



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 22, 2019

CASE NUMBER: 2018OPA-0847

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.120-POL-1 Off-Duty Employment Eligibility, Requirements, and Authorized Activities 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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:

It was alleged that the Named Employees violated the law in the operation of their respective off-duty businesses.

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.

It was alleged that Named Employee #1 (NE#1), who is employed by SPD as a Parking Enforcement Officer, may have violated the law in her off-duty capacity. Specifically, it was alleged that NE#1’s company used non-commissioned individuals for flagging at off-duty jobs. It was further alleged that NE#1’s company may have engaged in the over-reporting of earnings on the IRS 1099 forms provided to employees. It was alleged that another company owned by Named Employee #2 (NE#2) had engaged in this practice (discussed below) and that NE#1 had purchased NE#2’s company and continued that conduct. If true, this also would have constituted a violation of law.

The Complainant identified that the use of a non-commissioned officer to flag occurred on June 24, 2018 and he provided the name of the individual at issue. Based on evidence obtained from NE#1, OPA determined that the individual was, in fact, a previously commissioned officer. Moreover, OPA spoke to SDOT, which contracted for the off-duty work. SDOT confirmed that it was appropriate for the individual to flag for them and told OPA that an active

duty law enforcement officer was only required for an off-duty job when the work entailed operating traffic signals. That was not required for the job in question here.

OPA further asked NE#1 whether she had purchased NE#2's company and had continued the alleged practice of over-reporting income on employee 1099 forms. NE#1 denied that she bought NE#2's company. This was confirmed by NE#2. NE#1 also stated that her company paid its employees via payroll and deducted taxes. She told OPA that she did not issue 1099 forms to employees that worked for her company and, as such, that she did not engage in the conduct alleged by the Complainant.

Based on OPA's review of the evidence and for the reasons discussed above, OPA finds that there is an insufficient basis upon which to conclude that NE#1 violated the law in the manner alleged by the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.120-POL-1 Off-Duty Employment Eligibility, Requirements, and Authorized Activities 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities

SPD Policy 5.120-POL-1(4) states that: "Employees must request approval for all law enforcement related off-duty employment and business activities. This requires submitting an Off-Duty Employment Permit. (SPD Policy 5.120-POL-1(4).) The permit must include: "the employer or business name, the street address where work will take place, and specific duties the employee will perform. Employees may not submit vague descriptions such as 'various security.'" (*Id.*)

After investigating this matter, OPA determined that NE#1 submitted an appropriate permit and, thus, that she complied with the requirements of this policy. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #2 - Allegations #1

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

As discussed above, the Complainant alleged that NE#2, who has since retired from the Department, routinely over-reported employee earnings in 1099 forms provided to those employees. The Complainant asserted that this was either intentional misconduct on the part of NE#2 or was due to his poor record keeping. The Complainant told OPA that NE#2 had since sold his company to NE#1 and, now, NE#1 was continuing this practice. If true, this conduct would also constitute potential illegal activity.

OPA's investigation reviewed that NE#2's company was established on June 3, 2015, but was dissolved by the Washington Secretary of State on November 15, 2016, due to the failure of the entity to file a required report within the time set forth by law. NE#2 confirmed to OPA that he dissolved and then later reformed his company under a different name. He denied ever selling his company to anyone.

NE#2 also denied ever over-reporting earnings on 1099 forms provided to employees. He told OPA that no current or former employee had ever alleged that he did so.

In investigating this case, OPA had limited information at its disposal. For example, OPA did not have a sampling of the 1099 forms issued by NE#2 to employees or, for that matter, a list of former and current employees that worked for NE#2 in order for OPA to do its own due diligence. Moreover, while NE#2 denied engaging in this behavior, he did not provide any documentation that conclusively established this to be the case. Accordingly, OPA does not have

sufficient evidence to either prove or disprove that NE#2 engaged in the conduct alleged and, as such, I recommend that this allegation be Not Sustained – Inconclusive.

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