



CLOSED CASE SUMMARY

ISSUED DATE: December 13, 2017

CASE NUMBER: 2017OPA-0629

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Complaints Of Possible Misconduct 6. Employees Will Report Alleged Violations	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Complaints Of Possible Misconduct 6. Employees Will Report Alleged Violations	Not Sustained (Inconclusive)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Complaints Of Possible Misconduct 6. Employees Will Report Alleged Violations	Sustained

Imposed Discipline

Written Reprimand

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 Employees failed to properly report an allegation of misconduct as required by Department policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Complaints Of Possible Misconduct 6. Employees Will Report Alleged Violations

Based on my review of the evidence, NE#1 was not in the vicinity of the subject when he complained that his head was slammed into the concrete. As he did not know of the alleged misconduct, he thus had no duty to report. Accordingly, I recommend that this allegation be Not Sustained – Unfounded as against him.

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



Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Complaints Of Possible Misconduct 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 requires that when an employee becomes aware of an allegation of serious misconduct he must report that misconduct to both a supervisor and OPA. (See SPD Policy 5.002-POL-6.) SPD policy defines the use of excessive force as serious misconduct.

Here, then Named Employees were involved in the arrest of the subject. Force was used by NE#1 to take the subject down to the ground and to place him into custody. Based on their statements, it appears that neither NE#2 nor NE#3 directly observed the initial force used by NE#1. The subject was already on the ground when NE#2 assisted with his arrest. As such, NE#2 and NE#3 did not conclusively know whether, when taking him down to the ground, NE#1 slammed the subject's head into the concrete either purposefully or inadvertently. At a later point, when standing with the subject in front of a patrol vehicle, both NE#2 and NE#3 were in the subject's immediate vicinity when he stated that his head was slammed into the concrete. NE#2 was standing right behind the subject and appeared to be adjusting his handcuffs. NE#3 was out of the view of the ICV, but repeated the subject's words to him. Again, based on the officers' knowledge at that time, this could have been a true statement and, if so, would have constituted serious misconduct; however, neither reported this statement.

NE#2 claimed that he could not recall whether he heard the subject's statement or NE#3's repeating of the subject's words. He admitted that he did not tell his sergeant what the subject said while standing in front of the patrol vehicle, but believed it to be possible that he could have relayed the statement to his sergeant during a later screening. I note that there is no mention of the subject's allegation on the sergeant's use of force review.

Moreover, in the Captain's review of the use of force, he stated that it did not appear that the subject's allegations were conveyed to a supervisor. Lastly, had this complaint been screened with the sergeant, the Department's Force Investigation Team would have been notified given the possibility of a head injury. That FIT was not contacted suggests to me that the subject's allegation was not reported. However, I cannot conclusively determine that this is the case and that NE#2 failed to report. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Complaints Of Possible Misconduct 6. Employees Will Report Alleged Violations

NE#3 acknowledged that he heard the subject's allegation and repeated the subject's words back to him. NE#3 further recognized that it was an allegation of serious misconduct that was required to be reported. NE#3 did not believe he was personally required to report the allegation, however, because he observed NE#1 and NE#2 screening the force with a supervisor. Presumably, NE#3 assumed that one of these two officers would have informed the sergeant of the allegation made by the subject. However, neither did so and the allegation was not reported.

NE#3's belief that another officer could have addressed these allegations with a supervisor does not excuse his failure to report. NE#3 should have taken affirmative steps to determine that allegation had been reported. If, at that time, he learned that it had been, he would have been excused from his obligation under the policy. However, he did not do so and that failure to report was inconsistent with policy. As such, I recommend that this allegation be Sustained as against him.



Seattle
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Recommended Finding: **Sustained**