

## Research Article



# Veterans with Post Traumatic Stress Disorder Who Use Service Dogs: What You Need to Know Legally

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## Abstract

The use of service dogs has increased dramatically over the past decade. In conjunction, combat-related veterans have experienced a dramatic increase in Post-traumatic Stress (“PTSD”). PTSD can be dangerous for a veteran or a veteran’s family without proper treatment. Sadly, PTSD is one of the more significant factors that puts a soldier at risk for suicide. Service dogs bring hope to veterans who suffer from PTSD. In turn, veterans’ needs can simultaneously serve to save the dogs who might otherwise be destined for euthanasia.

## Introduction

Service dogs are a valuable asset to persons with disabilities. They empower disabled persons to maintain autonomy and independence in society. Among their many invaluable assets, service dogs have become particularly beneficial for veterans disabled by PTSD. Veterans with PTSD at increased risk of suicide find help by helping dogs themselves at risks for death. One of the many challenges veterans with service dogs face is knowing and understanding laws protecting them in their use of service dogs. This article will touch on the impact of PTSD suicide rates and the beneficial change that service dogs can bring to reduce that statistic. Additionally, because of the legal obstacles encountered with the use of service dogs there is discussion of the law related to the use of service dogs to promote awareness and understanding.

## Post-traumatic Stress is Killing Our Veterans

It is estimated that upwards of 20% of war veterans<sup>[1]</sup>, approximately 22 veterans per day<sup>[2]</sup> commit suicide. One of the prevailing factors is PTSD<sup>[3]</sup>. Of those affected by PTSD, approximately 50% do not seek treatment<sup>[2]</sup>. Many do not realize that what they are suffering is a genuine mental health issue. Or, they fear the stigma of being labeled mentally ill. In 2015, it was reported in USA Today, in an article featuring Erick Scott, an Iraq war veteran, that it was not until several episodes of nocturnal assaults on his wife and daunting night sweats that Mr. Scott finally attempted to get intervention for PTSD<sup>[4]</sup>. Initially, he was prescribed medications, but failed to be compliant with taking the medication. Eventually, with the use of

<sup>1</sup>Richardson LK, Frueh BC, Acierno R (2010) Prevalence estimates of combat-related post-traumatic stress disorder: critical review. *Aust N Z J Psychiatry* 44: 4-19.

<sup>2</sup>Veterans Statistics: PTSD, Depression, TBI, Suicide.” Veterans and PTSD. September 20, 2015, <http://www.veteransandptsd.com/PTSD-statistics.html>, (last visited 11/09/2015).

<sup>3</sup>In addition to PTSD, Traumatic Brain Injury (TBI) and Depression are also factors.

<sup>4</sup>Elissa Koehl, “Watch service dog calm war vet’s PTSD reaction,” (Jan 22, 2015, 3:08 p.m.), <http://www.usatoday.com/story/news/nation-now/2014/09/16/inspiration-nation-service-dog-calms-ptsd/15729181/>, (last visited 9/15/2015).

a service dog through “K9s for Warriors,<sup>[5]</sup>” Mr. Scott was able to finally achieve victory over his battle with PTSD.

## Man’s Best Friend to the Rescue

Service dogs have become more prevalent since they emerged in the United States beginning in 1928. Originally, service dogs were trained exclusively as guide dogs for the blind. Morris Frank of Nashville, Tennessee, was the recipient of Buddy, the first guide dog to arrive and traverse the streets of New York City on June 11, 1928<sup>[6]</sup>. It is estimated that there are more than 387,000<sup>[7]</sup> service dogs being used today by millions of individuals afflicted with visible and invisible disabling conditions.

Captain Jason Haag, US Marine Corp Retired, suffered PTSD and Traumatic Brain Injury (“TBI”), from IED explosions in Fallujah (2008)<sup>[8]</sup>. Captain Haag, acquired a service dog named “Axel.”<sup>[9]</sup> Captain Haag, like Mr. Scott, also acquired his service dog through “K9s for Warriors.” As it turned out, Captain Haag, who had been struggling with PTSD and TBI, was a saving grace for Axel who was scheduled to be euthanized. Although it seemed that Captain Haag rescued Axel, it was in fact Axel that rescued Captain Haag. Service dogs provide unconditional love and a sense of purpose. For persons disabled by PTSD, service dogs prove to be very therapeutic and have been reported to have “minimized or completely mitigated”<sup>[10]</sup> symptoms. In recognition of their efforts and success working as a team to combat PTSD, Axel and Captain Haag were honored at the 2015 American Humane Hero Dog Awards<sup>[11]</sup>. Captain Haag, his wife and Axel had all traveled together to Los Angeles, California, by plane for the award ceremony. On the trip to California they traveled without any difficulties regarding the use of a service dog. However, in a bizarre twist, on their return flight from the awards ceremony September 20, 2015, with the exact same airline, Captain Haag, his wife and Axel encountered some turbulence; on the ground. Captain Haag and Axel, his service dog, were subject to willful discrimination<sup>[12]</sup> in violation of the Americans with Disabilities

<sup>5</sup>K9s for Warriors, <http://www.k9sforwarriors.org/>, (last visited 06/15/2018).

<sup>6</sup>The Seeing Eye: History, SeeingEye.Org, <http://www.seeingeye.org/about-us/history.html?referrer=https://www.google.com/>, (last visited 9/15/2015).

<sup>7</sup>Welcome to Service Dog Central, Service Dog Central.org, <http://www.servicedogcentral.org/content/>, (last visited 9/28/2015).

<sup>8</sup>Nikki Burdine, WUSA9, “Military service dog nominated to compete for Hero Dog of the Year,” (Sept. 2, 2015, 9:46 a.m.), <http://www.wusa9.com/story/news/local/2015/04/25/military-service-dog--named-hero-dog--year/26378483/>, (last visited 9/15/2015).

<sup>9</sup>(Captain Hagg) Jason and Axel, <https://twitter.com/jasonandaxel>, (last visited 9/15/2015).

<sup>10</sup>Service Dog Tasks for PTSD, by Jean Cary, Service Dog Tutor, <http://www.servicedogtutor.com/service-dog-tasks-for-ptsd-3/>, (last visited 06/15/2018).

<sup>11</sup>American Humane Association Hero Dog Awards, 2015, <http://www.herodogawards.org/>, (last visited 9/15/2015). To see a comprehensive video, see 2015 Hero Dog Awards@ Sizzle Reel, <https://www.youtube.com/watch?list=PL6QaNkBT2Vv2Y4XxfBXlh3lHPdxjYKwed&v=66zWXSgIDB4>.

<sup>12</sup>Emily Shapiro, “Veteran Accuses American Airlines of Stopping Him, Service Dog From Boarding Flight,” ABC News (Sept. 22, 2015, 12:05 p.m.), <http://abcnews.go.com/US/veteran-accuses-american-airlines-stopping-service-dog-boarding/story?id=33943749>, (last visited 11/09/2015).

Act<sup>[13]</sup> Amendments Act (“ADAAA”) of 2008 and the Federal Air Carriers Act<sup>[14]</sup> (“FACA”), as amended as of 2009. When it was time to board the plane the airline agents demanded documentation from Captain Haag to prove Axel was a service dog. Captain Haag who had previously traveled without confrontation, was not prepared on his return flight to produce the documentation the airline agents (improperly) demanded. The airline agents denied Captain Haag and his service dog Axel access to their scheduled flight. The airline quickly remedied their error the following day, but it was demonstrative of how easily discrimination can occur. Through it all, man’s best friend-Axel remained by Captain Haag’s side.

## Service Dog Discrimination

One of the prevailing challenges involving the use of service dogs is willful discrimination, in violation of the ADAAA, FACA or the Federal Housing Act (“FHA”)<sup>[15]</sup>. These are specifically federal regulations; this discussion does not include state regulations extensively. Statutory regulations tend to result in discrimination due to the language of the respective acts. Although these laws are similar, the requirements can vary slightly resulting in different interpretations for individuals, agencies, entities and courts across the nation. Amendments to the ADAAA in 2008 mandated a broader interpretation for persons with disabilities. This was contrary to the Court previous interpretations which was more narrow. Prior to 2008, mitigating measures were divisive and only helped to perpetuate discrimination against persons with disabilities. Since 2008, the legislature and (ideally) the courts now acknowledge that the use of mitigating measures may not be used to discriminate against persons with disabilities which includes persons with disabilities who use service dogs. In 2010, in an effort to reduce discrimination the Department of Justice provided clarity with the specific requirements regarding “Service Animals.”<sup>[16]</sup>

## Service Dog Accommodation

Generally, there are two specific questions that a person with a service dog proffering to be disabled (if not obvious) can be asked. One: “Is this a service animal?” Two: “What task or function does your dog perform?” This is a conundrum, for disabled persons with service dogs seeking accommodations and for entities trying to adhere to their own policies while simultaneously obligated to accommodate persons with disabilities. An initial interpretation comes by way of a balancing test: a public accommodation needs to ascertain the legitimacy of a claim of disability and the need for use of a service

<sup>13</sup>The initial Americans with Disabilities Act, was signed into law in 1990. 42 USC § 12101.

<sup>14</sup>14 CFR Part 382, Department of Transportation, Nondiscrimination on the Basis of Disability in Air Travel.

<sup>15</sup>42 USC § 3604(f).

<sup>16</sup>ADA Requirements, Service Animals, US Dept. of Justice [https://www.ada.gov/service\\_animals\\_2010.pdf](https://www.ada.gov/service_animals_2010.pdf), (last visited 06/15/2018). Historically the term “service animals” included any animal, to include, but not limited to, dogs, monkeys, pigs, miniature horses or other animal demonstrated to aid a disabled person. As of 2010, the Department of Justice has proclaimed, effective March 12, 2011, that only “dogs” are recognized under Title II (public government entities) and Title III (general public accommodations) of the ADA.

dog/assistance dog versus a disabled person's right to privacy and protections under HIPAA<sup>[17]</sup>. Although many people assume one must be on disability benefits (private or social) to qualify as a disabled person, the absence of monetary benefits does not negate entitlement to protection under the law. It merely requires the appropriate documentation from a third-party practitioner<sup>[18]</sup> licensed to diagnose disabling conditions as defined in the ADAAA. There is a caveat. Public accommodations and air carriers are prohibited from demanding documentation regarding a person's disability. They are encouraged, if not required, to accept a person's claim as valid. The only legitimate grounds to deny accommodations to a disabled person with a purported service dog is if the dog displays uncontrollable behavior or elimination issues. Furthermore, a service dog is not required to wear a vest to indicate service dog status. This has likely increased the incidence of "fake" service dogs. This makes discernment for entities-public accommodations, very difficult and frustrating for the accommodation of service dogs.

In addition, a public accommodation cannot prohibit service dog accommodation based upon fear. "Fear" of dogs is not a legitimate purpose for banning service dogs.<sup>[19]</sup> The specific factors which allow entities to deny service dogs access, as previously mentioned, include: (1) whether the service dog is housebroken, and (2) the behavior of the service dog. If a service dog is not properly controlled or could pose a threat, pursuant to 28 CFR PT. 36, App. A, subpt. C<sup>[20]</sup>, a service dog could be banned. There are other controlling factors that can help determine whether or not a service dog can be banned. Currently, a FHA claim can be determined based upon the factors found in 42 USC § 3604(F)(2)<sup>[21]</sup>. The Air Carriers Act guidelines are highlighted in 49 USC § 41705. The FACA case law was addressed in *Adler v. WestJet Airlines, Ltd.*, 31 F. Supp. 3d, 1385 (SD Fla. 2014). However, reliance is placed on *Shotz v. Am. Airlines, Inc.*, 420 F.3d 1332, 1336 (11th Cir. 2005), which was prior to the ADAAA of 2008 and the subsequent directives from the Department of Justice in 2010. Service dog accommodation is essential unless justifiably deniable.

## Service Dog Laws: Efforts to Reduce Misuse and Discrimination

Service dogs "in training" are not covered under the ADAAA. As of July 1, 2015, the State of Florida implemented a law, § 413.08(9), which makes it a criminal misdemeanor of the second degree to misrepresents the use of a service animal. It equally imposes the same punishment for persons or entities who willfully discriminate

against disabled persons with service dogs or legitimate service dog trainers; § 413.08(4). The intent is to dissuade citizens from trying to present their pets as service dogs and to empower legitimate service dog trainers to take "service dogs in training" into locations where previously these service dogs in training have legally been denied access.

## Conclusion

The heart of the matter lies in the fact that service dogs, quite often shelter dogs destined for death, have found a lawful purpose through service or assistance of our veterans equally at risk for death due to combat-related PTSD. Legal advocacy for veterans and their service dogs requires an expanded understanding of the laws that protect disabled persons and their dogs as well as entities who may be subject to misrepresentations by those who are not entitled. Hopefully, a better understanding the law of service dogs may help to serve the needs of those with PTSD and possibly reduce the suicide rate for those who bravely served our country.

<sup>17</sup>Health Insurance Portability and Accountability Act of 1996 (HIPAA).

<sup>18</sup>A third-party professional can include, but is not limited to, a medical doctor, a clinical psychiatrist or psychologist, or other licensed professional who can clinically validate a claim of disability.

<sup>19</sup>ADA Requirements, Service Animals, U.S. Dept. of Justice, [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm), (last accessed 09/15/2015).

<sup>20</sup>*Tamara v. El Camino Hosp.*, 964 F. Supp. 2d 1077, 1083 (ND Cal. 2013). This addresses ADA, Title III. Analysis of Title II can be found in *Alboniga v. Sch. Bd. of Broward County Fla.*, 2015 US Dist. LEXIS 15832, 23 (SD Fla. 2015)

<sup>21</sup>*Sanzaro v. Ardiente Homeowners Ass'n LLC*, 21 F. Supp. 3d 1109, 1115 (D. Nev. 2014).