



CLOSED CASE SUMMARY

ISSUED DATE: JULY 2, 2019

CASE NUMBER: 2019OPA-0032

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 the Named Employee made false statements in two PAS entries, acted unprofessionally towards him, and issued PAS entries in order to retaliate against him.

SUMMARY OF INVESTIGATION:

The Complainant alleged to the Department’s EEO Sergeant that his supervisor, Named Employee #1 (NE#1), engaged in conduct towards him that violated EEO policies. The allegations centered around the Complainant’s assertion that NE#1 repeatedly sanctioned him for engaging in ADA-protected activities. The Complainant stated that he suffered an on-duty back injury that required surgery. After missing several months of work, he returned to duty with several ADA accommodations. These included access to the North Precinct ADA-approved vehicle. The Complainant alleged that NE#1 issued several Performance Appraisal System (PAS) entries to him surrounding his usage of that vehicle and that those entries were inaccurate and false. The Complainant specifically asserted that the PAS entry dated October 30, 2018 was a “complete fabrication.” He stated that he did not return to the precinct early on the date, he never apologized to NE#1 for his behavior, and that they did not discuss the issues that NE#1 referenced in that entry. He further contended that the PAS entry dated November 16, 2018 was a “boldface lie.” He asserted that, on November 16, he returned to the North Precinct at the end of his shift to allow another officer to use the ADA-approved vehicle; however, he stated that, when he was in the write-up room, NE#1 approached him and began yelling at him for logging off early. The EEO Sergeant referred this matter to OPA and this investigation ensued.

There are three PAS entries at issue in this case. The first, which was dated October 24, 2018, detailed counseling provided to the Complainant concerning his response to a hit and run collision that occurred on that same day. In the PAS entry, NE#1 noted that the Complainant did not cite the suspect driver, did not activate BWV, and did not document that non-activation. NE#1 further noted that the Complainant did not timely complete the report relating to that incident prior to the conclusion of his shift and, when NE#1 checked on the status of the still outstanding



report, the Complainant gave her a number of explanations that she believed were invalid excuses. The second, which was dated October 30, 2018, referenced counseling provided to the Complainant concerning logging out of his vehicle prior to 19:30 hours. NE#1 wrote that the expectation of North Precinct supervisors was that officers would comply with the directive not to log out prior to that time and that officers would contact supervisors with any concerns or questions. NE#1 documented that the Complainant told her that he “screwed up” and that he was aware of this directive based on a discussion with another officer. Lastly, NE#1 noted that the Complainant asserted that he would contact a supervisor and get permission if he was going to log out early in the future. Unlike the first PAS entry, the second entry did not reference the date upon which the conduct at issue had occurred. In the third and last PAS entry, NE#1 indicated that the Complainant again logged out of his vehicle prior to 19:30 hours (at 19:17 hours) and approximately one hour before the end of his shift. NE#1 documented that she requested the Complainant meet with her at 19:22 via an MDT message but that he did not respond. NE#1 asked the Acting Lieutenant to help track the Complainant down and she stated that the Complainant was located in the locker room prior to 19:30 hours. NE#1 reported that, at that time, the Complainant had already turned in his vehicle. NE#1 documented that, when the Complainant had not come to speak with her ten minutes later, she located him reviewing emails on a computer. She told the Complainant that he was required to follow directions provided by supervisors.

As part of its investigation, OPA interviewed the Complainant. He repeated the allegations he previously made to the EEO Sergeant. The Complainant told OPA that he usually logs out of the ADA-approved vehicle between 19:15 hours and 19:30 hours in order to allow officers on Third Watch to use it. He stated that NE#1 did not like that he did this because of the standing order that officers not log out of their vehicles prior to 19:30 hours. The Complainant affirmed that the conversation memorialized in the October 30 PAS entry never happened and he stated that did not apologize to NE#1. With regard to the November 16 PAS entry, the Complainant backed away from his initial assertion to the EEO Sergeant that it was a “boldface lie.” He now stated that the entry was: “not exactly dishonest, but it’s not all that happened.” The Complainant contended that the false information in the entry was the notation that NE#1 previously instructed him not to log out of his vehicle prior to 19:30 hours. He asserted that she never provided that direct order. The Complainant told OPA that the resolution he desired from this case was for the October 30 and November 16 PAS entries to be stricken from his personnel file.

OPA further interviewed NE#1. She told OPA that, at the time of the issuance of the PAS entries, she was unaware that the Complainant received ADA accommodations. NE#1 asserted that the content of the PAS entries was truthful and accurate. She said that the Complainant did apologize to her during the counseling session on October 30. She clarified that, while the meeting occurred on that date, the conduct referred to in the entry occurred on October 24. NE#1 further confirmed that she directed the Complainant not log out of his vehicle any earlier than 19:30 hours. NE#1 stated that she was not told by the Lieutenant to refrain from giving PAS entries to the Complainant. She further denied that she in any way retaliated against the Complainant. Lastly, NE#1 stated that, in counseling the Complainant and issuing him PAS entries, she was acting consistent with her role and responsibilities as a Department supervisor. As such, she denied that she was unprofessional towards the Complainant.

OPA also interviewed NE#1’s and the Complainant’s Lieutenant. The Lieutenant did not have personal knowledge of the conversations between NE#1 and the Complainant or the underlying incidents that the entries concerned. As such, the Lieutenant could not say whether the entries were truthful and accurate. The Lieutenant confirmed, however, the direction to officers from the North Precinct chain of command that the officers not return to the precinct early. The exception from this rule was where a Third Watch officer had made a specific request for a



vehicle and the vehicle, thus, needed to be returned to the precinct. The Lieutenant told OPA that she did not necessarily agree with the tone of the PAS entries.

OPA additionally interviewed another Sergeant. The Sergeant worked the same shift as NE#1 and was a witness to the conversation documented in the October 30 PAS entry. While the Sergeant did not remember the exact words that were said during that discussion, he recalled the Complainant apologizing to NE#1. The Sergeant characterized the Complainant's response to the discussion as the Complainant committing to do better. The Sergeant confirmed that NE#1 instructed the Complainant not to log out of his vehicle prior to 19:30 hours. The Sergeant stated that he was not aware at the time whether the Complainant had any accommodations. He told OPA that he did not know whether NE#1 was aware of this either. The Sergeant said that there was no discussion during the meeting of the Complainant's use of a specific vehicle and whether this was the reason for him logging out early. The Sergeant asserted that the substance of the October 30 PAS entry was, to the best of his recollection, truthful and accurate. He further contended that NE#1 did not engage in unprofessional behavior during the October 30 counseling meeting.

Lastly, OPA reviewed the Complainant's MDT logs. These logs documented his attendance at work on the dates in question. During that time, the Complainant worked a steady shift of 11:00 hours to 20:00 hours. The logs indicated that, on October 24, the Complainant logged into service at 15:05 hours. He logged to one call for service during that time, at 15:16 hours, and he arrived on scene at 15:27 hours. The Complainant reported that he returned to the precinct with evidence at 16:01 hours. The Complainant logged out of his vehicle at 17:35 hours and logged out entirely at 18:24 hours. On October 30, the Complainant logged in at 11:55 hours. He logged out of his vehicle at 19:35 hours and logged out of work on 22:15 hours. Lastly, on November 16, the MDT logs established that the Complainant logged into service at 11:33 hours, logged out of his vehicle at 19:17 hours, and logged out of work at 19:51 hours.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

As discussed above, the Complainant alleged that NE#1 included false information in the PAS entries. Specifically, he denied the content of the October 30 counseling session, including: the conduct attributed to him; the assertion that he apologized to NE#1; and that he logged out early on October 30. The Complainant further asserted that NE#1's statement in the November 16 PAS entry that she ordered the Complainant not to log out of his vehicle prior to 19:30 hours was inaccurate.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

Based on OPA's review of the totality of the evidence, there is insufficient evidence to establish that NE#1 engaged in dishonesty. Indeed, the evidence indicates the contrary. With regard to the apology, the witness Sergeant asserted that the Complainant did apologize for his conduct, even if the Sergeant could not confirm the exact substance of what the Complainant said. With regard to the Complainant's allegation that the substance of the October 30 PAS entry was never discussed, this is also contradicted by the Sergeant's OPA interview. Similarly, both the Sergeant and NE#1 told OPA that NE#1 did direct the Complainant that he was not to log out of his vehicle prior



to 19:30 hours. Lastly, with regard to the Complainant's assertion that he did not log out early on October 30 and, thus, that this portion of the PAS entry is inaccurate, NE#1 explained that, while the entry was written on October 30, it was referring to the early log out by the Complainant on October 24. This is plausible given that there is no specific date referenced in the PAS entry. The Complainant is right that he did not log out early on October 30; however, on October 24, he arrived at work several hours after his shift started, logged out of his vehicle nearly two hours prior to the appropriate time, and logged out of work entirely approximately one and a half hours before the end of his shift. This supports a finding that NE#1's statements concerning the Complainant's early log out were not dishonest.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant contended that the negative PAS entries that he received from NE#1 were issued in order to retaliate against him. The Complainant opined that his retaliation was based on his having ADA accommodations.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

NE#1 denied that the PAS entries were retaliatory, let alone that they were based on NE#1 having ADA accommodations. She asserted that the PAS entries were appropriate and based solely on NE#1's conduct. NE#1 denied that she was even aware of the Complainant's ADA accommodations at that time. OPA deems this denial credible as both the Sergeant and the Lieutenant also stated that they were unaware of NE#1's ADA accommodations prior to this incident.

Accordingly, I find that the evidence does not support a finding that NE#1 retaliated against the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

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

The Complainant's final allegation was that NE#1 engaged in unprofessional behavior towards him. He specifically pointed to the substance of the PAS entries and when NE#1 purportedly yelled at him.

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.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

Based on OPA’s investigation, there is insufficient evidence to prove that NE#1 yelled at the Complainant in the write-up room. Certainly, had this occurred, the Complainant would have been able to point to witnesses who observed that conduct. He did not do so. Moreover, none of the witnesses that OPA did interview recounted hearing NE#1 yell at the Complainant. Even had NE#1 raised her voice when speaking with the Complainant, this would not have necessarily risen to the level of unprofessional conduct. As NE#1 recounted, she had asked the Complainant to come speak with her once he arrived at the precinct but, instead of doing so, he was checking emails. If this is what occurred and given the expectation that employees obey the chain of command, NE#1 may have been warranted in speaking sternly with the Complainant.

OPA further finds that the contents of the PAS entries are not unprofessional. Again, that the PAS entries are critical does not violate policy. If the PAS entries were inaccurate this would, of course, have been unprofessional; however, as discussed in Allegation #1 above, the evidence does not support such a finding.

Ultimately, for the reasons stated above, I recommend that this allegation be Not Sustained – Unfounded.

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