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Return-to-Work (RTW) Corner

Anxiety and employment discrimination: Implications for counseling and return to work practice

Jenny L. Cureton[a,*], Mykal Leslie[a], Brian McMahon[b], Hannah E. Lowe[a], Bridget Tovey[a] and Phillip D. Rumrill[c]
[a]*Department of Counselor Education and Supervision, Kent State University, Kent, OH, USA*
[b]*Department of Physical Medicine and Rehabilitation, Virginia Commonwealth University, Richmond, VA, USA*
[c]*Human Development Institute, University of Kentucky, Lexington, KY, USA*

Abstract.
BACKGROUND: The most prevalent mental health diagnosis is anxiety disorder, which remains largely undertreated.
OBJECTIVE: This investigation considered differences in workplace discrimination against adults with anxiety disorders during two eras of legal history: the original Americans with Disabilities Act (ADA, 1990-2008) and the ADA Amendments Act (ADAAA, 2009-present).
METHOD: Research questions addressed differential (a) numbers and types of allegations, (b) case resolutions, and (c) demographic characteristics of the charging parties.
RESULTS: Results indicated substantially more allegations and merit-based resolutions filed by charging parties with anxiety disorders post-ADAAA. Furthermore, the post-ADAAA era revealed increases in allegations from women and people from non-white racial groups.
CONCLUSION: These findings can inform advocacy and counseling and rehabilitation services for clients who experience anxiety.

Keywords: Anxiety disorders, workplace discrimination, counseling, advocacy, disabilities

1. Introduction

Stressful personal, professional, and ecological circumstances are correlated with anxiety symptoms [1–3]. Americans with anxiety disorders who experience workplace discrimination have an avenue for pursuing justice: the Equal Employment Opportunity Commission (EEOC). The Americans with Disabilities Act (ADA) [4] and the ADA Amendments Act (ADAAA) [5] marked crucial turning points in employment rights and public access for those with anxiety disorders and most disabilities. Thirty-two years after the enactment of the original ADA, we examined differences in workplace discrimination allegations filed by persons with anxiety disorders before and after the ADAAA became effective. The intent was to document findings that have implications for counselors and rehabilitation professionals serving workers with anxiety, particularly in the context of changes across the entire timespan for which data are available (1992 to 2016).

*Address for correspondence: Jenny L. Cureton, Department of Counselor Education and Supervision, Kent State University, Kent, OH 44240, USA. E-mail: jcureton@kent.edu.

1.1. Anxiety disorders

There are several types of anxiety disorders including generalized anxiety disorder, separation anxiety disorder, panic disorder, social anxiety disorder and other phobias [4]. A common hallmark of anxiety disorders is fear and anxiety that are excessive for the actual threat. Avoidance, and other behavioral responses often accompany the emotion, as can physical symptoms such as trembling and gastrointestinal problems. This class of disorders is closely related to obsessive-compulsive and trauma disorders, which share similar symptom structures [6].

Anxiety disorders have long been considered highly prevalent and debilitating. Repeated epidemiological surveys from the 1990 s to present have established their continuing pervasiveness, particularly in the United States [7]. Generalized anxiety diagnoses have increased globally, particularly in high-income countries [8]. Coupled with symptoms, people with anxiety disorders experience social and physical difficulties, health loss and premature mortality, which impact individuals 15-34 years of age and women at higher rates [9].

1.2. The Americans with disabilities act and equal employment

The ADA offers individuals "legal protection against discrimination in many areas of their lives, including employment" (p. 175) [10]. The ADAAA was passed in September 2008 and implemented on January 1, 2009 [11]. Changes included a broadened definition of disability, restricted use of previous standards, and revised language. Revised language sent a clearer and more prohibitive message about discriminating against "a qualified individual on the basis of disability" (5.a.2.) [5]. ADAAA resulted in overturned Supreme Court decisions related to ADA, which had made it difficult for individuals to prove that their impairments were disabilities [11]. The Equal Employment Opportunity Commission (EEOC) is the federal agency created by the Civil Rights Act of 1964. Consisting of approximately 2,000 attorneys, mediators, and investigators, EEOC is responsible for enforcing ADA Title I, the Employment Provisions. Since the effectuation of ADAAA, there has been a marked increase in the number of allegations filed with EEOC, which in turn broadened the legal protections for people with disabilities [12].

Employees with anxiety in the workplace are protected by the ADA and the ADAAA from discrimination involving harassment, intimidation, failure to accommodate, unlawful termination, hiring, terms and conditions of employment, discipline, wages, and 32 other possible personnel actions. EEOC includes several mental illness categories in the types of covered disabilities (e.g., depression, anxiety disorder, bipolar disorder, schizophrenia, and unspecified forms of mental illness). EEOC defined anxiety disorders as "characterized by anxiety and avoidance behavior, this impairment [anxiety disorder] includes fear (phobic) disorders, obsessive-compulsive disorders, post-traumatic stress disorders, and panic disorders" (p. 175) [13].

Allegations filed by charging parties with anxiety are most common among impairment groups for age cohorts 25-34 and 35-54 [14]. People who live with anxiety disorders may have a variety of intrusive workplace experiences, including isolation from coworkers [15] and anxiety attacks that interfere with their capacity to manage time, complete daily work demands, and manage emotions [16]. People with mental illness, including those with anxiety, often have difficulty communicating with employers, which can leave them misunderstood and discriminated against via advancement restrictions, wage inequity, and denial or weak application of equitable work terms and/or conditions [13].

1.3. Contextual changes for ADAAA, effective 2009

Americans have experienced substantial changes from the pre-2009 ADAAA period to present that likely influence EEOC claims from those with anxiety disorders. These changes include impactful events and public opinion, updates in counseling practice, and shifts in relevant policy. In the following paragraphs, we highlight notable moments in the profession prior to the ADAAA [5], then explore changes across pre/post-ADAAA periods and how these relate to workplace discrimination cases from charging parties with anxiety.

It was in the same decade as the original ADA of 1990 that counseling as a profession was developing in a number of meaningful ways. In 1992, counseling as a primary mental health profession was finally included in the health care human resource statistics compiled by the Center for Mental Health Services and the National Institute of Mental Health [17]. This change placed counselors in the same company

as social workers, psychologists, and other mental health professionals. That same year, the Association for Multicultural Counseling and Development approved a document outlining the need and rationale for a multicultural perspective in counseling [18]. This sparked a conversation about the importance of counseling within a multicultural framework. A foundation was set for what is now a meaningful set of multicultural and social justice counseling competencies [19]. Additionally, access to counseling in the 1990s increased with the rise of managed care [20]. Increases abounded in awareness of counseling as a profession, importance on multicultural awareness in counseling, and accessibility of services. In turn, persons with anxiety were empowered to take formal action when experiencing workplace discrimination thanks to the ADA.

Impactful events. It is important to take into consideration sociological factors that could contribute to a rise or fall in overall frequencies of workplace discrimination claims filed by individuals with anxiety. From 1990 through 2009, there were several highly publicized events that have contributed to a "collective anxiety" (p. 231) [1] among Americans. Examples include increase in publicized violence and two serious economic crises. Human-caused traumatic events (e.g., mass shootings) as well as community-wide disasters (e.g., natural disasters, war) cause death and extensive damage to infrastructures and economies. Undoubtedly, they also disrupt life, alter routine patterns, and tear the social fabric of the community [21].

Undoubtedly, the September 11th terrorist attacks are illustrative of collective anxiety. In the days following the attacks on 9/11, nearly half of Americans reported symptoms of posttraumatic stress [22], and many of these symptoms remained elevated for weeks and months [2]. Exposure to violence challenges the beliefs individuals hold of living in a benevolent, predictable world [23, 24] and intensifies feelings of vulnerability [25]. Moreover, the unprecedented impact of the 9/11 attacks on the American economy further perpetuated our nation's collective anxiety. Other events such as the Columbine High School shooting, the Iraq war, the war in Afghanistan, Hurricane Katrina, and the 2007 to 2012 Great Recession have prompted increased anxiety among Americans. This in turn could have contributed to an increase among workplace discrimination claims relating to anxiety.

The ADAAA became effective in 2009 and coincided with the *Great Recession* [26, 27]. It left a devastating national and global impact on employment and related anxiety. Results of a systematic review [3] representing six of the seven continents documented the negative impact of economic crises on workers' mental health, including increased anxiety. Pre/post comparisons from diagnostic interviews with over 2,500 U.S. residents indicated that financial and housing impacts of the Great Recession were associated with higher levels of anxiety and other mental health problems [28]. Financially advantaged individuals also reported higher levels of generalized anxiety symptoms due to housing impacts even as those with less financial means had higher levels of symptoms due to a myriad of recession impacts. People with lower education who experienced job-related impacts were more likely to develop anxiety. Men experienced significantly greater job loss during the Great Recession than women, but women were more likely to receive a post-recession anxiety diagnosis compared to pre-recession [29].

Public opinion. Something else that has evolved since ADA [4] is U.S. stigma surrounding mental health. Over the past 30 years, population-based studies have documented the levels of public stigma toward common disorders [30]. There is some evidence, however, that subsequent increased awareness and education surrounding mental illness may have assisted in decreasing stigma. In 2010, a study in the *American Journal of Psychiatry* showed that Americans, between 1996 and 2006, developed a greater awareness of the neurobiological basis of mental illness and became more supportive of medical treatment for mental illnesses [31]. Currently, millennials are the most educated generation [32], and education has been found to be negatively associated with perceived dangerousness of individuals with mental illnesses [33, 34]. Due to these factors, we believe the decrease in general stigma surrounding mental health could have contributed to the empowerment of individual workers to file discrimination claims based on their anxiety diagnoses, with several counseling and return to work implications.

Updates to counseling practice. A number of updates occurred during the pre-2009 ADAAA period through 2016 that are relevant for counseling and return to work services for clients with anxiety. These include important changes to diagnostic guidelines, evidence-based practice, and the development of a counselor professional identity centered in wellness and incorporating advocacy. Diagnostic guidelines for anxiety disorders have changed. Anxiety disorders first appeared as a distinct cate-

gory in the DSM-III [35] and the APA adapted the criteria in each revision of that edition [36]. The DSM-IV [37] included refinement of the criteria based on research on subjective distress, physiological response, and behavioral avoidance [36]. Perhaps the most dramatic diagnostic shift for anxiety disorders since 1980 was the formation of three distinct categories by removing from the anxiety disorders chapter both obsessive-compulsive and related disorders and trauma- and stressor-related disorders. Arguably, there was substantive evidence for this separation based on advancements in neuroscience and clinical understandings of trauma.

Policies and related standards. In addition to shifts in the ADA/ADAAA and related EEOC practices, healthcare policy and professional codes/standards have undergone changes in the pre/post-ADAAA periods that are relevant to anxiety disorders and workplace discrimination. Improvements in healthcare accessibility and use for Americans of all races/ethnicities, ages, and abilities accompanied the Affordable Care Act of 2010 [38]. The most immediate and significant improvements occurred for those in low income and younger age brackets. Although populations with physical, neurological or sensory disabilities experienced improvements after the act's implementation, those with mental health disabilities did not [38].

Research findings have demonstrated (a) the connection between stressful jobs and personal events and anxiety symptoms, (b) the continued prevalence of anxiety disorders, and (c) decreasing mental health stigma. However, no published study has heretofore investigated any evidential increases in workplace discrimination allegations by Americans with anxiety disorders (AD). Therefore, in the preceding paragraphs, we sought to explore differences between the pre-amendments (before 2009) and the post-amendments time periods that held impactful shifts in American life and public opinion, in policy changes including and beyond ADAAA, and in service delivery for AD. We believed that these changes may have accompanied an increase in the number of EEOC discrimination claims filed based on AD. We postulated that a higher percentage of post-amendment allegations would be substantiated with merit compared to those filed prior to the ADAAA. Our three research questions were:

1. Do the workplace discrimination experiences of Americans with anxiety related disorders (AD) differ across the two eras of ADA implementation (July 26, 1990 to December 31, 2008 and January 1, 2009 to 2016) in terms of the total number of allegations closed per year, and the types of discrimination issues alleged?
2. Do the workplace discrimination experiences of Americans with AD differ across the two eras of ADA implementation in terms of the resolutions or outcomes (i.e., merit-rate) of EEOC's investigatory process?
3. Do the workplace discrimination experiences of Americans with AD differ across the two eras of ADA implementation in terms of the gender, race/ethnicity, and age of charging parties?

2. Method

2.1. Collection and construction of the study dataset

EEOC conducts investigations, recommends mediation, attempts conciliation, and/or pursues litigation to resolve charges [39]. When an allegation is filed, EEOC reviews it to confirm that the employer is a covered entity and that the allegation includes the information required to evaluate the allegation. With close scrutiny and oversight by EEOC, a National EEOC ADA Research Project (NEARP) began in 2003 to utilize secondary data from the EEOC Integrated Mission System (IMS) database for research purposes. NEARP uses data collected by EEOC to document the nature and scope of workplace discrimination on the basis of disability. Since its inception in 2003, NEARP has obtained data on 834,536 closed allegations spanning from the effective date of Title I in 1992 through 2016 [40], and has produced over 90 publications and ten dissertations. A recent overview of major findings by NEARP was recently published by McMahon and colleagues [41].

Permissions from institutional review boards at participating institutions served to ensure ethical conduct, such as confidentiality and data security. Specific extraction protocols were followed to prepare the study dataset for analysis. Following are the relevant parameters for transfer of data from EEOC IMS NEARP dataset.

- The unit of study is an allegation. A charging party (individual who files an allegation) may bring more than one allegation (e.g., involving wages and promotion) or may file allegations on more than one occasion. Charging parties

average 1.6 allegations per filing, thus an allegation is not tantamount to a person.
- Study data are strictly limited to allegations brought under Title I of the ADA. Only allegations received, investigated, and closed by EEOC are included.
- Study data are included for all EEOC reported allegations from July 1992 through December 2016: a period of 24.5 years.
- Excluded from this study are allegations that:
  1. are investigated by non-EEOC personnel only, typically employed by state agencies;
  2. are referred by EEOC to be resolved in civil court, federal or state;
  3. involve retaliation, because this does not illuminate the existence or consequence of disability;
  4. involve impairment groupings other than anxiety disorders;
  5. involve elements that do not address the research questions for this study; or
  6. involve alternative prongs of the ADA definition of disability, such as "record of," "regarded as," or "known associate of" a person with disability.

2.2. Study design

The NEARP team implemented an ex post facto, causal comparative quantitative design including descriptive and inferential statistics. The overarching purpose was to gain a thorough understanding of the workplace discrimination experiences of Americans with AD before ($N = 11{,}721$) and after ($N = 20{,}513$) the passage of the ADAAA by comparing and contrasting allegations and their investigatory outcomes between these two time periods.

It is very important to note that EEOC defines the AD group to include anxiety disorders, obsessive-compulsive and related disorders, and trauma- and stressor-related disorders as characterized in the DSM-IV [42]. The specific variables of interest for this study included AD allegations pre-ADAAA and AD allegations post-ADAAA, as well as three distinct factors for each, described below.

- Nature of the discrimination alleged, or issue: codes for 40 distinct personnel actions which may be discriminatory if performed unlawfully according to EEOC criteria
- Merit status of the closed investigation: conclusion by EEOC of whether or not the investigation closed with a finding of merit (settlement or clear evidence of likely discrimination) or non-merit (insufficient evidence of discrimination or closure due to technicality)
- Demographic characteristics of the charging parties: gender, age, and race/ethnicity

2.3. Statistical analysis

Data were imported into the Statistical Package for the Social Sciences (SPSS) version 21 for all analyses. For each categorical dependent variable (i.e., issue, CP gender, CP race/ethnicity, resolution), a Pearson chi-square test was first utilized to test the homogeneity of proportions across the two ADA and ADAAA time periods. If the Pearson chi-square test indicated the existence of significant proportional differences, standard residuals greater than an absolute value of 2.0 were used to pinpoint those statistically significant differences. This test statistic does not require independence of study data (some charging parties filed more than one allegation), equivalent group sizes, or normality of distribution assumptions. For the continuous dependent variable of CP age, a t-test for independent samples was used to compare means between the two time periods. To minimize the likelihood of Type 1 errors, the significance levels were set at .001 for all inferential analyses, be they parametric or non-parametric.

3. Results

Findings are presented in both descriptive and inferential terms to illustrate the distribution of scores across the two referent groups, which were differentiated by closure date during the pre-ADAAA era vs. post-ADAAA era. The three research questions concerned AD-related workplace discrimination and differences between the two eras involving frequency of allegations, demographics of charging parties, and outcomes of the EEOC investigation.

3.1. Types of alleged discrimination

The first analysis explored the frequencies of closed allegations and the specific types of circumstances under which the alleged discriminatory actions occurred (also known as issues) as reported by people with AD in the pre-ADAAA era in comparison to the issues alleged by individuals with AD in the post-ADAAA era. This represents a roughly 350% increase in the number of allegations filed by

Table 1
Differences in proportion by discrimination issues

Issue	Pre-ADAAA (n = 11,721)		Post-ADAAA (n = 20,513)		
	f	%	f	%	$\|SR\|$
Discharge*	3,417	29.2	5,518	26.9	2.9
Reasonable accommodation	2,281	19.5	4,213	20.5	NSD
Harassment*	1,398	11.9	2,664	13.0	2.1
Terms/conditions*	1,067	9.1	2,156	10.5	3.1
Discipline*	641	5.5	1,671	8.1	6.9
Constructive discharge	379	3.2	650	3.2	NSD
Intimidation	275	2.3	465	2.3	NSD
Suspension	244	2.1	467	2.3	NSD
Hiring	195	1.7	312	1.5	NSD
Assignment	190	1.6	393	1.9	NSD
Demotion*	189	1.6	255	1.2	2.2
Wages*	186	1.6	207	1.0	3.6
Promotion	178	1.5	258	1.3	NSD
Benefits*	156	1.3	151	0.7	4.2
Layoff*	118	1.0	110	0.5	3.9
Posting notices*	15	0.1	195	1.0	7.0

Note. *=$p < 0.001$.

Americans with AD per year (732.56 to 2,564.13, respectively).

Regarding the nature of discrimination, Table 1 presents a comparison of the 16 most frequently occurring issues in EEOC Title I allegations for both groups. It is noteworthy that each group had identical rank-orders for the top eight issues and that the top five issues in each group accounted for a substantial proportion of the total allegations. The five most common types of issues filed by Americans with AD pre-ADAAA (n = 8,804) accounted for over three-quarters (75.1%) of the total number of allegations filed by that group. Similarly, the five most common types of issues in the post-ADAAA group (n = 16,222) comprised just under four-fifths (79.1%) of that group's total allegations.

Even so, a chi-square analysis revealed statistically significant differences in the patterns and proportions of specific issues alleged by people with AD pre-ADAAA in comparison to post-ADAAA (X^2 (39, N = 32234)=520.203, $p < .001$). Specifically, Americans with AD after the ADAAA were more likely than their pre-ADAAA counterparts to allege discrimination on the basis of harassment, terms and conditions, discipline, and posting notices. On the contrary, they were less likely to file allegations related to discharge, demotion, wages, benefits, and layoff.

3.2. Rate of merit case resolutions

The second comparison involved legal resolutions of the EEOC investigatory process with respect to allegations brought by charging parties with AD in the pre-ADAAA era relative to those in the post-ADAAA era. For purposes of comparison, the researchers collapsed all case resolutions into two categories: merit resolutions and non-merit resolutions. Merit resolutions include withdrawal with benefits, settlement with benefits, successful conciliation, and conciliation failure. Non–merit resolutions include no cause findings and administrative closures. Before the passage of the ADAAA, one-fifth (20%) of the workplace discrimination allegations brought under ADA Title I resulted in a merit-resolution. Since ADAAA effectuation, there was a statistically significant increase in the percentage of allegations that resulted in a merit-based resolution (21.5%; X^2 (1, N = 32,224)=10.436, p = .001).

3.3. Characteristics of charging parties

The final comparison in this study concerned CP demographic differences between the two time periods. The average ages for charging parties with AD pre- (42.96 years) and post-ADAAA (42.99 years) were not significantly different (t (29,311)=-0.232, p = .817). Table 2 outlines the differences in CPs with regard to gender and race/ethnicity. CPs in the post-ADAAA era were significantly more likely than those in the pre-ADAAA era to be female (60.6% to 56.7%, respectively) and less likely to be male (39.4% to 43.3%, respectively; X^2 (1, N = 30,828)=44.307, $p < 0.001$).

Table 2
Differences in charging party characteristics

Characteristics	Pre-ADAAA ($n = 11,721$)		Post-ADAAA ($n = 20,513$)		
	f	%	*f*	%	|*SR*|
Gender					
Female*	6,580	56.7	11,642	60.6	3.4
Male*	5,023	43.3	7,583	39.4	4.0
Race/ethnicity					
Caucasian	7,076	68.3	11,928	67.6	NSD
African American*	1,756	17.0	4,461	25.3	11.3
Latino/a*	736	7.1	536	3.0	12.3
Asian American*	161	1.6	391	2.2	3.0
Native American/Alaskan Native*	58	0.6	332	1.9	7.2

Note: Respondent Ns for the two demographic variables of gender and race/ethnicity are different due to missing data for those variables; *=$p < 0.001$.

The racial/ethnic profile of the pre-ADAAA group was 68.3 percent Caucasian, 17 percent African American, 7.1 percent Latino/a, 1.6 percent Asian American, and 0.6 percent Native American/Alaskan Native. By comparison, post-ADAAA group was 67.6 percent Caucasian, 25.3 percent African American, 3.0 percent Latino/a, 2.2 percent Asian American, and 1.9 percent Native American/Alaskan Native. A chi-square analysis revealed that the post-ADAAA group had proportionally more individuals who identified as African American, Asian American, and Native American/Alaskan Native, but proportionally fewer who identified as Latino/a (X^2 (5, $N = 28,007$)=1486.422, $p < 0.001$).

4. Discussion

The current study is the only investigation of workplace experiences of Americans with AD through the lens of a time-based comparison of EEOC allegations and rulings. The findings indicate that significant differences exist between AD-related workplace discrimination pre- and post-ADAAA. These findings have important implications for the counseling field and for return to work practice.

The most foundational implication is the need for client care to address the intersection of career and mental health concerns. There has been a long-standing interplay and unnecessary division between concepts and practitioners of career and personal counseling [43]. This connection between AD and workplace discrimination is one of many client issues that demonstrate the need for counselors to address both diagnostic symptoms and career concerns, or to ensure that holistic care is available via referral. Previous authors have recommended infusion of career counseling into psychotherapy [44] and use of career assessments with clients experiencing anxiety [45].

4.1. Alleged discrimination and merit-based resolutions

Perhaps the most dramatic finding of the study was the 350% increase since the effectuation of the ADAAA in the annual number of discrimination allegations submitted by Americans with AD, from 732.56 claims per year to 2,564.13 claims per year. This is even more surprising because the workforce dramatically shrunk post-ADAA due to the Great Recession. This aligns with, but surpasses, findings from other studies demonstrating an increase in EEOC allegations for specific disabilities across time [40, 46, 47]. This finding underscores the growing magnitude of discrimination, the growing willingness to report, or both. Counselors and rehabilitation professionals need to address the workplace stress and unfair treatment that clients with AD may experience.

The top eight allegations were congruent for both groups, making up 82.8% of all allegations in the pre-ADAAA group and 86.8% in the post-ADAAA era group. In absolute terms, the list of most commonly alleged types of discrimination is quite similar for both groups. This finding points to a sustained set of workplace struggles that clients with AD face. The top three types of alleged discrimination since 1992 are discharge, reasonable accommodation, and harassment. Discharge is the "involuntary termination of employment status on a permanent basis" (p. 9) [48]. Alternatively, the employer may have "failed to provide reasonable accommodations to the known physical or mental limitation of a qualified individual with a disability" (p. 9). Harassment is described

as "antagonism directed at an individual because of disability in non-employment situations or settings" (p. 9). These issues characterize intolerant reactions to mental health disabilities and are also potential triggers that could worsen anxiety symptoms, as might the lesser issues of terms/conditions (e.g., inequity regarding working conditions, job environment, or non-monetary privileges) and disciplinary action against an employee, which represented a solid 8.1–10.5% of the allegations.

In terms of allegation types and how their proportions differed between the two time periods considered in this study, it is important to note that allegations related to discharge, demotion, and layoff were higher pre-ADAAA and that other forms of discrimination (e.g., harassment, terms and conditions of employment, discipline) were higher post-ADAAA. Discharge is the most final and conspicuous form of workplace discrimination, and layoff and demotion decisions are also direct and conspicuous, whereas other allegation types operate more subtly, even insidiously [40]. It may be the case that employers were more likely to discharge workers with disabilities outright, to lay them off, and to demote them during early stages of the original ADA because the law was relatively new and had not established as many nuances based on case law and regulatory changes [49]. Then, after the ADAAA took effect with restored protections and promise for workers with disabilities, the uptick in more subtle forms of discrimination might suggest that employers who are inclined to discriminate against employees with disabilities opt for less obvious methods of unfair treatment.

Counselors and rehabilitation professionals can work collaboratively with clients who have AD to support their mental health during the processes of discerning potentially discriminatory workplace experiences and the decision-making, filing, and resolution process for EEOC claims. Despite the finding that merit-based resolutions for AD cases have increased significantly since ADAAA, it is important to note that merit is only ruled in 21.5% of post-ADAAA allegations. Counselors and rehabilitation professionals can educate clients about the four in five chance of getting rejected and reassure them of their sustaining professional alliance regardless of the client's decision to file and subsequent claim resolution.

Counselors can utilize treatment approaches for clients with AD supported by literature, including cognitive behavioral therapy (CBT), mindfulness, and other interventions. One example is work-related CBT, which has shown effectiveness with people with AD who were unemployed [50, 51] or on sick leave because of their impairment [52]. Work-related CBT focuses on prevention or reduction of mental health symptoms and employment problems, potentially aimed at job-seekers with diagnosed mental disorders such as AD. Interventions include job-search groups utilizing educational and active learning techniques to improve motivation and persistence through professional failures and challenges [51] and CBT techniques for work stressors toward adaptive behaviors and appraisals.

Counseling and mindfulness are among the strategies that employees use to cope with their mental health conditions at work [53]. Helping professionals should also explore the growing evidence for incorporating mindfulness into interventions for people with AD experiencing workplace concerns as they are effective for improving anxiety symptoms and work-specific outcomes [54, 55]. Other coping skills that counseling can target are humor, accepting the AD and taking time off, communication, and compensating for lost performance when AD symptoms are particularly impairing by working harder when symptoms are lessened [53].

4.2. Characteristics of charging parties

Though CPs' ages did not differ significantly between the two time periods, their gender and race characteristics did. Results showed no differences in age of AD cases filed before ADAAA versus after. However, this finding corroborates the literature on anxiety disorders and workplace discrimination, which has shown that EEOC cases regarding AD are more prevalent in younger ages than middle-age [14] and older workers [56].

The proportion of workplace discrimination cases filed by women with AD has increased significantly in the post-ADAAA era, as has that from African Americans, Asian Americans, and American Indians/Alaska Natives. These findings partly correspond with other research demonstrating gender differences in workplace discrimination [57, 58] and changes over time in merit-based resolutions for race/ethnic groups [59], and provide further evidence about the impact of the sociocultural context in which victims of discrimination find themselves. This finding may also suggest that these groups have developed ADA literacy over time. Counselors and rehabilitation professionals should acknowledge this context

with clients with AD as part of multiculturally competent counseling practice [19, 60] including the use of broaching [61]. Furthermore, client conceptualization and intervention can include race-based trauma [62] and related experiences and their connection with anxiety symptoms in career contexts. Given the smaller proportions of cases found in this study, readers working with clients who are older adults, men, and/or Latinos with AD experiencing workplace discrimination might acknowledge the isolating reality their clients may perceive.

Implications beyond counseling interventions concern client advocacy and counselor training. Although racial/ethnic disparities for healthcare accessibility and use decreased with the implementation of the Affordable Care Act, disparities remain and are greater for those who are uninsured and/or living in states that have not expanded Medicaid (https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/) [63] and for those with mental health disabilities such as anxiety disorders [38]. Counselors and rehabilitation professionals can advocate to state governments for expanded healthcare access, including mental healthcare. Counselor can also advocate for workplaces to integrate evidence-based practices such as mindfulness-based programs [55]. Finally, it is important that counselor educators improve their coverage of disabilities in counselor education within and beyond the multicultural counseling course and integrate career and personal counseling in their teaching to avoid giving the false impression that clients do not present with holistic concerns such as AD interfacing with workplace discrimination and related stress.

4.3. Directions for future research

There are several directions for future research including studies utilizing the NEARP database and those regarding counseling for AD clients experiencing workplace discrimination. A trendline analysis would be an interesting next step. For example, rather than considering allegations filed by people with AD in two phases of ADA implementation as was done in this study, a year-by-year comparison of discrimination trends would permit researchers to gauge more specifically the impact of events such as 9/11 and the Great Recession on employer responses (and employee responses, for that matter) to AD in the workplace.

Certainly, a trendline analysis like the one noted above will be important once EEOC data are available for the years that include the COVID-19 pandemic. The pandemic has wrought unprecedented anxiety among people worldwide given its enduring effects on the way we socialize, work, live, care for ourselves, travel, and access healthcare.

This study's findings highlight the need for research evidence on approaches that counselors regularly use for AD beyond or in conjunction with CBT. These could include work-related CBT [52] and mindfulness-related interventions [54, 64]. More outcomes research is needed concerning approaches for integrated career and personal counseling [44] and about counseling AD adult clients from marginalized communities [65]. Here again, in light of the COVID-19 pandemic, telehealth and virtual service delivery platforms will be important considerations in these outcome studies.

A deeper investigation of EEOC data and other sources concerning career experiences of women and people of color with AD is needed to inform counseling and advocacy to address harmful discrimination. Updated studies comparing age groups are also needed. Similar studies exploring workplace discrimination directed at other mental health issues (e.g., depression) would benefit professionals and clients. If possible, updating the NEARP database to DSM-5 categorizations and criteria and/or to inclusion of other demographics such as socioeconomic status, affectional orientation (i.e., sexual orientation), and gender identity would offer research findings that represent a more holistic and contemporary picture of workplace discrimination among these populations. This could include studies about workplace discrimination allegations from Americans concerning their trauma-related diagnoses amidst the shift from DSM-IV to DSM-5 for these disorders [66].

4.4. Limitations

Although this study has many strengths including population level data across time, it is not without limitations. The unit of measure for the study was an allegation rather than a charging party; thus, an individual charging party could have allegations on multiple issues or occasions. Demographic and diagnostic data that are not available in the data may hold potentially relevant information such as exact disorder, severity and duration, and treatment received as well as marital status, sexual orientation, and

socioeconomic status. Specifically, there is no way to know how many of the cases are generalized anxiety disorder, diagnosed under DSM-IV or 5, or a diagnosis that is no longer clustered with anxiety disorders in DSM-5 (i.e., PTSD and OCD).

Finally, this study expressly concerned allegations brought under ADAAA Title I. It is unlikely that the study population represents the entirety of Americans with AD who experience workplace discrimination. Necessarily excluded are people with AD who experience unfair treatment in the workplace and choose not to report this. Others with AD facing workplace discrimination may have instead filed allegations under other employment-related legislation, such as the Rehabilitation Act of 1973, Civil Rights Act, Equal Pay Act, or Age Discrimination in Employment Act, which were not included in this study.

5. Conclusion

Americans with AD continue to face workplace discrimination based on their mental health diagnosis, primarily but not limited to being discharged from their jobs, receiving unfair treatment regarding reasonable accommodations, and becoming the target of harassment from colleagues and/or supervisors. As changes in policies, public opinion, practice, and other events have occurred, allegations have increased more than threefold and merit-based resolutions have risen slightly. Workplace discrimination allegations on the basis of AD have increasingly been filed by females, and allegations filed by African Americans, Asian Americans, and Native Americans/Alaskans have also risen. Counselors and rehabilitation professionals can respond by utilizing integrative approaches to career and personal counseling that are responsive to gender and racial/ethnic discrimination stress. More research is needed using the NEARP database and concerning counseling and advocacy to address this growing problem of discrimination based on anxiety diagnosis, which is possibly layered with other biases and contextualized within sociocultural phenomena. Further study seems all the more crucial in the current COVID-19 era, given the pandemic's continuing impact on anxiety, workplaces, and marginalized populations.

Conflict of interest

None to report.

Disclaimer

The records were examined with permission of the Equal Employment Opportunity Commission (EEOC).

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