



## CLOSED CASE SUMMARY

ISSUED DATE:      DECEMBER 15, 2020

FROM:             DIRECTOR ANDREW MYERBERG  
                      OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:     2020OPA-0121

**Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Not Sustained (Inconclusive)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	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:**

The Complainant alleged that the Named Employees engaged in “time theft” when they routinely left work before the scheduled conclusion of their workday.

**ANALYSIS AND CONCLUSIONS:**

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

***4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor***

The Complainant initiated this investigation with OPA. She contended that, in late 2019 and early 2020, the she and other officers became aware that two of their colleagues – Named Employee #1 (NE#1) and Named Employee #2 (NE#2) – were regularly leaving work earlier than their scheduled end of shift time of 4:30 PM. The Complainant said that she and the other officers brought this matter to the attention of their superiors. She recalled that, as a result of that conversation, it was suggested that the unit keep record of the whereabouts of NE#1 and NE#2. For six days in January and February 2020, SPD computer records showed NE#1 and NE#2 as logging off from the system 50 to 70 minutes earlier than the scheduled 4:30 PM end time. On only one of these days did NE#2 record the use of one vacation hour. On February 19, 2020, the Complainant confronted NE#1 and NE#2 about leaving work early. She said that this confrontation occurred at approximately 3:15 PM as the Named Employees were leaving work. OPA notes that the Complainant’s actions in confronting the Named Employees is the subject of another OPA complaint that they filed against her.



During interviews with OPA, two other witness employees stated that they were aware of NE#1 and NE#2 leaving work early but could not provide documentary evidence of these occurrences. One of the witnesses, an officer, said that she mapped the Named Employees leaving early, but did not memorialize these observations. She said that she discussed the matter with the unit Sergeants, and they indicated that the issue had been raised with a Lieutenant, who was handling it. The second witness, a Sergeant, said that he knew about the Named Employees potentially leaving early and that multiple officers raised this with him. He said that the Lieutenant was aware of this and indicated that she was handling it. The Sergeant did not speak to the Named Employees about this matter and did not take any action.

The Lieutenant told OPA that officers under her supervision and in other units raised concerns with her concerning the Named Employees' work hours. She did not recall any of the Sergeants in her chain of command flagging this. While the Lieutenant was aware of general concerns that had been expressed to her, she did not directly view the Named Employees ever leaving work early. The Lieutenant explained that she was busy and did not have the capacity to monitor the hours of every employee. She did not recall that anyone assigned to her unit "mapped" the Named Employees at work and she did not remember discussing this with the Sergeant. The Lieutenant noted that she discussed with the unit that employees could leave early time to time with the approval of a supervisor, but officers were not permitted to do so on a constant basis.

OPA lastly interviewed NE#1 and NE#2. NE#1 indicated that, when he first started working in the unit, he and NE#2 worked out of the Seattle Emergency Operations Center (EOC). They later moved to be within the City's Finance and Administrative Services (FAS) division. NE#1 had a locker at Park 90/5 where he kept his personal items. He parked his SPD car at the EOC. NE#1 said that, during a normal workday, he was required to be present at FAS by 0700 hours. He stated that, in the afternoon and near the end of his shift, he would go to Park 90/5 to get changed. He would then drive to the EOC, park his vehicle, and walk to public transportation.

NE#1 recalled being confronted by the Complainant. He denied that he was leaving work early that day. He said that both he and NE#2 took a train that left from a downtown train station at 1555 hours. He said that all of the unit Sergeants and the Lieutenant knew this and said that they were allowed to take that train.

NE#1 denied that he habitually left work early. He stated that he was permitted to go to the EOC and then leave from there. He remembered that one person in another squad once discussed people in his unit leaving early. He did not recall a supervisor ever counseling the unit about leaving early.

NE#2 said that he met with the Lieutenant on several occasions regarding complaints from other officers that he was leaving early. He told OPA that the Lieutenant informed him that he did not need to worry about the complaints. He said that he explained the train schedule to the Lieutenant, and she understood. He confirmed that, prior to being confronted by the Complainant, he received a document containing team expectations.

OPA questioned NE#1 concerning several days upon which he may have left early. He told OPA that his log off time did not necessarily indicate when he stopped working, as he continued working from the EOC. For several dates, he could not recall whether he left early or whether he had an authorization to do so. He also could not explain why he generally spent a significant amount of time at Park 90/5. He said that he could have been completing paperwork, using the gym, eating lunch, or engaging in a number of other activities. He denied that he violated policy and said that his work schedule was approved by the Lieutenant.



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Both of the Named Employees asserted that this complaint was filed against them by the Complainant because they were involved in reporting potential misconduct concerning the Lieutenant. This resulted in the Lieutenant being transferred from the unit. The Named Employees said that the Complainant retaliated against them because she had a close relationship with the Lieutenant. NE#2 recalled that, at the time the Complainant confronted them, she asked them if they thought they lived in a “glass house.” He further recalled that the Complainant said that she was “coming after them” and that she could not believe that the Named Employees reported “her friend.”

OPA notes that the Complainant’s actions in confronting the Named Employees is the subject of another OPA complaint that they filed against her. OPA also notes that the Sergeant, like the Complainant, recently had an OPA complaint filed against him by another officer in the unit. The complaint alleged that the Sergeant engaged in retaliatory behavior against that officer because he, like NE#1 and NE#2, was involved in reporting the Lieutenant’s misconduct. OPA lastly notes it is not in dispute that the Complainant and the Lieutenant are personal friends and that the Complainant later transferred to the Lieutenant’s new assignment.

SPD Policy 4.010-POL-2 requires SPD employees to schedule time off with their supervisors. The policy states that: “Employees will contact their sergeant/supervisor before their scheduled work shift to request an unscheduled absence from duty.” (SPD Policy 4.010-POL-2.)

There is evidence here of both NE#1 and NE#2 leaving early, perhaps inappropriately. Indeed, multiple officers attested that this was the case and log records indicated that the officers logged out of their computers prior to their scheduled shift ends on several occasions. However, neither is conclusive of their culpability.

With regard to the witness accounts, the Named Employees both asserted that the Complainant was biased against them and that this complaint was retaliatory. OPA also determined that the Sergeant was a Named Employee in a case tangentially involving the Named Employees. Lastly, the Named Employees claimed that the Lieutenant could also be retaliating against them as they reported her misconduct. While OPA does not opine on whether that this was the case within this specific investigation, it raises some questions that impact OPA’s findings.

With regard to the log records, just because an individual logs out of a computer does not necessarily determinatively establish that they stopped working for the day. It could be possible that the Named Employees performed other tasks at Park 90/5 or EOC and there is simply insufficient evidence to disprove that.

Lastly, the Named Employees stated that the Sergeants and the Lieutenant were all aware of their schedule and the fact that they took the 1555 train. While at least one Sergeant and the Lieutenant denied this, there are no records supporting either account. This is not surprising as, in OPA’s experience, lax timekeeping is often the norm within non-patrol units. Regardless, the lack of documentation significantly undermines OPA’s ability to meet its burden of proof and to hold the Named Employees accountable if appropriate based on the other evidence.

Ultimately, as indicated above, the evidence is inconclusive as to whether the Named Employees abused their time. As such, OPA recommends that this allegation be Not Sustained – Inconclusive as against both NE#1 and NE#2.

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



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

***4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor***

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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