



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for January 15, 2021

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NONPRECEDENTIAL COURT DECISIONS

Lowe v. Department of the Navy, No. [2020-1564](#) (Fed. Cir. Jan. 11, 2021): The agency removed Mr. Lowe based on charges of careless or negligent performance of duties (six specifications) and conduct unbecoming (one specification). The administrative judge determined that the agency did not prove any of the specifications of the first charge, but it proved the specification in the second charge. The conduct described in the second charge involved a statement that Mr. Lowe made to a subordinate employee, and the administrative judge sustained the specification and charge despite the fact that she did not conclude that Mr. Lowe made the exact statement as charged by the agency. Because she only sustained the second charge, the administrative judge mitigated the removal penalty to a reduction in grade to a GS-12 nonsupervisory position. The initial decision became the Board's final decision. On review before the court, Mr. Lowe asserted that his due process rights were violated because the administrative judge relied on a new ground outside the scope of the conduct unbecoming charge described in the notice of proposed removal. The court rejected Mr. Lowe's due process arguments because Mr. Lowe had "an opportunity to meaningfully address the charge against him," "he admitted that he made a statement using very similar language to that specified by the agency," and the admitted statement "was not a significant departure from the agency's specification." The court therefore affirmed the Board's final decision.

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