



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 2, 2019

CASE NUMBER: 2018OPA-0967

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	4.070 - Limited Duty Assignments 2. Employees on a Limited-Duty Assignment Shall Not Work for a Secondary Employer	Not Sustained (Lawful and Proper)
# 2	4.070 - Limited Duty Assignments 4.070-PRO-1 Employee Requesting a Limited-Duty Assignment	Not Sustained (Training Referral)
# 3	4.070 - Limited Duty Assignments 4.070-PRO-2 Employee Returning From a Limited-Duty Assignment	Not Sustained (Lawful and Proper)
# 4	5.120 - Off-Duty Employment 3. Certain Events Suspend Eligibility for Off-Duty Employment	Not Sustained (Lawful and Proper)
# 5	5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities	Not Sustained (Inconclusive)
# 6	5.120 - Off-Duty Employment 13. Employees Must Log-In at the Beginning of Their Off-Duty Shifts and Log-Off at the End of Their Shifts	Not Sustained (Lawful and Proper)
# 7	13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles	Not Sustained (Lawful and Proper)
# 8	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 9	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	4.070 - Limited Duty Assignments 4.070-PRO-2 Employee Returning From a Limited-Duty Assignment	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 (NE#1), who was working an off-duty security job at CenturyLink Field, lacked reasonable suspicion when he stopped and detained two women at a concert they were attending. It was also alleged that NE#1 treated them unprofessionally when he threatened to throw them out of the concert because they flipped him off. It was further alleged that NE#1 violated a number of policies relating to his leave status and secondary employment.



SUMMARY OF INVESTIGATION

This investigation stemmed from an anonymous Complainant that was submitted to OPA through its online complaint form. In the complaint, it was reported that, on October 4, 2018, NE#1 stopped and detained two women at a concert. It was further alleged by the anonymous Complainant that NE#1 threatened to physically remove the woman from the venue or arrest them after they were critical of him.

A review of the NE#1's work records for October 4, 2018 showed him logging into service at 5:34 a.m. as a K-9 unit with his police dog and then logging out of service on October 5, 2018 at 1:01 a.m. At the time listed by the anonymous Complainant as the date and time of the reported incident, October 4, 2018 at 11:00 p.m., NE#1's vehicle was parked at the site of the venue.

NE#1's work records reflected that he reported his off-duty shift internally in SPD's system as required by policy and CenturyLink confirmed that he worked the concert from 4:00 p.m. until 12:30 a.m.

SPD Human Resources (HR) reported to OPA that they had no record of NE#1 having a permit to work off-duty on the date in question. They also reported that their records reflected that an insurer Activity Prescription Form (APR) was submitted to HR indicating that NE#1 was on light-duty medical status starting on August 12, 2018. The end date listed on the APR was "TBD." HR stated that they had no information in their system indicating that NE#1 was off light-duty status as of October 4, 2018, or that he requested and was granted the ability to work light-duty in the K-9 unit. Payroll records reflected that NE#1 was marked in the system as "IC" on October 4, 2018, which indicated that he was paid as if he was on light duty.

In addition, a later review of NE#1's time entries reflected that he was listed as being back on full-duty status as of August 16, 2018. OPA was told that an updated APR reflecting that NE#1 was cleared to return to full-duty status was apparently sent by NE#1's supervisor, Named Employee #2 (NE#2), to the Employment Services Lieutenant. However, as of late October 2018, HR was not in possession of that document. NE#1's time entries were not aligned with the payroll records.

Named Employee #1

NE#1 acknowledged that he worked the concert on October 4, 2018 and was in uniform. NE#1's role during the event was stadium security, which included ensuring the safety of the attendees and performers. It also included enforcing the venue's attendee code of conduct and assisting stadium employees with individuals who were unruly and/or overly intoxicated, thus needing to be escorted out of the facility. NE#1 stated that, during this off-duty assignment, he worked inside the venue on the main floor. His police dog was not with him inside the venue.

NE#1 stated that he was working near the main performance area at approximately 11:00 p.m. NE#1 described his interactions with concertgoers that evening as being generally friendly. In terms of his recollection about a potentially negative interaction he had with two women that evening, NE#1 recalled that two women walked past him and one of the women, referred to here as the subject, stuck her middle finger up at him and repeatedly said, "fuck you." NE#1 stated that he had not had any interactions with either of these women before that incident. In response, NE#1 walked over to the subject and told her that she is not allowed to do that in the stadium and that



she could be removed. NE#1 continued by explaining that he was there as an employee that evening and was expected to enforce the attendee code of conduct, which strictly prohibited unruly or disruptive behavior. NE#1 explained to both women that the concert was a private event and that, while the subject was permitted to act in a disruptive manner outside if she chose to do so, she could not do so inside the venue. NE#1 stated that subject started yelling at him and told him that she was worried and/or scared of the police because the police were going to kill her. NE#1 explained that he never threatened her or drew his weapon; however, he acknowledged that he may have yelled at her because of the noise associated with the concert. NE#1 stated that the subject then asked him if he really wanted to kick out a handicapped person. NE#1 explained again that she was not allowed to act in an unruly manner and that, if she continued to do so, she could be removed and/or arrested. NE#1 stated that the subject responded by putting her hands behind her back and telling NE#1 that he was going to have to arrest her.

The subject then asked for his name and badge number, which he provided to her. NE#1 stated that she continued to act out. He told her that he could get the head of security to come over and explain why she needed to settle down and to convey to her the consequences if she did not do so. NE#1 told OPA that the subject stated something about how she had complained about other officers. NE#1 then warned the subject's friend that the subject needed to settle down or risk being thrown out. NE#1 stated that the subject's friend was rational and reasonable, and actually thanked him before he walked away. NE#1 decided to leave the situation alone and see whether that would result in better behavior. NE#1 stayed in the same area but he never re-engaged with the subject. NE#1 stated that he never detained her and that she continued to stand near him and argue with him even though her seat was nearby. NE#1 stated that she was always free to go and he never told her that she needed to stay in that spot while he talked to her.

NE#1 acknowledged that he did not complete a *Terry* Template concerning his contact with the subject because it was not a *Terry* stop. NE#1 described it as more of an educational contact, in that he explained to the subject that she needed to control her actions while inside of the venue. NE#1 told OPA that, when he did so, he was engaging in his normal practice of explaining the venue's code of conduct to attendees. This was done to ensure that attendees were able to stay at the venue and not be removed unless there was no other option.

In terms of the wording contained in the online anonymous complaint, NE#1 took issue with the statement that was made against him when the Complainant wrote that NE#1 was a, "known killer with white supremacist/Nazi tattoos." NE#1 noted that he is bi-racial, does not have such tattoos, and was wearing long sleeves during the night of that concert because of the weather, so his tattoos were not visible.

NE#1 informed OPA that he submitted his secondary employment permit paperwork and was properly authorized to work his off-duty shift on October 4, 2018. NE#1 stated that his paperwork has been in order since 2010 and that he has copies of his approvals to prove it.

NE#1 stated that he was not required to log in under a specific unit as there is an exception to the policy when working at CenturyLink and Safeco and it applied to his situation. NE#1 stated that he has worked off-duty at CenturyLink for approximately eight years and has never logged in under the unit in question because of the exception.

NE#1 acknowledged that he did take his Department vehicle to his secondary employment but that it was authorized by an SPD Captain. NE#1 asserted that, as a K-9 officer, he was allowed to take his Department vehicle



home. NE#1 explained that, since he was on call, he was allowed to take their Department assigned vehicles to his secondary employment because he may get called out at any given point. NE#1 noted that his police dog partner is also expected to come along to the off-duty assignment in case there is a callout.

NE#1 stated that he was on light-duty status from August 12th to August 16th. When he returned to full-duty status, he submitted the required documentation to his Sergeant, NE#2. During the time that NE#1 was on light-duty status, NE#1 received approval to work at the K-9 Center on training issues with his dog.

Named Employee #2

NE#2 provided confirmation that NE#1 submitted the proper paperwork to him regarding his light-duty status. In terms of the limited duty being performed at the K-9 Training Center, NE#2 recalled sending an email requesting that on behalf of NE#1. NE#2 said that he got a response back from the Employment Services Lieutenant approving that request. NE#2 stated that he could not recall whether he specifically told NE#1 either that he was approved for light-duty or that he could work at the K-9 Training Center during that time. NE#2 explained that he believed that he informed NE#1 that he was approved for a modified work status.

NE#2 confirmed that he received the APF from NE#1, which cleared NE#1 to return to full-duty status. NE#2 stated that he received it on August 16, 2018, and he hand carried it to the South Precinct and put it in an outgoing mailbox addressed to the Employment Services Lieutenant. NE#2 stated that he did not make a copy of the APF for himself or for NE#1. NE#2 acknowledged that he was supposed to fax or email the signed APF document to the Employment Services Lieutenant, but he did not do so. NE#2 stated that he simply forgot that was a requirement in the policy.

Employment Services Lieutenant

The Employment Services Lieutenant told OPA that it is not uncommon for limited duty assignment paperwork to arrive at HR for approval late and that, technically, officers are supposed to stay at home until they have that approval. He stated that sometimes supervisors in those instances will self-deploy their officer to an assignment they can perform in-house even though they should not be doing that.

The Employment Services Lieutenant stated that he recalled getting the APF paperwork associated with NE#1's light-duty status and the request that NE#1 be allowed to work at the K-9 Training Center during that time. He was unable to recall whether he received that information and request via email or through some other means.

Email Communication with Witness Captain

The Captain confirmed that there were on-scene supervisors at the concert and that NE#1 was not required to log in as he would have for events where they were not present. The Captain also confirmed that NE#1 was permitted to have his Department vehicle and police dog present when he arrived for this off-duty assignment. In terms of enforcing CenturyLink's attendee code of conduct, the Captain said that off-duty officers intervene briefly with individuals to explain a potential violation of the code of conduct. He noted that such situations involve individuals who are in unauthorized areas of the stadium, attendees taunting each other, intoxicated attendees, or individuals shouting obscenities. The Captain added that these types of warnings almost always suffice and lead to a remarkably low number of arrests at events with large number of attendees. The Captain confirmed that the type of interaction that NE#1 had at CenturyLink was not a *Terry* stop and was along the lines of what he described above.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

4.070 - Limited Duty Assignments 2. Employees on a Limited-Duty Assignment Shall Not Work for a Secondary Employer

SPD Policy 4.070-POL-2 states that employees on a limited assignment shall not work for a secondary employer.

This allegation was classified for investigation because Department records indicated that NE#1 was on limited-duty when he worked secondary employment at the concert. However, OPA's investigation revealed that NE#1 was cleared to return to full duty on August 16, 2019. As such, there was no restriction in place when he worked secondary employment on the date in question.

For the above reasons, I recommend that this allegation Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

4.070 - Limited Duty Assignments 4.070-PRO-1 Employee Requesting a Limited-Duty Assignment

SPD Policy 4.070-PRO-1 states that Department employees are tasked with emailing a request for a limited-duty assignment to the Employment Services Lieutenant and their Captain. It further states that they must send a completed APF from their healthcare professional to the Employment Services Lieutenant.

According to the express terms of the policy, NE#1 was supposed to request a limited-duty assignment by emailing the Employment Services Lieutenant. The evidence shows that, instead, NE#2 did so on NE#1's behalf. The evidence indicated that the officers believed that doing so through a supervisor was deemed an acceptable practice by the Employment Services Lieutenant. Moreover, the Employment Services Lieutenant told OPA that he verbally informed NE#2 that he approved the limited-duty request for NE#1.

OPA acknowledges that the Employment Lieutenant's approval of the request and apparent acceptance of how the request was made shields the Named Employees from a finding that they violated policy in this regard. However, even though this is the case, the Named Employees and, for that matter, the Employment Services Lieutenant, are required to follow the policy as written. This is purposed to ensure fairness of application and consistency across the Department. For these reasons, I issue the below Training Referral.

- **Training Referral:** NE#1 should review the requirements of 4.070 with NE#2. They should ensure that they both understand their responsibilities as outlined by the policy. This review and any associated discussion should be documented and this documentation should be maintained in an appropriate database.

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



Named Employee #1 - Allegation #3

4.070 - Limited Duty Assignments 4.070-PRO-2 Employee Returning from a Limited-Duty Assignment

SPD Policy 4.070-PRO-2 states that, upon completion of limited-duty assignments, employees are tasked with obtaining an APF signed by a healthcare professional releasing them to duty without restrictions, and that they are to submit the APF to their regular sergeant/supervisor.

NE#2 confirmed that NE#1 submitted a signed APF clearing NE#1 to return to full-duty status on August 16, 2018. NE#1 presented a copy of that form to OPA during his interview.

OPA notes that this allegation was only classified for investigation because NE#2 failed to properly forward it to the Employment Services Lieutenant according to policy. For this reason, there was no record of it being received until November 2018. If NE#2 had fully complied with the policy, this allegation would not have been part of this case.

Regardless, as NE#1 complied with this policy, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegations #4

5.120 - Off-Duty Employment 3. Certain Events Suspend Eligibility for Off-Duty Employment

SPD Policy 5.120-POL-1 (3) states that certain events, such as being on limited-duty status, suspend eligibility for off-duty employment.

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

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

Named Employee #1 - Allegation #5

5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities

SPD Policy 5.120-POL-1 (4) states that employees must request approval for all law enforcement related off-duty employment and business activities.

The evidence shows that HR received NE#1's secondary employment permit for CenturyLink Field on October 31, 2018. The permit reflected that it was signed and dated on October 3, 2018 by both NE#1 and NE#2. Although this form is marked as a renewal, neither NE#1, NE#2, nor HR were able to locate the permit that existed for the previous period, which would have clearly established that NE#1 had the proper permit on file at the time he worked the October 4, 2018 concert date. As HR did not receive the permit until nearly one month after it was



signed and dated by NE#1 and NE#2, OPA is unable to conclusively determine whether NE#1 fully satisfied his requirement of having an approved permit in place at the time he worked on October 4, 2018.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #6

5.120 - Off-Duty Employment 13. Employees Must Log-In at the Beginning of Their Off-Duty Shifts and Log-Off at the End of Their Shifts

SPD Policy 5.120-POL-1 (13) states that employees must log-in at the beginning of their off-duty shifts and log-off at the end of their shifts. An exception from this general rule exists where employees are working security at Safeco or CenturyLink Fields, there are on-scene SPD supervisors, and all employees are operating as a group on a radio channel separate from normal radio traffic.

NE#1 stated that he was not required to log in per this policy because SPD supervisors were present at this event and because he was part of a group that was operating on a separate radio channel. NE#1's Captain confirmed this information in an email to OPA.

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

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

Named Employee #1 - Allegations #7

13.080 - Use of Department Vehicles 11. Prohibited Activities During Use of Department Vehicles

SPD Policy 13.080-POL-11 prohibits SPD employees from using a Department vehicle for secondary employment.

NE#1 stated that he and other K-9 officers have been authorized by their Captain to use their Department vehicles when working off-duty, as long as their police dog is with them. This is permitted due to SPD's low staffing levels and because it provides the flexibility to use the K-9 officers for callouts in emergency situations. OPA confirmed this information with the Captain and verified that NE#1's police dog was present in the vehicle on October 4, 2019.

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 #8

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

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers."



NE#1 acknowledged that he had an encounter with the subject during which she flipped him off and yelled an obscenity at him. NE#1 explained that he approached her and informed her that she needed to abide by the attendee Code of Conduct, and that she could be removed from the venue if she continued acting in a disruptive manner. NE#1 considered contacting attendees who display disruptive behavior as being part of his job as an employee of CenturyLink during such events. NE#1 denied that he was unprofessional and noted that he did not restrict the movements of the subject and her friend as their seats were next to where this exchange took place. NE#1 added that even though the woman continued with her antics, he ultimately ignored her and that this was the end of their interaction. Last, NE#1 vehemently denied the Complainant's allegations that he was a "known killer" and had racist tattoos.

OPA further learned from the Captain that off-duty officers who work such events are expected to be alert and to explain to attendees who are becoming unruly that such behavior is not permitted and to explain that they run the risk of being kicked out.

In terms of evidence supportive of the allegations made in the anonymous complaint, OPA was unable to find any third-party videos that captured the encounter between NE#1, the subject, and the subject's friend. Additionally, since this was an anonymous complaint, OPA had no means of contacting either woman to obtain additional information, and there were no photos or videos attached to the online complaint. As such, and based on a preponderance of evidence standard, OPA finds that there is insufficient evidence proffered by the Complainant to support a finding that NE#1 was unprofessional during this incident.

For these reasons, I find that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegations #9

6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful

SPD Policy 6.220-POL-1 governs *Terry* stops and stands for the proposition that *Terry* stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a *Terry* stop as: "A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity."

Based on the information as discussed above, OPA finds that there is no evidence to support the conclusion that NE#1's encounter with the woman amounted to a *Terry* stop. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegations #1

4.070 - Limited Duty Assignments 4.070-PRO-2 Employee Returning from a Limited-Duty Assignment



SPD Policy 4.070-PRO-2 states that sergeants are tasked with emailing or faxing a signed APF to the Employment Services Lieutenant, as well as to send the original hard-copy APF to the Employment Services Lieutenant.

NE#2 admitted that he failed to email or fax NE#1's APF. When he did not do so, he violated policy. Moreover, his actions contributed to the inclusion of multiple allegations in this OPA investigation that otherwise would not have been classified. However, for two main reasons, OPA does not believe that a Sustained finding is warranted. First, NE#2 acknowledged his mistake. Second, OPA credits NE#2's contention that he did not violate policy knowingly or intentionally. Instead, OPA recommends that NE#2 receive the below Training Referral.

- **Training Referral:** NE#2 should review the requirements of 4.070 with his chain of command and confirm that he has read and understands his responsibilities as outlined by this policy. This review and associated discussion should be documented, and this documentation should be maintained in an appropriate database.

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