

"Sex Addict" Fired by IBM Sues for \$5 Million

In-House News:

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By Anique Gonzalez

A \$5 million lawsuit filed against IBM by a former employee who was terminated because he entered an adult chat room while at work has once again come to the legal forefront. James Pacenza, a 58-year-old Vietnam veteran who operated an East Fishkill, NY, machine plant that produced computer chips for the company, claims that he is addicted to the Internet and that, rather than firing him, IBM should have attempted to treat his disorder.

In May of 2003, Pacenza visited an adult chat room on a company computer during a 10-minute free period while a machine measured the thickness of silicon wafers. After the 10-minute period had elapsed, Pacenza went back to work but failed to log out of the chat room. Thereafter, a coworker went to the workstation Pacenza had been using and viewed content referencing a sexual act. The individual subsequently reported the incident, and Pacenza was promptly fired.

Pacenza maintains that visiting adult chat rooms via the Internet is how he combats his posttraumatic stress disorder (PTSD), a disorder he says he developed after witnessing the death of his best friend while they were on patrol in Vietnam in 1969. For those unfamiliar with the disorder, PTSD is an anxiety disorder that results from a traumatic incident and is from then on triggered by external events. Symptoms of PTSD can include insomnia or disassociation

and can also be displayed through other disorders, such as clinical depression or addiction.

On that particular day in May, Pacenza reportedly visited the Vietnam Veterans Memorial, which he said directly impacted his actions. Pacenza elaborated, "I felt I needed the interactive engagement of chat talk to divert my attention from my thoughts of Vietnam and death."

According to federal court documents, Pacenza stated that having PTSD directly resulted in his becoming "a sex addict, and with the development of the Internet, an Internet addict." Furthermore, he contends that his illness should fall under the guidelines of the Americans with Disabilities Act (ADA). Pacenza's lawyer, Michael Diederich, explained that other company employees with "well-known" addictions, including addictions to alcohol and drugs, are given help in the form of recovery programs and that Pacenza's addiction should have been treated in a similar manner.

Diederich maintains that Pacenza did not breach any IBM rules regarding Internet use and that the real basis for the dismissal was his age, not his website preferences. At the time Pacenza was fired, he had worked for IBM for 19 years and was one year away from retirement.

While the suit was originally filed in 2004, it floundered in litigation limbo as Pacenza struggled with medical ailments and Diederich served as a military lawyer in Iraq. Recently, though, IBM has requested a summary judgment, noting that its "policy against surfing sexual websites is clear."

The company has also denied the age-discrimination allegation and stated that

the Plaintiff was discharged by IBM because he visited an internet chat room for a sexual experience during work after he had been previously warned." IBM insists that four months earlier, Pacenza had been cautioned after it was discovered that he had logged into an adult chat room while at work; Pacenza denies the assertion.

On a larger scale, the outcome of the case has the potential to directly impact whether or not Internet misuse will be considered a valid form of addiction and, subsequently, how companies are allowed to deal with employees who abuse the Internet while at work.

In the event that the case goes to trial and is settled in Pacenza's favor, Internet addiction may then fall into a category of psychological impairments covered by the ADA. In that instance, it is possible that companies would be required to provide aid to those with the disorder, including counseling and medical leave. Moreover, it may also impact an employer's ability to terminate those with the addiction.

On the Net

IBM

www.ibm.com/us

ADA Home Page

www.usdoj.gov/crt/ada/adahom1.htm

National Center for PTSD

