

## NOVA Legal Beat: Falsification or Honest Mistake?

Q. My agency is accusing me of falsifying documents. Yes, I inputted some incorrect information, but that was a mistake. What can I do?

A.

Falsification is a serious charge — one that could result in the removal of a federal employee. This offense “raises serious doubts regarding [an employee’s] honesty and fitness for employment,” a Merit Systems Protection Board (MSPB) administrative judge said in *Steve Durfee v. Department of Defense*

(2010). While agencies will not tolerate falsification offenses, they should not be so strict as to not take into account the fact that mistakes can and do happen. Falsification occurs when an employee “knowingly supplied incorrect information with the intention of defrauding or deceiving the agency,” the administrative judge noted in *Durfee*

. He added that “[b]ecause there is seldom direct evidence on the issue, circumstantial evidence must generally be relied upon to establish the element of intent.” An employee may have a reasonable explanation for why incorrect information was provided, but that may not always save him or her from discipline, at least initially. That’s what happened to the senior safety and health specialist in *Ralph A. Deskin v. U.S. Postal Service*

(1997). The agency proposed to remove the employee for allegedly falsifying information in a report and cover letter on a workplace safety program called “Supervisors’ Training Observation Program” (STOP). Initially, the employee submitted a report indicating that 50 percent of customer service employees and 90 percent of processing and distribution employees had “STOP knowledge.” After being told to correct inaccuracies in the report, the employee revised it to indicate that only five percent of customer service employees and 10 percent of processing and distribution employees had “STOP understanding.” These “glaring discrepancies” between the two report drafts and the untrue statements in the accompanying cover letter prompted the agency’s removal proposal, which a deciding official reduced to a demotion. The employee filed a petition for review with the MSPB, but an administrative judge sustained the agency’s action. The appellant explained that his supervisor had told him to detail in the report whether craft employees knew “what STOP [was].” Based on his understanding of these instructions, the appellant set out to find out the “percentage of craft employees who had ever heard of STOP.” However, the supervisor of the appellant’s supervisor had actually wanted the report to reflect how well craft employees understood STOP, though this intention was not clearly expressed anywhere along the chain of command. The Board concluded that the appellant gave plausible explanations “for the numbers proffered in the initial STOP report” and how he “misunderstood what information his superiors wanted.” The Board noted that he was given little time to complete the report, and he promptly corrected the mistakes in it after they were brought to his attention. The Board ordered the agency to cancel the demotion and restore the appellant to his prior grade level. Federal employees charged with falsification should immediately contact a federal employment law attorney. Depending on the circumstances, an attorney could show the employee did not intentionally submit incorrect information with any intent to deceive. Mathew

B. Tully is the founding partner of Tully Rinckey PLLC. Located in Arlington, Va. and Washington, D.C., Tully Rinckey PLLC's attorneys practice federal employment law, military law, and security clearance representation. To speak with an attorney, call 703-525-4700 or to learn more visit [fedattorney.com](http://fedattorney.com).

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