



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 1, 2018

CASE NUMBER: 2018OPA-0119

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)

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 the Named Employee was dishonest during his OPA interviews in a prior case (2017OPA-0868).

ADMINISTRATIVE NOTE:

As with his prior case (2017OPA-0868), the dishonesty allegation in this matter was initially recommended to be Sustained. OPA and Named Employee #1’s chain of command thoroughly discussed this matter and reached the conclusion that, while it appeared that Named Employee #1 had engaged in dishonesty to OPA, this could not be proved by the higher evidentiary burden required.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

A. Factual Background

This case stems from an incident that occurred on August 18, 2017. On that date, Named Employee #1 (NE#1) submitted an overtime request for time spent testifying in King County Superior Court pursuant to a subpoena. In the overtime request, which he submitted to his supervisor, NE#1 indicated that he was being subpoenaed in his official capacity by checking the box “only officer” under the field titled “subpoenaed as.” NE#1 attached a copy of the first page of the subpoena to the overtime request. The subpoena, which NE#1 later claimed was mailed to him at the precinct, contained NE#1’s personal address not his work address. NE#1 only included the first page of the subpoena with the form and not that portion of the subpoena that would ordinarily set forth the anticipated areas of testimony.

When he reviewed the subpoena, NE#1’s supervisor noted that it was not signed by either the bailiff or assistant city attorney as required by SPD Policy 5.140(IV)(B). NE#1 indicated that he had no signature on the form because the court did not have a city overtime form.



The supervisor signed the form but on a second review noticed some issues with its content. The Complainant brought the form to a Lieutenant who also had questions concerning the form. Specifically, the Lieutenant noted that the form was addressed to NE#1's personal residence, not his work address. The Lieutenant also requested that the Complainant look up the CAD for the incident number that was listed on the form (2016-280952) to determine what officers responded to this call and to verify if NE#1 was the only involved officer, as he indicated in the form. The Complainant did so and determined that NE#1 was not listed as either the primary or secondary officer and was not listed on the CAD at all as responding to the call.

The supervisor discussed the form with NE#1 and, during that conversation, determined that NE#1 had not been involved in the incident number listed on the subpoena. After a further back and forth, which NE#1 and the supervisor characterized differently, the supervisor referred this matter to OPA based on the belief that NE#1 purposefully submitted an overtime form for work unrelated to his official duties.

In that case, NE#1 was interviewed twice, on January 5, 2018 and February 2, 2018. As a general matter, the first interview was vague. He claimed that he did not know the specifics of why he had been subpoenaed and thought that it could be related to a SPD matter. He stated that he believed this to be the case, at least in part, because he received the subpoena at his work address. He provided little to no details concerning the specifics of this case. In his second interview, NE#1 provided more information; however, his answers were still confusing and, as discussed below, purposefully misleading.

This prior case resulted in a Sustained finding for NE#1 seeking overtime pay that he was not entitled to; however, the dishonesty allegation could not ultimately be proved and it was recommended to be Not Sustained – Inconclusive. That being said, based on OPA's concern that NE#1 was dishonest during his interviews in that prior case, a new investigation was commenced. NE#1 was then interviewed a third time.

B. Initial OPA Interviews

At his first OPA interview, NE#1 stated that he received a subpoena at the precinct and, in accordance with that subpoena, went to court to testify in a civil matter between two civilians. (NE#1 First OPA Interview, at p. 5.) NE#1 was asked whether he spoke to the attorneys who subpoenaed him prior to him testifying and indicated he did. (*Id.* at pp. 5-7.) The exact substance of this conversation was unclear. Later in his first interview, NE#1, in response to the assertion that the civil attorneys had indicated to OPA that they made it clear that he was being subpoenaed in his personal capacity, first stated that this was absolutely not that case and then stated that he did not remember such a conversation. (*Id.* at p. 14.)

The subpoena, itself, was addressed to NE#1 at his personal residence. However, NE#1 claimed to have received the subpoena at his work. (*Id.* at pp. 7-9.) NE#1 stated that because he received the subpoena at the precinct, he believed that he was going to be questioned concerning an incident where the defendant in the civil lawsuit had kicked a door while on a motorcycle. (*Id.* at pp. 5, 10.) This was something he said he discussed with the civil attorneys during a phone call with them. (*Id.*) However, NE#1 had not had any involvement in this incident as a police officer. (*Id.* at p. 11.) At his second OPA interview, NE#1 further expounded on this issue and his belief that he was going to be questioned concerning a police matter. (See NE#2 Second OPA Interview, at pp. 4-7.) NE#1 also asserted at his second interview that none of the attorneys he spoke to told him why he was needed in court. (*Id.* at pp. 7-8.)



NE#1 indicated that, after testifying at the court proceeding, he was aware that his testimony was unrelated to his official duties. (NE#1 First OPA Interview, at p. 22.) NE#1 told OPA that the attorneys never asked him about the individual who had kicked a door while on a motorcycle. (*Id.* at pp. 14-15.)

C. Subsequent OPA Interview

At his interview in this case, his third overall, NE#1 definitively stated that he understood that the case he was testifying in was a civil matter and that it was unrelated to his law enforcement activities. He told OPA that he had known the plaintiff and the defendant in this case for a number of years. He was aware that the defendant owned an insurance company. Indeed, the defendant had, at one point, sold an insurance policy to NE#1. This policy, like that enrolled in by the plaintiff in the civil matter, was “faulty.” NE#1 acknowledged that he was aware that insurance was at issue in the civil case. This is consistent with what NE#1 wrote in the declaration that was filed on his behalf in this civil case.

NE#1 still asserted that he had confusion concerning another civil matter that involved a road rage incident. Apparently, that incident also involved the plaintiff and was investigated by SPD. However, OPA obtained the audio of NE#1’s testimony in this civil case. NE#1 testified at the trial that he knew both the plaintiff and the defendant. He stated that he had known the plaintiff for 30 years. He had known the defendant for several years after the defendant joined a breakfast group that both he and the plaintiff were a part of. At the breakfast group, the participants would discuss motorcycles, insurance, businesses, and other items. NE#1 indicated that he was aware that the defendant owned an insurance company affiliated with All State. The audio recording of the testimony confirmed that this matter was totally unrelated to his law enforcement activities, as well as unrelated to the road rage case described by NE#1.

NE#1 again stated that he did not know how the subpoena for him to testify came to be sent to his attention at the precinct. He told OPA that he learned, as part of the earlier case, that it was faxed. But he did not know who faxed it or why. At this third interview, OPA played NE#1 a recording of a conversation between the assigned OPA investigator and the plaintiff’s attorney. The attorney confirmed to OPA that the subpoena was faxed to NE#1 and that NE#1 requested that he be subpoenaed at his office for his “convenience.”

D. Analysis

SPD Policy 5.001-POL-10 requires that officers be truthful and complete in all communications.

In my opinion, the substance of NE#1’s trial testimony makes it clear that he was dishonest in his initial OPA interviews. NE#1 repeatedly told OPA that he was confused as to why he had been called to testify and that he thought it could be related to a SPD investigation. For example, in response to a question from OPA concerning whether he was called to testify concerning a SPD incident, NE#1 stated: “I don’t know. I, I thought I wa—I thought this, I thought this previous issue was gonna come up. The issue where he had talked to me, that he had gotten in trouble, that one of the parties had done something criminal. And I thought the other party might be calling me in for that.” (NE#1 First OPA Interview, at p. 22.)

However, by his third interview he knew exactly why he had been subpoenaed and told OPA what information he provided. Moreover, his trial testimony established that there was no confusion as to why he was called to testify.



He was not asked questions about anything relating to his law enforcement activities. Further, NE#1 executed a declaration prior to testifying that set forth details related to this case. He did not disclose that declaration at his first OPA interview and the specific nature of the declaration undercuts any claim that he did not know why he was being called as a witness.

In addition, contrary to his repeated claims that he had no idea why the subpoena for a civil matter unrelated to his job was sent to him at the Southwest Precinct, an employee of the subpoenaing lawyer's office confirmed to OPA that this was done at the request of NE#1. This is absolutely inconsistent with his prior statements and, specifically, the following: "The second [subpoena] came to my box. In fact, that's what surprised me, that—why would they send it to my box? That's what tipped me off, that they wanted to talk about the, the police matter that I had brought up to them, that's what I thought." (NE#1 First OPA Interview, at p. 7.) At that same interview, NE#1 affirmed that he believed that, since he received the subpoena at his work, SPD would pay for the time he spent testifying. (*Id.* at pp. 26.) This is particularly concerning considering that the plaintiff's attorney's office confirmed that NE#1 asked that he be sent the subpoena at his work and he then used this as the excuse for how he could seek money he was not entitled to.

I believe that NE#1 was further dishonest by omission. For example, when NE#1 was asked what he was told by the attorneys as to why he was being called to testify, he stated:

The—I don't even know if he's, if that person is the—they, they asked, they asked me some infor—they asked me some questions and then I also told them about the incident where the defendant, I don't know who the defendant—I asked, where one of the parties had been in a, he had kicked a door, he was on a motorcycle, he kicked a door. And Officer, he's actually Acting Sergeant, oh, it'll come to me in a second, who was handling it.

(NE#1 First OPA Interview, at p. 5.) This is just one instance of the continuous vague, confusing, and misleading answers he provided to OPA. Moreover, it is emblematic of his knowing choice to fail to mention numerous facts relevant to this case. Notably, he was much more specific at his third interview than his first, even though the first interview was significantly closer in time to the incident and should have been his most accurate recitation of the facts. He did not mention that he had known the plaintiff for 30 years and the defendant for several years. He did not mention that he had executed a declaration in the case, that he had an insurance policy with the defendant, and that his testimony solely pertained to the insurance dealings between the plaintiff and defendant and had nothing to do with any SPD case.

From my review of the totality of the facts and statements from NE#1's two cases, I conclude that he made a fundamental error of judgment when he sought compensation for hours he was not entitled to and he compounded that error when he later provided false information and misled OPA. While NE#1's chain of command agrees with me in this regard and shares the same serious concerns regarding NE#1's honesty in this instance, we are faced with the same problem that arose in his prior case – namely, that this cannot be proved by the higher evidentiary burden required for dishonesty allegations. This is largely due to his confusing and convoluted answers that serve to obfuscate the record, perhaps intentionally. His statements prevent a conclusive finding, by this higher burden of proof, as to what he knew and when and, thus, whether he lied to OPA or whether he was simply ignorant and careless. As I wrote in the DCM for NE#1's prior case: "This should be in no way interpreted as an exoneration of NE#1 or a recognition that his conduct was anything other than deliberately misleading and unethical." I echo these



sentiments here and have grave concerns surrounding NE#1 continuing to operate in the role of a police officer, which requires the public's trust and for which honesty is a crucial component. However, for the reasons stated above, I recommend that this allegation be Not Sustained – Inconclusive.

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