakable request for accommodation before his/her job performance suffers.**

One of the most common mistakes made is in the timing of an accommodation request. It should be made at the earliest possible moment. This point in time would be when the employee begins to have difficulty performing a major job function. For example, a proofreader who begins to experience a gradual visual loss, starts having her accuracy in reviewing manuscripts fall below acceptable performance standards. She is given a warning. The employee then has her eyes checked and discovers that she is in the early stages of macular degeneration. After providing documentation of this condition described above, the employee should check the accommodation resources and identify one that could ostensibly enable her to perform her proofreader job duties more accurately.

A worst case scenario would occur if this same employee waits until she is terminated to request accommodation and identify her disability. An employer is not required to accommodate after the fact with the consequence that the termination would not violate the ADA or Rehabilitation Act.

**5. The accommodation request should be made in writing and dated.**

This request does not have to use the words “reasonable accommodation”, but utilization of these words is preferable so that there is no mistake that the interactive process is being triggered. An employee who is not trained in the process of obtaining accommodation can merely ask for some item or change to assist them in accomplishing an essential job function.

**6. The employee should identify an accommodation that meets ADA requirements, not one that poses an undue hardship or one that eliminates the essential functions of the job.**

There is a conflict in many court decisions (*Frazier-White v. Gee*, \_\_\_ F.3d \_\_\_ (11<sup>th</sup> Cir. 2016); *Kvorjak v. Maine*, 259 F.3d 48, 54 (1<sup>st</sup> Cir. 2001), citing *Reed v. LePage Bakeries, Inc.*, 244 F.3d 254, 261 (1<sup>st</sup> Cir. 2001), citing EEOC Interpretive Guidance, 29 C.F.R. Pt. 1630, app. at Section 1630.9) between the employer’s burden to show undue hardship and an employee’s duty to identify an accommodation that is reasonable. Arguably there is no distinction between showing that an accommodation is an undue hardship and proving that it is not unreasonable. Employers are in a better position to show reasonableness as they have the information on finances and resources. Thus, individuals with disabilities who need a job accommodation should assist the employer in listing all available options (through the interactive process) so that the employer has a range of price alternatives more likely to be reasonable in terms of cost. The employee needs to be flexible in the provision of accommodation. For instance, insisting on only the most expensive accommodation when there are other less costly alternatives will likely result in a denial of accommodation based on undue hardship. In the 23 cases analyzed, undue hardship was claimed as a defense in only one of the cases. However, to

prevent assertion of this defense, employees should be willing to explore all options, especially low tech ideas.

Before considering any request for accommodation, a worker should have a full understanding of the major job tasks or essential functions of the position. These can be identified by reviewing a comprehensive job description or an advertisement which lists them. Any request made to a professional regarding available accommodations should list the essential functions.

**7. The vocational rehabilitation counselor should provide training to the employee with a disability or designee on the process for requesting accommodation. A core curriculum should be designed that includes the elements as noted in Figure 1.**

This training should be an integral part of the VR counseling and guidance for their consumers. It could be provided directly by the counselor or other trained agency personnel or contracted out to an outside entity like the Job Accommodation Network or a university center such as Auburn University's Center for Disability Research and Policy Studies.

### **Limitations**

The following limitations apply to the study:

- The extent to which participants understand the meaning of reasonable accommodations.
- The extent to which responses from the sample of vocational rehabilitation counselors are representative of all vocational rehabilitation counselors in Alabama.
- The extent to which this research instrument is valid and reliable to identify knowledge and practices of vocational rehabilitation counselors.

- The extent to which an adequate number of vocational rehabilitation counselors will respond to the questionnaire.
- Limited to generalizations of knowledge and practices of vocational rehabilitation counselors in Alabama.

### **Conclusion**

Successfully securing workplace reasonable accommodations is a very complex and technical process as evidenced by case law. VR counselors are an integral part of the rehabilitation process that secures competitive employment for individuals with significant disabilities. There is a gap in counselors' perception of their knowledge and an acceptable or desired level of knowledge as well as a variance in counselors' perception of their practices and an acceptable or desired level of effective practices. Likewise, there is a statistically significant difference in workplace reasonable accommodation knowledge and practices between counselors with 30 or more years of service as compared to counselors with 9 or fewer years of service. These quantitative findings support recommendations for annual reasonable accommodation training for VR counselors.

### **Summary**

This chapter presented a summary of the research purpose and procedure, implications, recommendations, limitations, and conclusion. The major recommendation is annual training on workplace reasonable accommodations for VR counselors based on the elements presented in Figure 1.

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APPENDIX A

AUBURN UNIVERSITY INSTITUTIONAL REVIEW BOARD (IRB) FORM

AUBURN UNIVERSITY INSTITUTIONAL REVIEW BOARD for RESEARCH INVOLVING HUMAN SUBJECTS  
**RESEARCH PROTOCOL REVIEW FORM**  
**FULL BOARD or EXPEDITED**

For Information or help contact THE OFFICE OF RESEARCH COMPLIANCE (ORCL 115 Ramsay Hall, Auburn University)  
 Phone: 334-844-5966 e-mail: IRBAdmin@auburn.edu Web Address: <http://www.auburn.edu/research/vpr/ohs/index.htm>

Revised 2.1.2014 Submit completed form to [IRBsubmit@auburn.edu](mailto:IRBsubmit@auburn.edu) or 115 Ramsay Hall, Auburn University 36849.

Form must be populated using Adobe Acrobat / Pro 9 or greater standalone program (do not fill out in browser). Hand written forms will not be accepted.

1. PROPOSED START DATE of STUDY: 3-2-2016

PROPOSED REVIEW CATEGORY (Check one):  FULL BOARD  EXPEDITED

SUBMISSION STATUS (Check one):  NEW  REVISIONS (to address IRB Review Comments)

2. PROJECT TITLE: Knowledge and Practices of Vocational Rehabilitation Counselors Related to Reasonable Accommodations to Increase the Employment of Persons with Disabilities.

3. Graham L. Sisson, Jr. PhD Candidate Special Ed. & Rehab. sissogl@auburn.edu  
 PRINCIPAL INVESTIGATOR TITLE DEPT AU E-MAIL

4249 Woodvale Road, Birmingham, AL 35222 205.706.4034 grambosco@gmail.com  
 MAILING ADDRESS PHONE ALTERNATE E-MAIL

4. FUNDING SUPPORT:  N/A  Internal  External Agency: \_\_\_\_\_  Pending  Received

For federal funding, list agency and grant number (if available). \_\_\_\_\_

5a. List any contractors, sub-contractors, other entities associated with this project:

N/A

b. List any other IRBs associated with this project (including Reviewed, Deferred, Determination, etc.):

N/A

**PROTOCOL PACKET CHECKLIST**

All protocols must include the following items:

Research Protocol Review Form (All signatures included and all sections completed)  
 (Examples of appended documents are found on the OHSR website: <http://www.auburn.edu/research/vpr/ohs/sample.htm>)

CITI Training Certificates for all Key Personnel.

Consent Form or Information Letter and any Releases (audio, video or photo) that the participant will sign.

Appendix A, "Reference List"

Appendix B if e-mails, flyers, advertisements, generalized announcements or scripts, etc., are used to recruit participants.

Appendix C if data collection sheets, surveys, tests, other recording instruments, interview scripts, etc. will be used for data collection. Be sure to attach them in the order in which they are listed in# 13c.

Appendix D if you will be using a debriefing form or include emergency plans/procedures and medical referral lists (A referral list may be attached to the consent document).

Appendix E if research is being conducted at sites other than Auburn University or in cooperation with other entities. A permission letter from the site / program director must be included indicating their cooperation or involvement in the project. NOTE: If the proposed research is a multi-site project, involving investigators or participants at other academic institutions, hospitals or private research organizations, a letter of IRB approval from each entity is required prior to initiating the project.

Appendix F - Written evidence of acceptance by the host country if research is conducted outside the United States.

**FOR ORG OFFICE U**

DATE RECEIVED IN ORC: \_\_\_\_\_ by \_\_\_\_\_ PROTOCO  
 DATE OF IRB REVIEW: \_\_\_\_\_ by \_\_\_\_\_ APPROVA  
 DATE OF IRB APPROVAL: \_\_\_\_\_ by \_\_\_\_\_ INTERVAL  
 COMMENTS:

The Auburn University Institutional  
 Review Board has approved this  
 Document for use from  
04/24/2016 to 04/23/2017  
 Protocol # 16-041 EP 1604

6. GENERAL RESEARCH PROJECT CHARACTERISTICS

**6A. Research Methodology**

Please check all descriptors that best apply to the research methodology.

Data Source(s): <input checked="" type="checkbox"/> New Data <input type="checkbox"/> Existing Data	Will recorded data directly or indirectly identify participants? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	---

Data collection will involve the use of:

- |  |                          |
|--|--------------------------|
| Educational Tests (cognitive diagnostic, aptitude, etc.)         | Internet / Electronic    |
| Interview  | Audio                    |
| Observation  | Video                    |
| Location or Tracking Measures                                    | Photos                   |
| Physical / Physiological Measures or Specimens (see Section 6E.) | Digital images           |
| / Surveys / Questionnaires                                       | Private records or files |
| Other: _____   |                          |

**6B. Participant Information**

Please check all descriptors that apply to the target population.

Males     Females     AU students

**Vulnerable Populations**

Pregnant Women/Fetuses     Prisoners     Institutionalized  
 Children and/or Adolescents (under age 19 in AL)

Persons with:

Economic Disadvantages     Physical Disabilities  
 Educational Disadvantages     Intellectual Disabilities

Do you plan to compensate your participants?  Yes     No

**6C. Risks to Participants**

Please identify all risks that participants might encounter in this research.

Breach of Confidentiality\*     Coercion  
 Deception     Physical  
 Psychological     Social  
 None  
 Other:

\*Note that if the investigator is using or accessing confidential or identifiable data, breach of confidentiality is always a risk.

**6D. Corresponding Approval/Oversight**

- Do you need IBC Approval for this study?  
 Yes     No  
If yes, BUA #: \_\_\_\_\_ Expiration date \_\_\_\_\_
- Do you need IACUC Approval for this study?  
 Yes     No  
If yes, PRN #: \_\_\_\_\_ Expiration date \_\_\_\_\_
- Does this study involve the Auburn University MRI Center?  
 Yes     No  
Which MRI(s) will be used for this project? (Check all that apply)  
 3T     7T
- Does any portion of this project require review by the MRI Safety Advisory Council?  
 Yes     No

Signature of MRI Center Representative: \_\_\_\_\_  
Required for all projects involving the AU MRI Center

Appropriate MRI Center Representatives:  
 Dr. Thomas S. Denney, Director AU MRI Center  
 Dr. Ron Beyers, MR Safety Officer



7. PROJECT ASSURANCES Knowledge and Practices of Vocational Rehabilitation Counselors Related to Reasonable Accommodations to Increase the Employment of Persons with Disabilities.

**A. PRINCIPAL INVESTIGATOR'S ASSURANCES**

1. I certify that all information provided in this application is complete and correct.
2. I understand that, as Principal Investigator, I have ultimate responsibility for the conduct of this study, the ethical performance of this project, the protection of the rights and welfare of human subjects, and strict adherence to any stipulations imposed by the Auburn University IRB.
3. I certify that all individuals involved with the conduct of this project are qualified to carry out their specified roles and responsibilities and are in compliance with Auburn University policies regarding the collection and analysis of the research data.
4. I agree to comply with all Auburn policies and procedures, as well as with all applicable federal, state, and local laws regarding the protection of human subjects, including, but not limited to the following:
  - a. Conducting the project by qualified personnel according to the approved protocol
  - b. Implementing no changes in the approved protocol or consent form without prior approval from the Office of Research Compliance
  - c. Obtaining the legally effective informed consent from each participant or their legally responsible representative prior to their participation in this project using only the currently approved, stamped consent form
  - d. Promptly reporting significant adverse events and/or effects to the Office of Research Compliance in writing within 5 working days of the occurrence.
5. If I will be unavailable to direct this research personally, I will arrange for a co-investigator to assume direct responsibility in my absence. This person has been named as co-investigator in this application, or I will advise ORC, by letter, in advance of such arrangements.
6. I agree to conduct this study only during the period approved by the Auburn University IRB.
7. I will prepare and submit a renewal request and supply all supporting documents to the Office of Research Compliance before the approval period has expired if it is necessary to continue the research project beyond the time period approved by the Auburn University IRB.
8. I will prepare and submit a final report upon completion of this research project.

My signature indicates that I have read, understand and agree to conduct this research project in accordance with the assurances listed above.

Graham L. Sisson, Jr.

Printed name of Principal Investigator

  
Principal Investigator's Signature

1-27-16  
Date

**B. FACULTY ADVISOR/SPONSOR'S ASSURANCES**

1. I have read the protocol submitted for this project for content, clarity, and methodology.
2. By my signature as faculty advisor/sponsor on this research application, I certify that the student or guest investigator is knowledgeable about the regulations and policies governing research with human subjects and has sufficient training and experience to conduct this particular study in accord with the approved protocol.
3. I agree to meet with the investigator on a regular basis to monitor study progress. Should problems arise during the course of the study, I agree to be available, personally, to supervise the investigator in solving them.
4. I assure that the investigator will promptly report significant incidents and/or adverse events and/or effects to the ORC in writing within 5 working days of the occurrence.
5. If I will be unavailable, I will arrange for an alternate faculty sponsor to assume responsibility during my absence, and I will advise the ORC by letter of such arrangements. If the investigator is unable to fulfill requirements for submission of renewals or modifications or the final report, I will assume that responsibility.

Dr. Davis E. Martin

Printed name of Faculty Advisor / Sponsor

  
Faculty Advisor's Signature

1-28-2016  
Date

**C. DEPARTMENT HEAD'S ASSURANCE**

By my signature as department head, I certify that I will cooperate with the administration in the application and enforcement of all Auburn University policies and procedures, as well as all applicable federal, state, and local laws regarding the protection and ethical treatment of human participants by researchers in my department.

Dr. Davis E. Martin

Printed name of Department Head

  
Department Head's Signature

1-11-16  
Date

8. PROJECT OVERVIEW: Prepare an abstract that includes:  
(350 word maximum, in language understandable to someone who is not familiar with your area of study):

- a) A summary of relevant research findings leading to this research proposal:  
(Cite sources; include a "Reference List" as Appendix A.)
- b) A brief description of the methodology, including design, population, and variables of interest

a) Summary of relevant research findings leading to this research proposal: Americans with disabilities face unemployment rates that are unacceptably high (Krooks, 2011). This high unemployment rate is caused, in part, by employment discrimination against persons with disabilities (EEOC, 2007). The main protection against employment bias against individuals with disabilities in the private sector is the Americans with Disabilities Act (ADA, 1990). Employment in the primary labor market is a necessary prerequisite for any individual, including those persons with disabilities who do not reach their full potential in employment due to employment discrimination (EEOC, 2007). Nearly two-thirds of the people with disabilities who want to be employed remain unemployed (Harris Poll, 2004).

- b) Brief description of the methodology, including design, population, and variables of interest

Methodology, including design: The method for this study will be a paper-pencil survey using a researcher-developed questionnaire that will be administered in person by the researcher to participants.

Design: The design of this study will be exploratory to identify the current knowledge and practices of vocational rehabilitation (VR) counselors who serve individuals with significant neurological impairments.

Population: Participants for this study will be vocational rehabilitation counselors employed at one of the 14 VR service units in Alabama.

Variables of interest: The dependent variables for this study will be the responses on the knowledge and practice items. Other variables will be demographic characteristics, such as age, gender, level of education, and years of service of the VR counselors.

9. PURPOSE.

- a. Clearly state the purpose of this project and all research questions, or aims.

Purpose of the study:

The purpose of this study is to identify the level of vocational rehabilitation counselor knowledge and counselor practices related to reasonable accommodations in the workplace for individuals with significant neurological impairments.

Research Questions:

1. What are the characteristics of VR counselors who serve individuals with neurological impairments in AL?
2. To what extent do VR counselors perceive themselves as knowledgeable about reasonable accommodations in the workplace?
3. To what extent do VR counselors perceive themselves as effective practitioners related to providing reasonable accommodations in the workplace?
4. What requirements should be included in a decision-making model for reasonable accommodations in the workplace for eligible individuals with disabilities?

- b. How will the results of this project be used? (e.g., Presentation? Publication? Thesis? Dissertation?)

This will be used as a presentation and dissertation.

10. KEY PERSONNEL. Describe responsibilities. Include information on research training or certifications related to this project. CITI is required. Be as specific as possible. (Include additional personnel in an attachment.) *All key personnel must attach CIT/certificates of completion.*

Principle Investigator Graham L. Sisson, Jr. Title: PhD Candidate E-mail address sisso9l@auburn.edu

Dept / Affiliation: Special Ed. & Rehab.

Roles / Responsibilities:

The PI's roles and responsibilities are to submit the questionnaire to the targeted population of vocational rehabilitation counselors who service those with significant disabilities or other mobility impairments such as paraplegia, quadriplegia, multiple sclerosis, etc. The PI will assist Dr. Kraska in the research design, implementation, data analysis, and reporting, following the direction of the major professor, Dr. Everett Martin.

Individual: Dr. Davis E. Martin Title: Dist. Professor E-mail address martiev@auburn.edu

Dept / Affiliation: Major Professor

Roles / Responsibilities:

Overall guidance and direction for the study.

Individual: Dr. Marie Kraska Title: Dist. Professor E-mail address kraskmf@auburn.edu

Dept / Affiliation: E.F.L.T

Roles / Responsibilities:

Assist in research design, implementation, data analysis and reporting.

Individual: \_\_\_\_\_ Title: \_\_\_\_\_ E-mail address \_\_\_\_\_

Dept/Affiliation: \_\_\_\_\_

Roles / Responsibilities:

Individual: \_\_\_\_\_ Title: \_\_\_\_\_ E-mail address \_\_\_\_\_

Dept/Affiliation \_\_\_\_\_

Roles / Responsibilities:

Individual: Title: E-mail address \_\_\_\_\_

Dept / Affiliation: \_\_\_\_\_

Roles / Responsibilities:

11. LOCATION OF RESEARCH. List all locations where data collection will take place. (School systems, organizations, businesses, buildings and room numbers, servers for web surveys, etc.) Be as specific as possible. Attach permission letters in Appendix E. (See sample letters at <http://www.auburn.edu/research/vpr/ohs/sample.htm>)

State of Alabama Vocational Rehabilitation Offices.

12. PARTICIPANTS.

- a. Describe the participant population you have chosen for this project including inclusion or exclusion criteria for participant selection.

Check here if using existing data, describe the population from whom data was collected, & include the# of data files.

Participants for this study will be vocational rehabilitation counselors employed by the Alabama Department of Rehabilitation Services and assigned to one of the 14 Service Units within the state of Alabama. Only those counselors who serve persons with spinal cord injuries and other similar neurological impairments will be included in the participant population.

- b. Describe, step-by-step, in layman's terms, all procedures you will use to recruit participants. *Include in Appendix B a copy of all e-mails, flyers, advertisements, recruiting scripts, invitations, etc., that will be used to invite people to participate. (See sample documents at <http://www.auburn.edu/research/vpr/ohs/sample.htm>.)*

1. Obtain email addresses from the Alabama Department of Rehabilitation Services for vocational rehabilitation counselors who serve persons with spinal cord injuries and other similar neurological impairments.
2. Contact each Unit supervisor and designated counselors via email to request 20 to 25 minutes at their monthly staff meeting to present and explain the Information Letter and the purpose of the study.
3. When the researcher receives permission to meet with the counselors, he will remind them that participation is completely voluntary and participation may be withdrawn at any time.
4. The invitation to participate will inform participants that their responses will be anonymous and confidential. All participants will be instructed to place their questionnaire (whether complete or incomplete) in an unmarked envelop which will be given to their unit supervisor. The researcher will collect the questionnaires, each in an unmarked envelop, and take them to his office and store them in a locked file cabinet for analysis when all questionnaires for the 14 Units in Alabama have been collected.

- c. What is the minimum number of participants you need to validate the study? 45  
How many participants do you expect to recruit? 90  
Is there a limit on the number of participants you will include in the study?  No  Yes- the# is \_\_\_\_\_

- d. Describe the type, amount and method of compensation and/or incentives for participants.

(If no compensation will be given, check here:  )

Select the type of compensation:  Monetary  Incentives

- Raffle or Drawing incentive (Include the chances of winning.)
- Extra Credit (State the value)
- Other

Description:



13. PROJECT DESIGN & METHODS.

- a. Describe, step-by-step, all procedures and methods that will be used to consent participants. If a waiver is being requested, check each waiver you are requesting, describe how the project meets the criteria for the waiver.

- Waiver of Consent (including using existing data)  
 Waiver of Documentation of Consent (use of Information Letter)  
 Waiver of Parental Permission (for college students)

- b. Describe the research design and methods you will use to address your purpose. Include a clear description of when, where and how you will collect all data for this project. Include specific information about the participants' time and effort commitment. (NOTE: Use language that would be understandable to someone who is not familiar with your area of study. Without a complete description of all procedures, the Auburn University IRB will not be able to review this protocol. If additional space is needed for this section, save the information as a .PDF file and insert after page 7 of this form.)

Research design. This will be a status study using a survey research design to ascertain vocational rehabilitation counselors' knowledge and practices related to reasonable accommodations in the workplace for individuals with spinal cord and other neurological disabilities.

Methods. The methods for the study will involve an email to counselors and their supervisors requesting time at their staff meeting to present the Information Letter requesting counselor participation and administering the questionnaire.

When: Data will be collected between March 1, 2016, and May 1, 2016.

Where: Data will be collected at each individual Vocational Rehabilitation Services offices for each of the 14 units in Alabama. The 14 units are located throughout the state of Alabama.

How: Data will be collected using a paper-pencil questionnaire that will be administered to the counselors in person by the researcher.

Participant time and effort commitment. The questionnaire should take participants no longer than 20 to 30 minutes to complete with minimum effort. Each question requires that participants select only one response.

13. PROJECT DESIGN & METHODS. *Continued*

- c. List all data collection instruments used in this project, in the order they appear in Appendix C. (e.g., surveys and questionnaires in the format that will be presented to participants, educational tests, data collection sheets, interview questions, audio/video taping methods etc.)

Counselor Knowledge and Practices Related to Reasonable Accommodations

- d. Data analysis: Explain how the data will be analyzed.

Descriptive statistics will be calculated for all research questions. A one-sample t-test will be used to respond to research questions two and three. A theme analysis of related literature and research and responses to the Counselor Knowledge and Practices Related to Reasonable Accommodations questionnaire will be used to respond to research question four.

14. RISKS & DISCOMFORTS: List and describe all of the risks that participants might encounter in this research. *If you are using deception in this study, please justify the use of deception and be sure to attach a copy of the debriefing form you plan to use in Appendix D. (Examples of possible risks are in section #60 on page 2)*

No risks or discomforts are anticipated with participation in this project.

15. PRECAUTIONS. Identify and describe all precautions you have taken to eliminate or reduce risks as listed in #14. If the participants can be classified as a "vulnerable" population, please describe additional safeguards that you will use to assure the ethical treatment of these individuals. Provide a copy of any emergency plans/procedures and medical referral lists in Appendix D. (Samples can be found online at <http://www.auburn.edu/research/vpr/ohs/sample.htm#precautions>)

All data from this project will be protected with state-of-the art technology, and confidentiality will be protected by de-identifying all the data collected. Participants will be instructed not to sign their name on the questionnaire. Data will be stored on the researcher's password protected computer in his locked office. Only the researcher has the password to his computer. Only the researcher and office manager have a key to his office. Hard copies of the questionnaire will be stored in the researcher's locked office in a locked file cabinet. Only the researcher and office manager have a key to the file cabinet where the data will be stored. Data will be analyzed in aggregate form only.

If using the Internet or other electronic means to collect data, what confidentiality or security precautions are in place to protect (or not collect) identifiable data? Include protections used during both the collection and transfer of data.

NA.

16. BENEFITS.

- a. List all realistic direct benefits participants can expect by participating in this specific study.  
(Do not include "compensation" listed in #12d.) Check here if there are no direct benefits to participants. IZI

Benefits to participants may be that results of the study can increase their knowledge about reasonable accommodations, which in turn, can result in more effective and efficient use of reasonable accommodations by counselors in securing employment for their clients with disabilities.

- b. List all realistic benefits for the general population that may be generated from this study.

No realistic benefits to the general population.

17. PROTECTION OF DATA.

a. Data are collected:

Anonymously with no direct or indirect coding, link, or awareness of who participated in the study (Skip to e)

Confidentially, but without a link of participant's data to any identifying information (collected as "confidential" but recorded and analyzed as "anonymous") (Skip to e)

Confidentially with collection and protection of linkages to identifiable information

b. If data are collected with identifiers or as coded or linked to identifying information, describe the identifiers collected and how they are linked to the participant's data.

c. Justify your need to code participants' data or link the data with identifying information.

d. Describe how and where identifying data and/or code lists will be stored. (Building, room number?) Describe how the location where data is stored will be secured in your absence. For electronic data, describe security. If applicable, state specifically where any IRS-approved and participant-signed consent documents will be kept on campus for 3 years after the study ends.

e. Describe how and where the data will be stored (e.g., hard copy, audio cassette, electronic data, etc.), and how the location where data is stored is separated from identifying data and will be secured in your absence. For electronic data, describe security

Data will be stored in the researcher's locked office on his password protected computer. Only the researcher and the office manager have a key to his office. Only the researcher has the password to his computer. Hard copies of the questionnaire will be stored in the researcher's locked office in a locked file cabinet.

f. Who will have access to participants' data?

*(The faculty advisor should have full access and be able to produce the data in the case of a federal or institutional audit.)*

Dr. Martin, advisor.

Dr. Kraska, methodologist.

g. When is the latest date that identifying information or links will be retained and how will that information or links be destroyed? (Check here if only anonymous data will be retained )



Memo Outlining Changes I made - including the IRB's comments

TO: IRB Administration  
FROM: Graham Sisson  
CC: Everett Martin  
Subject: "Revisions for protocol #16-041, Sisson "

Protocol title: "Knowledge and Practices of Vocational Rehabilitation Counselors Related to Reasonable Accommodations to Increase the Employment of Persons with Disabilities  
Protocol review request, #16-041

The IRB's comments are as follows:

*"10. What are the PI's Roles/Responsibilities?"*

*13.a. Ask for a waiver of documentation of consent to use an Information Letter, but you provide an Informed Consent document to sign. An Information Letter is appropriate in this case if it will be the only document that contains a participant's name.*

*16.b. If there are no benefits to participants or to any segment of society, then what is the rationale for your study?*

*Informed Consent:*

*State that time to complete the survey is 20-30 minutes. In 13.b. you stated less than 15 minutes. Just need to be consistent."*

This is in response to IRB comments received by PI on 3/18/16.

10. The PI's roles and responsibilities are to submit the questionnaire to the targeted population of vocational rehabilitation counselors who service those with significant disabilities or other mobility impairments such as paraplegia, quadriplegia, multiple sclerosis, etc. The PI will assist Dr. Kraska in the research design, implementation, data analysis, and reporting, following the direction of the major professor, Dr. Everett Martin.

13a. Will use the attached Information Letter.

16b. Benefits to participants may be that results of the study can increase their knowledge about reasonable accommodations, which in turn, can result in more effective and efficient use of reasonable accommodations by counselors in securing employment for their clients with disabilities.

Informed consent: Stated time to complete the survey is 20 – 30 minutes. 13(b) is worded to reflect a completion time of 20-30 minutes.

APPENDIX B  
LETTER OF CONSENT



**AUBURN**  
UNIVERSITY

DEPARTMENT OF  
SPECIAL EDUCATION,  
REHABILITATION, AND COUNSELING

The Auburn University Institutional  
Review Board has approved this  
Document for use from  
04/24/2016 to 04/23/2017  
Protocol # 16-041 EP 1604

(NOTE: DO NOT AGREE TO PARTICIPATE UNLESS AN IRB APPROVAL STAMP WITH CURRENT DATES HAS BEEN APPLIED TO THIS DOCUMENT.)

**INFORMATION LETTER**

**for a Research Study entitled**

***“ Knowledge and Practices of Vocational Rehabilitation Counselors Related to Reasonable Accommodations to Increase the Employment of Persons with Disabilities ”***

You are invited to participate in a research study to identify the level of current knowledge and practices of vocational rehabilitation (VR) counselors related to reasonable accommodations in the workplace for individuals with significant neurological impairments. Specifically, the purpose and objectives of this study is to identify characteristics of counselors, their perceptions of their own knowledge and effectiveness of their practices, and requirements that are important in a decision-making model for reasonable accommodations in the workplace for eligible individuals with disabilities. The study is being conducted by Graham Sisson, doctoral student, under the direction of Dr. Everett Martin, Department Head, in the Auburn University Department of Special Education, Rehabilitation, and Counseling. You are invited to participate because you are a vocational rehabilitation counselor working with individuals who need accommodations in the workplace and are age 19 or older.

If you decide to participate in this research study, you will be asked to complete a 38-item questionnaire. Your total time commitment will be approximately 20 to 30 minutes. There are no foreseeable risks or discomforts associated with participating in this study. If you participate in this study, your feedback can be helpful to improving services for individuals with significant neurological impairments who need reasonable accommodations in the work place.

You will receive no compensation for participating in this study.

There are no costs to you for participating in this study.  
All participants will be asked if they would like a copy of the results.

If you change your mind about participating, you can withdraw at any time during the study by depositing your anonymous survey form in an envelope provided by the researcher. Your participation is completely voluntary. If you choose to withdraw, your data can be withdrawn as long as it is identifiable. Your decision about whether or not to participate or to stop participating will not jeopardize your future relations with Auburn University, the Department of Special Education, Rehabilitation, and Counseling or any of its programs, or any other Auburn University Department or Unit with which you may be affiliated, or the Alabama Department of Rehabilitation Services (ADRS).

Page 1 of 2

Any data obtained in connection with this study will remain anonymous. We will protect your privacy and the data you provide indefinitely. Only aggregate data will be analyzed. No individual data will be analyzed. Information collected through your participation may be used to fulfill an educational requirement, published in a professional journal, and/or presented at a professional meeting or conference.

If you have questions about this study, *please ask them now* or contact Graham Sisson, at (205) 290-4540, or email to [Graham.Sisson@rehab.alabama](mailto:Graham.Sisson@rehab.alabama) or Dr. Everett Martin at (334) 844-7685 or email to [martiev@auburn.edu](mailto:martiev@auburn.edu).

If you have questions about your rights as a research participant, you may contact the Auburn University Office of Research Compliance or the Institutional Review Board by phone (334)-844-5966 or e-mail at [IRBAdmin@auburn.edu](mailto:IRBAdmin@auburn.edu) or [IRBChair@auburn.edu](mailto:IRBChair@auburn.edu).

HAVING READ THE INFORMATION PROVIDED, YOU MUST DECIDE IF YOU WANT TO PARTICIPATE IN THIS RESEARCH PROJECT. IF YOU DECIDE TO PARTICIPATE, THE DATA YOU PROVIDE WILL SERVE AS YOUR AGREEMENT TO DO SO. THIS LETTER IS YOURS TO KEEP.

*Graham Sisson*

March 4, 2016

Investigator's signature Date

Graham Sisson

Print Name

Co-Investigator Date

Printed Name

The Auburn University Institutional  
Review Board has approved this  
Document for use from  
04/24/2016 to 04/23/2017  
Protocol # 16-041 EP 1604

Page 2 of 3

APPENDIX C  
RESEARCH INSTRUMENT

Counselor Knowledge and Practices Related to Reasonable Accommodations

1. How knowledgeable are you about reasonable accommodation?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
2. How knowledgeable are you about the importance of reasonable accommodation for consumers with disabilities in terms of obtaining a job or employment?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
3. How knowledgeable are you about the different types of reasonable accommodations on the job?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
4. How knowledgeable are you about a consumer's or person with a disability's right to request accommodation for the interview or application process?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
5. How knowledgeable are you about what a consumer with a disability must say or do to successfully obtain reasonable accommodation?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
6. How knowledgeable are you about the limitations on an employer's duty to reasonably accommodate an individual with a disability?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
7. How knowledgeable are you about the interactive process?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable



8. How often have you assisted a consumer in using the interactive process to obtain reasonable accommodation?
  - a. Very often
  - b. Somewhat often
  - c. Not very often
  - d. Never
9. How knowledgeable are you about undue hardship?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
10. How knowledgeable are you about the factors used to prove undue hardship?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
11. How knowledgeable are you about essential functions?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
12. How knowledgeable are you about items or factors that can be used to prove or demonstrate essential functions?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
13. How knowledgeable are you about direct threat?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
14. How knowledgeable are you about whether safety can be a factor in the determination of reasonable accommodations?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
15. How knowledgeable are you about whether a consumer can be forced to take medication or use a personal device in lieu of being reasonably accommodated by the employer?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable

- d. Not at all knowledgeable
16. How often do you discuss reasonable accommodations with the consumer?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  17. How often do you receive training on reasonable accommodations?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  18. How often do you perceive that consumer requests for accommodations are reasonable?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  19. How often do you perceive that consumers know which accommodations they need?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  20. How often do you perceive that consumers understand their role in requesting accommodations?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  21. How often do you perceive that consumers understand what should be included in a reasonable accommodation request?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  22. How often have you assisted a consumer in obtaining documentation to support a reasonable accommodation request?
    - a. Very often
    - b. Somewhat often
    - c. Not very often
    - d. Never
  23. How often do you perceive that consumers understand limitations on reasonable accommodations?
    - a. Very often
    - b. Somewhat often
    - c. Not very often



- d. Never
24. How knowledgeable are you about the agency's reasonable accommodation worksheet?
- a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
25. How often have you successfully assisted a consumer in obtaining reasonable accommodation?
- a. Very often
  - b. Somewhat often
  - c. Not very often
  - d. Never
26. How knowledgeable are you about job restructuring as a reasonable accommodation?
- a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
27. How often have you assisted the consumer in obtaining job restructuring as a reasonable accommodation?
- a. Very often
  - b. Somewhat often
  - c. Not very often
  - d. Never
28. How knowledgeable are you about reasonable modification of policy as a reasonable accommodation?
- a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
29. How often have you utilized reasonable modification of policy in helping a consumer obtain this accommodation?
- a. Very often
  - b. Somewhat often
  - c. Not very often
  - d. Never
30. How knowledgeable are you about what policies could be reasonably modified?
- a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
31. How knowledgeable are you about attendance as an essential function of the job?
- a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable

32. How knowledgeable are you about the ability to waive no fault attendance policies as an accommodation?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
33. How knowledgeable are you about whether an essential function can be eliminated as a reasonable accommodation?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
34. How knowledgeable are you about non-financial factors as a basis for undue hardship?
  - a. Very knowledgeable
  - b. Somewhat knowledgeable
  - c. Not very knowledgeable
  - d. Not at all knowledgeable
35. What is your age group?
  - a. 17-30
  - b. 31-40
  - c. 41-50
  - d. 51+
36. What is your gender?
  - a. Male
  - b. Female
  - c. Other
37. How many years have you worked in this industry?
  - a. 0-9
  - b. 10-19
  - c. 20-29
  - d. 30+
38. What is your ethnicity?
  - a. Black
  - b. White
  - c. Other
  - d. Prefer not to answer