



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 20, 2018

CASE NUMBER: 2018OPA-0356

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Lawful and Proper)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Lawful and Proper)
# 4	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

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:

The Complainant alleged that Named Employee #2 was unprofessional towards her and that Named Employee #2, or another unknown SPD employee, subjected her to excessive force by injuring her elbow. Lastly, it was alleged that both Named Employee #1 and Named Employee #2 may have failed to refer potential misconduct to OPA and that neither assisted the Complainant in filing an OPA complaint.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

The Complainant was placed under arrest and was secured in an ambulance. While in the ambulance, she was speaking with Named Employee #1 (NE#1), who was an Acting Sergeant. Named Employee #2 (NE#2), who was also a Sergeant, walked up to them. At that point, the Complainant stated that NE#2 had been a “dick” to her. She also claimed that she suffered an injury to her elbow. When she was asked how she had incurred that injury, she pointed to NE#2. This was construed to be an allegation of excessive force against NE#2.

SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

The allegation was classified against NE#1 based on his failure to refer the Complainant’s statements to OPA. NE#1 told OPA that he did not make an OPA referral because it was communicated to him that NE#2 would self-report. NE#1 stated that he then had several furlough dates and, when he returned to work, he learned that NE#2 had needed to have another Sergeant complete the OPA referral. He said that, had he known this, he would have initiated the referral. Lastly, NE#1 noted to OPA that the allegations were false given that NE#2 had not interacted with the Complainant prior to her making her claims.

Under the circumstances of this case, and given that NE#1 reasonably believed that NE#2 was going to self-report, I do not find that NE#1 violated policy when he did not, himself, make an OPA referral. In the future, however, when NE#1 is acting as a supervisor and becomes aware of misconduct, he should conclusively determine that it is going to be reported prior to deciding not to do so.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

SPD Policy 5.002-POL-2 states that Department employees must assist any person who wishes to file a complaint.

Here, while the Complainant alleged that NE#2 was unprofessional and purportedly used excessive force that hurt her elbow, she did not explicitly request assistance in filing an OPA complaint or, for that matter, indicate that she wished to file a complaint. However, when she made those statements, neither NE#1 nor NE#2 asked her if she wanted them to facilitate the filing of a complaint with OPA.



NE#1 told OPA that, while he did not assist the Complainant in making an OPA complaint, she never affirmatively indicated that she wished to do so. He further told OPA that he thought this policy would be satisfied when NE#2 self-reported the allegations against him to either a supervisor or OPA.

NE#2 told OPA that he recalled that he ensured the Complainant was provided with OPA's contact information. He, like NE#1, also stated that she did not explicitly request that a complaint be filed or ask for assistance in filing a complaint. Lastly, he stated that it was always his intention to self-report and, as such, an OPA referral was going to be made regardless of whether the Complainant, herself, was interested in pursuing this action.

Given the above, and under the circumstances of this case, I find that the Named Employees complied with this policy. As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that NE#2 was a "dick" to her. While the Complainant did not reply to OPA's requests for her to be interviewed, OPA construes this as a claim that NE#2 engaged in unprofessional behavior.

Based on the evidence in the record, there is no evidence supporting the Complainant's claim that NE#2 was unprofessional towards her. Indeed, I find this allegation to be frivolous. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#2 caused an injury to her arm when he grabbed and shoved her. The Complainant's interaction with NE#2 was captured in its totality by Department Video. The video conclusively established that NE#2 never touched the Complainant, let alone subjected her to excessive force.

As such, I find that this allegation is frivolous and recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Lawful and Proper.



Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegations #4

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

NE#2 told OPA that he intended to self-report to OPA via a Blue Team submission. However, given that he used previously scheduled time off, it took him multiple days to begin the process of doing so. He then determined that he needed to have another Sergeant submit the Blue Team on his behalf. The other Sergeant submitted the Blue Team to OPA six days after the incident.

SPD Policy 5.002-POL-6 requires Department employees to report alleged violations of policy. Minor policy violations are to be reported to a supervisor, while serious policy violations must be reported to a supervisor or OPA. (SPD Policy 5.002-POL-6.)

Even though NE#2 ultimately reported his misconduct to another supervisor, by doing so approximately six days after the incident, he did not report in a timely fashion. However, I do not believe that this warrants a Sustained finding. Instead, I recommend a Training Referral.

- **Training Referral:** NE#1 should be retrained as to the elements of SPD Policy 5.002-POL-6. He should be reminded that he must report alleged misconduct in a timely fashion, not nearly one week after the allegation is made. NE#1 should be counseled to timely report allegations of misconduct in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - Allegations #1

8.200 - Using Force 1. Use of Force: When Authorized

Not only did NE#2 not subject the Complainant to excessive force, but no other SPD employee who interacted with her during this incident did so. Any allegation to the contrary is simply unsupported by the evidence. As such, I recommend that this allegation be Not Sustained – Unfounded.

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