



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 27, 2018

CASE NUMBER: 2018OPA-0379

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Inconclusive)
# 2	5.003 - Front Line Investigations 5.003-POL 1. Supervisors Will Investigate and Document Allegations of Minor Policy Violations	Allegation Removed

***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 engaged in a Frontline Investigation and other behavior that was retaliatory against her.

#### ANALYSIS AND CONCLUSIONS:

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 14. Retaliation is prohibited***

The Complainant is a Department Sergeant. On January 31, 2018, she was involved in an incident that resulted in her filing an OPA complaint against multiple officers under her supervision. That prior case, investigated under 2018OPA-0118, resulted in sustained professionalism findings against two officers for dismissing the Complainant’s attempts to reach them by phone and radio prior to those officers searching a vacant home.

On February 18, 2018, the Complainant was informed by her supervisors, Named Employee #1 (NE#1) and the Precinct Captain, that they wanted to meet with her. The meeting occurred two days later, on February 20, 2018. The Complainant reported that she requested a Guild representative but was told that it was not necessary. She further stated that she refused to watch the Body Worn Video (BWV) of the incident without her representative. The Complainant said that NE#1 and the Precinct Captain concluded that she had been unprofessional and counseled her accordingly. They issued her a PAS entry memorializing the discussion. NE#1 contended that the discussion was not disciplinary, but, instead, was purposed to counsel the Complainant on what he perceived was her unprofessional behavior. NE#1 stated that he completed a PAS entry for the Complainant memorializing the discussion and counseling.

On March 12, 2018, one of the officers in the Complainant’s squad filed a complaint against her for professionalism stemming from that prior incident. On March 19, 2018, OPA referred that matter back to the Complainant’s chain of command as a Frontline Investigation. OPA made this referral based on the fact that, if the officer’s account was



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credited, he asserted a plausible allegation of misconduct. In doing so, OPA did not deem that allegation to be valid. To the contrary, and as discussed more fully in the DCM for 2018OPA-0118, OPA did not have the same concerns as the officer regarding the Complainant's conduct at the scene and, in OPA's opinion, did not perceive her to be unprofessional. The Frontline Investigation was assigned to NE#1 by the Precinct Captain. NE#1 created a Frontline Investigation template on March 22, 2018 and completed it the following day. In that document, he included the content of his February 20 meeting with the Complainant. The Frontline Investigation was approved by the Precinct Captain. NE#1 stated that he completed the Frontline Investigation based on OPA's direction to do so. He denied that he did so based on a retaliatory motive.

The Complainant further alleged that, ever since the prior incident, NE#1's treatment of her has changed. She stated that they once had a good working relationship, but that their relationship had become strained and negative. She provided several examples of what she believed was retaliatory behavior on his behalf, including: NE#1's curtness and rudeness towards her; a significant dip of the scores on her most recent performance evaluation; a transfer to another squad without any prior consultation; a ceasing of assigning her to the Acting Lieutenant position; and, as discussed above, performing a Frontline Investigation that was "inappropriate, biased, secretive and a violation of policy." Lastly, NE#1 asserted her belief that she was being singled out unfairly and that this was potentially based on her gender. It is OPA's understanding that EEO is currently evaluating this aspect of the Complainant's allegations. The Complainant told OPA that she decided she needed to initiate this complaint after receiving her most recent performance evaluation, which she perceived to be negative.

NE#1 denied that he engaged in the retaliatory behavior alleged by the Complainant. He told OPA that the Complainant had been given the opportunity to serve in the Acting Lieutenant role since this incident. He also explained that, while he did give her lower evaluation scores in her most recent evaluation and while this was based in part on the prior incident, he was objective. He stated that he perceived that the Complainant had some deficiencies as a supervisor and evaluated her accordingly. Further, as discussed above, he denied that he engaged in inappropriate behavior when he completed the Frontline Investigation.

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.*)

With regard to the completion of a Frontline Investigation, this was done based on a referral by OPA. As such, this cannot constitute retaliatory behavior. This matter was complicated, however, by the fact that NE#1 took a counseling session that he had completed nearly a month before and converted it into a Frontline Investigation after the fact, instead of initiating a new investigation. As such, I can imagine that this must have been both confusing and concerning for the Complainant. However, this issue seems largely academic as, even had NE#1 started completely anew once he received the OPA referral, he still would have reached the same conclusions as he did in the initial counseling session and would have memorialized the same information.

With regard to the Complainant's other allegations of retaliation, the evidence is simply insufficient to allow OPA to reach a conclusive finding. As a general matter, there are significant disputes of the parties that are not resolved by any other objective evidence in the record. I further note that the assigned investigator did not ask NE#1 any specific



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questions concerning the basis for the Complainant's transfer or concerning her and NE#1's personal relationship. As such, OPA's investigation was incomplete in this regard. That being said, these specific questions are better addressed by EEO than OPA and it is OPA's understanding that an EEO investigation into these same issues had been initiated by the Complainant.

As I cannot decide this allegation given the facts in the record and when applying a preponderance of the evidence standard, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #2**

***5.003 - Front Line Investigations 5.003-POL 1. Supervisors Will Investigate and Document Allegations of Minor Policy Violations***

As discussed above, the Complainant asserted that the Frontline Investigation conducted against her was retaliatory and improper. Whether the Frontline was retaliatory is already addressed in Allegation #1. With regard to the question of whether the Frontline, itself, was improper, this is the subject of an active grievance and will be resolved in that forum. For these reasons, I recommend that this allegation be removed from this investigation.

Recommended Finding: **Allegation Removed**