



The ADA and Employment for Individuals with Brain Injury

March 25, 2013

The ADA

- Is a federal law
- Was signed by President Bush on July 26, 1990
- Was amended in 2008; ADA Amendments Act (ADAAA) took effect on Jan. 1, 2009
- Provides civil rights protection to individuals with disabilities
- Is an equal opportunity law, not an affirmative action law

The Five Titles of the ADA

I *Employment*

II *State and Local Government*

III *Public Accommodations*

IV *Telecommunications*

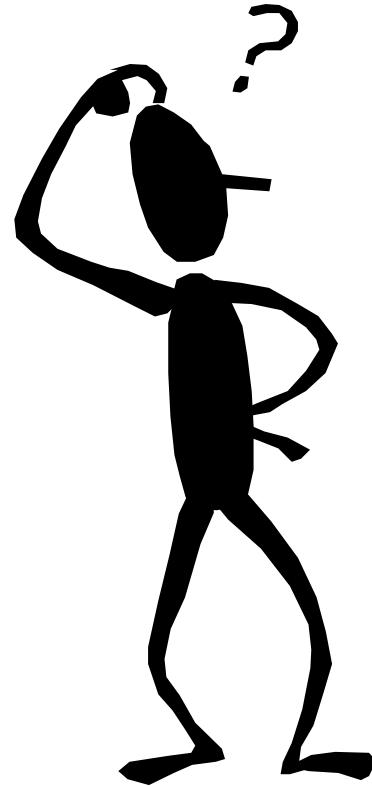
V *Miscellaneous Provisions*

Today's Focus: *EMPLOYMENT*



But first...

How does the
ADA define a
person with a
disability?



The three-part definition...

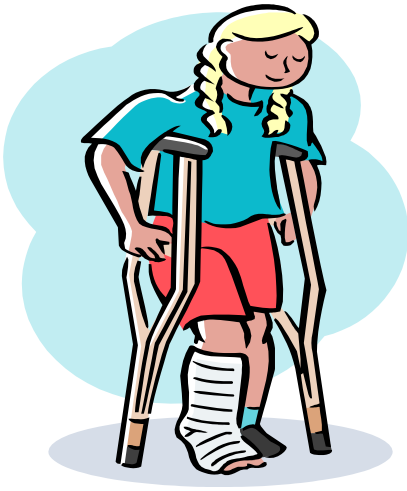
1. A person with a physical or mental impairment that substantially limits one or more major life activities.
2. A person with *a record of*...
3. A person *regarded as*...

Major life activities include, but are not limited to...

- Walking
- Speaking
- Seeing
- Hearing
- Caring for oneself
- Learning
- Performing manual tasks
- Working



Substantially limits



Refers to...

- Nature and severity of impairment
- Its expected duration
- Its expected long term impact

Record of...

- Protection based on a history or record of a disability
- Protection extended even if diagnosis was incorrect
- Includes hospitalization or treatment for substance abuse, psychiatric conditions, and other impairments



Regarded as...

- Protection based on perception of a disability where a real disability does not exist
- Prevents discrimination based on rumors, bias, unsubstantiated fears, and stereotypes



Traumatic Brain Injury Defined:

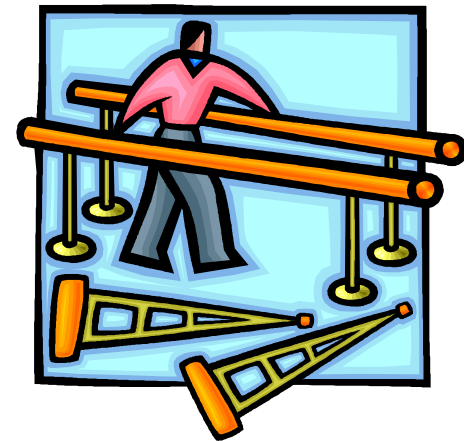
“an alteration in brain function, or other evidence of brain pathology, caused by an external force.” (BIAA, 2/2011)

“The new definition incorporates the emerging evidence that signs and symptoms of the injured brain may emerge over time.” (Dr. Wayne Gordon, Mt. Sinai School of Medicine)

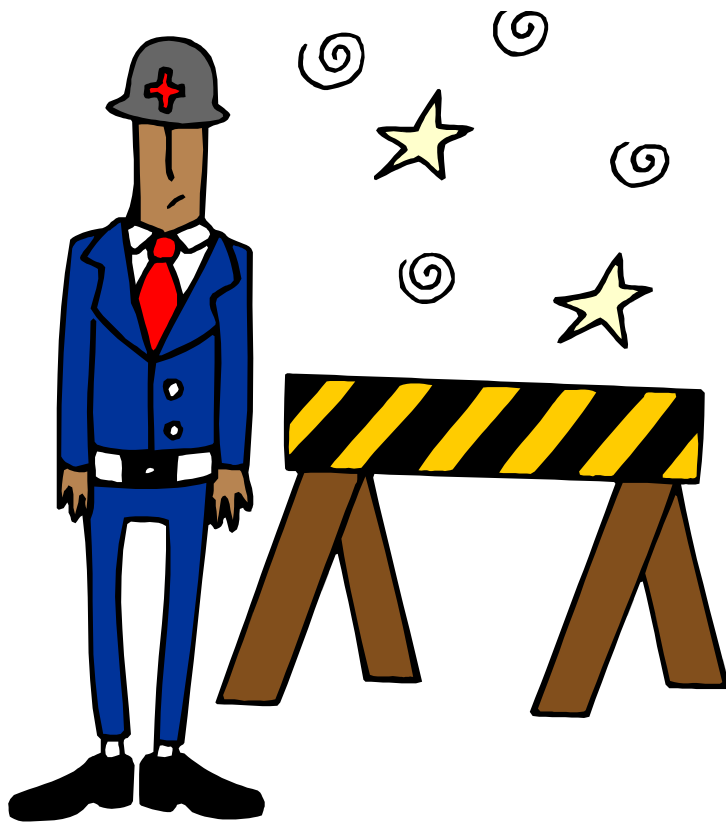
Recovery

Moderate/Severe TBI:

- Most rapid changes seen in first 6 months
- Continue to see changes in first 1-2 years, with changes slowing down over time
- Functional improvements possible at any time after injury
- Use of compensatory strategies and supports



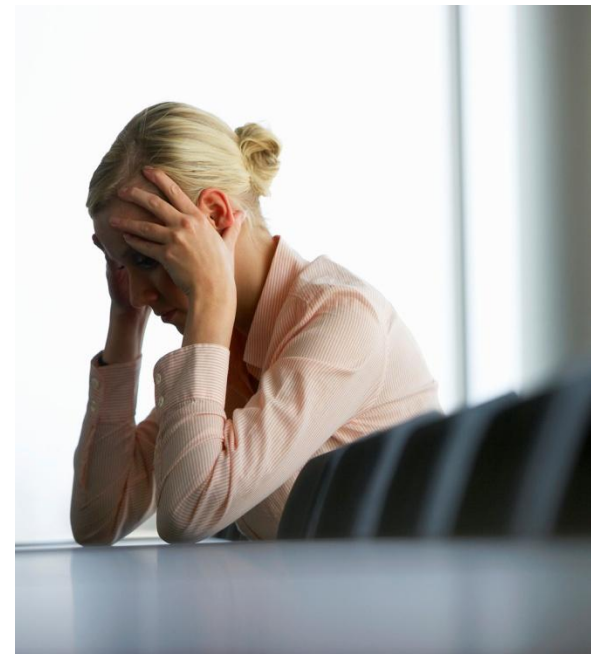
Functional Limitations Resulting from TBI



- Generally Fall into these four categories:
1. Sensory
 2. Motor
 3. Emotional/Behavioral
 4. Cognitive

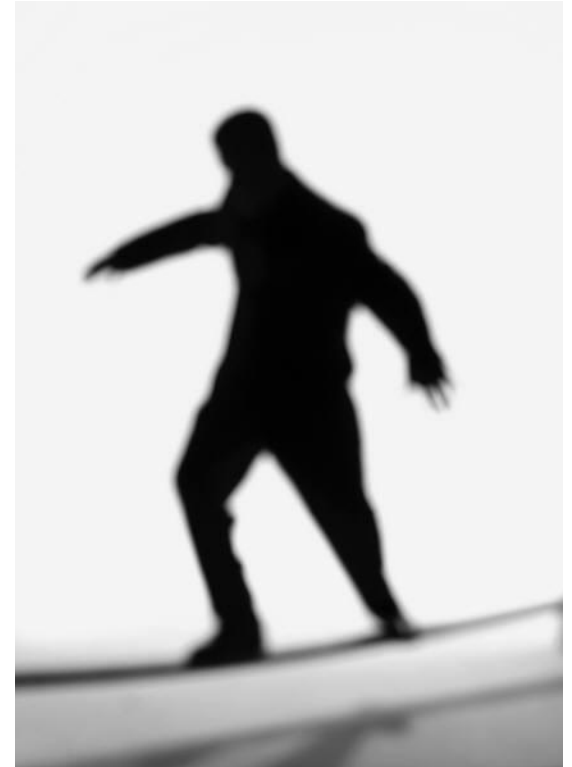
Sensory Limitations

- Headaches
- Fatigue
- Dizziness
- Blurred or double vision
- Sensitivity to noise/light
- Filtering
- Trouble with taste or smell

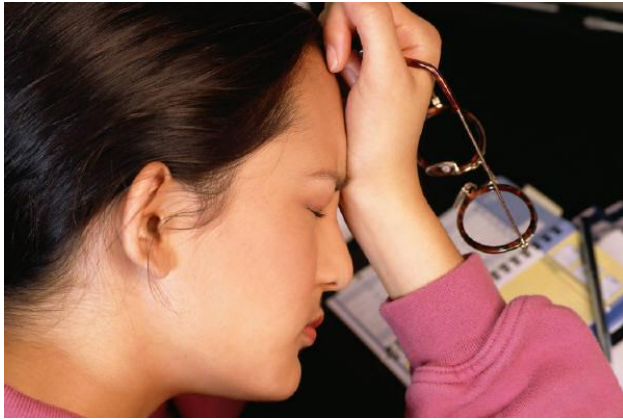


Motor Limitations

- Weakness
- Paralysis
- Reduced Coordination/Balance
- Spasticity
- Slurred Speech



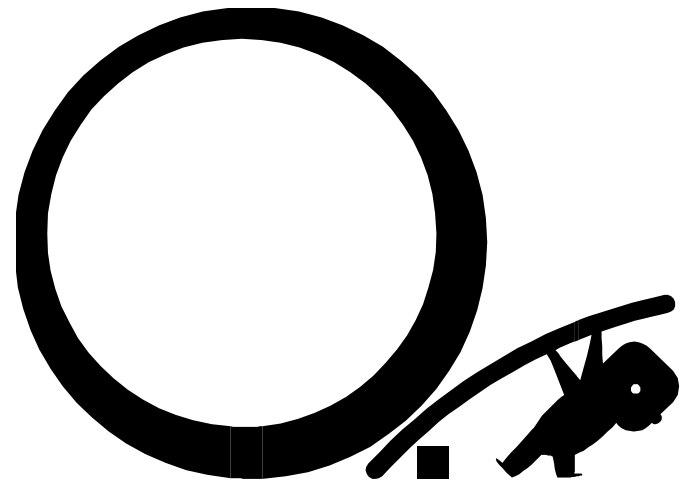
Emotional/Behavioral Limitations



- Decreased initiation
- Lack of awareness
- Impulsivity
- Depression
- Anxiety
- Irritability/anger
- Emotional lability

Cognitive Limitations

- Attention/concentration
- Memory
- Reasoning
- Slowed information processing speed
- Problem-solving difficulties
- Organizational difficulties
- Communication
- Confusion
- Judgment
- Initiation
- Abstract Thinking



...and now it's time to look for a job!



Return to Work (RTW) Challenges

Support systems

- Lack of social support can interact with physical, cognitive, and emotional/behavioral challenges
- Loss of previous social connections
- Diminished provider/family role
- Disconnected from church, community, etc.



Return to Work (RTW) Challenges

Disincentives

- Fear of losing disability benefits
- Inability to return to same employer or type of job
- Job prospects with lower income and/or status



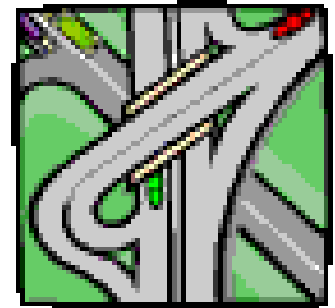
Predictors of RTW after TBI

- Predicting RTW is inexact; some variables are:

- Demographics (age, education)
- Pre-injury variables (work history, psychiatric functioning, substance abuse)
- Injury-related variables (severity, time since injury)
- Environmental variables (family, transportation)
- Other variables (personality features, economic variables, cultural influences)

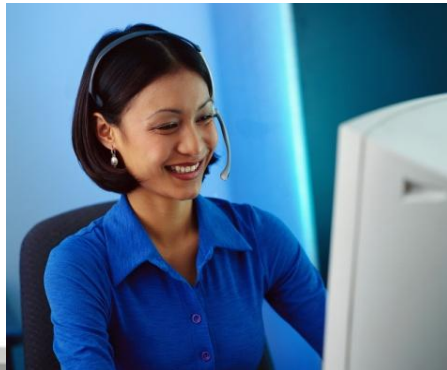


Merging ADA and TBI

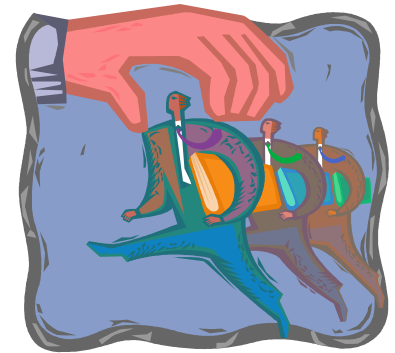


Employment Activities Covered by the ADA

- Application
- Testing/Selection
- Interview
- Hiring decision
- Training

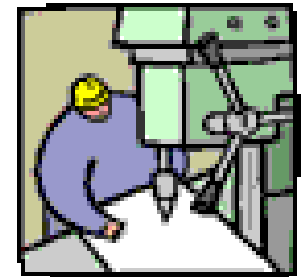


- Promotion opportunities
- Benefits
- Compensation
- Layoff/recall
- Any term, condition, or privilege of employment



The ADA Protects...

- **Qualified** individuals with disabilities from discrimination, provided that they can perform...
- The **essential functions** of a position...
- With or without **reasonable accommodation**



Qualified means...

- Education
- Work Experience
- Training
- Licenses
- Skills
- Certificates
- Good Judgment
- Ability to work with people



Essential Function means...



- The employer's judgment
- A written job description
- The amount of time spent performing a function
- The consequences of not performing the function
- The terms of a collective bargaining agreement
- The actual experience of past and current employees
- The nature of the work operation
- The organizational structure

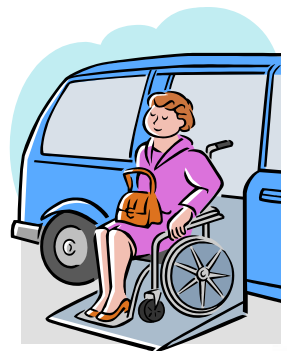
Reasonable Accommodation is...

- An adjustment to a job or to the work environment...
- That enables a *qualified* applicant or employee...
- To perform the *essential functions* of a job or...
- To enjoy equal benefits and privileges of employment



Examples of Reasonable Accommodation

- Make facility accessible
- Restructure job
- Modify work schedule
- Flexible leave policy
- Modify equipment or devices
- Modify policies/practices
- Provide qualified readers or interpreters
- Reassign to existing vacancy
- Many more

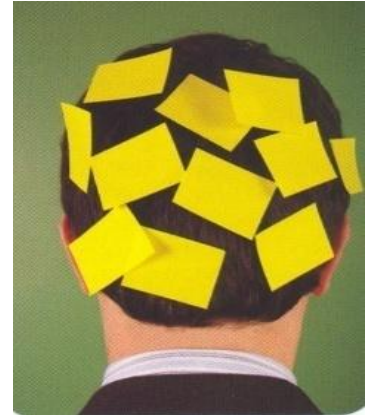


Possible TBI Accommodations

- Ramps, handrails, lever door handles
- Increase natural lighting
- Monitor glare guards
- Written and/or pictorial checklists
- Adjust training
- Reduce distractions
- Use memory aids (timer, smart phone)

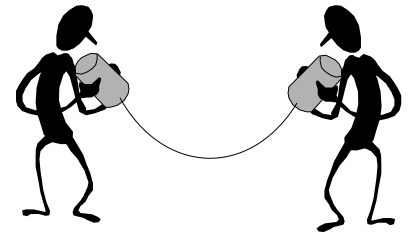
More TBI Accommodations

- Physical adaptations (colored files, ear plugs, headset, etc.)
- Co-worker prompts
- Notebooks, calendars, sticky notes, index cards
- Part time and/or flexible work schedule
- Check in with supervisor



The Reasonable Accommodation Process

- Identify the **essential function** to be accommodated
- Identify company's accommodation policy (supervisor, HR, etc.)
- Request the accommodation- be clear, specific
- Be prepared to provide documentation
- Trigger the interactive process



Accommodation Tips

- Identify how function has been accommodated (previous job, personal life)
- Avoid medical jargon
- Identify preferred and alternate ideas
- Maintain partnership
- Keep track of communication
- Focus on employment success



The ADA Does Not...

1. Guarantee employment for anyone
2. Establish quotas
3. Require employers to incur undue hardship
4. Protect illegal drug users
5. Protect direct threat

QUESTIONS, COMMENTS, ETC.



Resources

- Rocky Mountain ADA Center:
www.adainformation.org
- Job Accommodation Network:
www.askjan.org
- Colorado Assistive Technology Partners:
<http://www.ucdenver.edu/academics/colleges/medicalschool/programs/atp/Pages/AssistiveTechnologyPartners.aspx>

THANK YOU!

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