



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2019

CASE NUMBER: 2018OPA-0503

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|---|---------------------------|
| # 1 | 5.001 - Standards and Duties 10. Employees Shall Strive to be Professional | Not Sustained (Unfounded) |
| # 2 | 5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication | Not Sustained (Unfounded) |
| # 3 | 5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer | Allegation Removed |
| # 4 | 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 4. Retaliation Is Prohibited | Not Sustained (Unfounded) |

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 asked him to lie on her behalf during an OPA investigation in which she was the involved employee.

STATEMENT OF FACTS:

The Complainant was formerly employed by SPD. He was disciplined following an investigation into allegations that he lied to his supervisors when he claimed that he was not working off-duty. The involved supervisors were a then-Lieutenant (now a Captain) and Named Employee #1 (NE#1), who was the Complainant’s direct supervisor. He was found by OPA to have been dishonest and the Chief of Police agreed with this finding and terminated the Complainant.

After his termination, the Complainant filed this complaint. He contended that NE#1 asked him to lie for her during a prior investigation in which she was the Named Employee. In that case, which was investigated under OPA case number 2017OPA-0947, NE#1 submitted a training list with forged signatures. At her interview, NE#1 provided her explanation for why she signed for the other officers. When evaluating the totality of the circumstances, OPA determined that, while perhaps not the best decision, her reasoning was understandable as she wanted to avoid the officers she signed for being penalized for missing training had the training list not been timely submitted. NE#1 received a Training Referral but no Sustained findings. The Complainant was interviewed in 2017OPA-0947 and did not state at any point that NE#1 directed him or any other officers to lie on her behalf. However, in this newly initiated case, he stated that NE#1 asked him to lie two to three days prior to his interview in 2017OPA-0947, which took place on January 22, 2018.



However, given the nature of his allegation, OPA initiated this investigation. The Complainant identified four officers who were present when NE#1 purportedly asked them to lie for her. OPA interviewed all of these witness officers.

Witness Officer #1 (WO#1) was the witness officer who had the closest personal relationship with the Complainant. However, NE#1 denied that the Complainant ever told him that NE#1 asked him to lie for her. WO#1 also stated that NE#1 never asked him to lie. He confirmed to OPA that the first time he heard of this was after the Complainant had already filed this complaint against NE#1.

Witness Officer #2 (WO#2) recalled that the Complainant asked him a hypothetical question concerning whether he should report a supervisor to OPA if that supervisor asked him to lie. WO#2 believed that this conversation occurred sometime during the late winter/spring of 2018. WO#2 told OPA that he assumed that the Complainant was referring to NE#1, but that he had no firsthand knowledge of what he was talking about. WO#2 stated that NE#1 never raised any officer lying for her in his presence.

Witness Officer #3 (WO#3) stated that the Complainant informed him of the complaint he filed against NE#1. WO#3 said that this conversation occurred in approximately May 2018 and that he had no firsthand knowledge of the Complainant's allegations.

Witness Officer #4 (WO#4) stated that, sometime in the spring of 2018, the Complainant told him that NE#1 had asked the Complainant to lie for her in a prior investigation. WO#4 did not have firsthand knowledge of the Complainant's allegations.

Witness Officer #5 (WO#5) denied ever being told by the Complainant that NE#1 asked him to lie for her. WO#5 stated that he did not know anything about this incident.

OPA also interviewed NE#1. She denied ever asking any officers to lie for her in the prior investigation. She stated that she would have had no reason to do so as she took full responsibility for her actions. She said, however, that the Complainant did, at one point, ask her to lie for him. She told OPA that he spoke to her during his dishonesty case and said that his Guild representative advised him that, if NE#1 could not remember specifics about the incident, he would not lose his job. NE#1 contended that the Complainant told her that, if she did so, he would take care of her. NE#1 refused to lie for him. NE#1 asserted her belief that the Complainant was harassing her by filing this OPA complaint and trying to get back at her for being a witness in the case that resulted in his termination.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)



Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

If NE#1 asked officers, including the Complainant, to lie for her, this behavior would have been unprofessional. Based on OPA’s review of the totality of the record, however, there is insufficient evidence to establish that she engaged in this conduct.

The only individual who had firsthand knowledge of this alleged conduct was the Complainant. While three of the witness officers stated that the Complainant informed them of the nature of his complaint against NE#1, all professed not knowing anything about the underlying conduct. The Complainant had conversations with these officers in the late winter/spring of 2018, which was after the investigation of 2017OPA-0947 had concluded. However, it was during the pendency of the dishonesty case against the Complainant, in which NE#1 was one of the two primary witnesses. Notably, the Complainant commenced this complaint on June 4, 2018, which was after it was recommended that his employment be terminated. His impending termination was clearly the predominant motive for his filing the complaint. As he wrote to the Chief of Police on June 4:

I didn’t want to email this to you, but I know of no other way. My future employment is clearly in serious jeopardy, and I think you should know the following: [NE#1] had motive to not be truthful in her OPA interviews as a witness regarding my case...I appeal to you to have this matter looked into and to not terminate me. I didn’t know who else to tell this to given the urgency regarding my employment status.

While not dispositive, in and of itself, the Complainant’s desire to preserve his career lessens his credibility in this matter. This is particularly relevant as he is attacking herein one of the prime witnesses to his termination case.

In addition, WO#1, who the Complainant asserted was a direct witness to NE#1’s conduct and who he claimed to have discussed this matter with on multiple occasions, explicitly denied this. Moreover, WO#1 was one of the officers whose signature NE#1 copied and who she purportedly asked to lie for her. However, he also denied that this ever occurred, which further undercuts the Complainant’s claims.

Lastly, and again without impugning the Complainant, he has already been disciplined twice for dishonesty. This significantly undermines his reliability and believability as a witness.

For these reasons, and when applying a preponderance of the evidence standard, I find that the evidence is insufficient to establish that NE#1 was unprofessional. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication

If the Complainant’s allegations were true, NE#1 would have engaged in dishonesty in violation of policy. SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.



For the same reasons as stated above, I find that there is insufficient evidence to establish that NE#1 was dishonest or, for that matter, engaged in any of the misconduct alleged by the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer

It is unclear why this allegation was classified in this case. Regardless, it is duplicative of the other allegations and there is no evidence that NE#1 acted in violation of this policy. As such, I recommend that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #4

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 4. Retaliation Is Prohibited

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.*)

The Complainant alleged that he was subjected to termination because NE#1 retaliated against him. He stated that this was based on his refusal to lie on her behalf in 2017OPA-0947. However, this is unsupported by the evidence – most notably, the timelines of the two cases. The complaint in 2017OPA-0947 was initiated against NE#1 on September 14, 2017 and the five-day notice was sent to her on that same day. On September 19, 2017, NE#1 reported to her supervisor that the Complainant may have been working overtime without a valid work permit. She stated that he had been denied a work permit several months ago and that, on September 14, he directly told her that he was not working secondary employment. The Complainant stated that NE#1 asked him to lie for her two to three days before his interview in 2017OPA-0947, which was on January 22, 2018. However, NE#1 was interviewed in the Complainant’s dishonesty case on January 16, 2018, which was six days prior. As such, even if the Complainant’s account was to be credited, NE#1 had already testified in support of the allegation that the Complainant was potentially dishonest prior to the purported conversation between them. Accordingly, that testimony could not be construed as retaliation.

Ultimately, and consistent with the analysis set forth in Allegations #1 and #2, there is insufficient evidence to establish that NE#1 engaged in retaliation against the Complainant. For this reason, I recommend that this allegation be Not Sustained – Unfounded.

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