



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 22, 2018

CASE NUMBER: 2017OPA-1067

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Unfounded)
# 2	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Sustained
Imposed Discipline		
Oral Reprimand		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Not Sustained (Inconclusive)
# 2	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Inconclusive)

EXECUTIVE SUMMARY:

The Complainant, a Department supervisor, alleged that the Named Employees failed to report force to a supervisor in a timely manner as required by Department policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force

The Named Employees were involved in a traffic stop of the subject. The officers made the decision to arrest the subject and while they were handcuffing her in front of a patrol vehicle she made two complaints of pain. Specifically, the subject stated: “you’re hurting me...you’re hurting me” and “ow.” Named Employee #1 (NE#1) directly addressed the subject after both complaints of pain. Notably, after the first complaint, he stated in response: “I’m barely even grabbing you.” In addition, at the time the subject made the complaints of pain, Named Employee #2 (NE#2) was directly next to the subject attempting to place handcuffs on her.

At his OPA interview, NE#1 stated that he heard the complaints of pain at the time they were made. When asked why he did not immediately report the use of force to a supervisor, NE#1 told OPA that it was not his practice to do so at his



previous precinct (North) and that he was accustomed to screening the incident with a supervisor when he arrived at the precinct.

SPD Policy 8.400-POL-1 requires that officers report all uses of force except for de minimis force. The policy further requires that: "Officers shall further document all reportable uses of force to the best of their ability, including a description of each force application." (SPD Policy 8.400-POL-1.) I read this policy to govern the requirement that documentation be completed for any reportable use of force, while I read SPD Policy 8.400-POL-2 to require the immediate notification to a supervisor of the force or complaint of pain.

Here, NE#1 did not document any use of force or the subject's complaints of pain. However, given that this was a Type I use of force and given that he was a witness officer in this instance, he was not required by policy to do so. (*See, e.g.*, SPD Policy 8.400-TSK-1; SPD Policy 8.400-TSK-2.) Regardless, I note that NE#1 did later complete a use of force report when instructed to do so by a supervisor. As such, I recommend that this allegation be Not Sustained – Unfounded as against him.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

SPD Policy 8.400-POL-2 requires that an officer who uses reportable force or hears a complaint of pain while on duty is required to immediately notify a supervisor of this matter unless it would be impractical to do so. The policy further instructs the officer to make this notification by calling the supervisor via radio. (SPD Policy 8.400-POL-2.)

As discussed above, NE#1 heard the subject's complaints of pain. However, he never notified a supervisor. NE#1 stated that NE#2 was the primary officer and he was the backing officer. Accordingly, NE#1 asserted that his expectation was that NE#2 would notify a supervisor of the complaint of pain. However, the fact that he was a backing officer did not relieve NE#1 of the independent obligation to report the complaints of pain. Moreover, as he was standing right next to NE#1 at the time the complaints were made and, for a period of time thereafter, he was aware that NE#2 did not immediately notify a supervisor. However, NE#1 still did not do so. Lastly, NE#1 asserted that it was his prior practice to screen uses of force with a supervisor when he returned to the precinct. However, that prior practice was directly contrary to SPD policy, which requires an immediate notification to a supervisor via radio unless impractical. There is no evidence and NE#1 does not assert that an immediate notification via radio would have been impractical in this case. In addition, even if NE#1's prior practice was acceptable, here, NE#1 did not notify a supervisor while at the precinct and failed to verify with NE#2 that NE#2 did so.

For these reasons, NE#1's failure to immediately notify a supervisor of the subject's complaints of pain violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force



As discussed more fully below, NE#2 contended that he did not hear the subject's complaints of pain at the time they were made, but that he later realized that they had been made when he watched his ICV and he reported them to a supervisor. He stated that his supervisor instructed him to complete a use of force report and he did so.

For the same reasons as discussed in the context of Allegation #2, I am inclined to believe that NE#2 did not, in fact, hear the complaints of pain; however, I cannot prove or disprove this fact. If he heard the complaints, he would have been required to complete a use of force report, if he legitimately did not, this requirement would be excused. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #2

8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force

NE#2 was directly next to the subject when she twice complained of pain. However, NE#2 stated that he did not hear the complaints. If he did hear them or if a reasonable officer in his place would have heard them, he would have been required to report them and the failure to do so would constitute a violation of policy.

In virtually all cases where officers contend that they failed to hear complaints of pain, those complaints are never reported to a supervisor and/or documented. That such complaints were made is normally only caught after the fact and well after the incident during supervisory review. This case is somewhat unique in that NE#2 contended that he did not initially hear the complaints of pain, realized that the complaints were made that same day when he reviewed his ICV, then screened the complaints with a supervisor prior to ending his shift, and completed a use of force report when instructed to do so. In my opinion, this lends substantial credence to NE#2's account that he did not hear the complaints at the time they were made.

Had NE#2 not taken the steps he did in this case, I would have recommended that this allegation be Sustained as against him. I would have made this recommendation based on my conclusion that a reasonable officer in NE#2's place would have heard the complaints. However, given the specific facts of this case and given that while I cannot prove or disprove NE#2's claim that he did not hear the complaints of pain, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**