

DAILY NEWS

Did his duty – then lost his job

MICHAEL WARREN, A NATIVE of Port Jefferson, L.I., is suing International Business Machines Corp. for firing him because since 9/11 he's been called up too often by the Army Reserves.

Today, Warren serves his country in a time of war as he wages a second David vs. Goliath war against one of the giants of corporate America.

Warren's attorney Brendan Chao says IBM is in violation of Uniformed Services Employment and Reemployment Rights Act and the New York State Soldiers and Sailors Civil Relief Act, laws that protect reservists from being fired for military service.

After Chao filed suit on behalf of Warren, IBM moved for dismissal in summary judgment. IBM says Warren, an Internet security expert, was fired as part of a "zero-tolerance policy" after leaving a "threatening" voice message for a female co-worker in London.

"Liz, this is Michael Warren," his message said, after playing phone tag involving a big bank deal. "I'm gonna try you on your mobile. Pretty soon I'm gonna hunt you down and kill you. I'm gonna get on a plane. . . . And I'm going to, um, errrrh, I'm going to track you down. I'll talk to you in a minute. Bye-bye."

However, the co-worker said that although she thought the message might be inappropriate, she never felt threatened by it, and records show that she and Warren exchanged several cordial

IBM-related E-mails after that message while he was on reserve duty.

After listening to the tape, Manhattan federal Judge Denny Chin ruled in favor of Warren, and scheduled trial for May 9.

"A reasonable jury could find that Warren was joking when he left the voice mail," Chin wrote, "and that discharging an employee with an excellent eight-year employment record was exceedingly, and irrationally, harsh."

"The most egregious part of this ruse is that IBM allowed

Warren to keep working until a big \$6 billion Chase-J.P. Morgan deal was completed," says Chao. "They needed him on that deal."

In fact, Chin, in his ruling, also said: "Under these circumstances, a reasonable jury could surely find that the most likely explanation — indeed, the only logical explanation — is that IBM discharged Warren because of the continued absences caused by his membership in the reserves and the possibility that he would be summoned to additional and possibly extended service."

Kevin Lauri, IBM's attorney in the case, declined comment, referring inquiries to the IBM communications office, which didn't return a phone call.

In 1986, at age 19 and in college,

Warren joined the Army Reserves. In 1991 he was called up and served as a master sergeant military policeman in the Gulf War. In 1994, he was hired by IBM as an Internet security specialist, while remaining in the reserves, in which he's served for 19 years. Warren worked for eight years at IBM in the global security unit, earning a six-figure salary, winning raises, bonuses and favorable annual job performance evaluations.

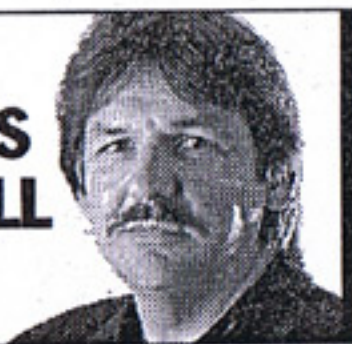
"But after 9/11 my bosses started getting frustrated with me getting called up by the reserves more frequently," Warren said last week. "I was getting what we call 'popup' missions without a lot of lead time. Iraq is essentially a police action. It calls for a lot of MPs, which is the most overtasked branch in the army. I train MPs, which are in very short supply at base camps across the country. We just can't produce enough MPs to meet all the mission requirements."

Not long after the smoke cleared from Ground Zero, Warren said, his superiors at IBM discussed his reserve status with him 15 or 20 times.

"When I told them I had a popup activation they'd say things like, 'You gotta be kidding me,'" says Warren. "One manager even said, 'You're killing me. How am I supposed to support this?' I can't even describe how frustrating this was. We'd been attacked. We were at war. I was an American in the United States Army Reserves. My country needed me because I had the skills to teach other MPs. And I was catching flak at work. On a fairness scale it was just very frustrating."

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Michael Warren