

Ask the Lawyer – Neil A.G. McPhie

By Neil A.G. McPhie

Q:

What exactly is conduct unbecoming a federal employee?

A:

Essentially, conduct unbecoming a federal employee is a very wide net that agencies can cast to catch a broad range of misconduct. The Merit Systems Protection Board (MSPB) has admitted that the offense is broad. In fact, in the case of *Miles v. Dep't of Army* (1992), the Board relied on Webster's Encyclopedic Unabridged Dictionary of the English Language to define "unbecoming."

"Unbecoming," the Board noted, means "unattractive; unsuitable;...detracting from one's...character, or reputation; creating an unfavorable impression." Conduct that the MSPB has found to be unbecoming includes leaving a taunting voicemail message to a co-worker in *Jones v. Dep't of the Interior* (2004); creating discrepancies in credit hour forms between actual times departed and recorded times of departure in *Raco v. Social Security Administration* (2011); engaging in an extramarital affair with a co-worker and falsely reporting a rape in *Miller v. Dep't of Army* (2007); and using a government vehicle to run over a dead deer in *Miles*.

As the Board noted in *Raco*, to prove a conduct unbecoming of a federal employee charge, an agency must prove the employee "engaged in the underlying misconduct alleged in support of the broad label." This requirement sets the bar for proving a conduct unbecoming charge very low. Even though the charge sounds vague, federal employees must take it seriously because its penalty could be removal.

The general nature of a conduct unbecoming charge may tempt agencies to push the envelope in terms of imposing penalties. Sometimes, though, the penalty for conduct unbecoming should not exceed that for the underlying offense, according to the Board. For example, in *Raco*, the Social Security Administration removed a claims examiner because of multiple credit hour form discrepancies relating to when she left the office. However, after examining the penalties that the agency issued against other employees who similarly violated time and attendance policies, the MSPB ordered the examiner's sentence reduced to a 14-day suspension without pay.

Federal employees charged with conduct unbecoming should immediately consult with a federal employment attorney. A lawyer could help them challenge the evidence against them, show that their conduct was not unbecoming, or show any disparate treatment.

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