



Basic Employee Relations Course

Determining the Charge

One of the most common reasons for losing a case involves the improper framing of the charge(s). It is not sufficient to state that an employee did something wrong; the charge must be appropriate to the act of misconduct. The agency must be able to prove that the employee committed the charged offense. The first step to advising management on the proper charge is to know the facts of the case before writing the charge. This fact-finding is fundamental to establishing that misconduct occurred that warrants an adverse action and to every aspect of framing the charge. In addition, you must know the legal elements that must be proven for a particular charge.

To assist the supervisor to choose the charge, you should remember:

1. Charge what you can prove.
2. The facts must support the charge.
3. The evidence must support the facts alleged.

Framing a supportable charge has three steps:

1. Charge label which provides the framework to identify the nature of the misconduct.
2. The Specifications which address Who, What, When, Where.
3. The legal elements which provides the evidence in support of the charge.

The following examples help illustrate problems with charges that require intent as a legal element that the agency must prove:

- **Example 1 - Charge Label - Theft**

- **Definition:** Taking with the intent to deprive the owner permanently of possession and use of his or her property.
- **Pitfall in Proving the Legal Elements:** Must prove taking and intent.

- **Example 2 - Charge Label - Insubordination**

- **Definition:** Willful and intentional refusal to obey the lawful order or a superior which he or she is entitled to give the order and to have it obeyed.
- **Pitfall in Proving the Legal Elements:** Difficult to show clarity of order, that order was in effect, and a deliberate or willful and intentional refusal to obey.



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- **Example 3 - Charge Label - Falsification**

- **Definition:** Knowingly supplying wrong information with the intent to deceive or mislead for gain or profit.
- **Pitfall in Proving the Legal Elements:** Must prove intent or that the individual misled or deceived for gain or advantage.

To avoid pitfalls with intent-based charges, consider using a charge without the intent element, such as failure to follow instructions, lack of candor, poor judgment; conduct unbecoming, or inappropriate conduct.

After a supportable charge has been identified, you must assist the supervisor to select the appropriate penalty.