

Workplace Discrimination and the Perception of Disability

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William R. Draper¹, Christine A. Reid¹, and Brian T. McMahon¹

Abstract

This article documents the employment discrimination experienced by Americans “regarded as” disabled (but not medically verified as such), using the Integrated Mission System of the U.S. Equal Employment Opportunity Commission (EEOC). Claimants who were perceived as disabled, as contrasted with those with documented disabilities, were more likely to file charges of discrimination based on the issues of discharge or hiring. Decisions by the EEOC in favor of claimants perceived to have disabilities disproportionately exceeded those in favor of claimants with documented disabilities. This finding lends support to the assertion that unconscious/implicit bias is persistent in the workplace.

Keywords

workplace discrimination, perceived disabilities, implicit bias

In 1990, the U.S. Congress passed the Americans with Disabilities Act (ADA), a landmark piece of legislation that prohibits discrimination against qualified individuals with disabilities (McMahon, Edwards, Rumrill, & Hursh, 2005). The main focus in the workplace discrimination literature has been on documented disabilities, but the ADA has two other definitional categories, or “prongs,” namely, “record of” (referring to those who have a record of having a disability in the past) and “regarded as” (referring to those who have been perceived as disabled by employers). The ADA Amendments Act of 2008 revised the law so that (Larson, 2008)

it no longer requires showing that the employer perceived the individual to be *substantially limited in a major life activity*, and instead said 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. (p. 466)

Earlier, a sort of “Catch-22” situation prevailed, in which employees lost their jobs due to being considered disabled but usually could not get justice in the courts, which considered them not disabled since they were seen as “generally” functional and thus employable elsewhere. This was summed up by Arlene B. Mayerson (n.d.), an attorney at the Disability Rights Education and Defense Fund (DREDF), as follows:

Hence, an employer may refuse to hire or fire someone because of their disability, and actually defeat

coverage by showing that other employers have less discriminatory job requirements. Substitute any other protected group to the analysis and the absurd result is patently clear. We don’t hire Jews, but all our competitors do.

Cases of discrimination against individuals regarded as disabled may demonstrate automatic stereotyping of employees and applicants. However, this is not necessarily a conscious, deliberate process.

Theoretical Constructs

Evidence of negative attitudes toward people with disabilities has a long history, exemplified by the ancient Greek and Roman practice of infanticide for those born with the appearance of disability (Rubin & Roessler, 2008). Although attitudes toward disability have evolved over time, there is still evidence that people with disabilities are stigmatized and experience discrimination (Antonak & Livneh, 2000; Au & Man, 2006). Whereas *stigma theory* can explain the conscious prejudice against groups or individuals labeled deviant in some fashion (Goffman, 1963; Link & Phelan, 2001), *causal attribution theory* can explain unconscious bias in the causes assigned to the conduct of another person

¹Virginia Commonwealth University, Richmond, Virginia, USA

Corresponding Author:

Christine A. Reid, VCU Department of Rehabilitation Counseling,
730 East Broad Street, Room 3061, P.O. Box 980330, Richmond,
VA 23298-0330, USA
Email: creid@vcu.edu

(Hewstone, 1989; Travis, 2002). There is theoretical overlap because automatic, unconscious prejudice assumes the existence of stigma in the first place. Attempts among the general populace to avoid dysfunctional information overload from a highly complex, technological society have led to increasing reliance on cognitive “shortcuts.” Instead of thinking through a situation requiring a judgment, snap decisions are made based on what comes immediately to mind. Although heuristics (rules of thumb) are generally efficient, they sometimes result in perceptual errors.

Contemporary stigma theory is usually traced back to the work of Goffman (1963), who defined *stigma* as “the phenomenon whereby an individual with an attribute is deeply discredited by . . . society [and] is rejected as a result of the attribute. [It] is a process by which the reaction of others spoils normal identity” (p. 3). Scambler (2009) recommended that stigma also be analyzed more broadly in terms of social macro-structure and political economy.

In the same spirit of conceptual integration, Pescosolido, Martin, Long, and Olafsdottir (2008) proposed that different levels of social life are involved in the process of stigmatization including *micro*, psychological and sociocultural factors at the individual level; *meso*, social network or organizational factors; and *macro*, society-wide factors. Thornicroft, Rose, Kassam, and Sartorius (2007) criticized the bulk of previous stigma research for a failure to focus on discrimination and human rights: “Instead of asking an employer whether he or she would hire a person with mental illness, we should assess whether he or she actually does” (p. 193). Some Dutch researchers (Heijnders & van der Meij, 2006) have argued that multilevel interventions show the most promise for reducing health-related stigma and discrimination, stating, “Reviewed studies showed that a combination of counseling, education and contact are very promising” (p. 361).

Link and Phelan (2001) wrote that “stigma exists when elements of labeling, stereotyping, separating, status loss, and discrimination co-occur in a power situation that allows these processes to unfold” (p. 364). They stressed the role of stigma in the emergence (or not) of life chances, the opportunities to realize one’s potential, in given individuals. For stigma to be reduced, interventions must be chosen that change either attitudes or the circumstances of power relations. Beyond legal mechanisms, control over media images would likely play a part.

A distinction should be noted here between *stigma* and an observable difference in performing *essential job functions*. The designation of stigma applies only in situations where the impairment is not a barrier to proper job performance. For example, a runway model with a limp provides an employer with a legitimate argument against employment (at least temporarily), whereas a runway model with a stutter would be experiencing stigma if denied work because of it. Skillful gait is a fundamental of this particular job;

skillful speech is not. It would be discriminatory and stigmatizing of people with speech impediments to refuse to hire the latter model on the basis of a quality that is not essential to that job (EEOC, 2005).

It has been stated in the legal literature that implicit bias against people with disabilities is one of the strongest in American society (Larson, 2008). This is one of the conclusions from Harvard’s Project Implicit, initiated by psychologist Anthony Greenwald and colleagues, which has received a considerable amount of publicity in recent years for its controversial test of unconscious social group preferences, the *Implicit Association Test* (IAT; Greenwald & Krieger, 2006). Differential response times taken to react to psychologically significant words and images are supposed to indicate prejudice, with the data suggesting, for example, that most people have a slight preference for their own race, although critics argue that the test merely reflects familiarity. Evidence for implicit psychological phenomena in general is considerable (Epstein, 1994; Kihlstrom, 1987; Shevlin, 1996; Westen, 1999). In addition, Bargh and Williams (2006) elaborated on the notion of “social automaticity,” an unconscious automatic stereotyping of those who deviate even slightly from an idea of anatomical or functional “normality.” As the creators of the IAT observed, “Unlike the Freudian revolution . . . the new science of unconscious mental processes is not the product of a single brilliant theoretical mind. Rather, it is being constructed from an evolving, accumulating body of reproducible research findings” (Greenwald & Krieger, 2006). But if the IAT is a valid measure, as Jolls and Sunstein (2006) in a recent symposium on law and psychology have noted, “Implicit bias poses a special challenge for antidiscrimination law because it suggests the possibility that people are treating others differently even when they are unaware that they are doing so.” This ties in with causal attribution theory’s emphasis on unconscious acts of discrimination. Larson (2008) noted in reference to a follow-up study on the IAT that

disability bias had the second weakest correlation between implicit and explicit attitudes, meaning that people are particularly unwilling to admit—or more likely, are unaware of—their implicit bias against individuals with disabilities. . . . Only attitudes based on age . . . showed more implicit bias than attitudes toward those with disabilities. (p. 466)

The social psychological dynamics demonstrated in the implicit bias studies are related to the problems of individuals regarded as disabled, because employers in these cases are often making workplace decisions without being conscious of how they are doing it.

To compound the obstacle of discrimination against those who have verified disabilities, there exists discrimination based on mere perception that a person has a disability

(Larson, 2008). There are two heuristics, or mental shortcuts for decision making, that have been discussed in the disability context (Larson, 2008; Travis, 2002). First, there is the “faulty representation” that any level of impairment is interpreted as indicative of disability. The prospect of a more realistic, nuanced spectrum of impairment is not considered (Tversky & Kahneman, 1974). Second is the “availability heuristic,” an error of facile recall; ongoing observation of the impaired employee tends to amplify the impairment’s severity in the employer’s mind (Travis, 2002).

Several other researchers have linked perceived disabilities and social cognition. How do people explain social events and essentially “peg” others? Arguing for the relevance of causal attribution theory in the disability context, Travis (2002) described the automatic and often unconscious quality of such attributions: “Perceived disabilities indeed may result from nonmotivational mistakes. . . . [They] can have purely cognitive origins, independent from invidious prejudice or other forms of group-based decision making, and . . . these types of errors may be a fairly common event” (pp. 491–492). The judging person is not motivated by conscious, emotional prejudice but is making decisions automatically and unconsciously, guided by rules of thumb informed by stereotypical assumptions about the behavior of a given group of people, in this case, people with disabilities. This point is worth emphasizing because of the prevalent association of unconscious mental phenomena with emotionalism. However, most of the biases discussed in the workplace context concerning causal attribution theory may not be so emotionally charged but, rather, dispassionate, “behind-the-scenes” calculations of business utility. Although some unconscious actions can be prompted by “subterranean” affect (Westen, 1999), the general consensus among behavioral scientists is that most of implicit phenomena is largely cognitive in nature (Kihlstrom, 2000). As often as not, the implicit biases operative in employer decision making are likely to be due to “innocent mistakes” not reflecting any ill will or “animus” in the legal arena (Travis, 2002; Tversky & Kahneman, 1974).

Also, causal attribution theory is not always applicable to the workplace situations discussed here. Some cases of discrimination will not necessarily be due to unconscious factors. Sometimes, simple ignorance of the ADA, especially in the smaller companies, or other “surface” motivations will account for the employer behavior. However, much of the social cognition literature of the past 25 years (see Bargh & Morsella, 2008, for overview) strongly suggests a prevalence of implicit bias that needs to be addressed in a psycho-educational intervention along with standard education about the ADA and related matters. The concept of an “impairment spectrum,” a continuum of severity for impairment, could be part of such an intervention to discourage employers from relying on deleterious, automatically generated stereotypes when making decisions about people with disabilities.

Before examining the data on the discrimination experience of people *perceived* to have disabilities, and to provide context for the present study, it is important to recognize the discrimination experienced by people with *documented*, or “actual,” disabilities. Previous research has documented workplace discrimination experienced by people with numerous diagnoses, including cancer (McKenna, Fabian, Hurley, McMahon, & West, 2007), traumatic brain injury (McMahon, West, Shaw, Waid-Ebbs, & Belongia, 2005), disfigurement (Tartaglia, McMahon, West, & Belongia, 2005), HIV/AIDS (Conyers, Boomer, & McMahon, 2005), hearing impairment (Bowe, McMahon, Chang, & Louvi, 2005), and autism (Van Wieren, Reid, & McMahon, 2008). In general, only one in five of these cases has resulted in a resolution favorable for the charging party. These documentations of disability in the context of workplace discrimination are part of a national Equal Employment Opportunity Commission/Americans with Disabilities Act (EEOC ADA) research project, described in McMahon, Edwards, et al. (2005).

The present study used records extracted from a “master database” of more than two million allegations in the Integrated Mission System (IMS) of the EEOC. This database includes all ADA-related discrimination complaints filed from July 26, 1992, through December 31, 2008. Within the database, each allegation was the unit of study; confidentiality was protected through purging of personal identifiers, both for charging parties and for employers. Only allegations related to ADA Title I employment provisions were included. Allegations filed on the basis of other employment statutes that vary by jurisdiction were excluded. Only allegations closed in the study period were included; allegations still under investigation were excluded from analyses.

The database for the study includes 338,861 allegations made by people who claim to have documented disabilities (DOCDIS) as defined by the first part of the ADA definition of disability, as well as 34,222 allegations made by people who claimed to have perceived disabilities as defined by the regarded as disabled (REGAS) definition of the ADA.

Little was previously known about employment discrimination against individuals perceived to be disabled (as contrasted with those who are documented as having disabilities). The purpose of this study was to determine if EEOC claims for people with documented disabilities differed from claims made by people regarded as disabled, including analysis of demographic variables such as age, gender, and race of the Charging Parties (CP); employer variables such as geographical region of filing, size of company, and industry type; issues (nature of discrimination claimed); and outcomes of cases. Specifically, the essential research questions are as follows:

Research Question 1: How do the demographic characteristics of individuals filing EEOC allegations

differ between people who have documented disabilities (DOCDIS) and people regarded as disabled (REGAS)?

Research Question 2: How do the characteristics of the Respondents (R), that is, the employers responding to the allegations, differ between cases for DOCDIS and those for REGAS, considering variables of industry type, company size, and regional location?

Research Question 3: How do the Issues, claims of objectionable employer actions, differ between cases for DOCDIS and REGAS?

Research Question 4: How were the cases resolved: without merit (favoring R) or with merit (ruling in favor of CP, the worker or job applicant)?

Method

Analysis

This study used a retrospective quantitative design. Following a presentation of descriptive statistics, proportion computations were made for the variables of allegation and merit resolution employing SPSS 17.0 (Statistical Package for the Social Sciences, 2008). The same program was used for other comparisons between allegations of discrimination against people with documented disabilities and allegations of discrimination against people regarded as having disabilities.

Results

Findings Concerning Allegations

The Integrated Mission System database of the EEOC does not provide information about specific perceived disabilities; they are all coded as one "regarded as" category. The overwhelming majority of REGAS (perceived disability) cases, about four-fifths, were resolved in favor of the employer. Following are the characteristics of the Charging Parties and the Respondents on discrimination issues, and findings pertaining to resolutions.

Characteristics of Charging Parties

The first research question addresses demographic characteristics of the Charging Parties. A typical employee charging workplace discrimination on the basis of perceived disability is a male aged 50 or older. Compared to male claimants in DOCDIS, there were proportionately fewer White males, but proportionately more Hispanic males, filing claims for REGAS. There is a statistical difference with regard to gender and age between claims for REGAS over DOCDIS, with the former having a greater

Table 1. Characteristics of Charging Parties

Characteristic	REGAS		DOCDIS	
	Frequency	Percentage	Frequency	Percentage
Gender				
Male	20637	53.3%	173416	51.2%
Female	17723	45.8%	163733	48.3%
Age				
<50	24612	68.4%	213188	70.2%
≥50	11352	31.6%	90384	29.8%
Ethnicity				
Asian	436	1.1%	3496	1.0%
AfricAm	6582	17.0%	61435	18.1%
Hisp	2265	5.8%	18425	5.4%
Mixdethn	6	0.0%	203	0.1%
NativAm	199	0.5%	1990	0.6%
White	19878	51.3%	188952	55.8%
Other	2304	6.0%	25201	7.4%
Unknwn	7049	18.2%	39142	11.6%

Note: $p < .001$. AfricAm = African American; Hisp = Hispanic/Mexican; Mixdethn = mixed race; NativAm = Native American/Alaskan Native; Unknwn = 4 "null" categories merged. REGAS = regarded as disabled/perceived disability cases; DOCDIS = documented/"actual" disability cases. Missing values are not presented in this table.

Table 2. Number of Employees

Case	15–100	101–200	201–500	500+	Other	Unknown
REGAS	12710 32.8%	4368 11.3%	4326 11.2%	15407 39.8%	1593 4.1%	287 0.7%
DOCDIS	104841 30.9%	38131 11.3%	35623 10.5%	141196 41.7%	16868 5.0%	1886 0.6%

Note: $p < .001$. REGAS = regarded as disabled/perceived disability cases; DOCDIS = documented/"actual" disability cases.

proportion of males and people aged 50 or older. For gender, $X^2(2, N = 377,580) = 190.129$; $p < .001$; $d = .04$. The results for age (≤ 50) are $X^2(1, N = 377,580) = 49.172$; $p < .001$; $d = .09$. (See Table 1 for demographic information, i.e., age, gender, and race of workers filing discrimination claims.)

Characteristics of Respondents

The second research question addresses industry type, company size, and regional location. Although proportionately more DOCDIS claimants than REGAS claimants (41.7% vs. 39.8%) filed claims in larger companies (500+), there was a significant difference favoring REGAS claimants in smaller (15–100) companies (32.8% for REGAS vs. 30.9% for DOCDIS), $X^2(6, N = 377,580) = 158.83$; $p < .001$; $d = .04$. (See Table 2 for information on company size.)

Table 3. Geographical Region Where Claims Were Filed

Case	Northeast	Midwest	South	West	Other
REGAS	2643 6.8%	6831 17.6%	13132 33.9%	5541 14.3%	77 0.2%
DOCDIS	32135 9.5%	84497 24.9%	113824 33.6%	49979 14.7%	1168 0.3%

Note: $p < .001$. Northeast = Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, Pennsylvania; Midwest = Indiana, Illinois, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; South = Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Texas, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma; West = Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, Wyoming, Alaska, California, Hawaii, Oregon, Washington; Other = U.S. territories and foreign countries. Missing values are not presented in this table. REGAS = regarded as disabled/perceived disability cases; DOCDIS = documented/"actual" disability cases.

Regional differences in the percentage of claims filed are proportionately greater for DOCDIS claimants in all regions but the South, where there were 33.9% of the claims for REGAS versus 33.6% for DOCDIS, $X^2(6, N = 377,580) = 3076.583$; $p < .001$; $d = .18$. (See Table 3 for information on regional distribution of companies.)

For industry types, as organized by the North American Industry Classification System (NAICS), there were also statistically significant differences, with the REGAS claimants proportionately higher than DOCDIS in Transportation, followed by Manufacturing and then Construction: $X^2(100, N = 377,580) = 1237.029$; $p < .001$; $d = .11$. The chi-square value for the type of industry incorporates data from all Industry types in the NAICS of the EEOC, not just the selected items in the table. (See Table 4 for information on industry type.)

Discrimination Issues

The third research question addresses the nature of the discrimination alleged to occur, that is, the Issues, as defined by the U.S. Equal Employment Opportunities Commission (2003). There were also statistically significant differences in the Issues, with REGAS claims being proportionately higher than DOCDIS with regard to Discharge ("involuntary termination of employment status on a permanent basis"), followed by Hiring ("failure by an employer to engage a person as an employee"), then Reinstatement ("failure of an employer to reinstate a person as an employee"). DOCDIS was proportionately higher in Reasonable Accommodations ("Respondent fail[ure] to provide reasonable accommodation to known physical/mental limitations of qualified person with a disability"), followed by Harassment ("antagonism in non-employment situations or settings"), then Discipline

("assessment of disciplinary action against an employee"), $X^2(41, N = 377,580 = 5216.792)$; $p < .001$; $d = .23$. (See Table 5 for information on workplace issues.)

Findings Concerning Resolutions

The fourth research question addresses how the cases were resolved. Here again, there were differences: Merit resolutions for REGAS proportionately exceeded those for DOCDIS by a statistically significant margin (26.2% vs. 22.5%): $X^2(13, N = 377,580 = 637.383)$; $p < .001$; $d = .08$. (See Table 6 for information on case resolutions.)

The largest effect sizes (d) for the variables studied were as follows: 0.23 for Issue, 0.18 for Census Region (CENREG), 0.12 for Race, and 0.11 for Industry Type (NAICS).

Discussion

Our research provides evidence that part of discrimination is stigma-based rather than associated with any meaningful functional differences in worker capability. This is seen most clearly in the finding concerning case resolutions: The merit resolutions for REGAS disproportionately exceeded those for DOCDIS by a statistically significant margin of 3.7% (i.e., 26.2% for the former vs. 22.5% for the latter). This speaks to an ongoing need for the overcoming of stereotypes. It can, in Goffman's (1963) terms, "spoil normal identity" to judge a person with a minor impairment as disabled and perpetrate discrimination in the workplace on that basis (Goffman, 1963). Such stigmatic labeling reduces the societal opportunities of the worker in question by reducing him or her to putatively dysfunctional and non-productive second-class status (Link & Phelan, 2001). Causal attribution theory explains the greater percentage of merit resolutions for REGAS by positing a widespread tendency in this society to make automatic, unconscious judgments, judgments that are often erroneous because they are based on simplistic assumptions (Hewstone, 1989).

In the descriptive statistics, one contrast that may be of practical significance is how proportionately fewer Caucasians/Whites filed perceived disability claims, compared with Whites in the DOCDIS group. This information could contribute to the education of employers, suggesting to them that racial or ethnic biases may be unconsciously influencing their decisions to label some employees disabled who are, in fact, not so.

With regard to company size, the somewhat larger proportion of perceived discrimination claims filed in relatively smaller companies (15–100 workers) may reflect more stereotypical thinking toward people with disabilities than is evidenced in larger companies (500+ workers) ($d = .04$). Alternatively, larger companies may have human relations departments that are more familiar with proactively avoiding

Table 4. NAICS (Industry type)

Case	Mining	Construction	Manufacturing	Wholesale	Retail
REGAS	299 0.7%	2917 2.5%	6949 17.4%	758 1.9%	2786 7.2%
DOCDIS	2346 0.7%	5899 1.8%	55175 16.5%	5890 1.8%	26415 7.8%
Case	Transport.	Information	Finance/Real Estate	Health Care	Public Admin.
REGAS	2276 5.8%	1206 3.0%	1975 4.2%	4130 10.7%	7436 8.2%
DOCDIS	15568 4.5%	12523 4.0%	16603 4.9%	36626 10.8%	30659 8.9%

Note: $p < .001$. Top 10 categories by numerical (%) value. NAICS = North American Industrial Classification System; REGAS = regarded as disabled/perceived disability cases; DOCDIS = documented/“actual” disability cases.

Table 5. Employment Issues

Issue	REGAS higher		DOCDIS	
	REGAS			
Discharge	14282	36.9%	109025	32.2%
Hiring	3601	9.3%	16326	4.8%
Reinstatement	887	2.3%	4571	1.3%
Terms/conditions	3684	9.5%	29078	8.6%
Prohib. med. inq.	487	1.3%	1877	0.6%
Assignment	719	1.9%	4454	1.3%
Issue	DOCDIS higher		REGAS	
	DOCDIS			
Reas. accom.	65758	19.4%	3161	8.2%
Harassment	26669	7.9%	2507	6.5%
Discipline	12670	3.7%	1174	3.0%
Const. discharge	8341	2.5%	800	2.1%
Benefits	4335	1.3%	344	0.9%

Note: $p < .001$. Prohib. med. inq. = prohibited medical inquiry; Reas. accom. = reasonable accommodations; Const. discharge = constructive discharge; REGAS = regarded as disabled/perceived disability cases; DOCDIS = documented/“actual” disability cases.

Table 6. Outcomes of Cases

Case	Merit resolutions	Not merit resolutions
REGAS	10,152 26.2%	28,567 73.8%
DOCDIS	75,732 22.5%	263,129 77.5%

Note: $p < .001$. REGAS = regarded as disabled/perceived disability cases; DOCDIS = documented/“actual” disability cases.

discrimination issues. Proposing theories of stigma and causal attribution to account for workplace discrimination is not meant as a sort of explanatory absolute. No doubt, some discrimination from small business managers is due to ignorance of the ADA and a belief that a disabled person is just

unqualified to do the job. The theoretical argument here is that at least some of this workplace discrimination may be due to unconscious factors. This view is based on contemporary social cognition literature and analyses of case law reflecting empirical findings on cognitive biases.

Regional differences in percentages of claims made between the data set claims exist in the data set, with a slightly greater proportion for perceived disabilities (REGAS) versus documented disabilities (DOCDIS) in the South ($d = .18$). It is unknown whether these regional differences are due to actual cultural/regional factors or are instead a result of confounding region with other variables such as employment sector.

The higher proportion of claims for REGAS in the Transportation and Manufacturing sectors suggests that employers in these industries should be among those chosen for an intervention. Concerns for traffic safety and efficiency in Transportation—employers may worry about the competence of drivers regarded as disabled—and acceptable productivity in Manufacturing should be addressed in the context of the concept of an “impairment spectrum.” For example, is a morbidly obese truck driver or applicant for that position necessarily unfit to handle the demands of the job (Travis, 2002)? This impairment spectrum refers to a continuum of severity for injuries and disorders, as opposed to a categorical “disabled or normal” schema. Thinking in the more nuanced terms of a spectrum may encourage a check on prejudicial automaticity (Bargh & Williams, 2006). However, it could also be argued that the increased number of REGAS claims in those industries could be based on the more physically demanding nature of the work, at least in some of the cases. Research about the efficacy of interventions in these areas is needed to clarify this point.

As for discrimination Issues, REGAS allegations were proportionately higher than those in DOCDIS for Discharge (a 4.7% difference), followed by Hiring (4.5%). Discharge and failure to hire are very significant adverse effects from the perspective of an individual claiming discrimination. It is unclear from this study whether people regarded as disabled

are more likely to make claims only for such adverse events, or if these differences are partly an artifact of something like the reduced rate of requesting reasonable accommodations.

Merit resolutions comprise the following four categories: (a) Withdrawn by Charging Party (CP, the employee or applicant filing the discrimination claim) with benefits to the CP; (b) Settled with benefits to the CP (where the EEOC was party to settlement); (c) Successful conciliation (the EEOC has determined that discrimination occurred and Respondent [employer] accepted solution); (d) Conciliation failure (the EEOC has determined that discrimination occurred, but the Respondent has not accepted the resolution). The merit resolution results reflect the theoretical dynamics of both stigma and causal attribution, if an employer who discriminates against a worker on the basis of perceived disability is being unconsciously motivated by a prejudice against any perception of impairment, regardless of its severity.

Because documented disabilities are known and often obvious, one would expect merit resolution rates to reflect this; it is counterintuitive for those with “merely” perceived disabilities to have a higher rate of merit closures. However, the data lead to this unexpected conclusion. (With documented disabilities, there is no question that a disability exists, but with perceived disabilities, there is room for doubt.) Merit resolutions for REGAS exceeded those for DOCDIS by a significant margin (26.2% vs. 22.5%). This finding lends support to the claim that implicit bias is prevalent in the workplace, just as it is in American society in general (Greenwald & Krieger, 2006; Larson, 2008).

Calculations of effect size herein have yielded rather low levels, but critics should not be quick to jump to dismissive conclusions. As Rosenthal (1990) has noted, it is important to put the numbers in the context of real-life cases: “When we think of an r of .04 as reflecting a 4% decrease in heart attacks . . . the r does not appear to be quite so small, especially if we can count ourselves among the 4 per 100 who manage to survive” (p. 775). Likewise, in the context of impairment-related workplace discrimination, losing one’s job is serious, especially with the stigma of disability attached to it. Difficult economic times exacerbate the problem. In an analysis of hiring discrimination, McMahon et al. (2008) opined that “small differences in proportion may have substantial impact. Each discriminatory event is [a] violation of civil rights with serious psychological, financial, career, and integrity consequences to all parties concerned” (p. 110).

Among the strategies that have been proposed for changing stigma are protest, education, and contact. Protest is thought to be most effective when the media are the target of change; likewise, education, although perhaps less effective, may help foster change through public service announcements. Contact is thought to show the most promise, but it is probably more successful when its scope is focused

(Corrigan & Wassel, 2008). Further research is needed to determine whether and how such methods could apply in cases of implicit bias.

To help remedy workplace discrimination against those perceived as disabled, an intervention for employers is proposed. Although unconscious processes cannot directly be engaged in this context, the problem can be confronted obliquely. First, the decision makers should be educated that such automatic, inferential errors are indeed occurring. “Applying the perceived disability prong to nonmotivational [i.e., unconscious and unintentional] mistakes,” wrote Travis (2002), “would be the first step in getting employers to recognize this propensity. . . . [Then] they must take conscious, proactive steps to improve the accuracy of their inferential judgments” (p. 508). Travis explained that research in cognitive bias suggests that the best way to reduce the fundamental attribution error of blaming the person rather than the situation is to force employers to take the perspective of the employee and to focus on the situational factors constraining the latter’s actions. A reduction in bias may result if employers are required to make a case contrary to their intended one. Furthermore, legal mandates to engage the employee interactively in the evaluative process are congruent with research on cognitive accuracy. An oft-cited example is the appellate court case of *Barnett v. U.S. Air, Inc.* (2000). An airline employee who injured his back at work was initially transferred to the mail room but was eventually terminated because there were two workers senior to him who placed bids for the job, and the company argued that the seniority policy trumped the ADA’s reasonable accommodation provision. The plaintiff, Barnett, argued that the company failed to engage him properly in an interactive process to find a solution that would accommodate him. Although the Supreme Court later ruled in favor of the airline (Robinson, 2003), the opinion expressed by the lower court emphasized that the interactive process is vital to the ADA’s process.

According to Wheeler (1999),

As part of the interactive process, employers should first analyze the purpose and essential function of the job involved. Next, the employer should consult with the . . . employee, obtaining as much information as possible about the individual’s . . . limitations. In this consultation, both . . . should discuss available alternatives. (p. 889)

In the context of perceived disability, the interactive process should focus on the efficacy of the applicant/employer, that is, his or her ability to perform the given tasks despite a presumed perception of serious limitations. Naturally, how the ADA Amendments Act of 2008 will be interpreted remains to be seen, but (Larson, 2008)

by returning the focus of claims brought under the ADA to the discriminatory actions by the employer rather than the employer's subjective mindset, courts are more likely to account for situations where implicit bias results in discriminatory behavior without intent on the part of the employers. (p. 463)

This intervention should involve the idea of an impairment spectrum, which simply refers to a continuum of severity for injuries and disorders and is the conceptual framework the employer could use in place of the unrealistic and pernicious, black-and-white stereotype of "the disabled" versus "the normal." When an employer fails to take into account the nuances and details of a particular case of impairment, such as that of an employee whose leg was injured on the job, and makes a one-size-fits-all decision of "disability" without taking into account what the worker can still do, that employer is engaging in simplistic, stereotyped thinking rather than more complex, realistic consideration of the particular case at hand. Employers have exaggerated the significance of tics, disfigurements, injuries, asthma, epilepsy, carpal tunnel syndrome, obesity, dysthymia, high blood pressure, and so on (Travis, 2002). One relevant example here is that of *Taylor v. Pathmark Stores* (1999). In this case, an employer fired a worker with a minor injury, but the worker was able to file a perceived disability claim based on the fact that despite the employer's presumably innocent mistake, it still had the responsibility to properly evaluate the worker to make sure the gravity of the injury was not exaggerated.

In terms of implications for rehabilitation, an intervention might involve teaching clients to be proactive and preempt employer prejudgment using evidence-based self-advocacy statements, usually linked to a well-constructed resume. For example, applicants or employees-at-risk could say, "Let me assure you, I can do all this . . ." or "You may have a concern about my ability here, but let me tell you how I handled this before. . . ." What is being proposed here are counteracting statements, those that "de-bias" or counter employers' faulty assumptions about the worker, who should ask himself or herself, "How can I identify what the employer's thinking about me and how to dispel it?" With conditions that are not obvious, research suggests that disclosure could be counterproductive (Bishop, Stenhoff, Bradley, & Allen, 2007; Dalgin & Gilbride, 2003); in these cases, the focus should be on a self-empowering interpretation of the employee/applicant's behavior. Thus, anticipating negative prejudgment and providing evidence-driven alternate explanations for behavior that would serve a de-biasing purpose could be at the heart of an effective intervention with this population.

Further research should distinguish between situations where unconscious mental factors are most likely playing a role in workplace discrimination and those in which more straightforward explanations are more likely. Also, with

regard to discrimination issues specifically, an obvious question is why would certain employers be more likely to fire and less likely to hire a worker with an "unreal" disability than a worker with an actual, documented one? How relevant is the prominence of the Transportation and Construction industries in REGAS merit resolutions here? All of these findings bring up questions as to their causes, and all are areas that deserve further research.

Conclusion

Not only is the conscious social psychological factor of stigma relevant to workplace discrimination, but so is implicit bias, unconscious stereotyping by the employer. Analysis of EEOC data demonstrates that mere perception of disability constitutes a significant aspect of workplace discrimination against workers with nondisabling impairments (and perhaps, with none at all). Recommended are interventions that emphasize not only the problem of stigma but also that of automatic cognitive biases with a focus on an impairment spectrum. The use of such a concept may help correct simplistic and inaccurate employer perceptions, which are damaging to workers with nondisabling impairments and, by extension, to the population of people with documented disabilities as well.

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About the Authors

William R. Draper, MS, is a doctoral candidate in the School of Allied Health Professions at Virginia Commonwealth University. His current research interests are social cognition, workplace discrimination, and poverty.

Christine A. Reid, PhD, CRC, is a professor of rehabilitation counseling at Virginia Commonwealth University. Her primary research interests focus on psychometric methodology, professional credentialing, life care planning, and deafness.

Brian T. McMahon, PhD, is a professor of rehabilitation counseling and rehabilitation medicine at Virginia Commonwealth University, where he directs the National EEOC ADA Research Project.