



CLOSED CASE SUMMARY

ISSUED DATE: MAY 22, 2018

CASE NUMBER: 2017OPA-1246

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)	Not Sustained (Training Referral)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 may have worked secondary employment without a valid and approved work permit.

ADMINISTRATIVE NOTE:

In the Director’s Certification Memo submitted to the Named Employee’s chain of command, the allegation in this case was initially recommended to be sustained. I based that recommendation in large part on my reading of the plain language of the policy. I did not credit the Named Employee’s assertion that the “date of hire” referenced in the policy meant the date of hire at the Department rather than the date of hire by the off-duty employer. I specifically wrote the following:

NE#1 expressed to OPA that he believed his permit was valid on the date in question. He argued that when the policy stated that the permit ran one year from the employee’s date of hire, it meant the employee’s date of hire at SPD, not the date of hire by the secondary employer. First, I find that this is an incorrect and illogical reading of the policy. It makes no sense that the one-year period would run from the date of hire at SPD. The “date of hire” that the policy refers to is clearly the date of hire by the secondary employer. This is consistent with the remainder of the language of the policy...

...I find that despite NE#1’s arguments to the contrary, this section of the policy is abundantly clear. Officers are required to renew permits every year, the permits last for 365 days at the most, and they run a year from the date of the beginning of the secondary employment. Notably, officers throughout the Department regularly comply with this policy without issue or question. For these reasons, I find that NE#1 worked secondary employment without a valid permit and, as such, I recommend that this allegation be Sustained.

At the discipline meeting in this case, the Named Employee’s Captain stated that many officers had the same confusion as NE#1 did concerning the date of hire language. After that meeting, I spoke to a number of SPD employees, including



some assigned to OPA. They confirmed that the language could be construed as ambiguous and that it was not uncommon for officers to interpret the date of hire as the date they began their employment at the Department.

While this does not change my opinion that this interpretation is illogical based on the plain language of the policy, I find it unfair and unreasonable to discipline the Named Employee for conduct that was apparently based on a confused belief shared by others in the Department. As such, I amended my recommended finding from Sustained to Training Referral.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)

OPA received a complaint via Twitter wherein it was alleged that several SPD officers were sitting in a truck outside of a church every Sunday “for hours” while in uniform. Presumably, the Complainant was claiming a potential waste of City resources; namely, uniformed police officers allegedly not engaging in official duties. This conduct was observed by the Complainant on December 3, 2017.

Based on this complaint, OPA looked into this matter and determined that three Department employees, including Named Employee #1 (NE#1), were, in fact, sitting in a truck outside of a church for multiple hours. However, OPA also learned that this was secondary employment paid for by St. James Cathedral. OPA further learned that NE#1 may not have had a valid work permit for that secondary employment.

OPA interviewed NE#1. At that interview, NE#1 brought a work permit for secondary employment at the St. James Cathedral. The permit had a submission date of November 15, 2016 and it was fully approved by NE#1’s chain of command on December 1, 2016.

SPD Policy 5.140(IV)(F) states that: “All Secondary Employment Permits are valid for one year, expiring on the employee’s date of hire. If a continuation of employment is desired, the employee is required to submit a new Secondary Employment Form.” The policy further instructs that: “Under no circumstances shall a Secondary Employment Form be valid for more than 365 days.” (SPD Policy 5.140(IV)(F)(1).) Lastly, the policy requires that: “Employees are responsible for ensuring that their permit is renewed annually and is current.” (SPD Policy 5.140(IV)(F)(2).)

NE#1 stated that he believed that his permit was valid when he worked secondary employment on December 3, 2017, because it expired one year from his date of hire – i.e. it ran from December 1, 2016 (the date it was approved) to December 6, 2017 (his date of hire was December 6, 1988). As discussed more fully in the Administrative Note section above, I find this interpretation of the policy to be inconsistent with its intent and plain language. Most notably, the policy explicitly states that a permit cannot last longer than 365 days. Even under NE#1’s calculation, his permit would have been 371 days in duration and thus in violation of policy.

That being said, I believe that NE#1’s conduct in this case was based on a misunderstanding of the policy. I further find that this confusion is shared by other members of the Department. While I find that, regardless, his permit was expired on the date in question and that he engaged in a technical violation of policy by engaging in secondary



employment, I believe that a Training Referral is the more appropriate result. I lastly note that my understanding is that this policy is presently being reviewed and revised by the Department. To the extent the Department is not already intending on clarifying the “date of hire” language, I will request that it consider doing so to ensure that this confusion is not repeated in future cases.

- **Training Referral:** NE#1 should be reminded of his obligation to ensure that his secondary work permits are annually renewed. NE#1 should understand the requirement that a permit can only last, at most, for 365 days before it expires. NE#1’s chain of command should impress on him how important it is that his permit is current and that it is the expectation of the Department that he will comply with this policy.

Recommended Finding: **Not Sustained (Training Referral)**