



## **CLOSED CASE SUMMARY**

ISSUED DATE: MAY 4, 2018

CASE NUMBER: 2017OPA-0982

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete in All Communication	Sustained
# 3	5.001 - Standards and Duties 17. Employees Must Avoid Conflicts of Interest	Not Sustained (Inconclusive)

**Imposed Discipline**

28 Day Suspension

***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 Named Employee was alleged to have engaged in various misconduct stemming from a vehicle accident that he falsely stated that he was involved with.

**ADMINISTRATIVE NOTE:**

The Complainant initiated this matter as an anonymous complainant. However, during the course of this investigation, she indicated that OPA could identify her. As such, her name is contained in OPA’s case file.

**STATEMENT OF FACTS:**

This complaint was initiated by the Complainant, who is the ex-wife of Named Employee #1 (NE#1). She asserted that NE#1 engaged in insurance fraud when he falsely reported to his insurance company that he was involved in a car accident where, in fact, NE#1’s nephew was the driver. She further alleged that NE#1 made a similar false report to the individual whose property was damaged by NE#1’s nephew. The Complainant indicated that, at the time of the accident, NE#1’s nephew was intoxicated. She contended that NE#1 falsely reported that he was driving in order to cover up the DUI and prevent his nephew from being arrested, as well as to ensure that the damage to NE#1’s vehicle and the property was covered by his insurance.

Based on these allegations of potentially criminal activity, OPA referred this matter to the Enumclaw Police Department (EPD). This matter was subsequently investigated by EPD. The EPD investigator verified that NE#1 did not report the accident to EPD. The EPD investigator further verified that NE#1 reported to his insurance company that he, not his nephew, was driving the vehicle. The EPD investigator determined that NE#1 contacted a towing company



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and “had a private impound and towed the vehicle” from where it was parked, a block away from the crash site. EPD ultimately concluded that no criminal charges would be accepted by the prosecutors and closed its investigation. Fundamental to this determination appears to have been the EPD investigator’s discussion with the insurance company. The investigator was informed that, because NE#1’s insurance policy covered not only him but also anyone else driving the car, the insurance company believed the identity of the driver to be immaterial for the purpose of the claim. The case was referred back to OPA and this investigation ensued.

OPA interviewed NE#1. He stated that, on the date in question, he was on-duty working as the East Precinct desk clerk. Earlier that evening, he received messages from his ex-wife, during which she indicated that NE#1’s nephew, who was driving their vehicle, could not be reached. At approximately 02:00 hours, NE#1 received a phone call from his nephew, who indicated that he had been in a car accident. NE#1 left work and responded to the scene of the accident, while still wearing his uniform.

When he arrived at the scene, NE#1 observed that the vehicle was parked on a side street approximately one block away from where the accident had occurred. The accident took place on a larger thoroughfare. (See Case Summary, at p. 13.) NE#1 told OPA that his nephew explained that the vehicle had been moved from the location of the accident because the road conditions were icy and the car had been situated on a curve on the main road. However, based on OPA’s review of the whether on the date in question, the low was 46 degrees, which would have been too warm for icy conditions to occur.

The Complainant was already at the scene at that time that NE#1 arrived (she had been driven there by a third party), as was NE#1’s nephew. NE#1 recounted that his nephew was very “emotional” concerning the accident and, due to his nephew’s demeanor, NE#1 decided to have the third party transport his nephew from the scene. NE#1 further decided that he would falsely assume responsibility for the accident. NE#1 explained that he did so because he knew that anyone who drove his vehicle was covered under his car insurance and because he did not want his nephew to lose his job or suffer any other negative collateral consequences.

NE#1 contacted a private tow company to tow the vehicle from where it was parked. NE#1 further went to speak with the homeowner whose property was damaged by his nephew. At that time, NE#1 was wearing his police uniform as he did not change out of it prior to leaving work. NE#1 told OPA that he was wearing a jacket over his uniform; however, the homeowner – who was also interviewed by OPA – did not recall any jacket but did recall that NE#1 had his uniform on. The homeowner indicated to OPA that NE#1 told him that he had been driving the car at the time of the accident. NE#1 admitted that he said this.

NE#1 did not report this accident at the time it occurred to either EPD or SPD. NE#1 further did not file a report concerning the accident with any law enforcement agency after the fact. He did, however, file a claim with his insurance company, wherein he falsely stated that he was driving the vehicle during the accident. After NE#1 paid a \$500 deductible, the insurance company paid out \$24,696.58 for the car and an additional amount for the damage to the home owner’s property.

This matter only came to light when the Complainant initiated this case with OPA. OPA’s investigation involved interviewing the Complainant, NE#1, the homeowner, and a woman who lived with the Complainant and NE#1 at the time. OPA attempted to contact the nephew, the third party who transported the nephew from the scene, and the Complainant’s father. Despite the OPA investigator’s best efforts, these attempts at interviews were unsuccessful.



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OPA also reviewed the entirety of EPD's criminal investigation report, which included the relevant insurance claim documentation.

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. As discussed below, I find that NE#1's actions in this case were contrary to policy. I further find that his conduct violated multiple state laws. In making this determination, I am not required to meet the beyond a reasonable doubt standard needed to proceed with a criminal prosecution. Instead, consistent with the applicable collective bargaining agreement, I apply a preponderance of the evidence standard, which is a significantly lower burden.

First, I find that the admittedly false report filed by NE#1 with his insurance company was in violation of RCW 48.30.230(1)(a). This statutory provision states that: "It is unlawful for any person, knowing it to be such, to: (a) Present, or cause to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance..." Here, NE#1 knowingly submitted the fraudulent claim that he was driving his vehicle at the time of the accident to his insurance company. He further gave an oral statement in support of that false claim. Whether or not his insurance covered any individual who had been driving his car is immaterial. Moreover, given that coverage, the fact that NE#1 did not disclose that his nephew was driving seems even more suspicious and problematic. Lastly, if, as it appears, NE#1's nephew was intoxicated at the time of the accident, NE#1's insurance almost certainly would not have covered the accident. This provided NE#1 motive to cover up who was driving, to contract with a private tow company to tow the vehicle, and to fail to file a report with any law enforcement agency. For these reasons, I find sufficient evidence to establish that NE#1 violated the law.

Second, NE#1 acted in violation of RCW 46.52.010(2). This statutory provision requires that: "The driver of any vehicle involved in an accident resulting only in damage to property fixed or placed upon or adjacent to any public highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property..." While NE#1 located and notified the owner of the damaged property, he did not provide him with "the name and address of the operator." Instead, NE#1 falsely identified himself as the operator, when the actual operator was his nephew.

Third, NE#1 violated RCW 46.52.030(1). This statutory provision provides in pertinent part: "Unless a report is to be made by a law enforcement officer under subsection (3) of this section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within four days after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns." Here, no report was completed by a law enforcement officer as NE#1 never reported this accident. As such, NE#1, himself, was required to make a written report of the accident given that it caused damage in the apparent excess of \$500. He did not do so. Notably, the only reason he also did not violate RCW 46.52.088, which proscribes false statements, is because he did not file the report.



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Given the above, I find that NE#1's conduct violated multiple Washington State laws, as well as Department and City policies. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

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

SPD Policy 5.001-POL-10 requires that Department employees be truthful and complete in all communications. Whether or not NE#1 made a prosecutable false statement, it is clear that he was untruthful and materially inaccurate in his reporting to the insurance company. It is undisputed that NE#1 was not driving the vehicle on the date in question. However, NE#1 made this false claim to both his insurance company and the owner of the damaged property. Notably, at the time he made the false statement to the home owner, he was wearing his Department uniform. This was confirmed to OPA by the home owner. While NE#1 contended that he was wearing a jacket over his uniform at the time, the home owner did not recall seeing a jacket on his person.

I note that NE#1 also may have engaged in dishonesty to OPA when he claimed during his interview that his nephew was not intoxicated on the date in question. This assertion was not only contradicted by the Complainant, but also by a woman, interviewed by OPA, who lived with NE#1 and the Complainant at the time. This woman informed OPA that she was told by both NE#1 and the Complainant that NE#1's nephew was "very intoxicated" at the time of the accident. She further told OPA that she and the Complainant were very "uncomfortable" with this situation and that she was unsure whether she should say something. That matter is being separately investigated by OPA under case number 2018OPA-0243.

As discussed above, NE#1 admittedly made a false statement to both his insurance company and to the home owner. The statement was made for the purpose of convincing them both that NE#1, not his nephew, was driving the vehicle that was involved in the accident. NE#1 contended that he did so to lessen the emotional trauma to his nephew and protect his nephew from losing his employment. However, based on the evidence amassed in OPA's investigation, a possible more nefarious purpose has become evident; namely, that NE#1 may have claimed that he was driving, contracted with a private company to tow the vehicle, and not reported this incident to any law enforcement agency because he was trying to hide the fact that his nephew was intoxicated at the time of the accident. If true, this would be a significant abuse of the public's trust and of NE#1's position as a police officer. Regardless of whether this can ultimately be proved, it is clear that NE#1 was dishonest, even when applying the higher quantum of proof required for this allegation. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 17. Employees Must Avoid Conflicts of Interest***

SPD Policy 5.001-POL-17 precludes employees from engaging in conflicts of interest. While I find that NE#1 actions were outside of policy generally, they do not appear to fit within the contours of what is prohibited by this policy. Even though NE#1 acted in order to protect a family member and, while doing so, was wearing his Department



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uniform, I do not find sufficient evidence to determine whether NE#1 violated this policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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