



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 26, 2019

CASE NUMBER: 2018OPA-0991

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 (Inconclusive)
# 2	5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities	Not Sustained (Lawful and Proper)

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, who was working secondary employment, acted unprofessionally towards her. It was further alleged that the Named Employee may not have had a valid secondary work permit on the date in question.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant stated that she was driving to an appointment in a Lyft and that the vehicle was forced to stop because a road was blocked. She told OPA that her appointment was in a building at the top of a hill. She indicated that the Lyft tried to get her as close to her destination as possible, but was directed to stop at the bottom of the hill by Named Employee (NE#1). On that date, NE#1 was working secondary employment flagging traffic. The Complainant explained that she is required to walk with a cane and that it was a struggle for her to get up the hill. The Complainant further contended that, at one point, she approached NE#1 and asked her not to cite the Lyft driver. She stated that NE#1 “laughed” at her and “shooed” her “away like a stray dog.” Lastly, the Complainant alleged that NE#1 mocked her as she walked away.

As part of its investigation, OPA determined that NE#1 was working secondary employment at the location and the time identified by the Complainant. OPA further interviewed NE#1. NE#1 acknowledged that she had a brief interaction with the Complainant on the date in question. NE#1 stated that she did not know that the Lyft had a passenger in it until the Complainant informed her of this fact after she had already gotten out of the car. NE#1 told OPA that, had she known that the Complainant was in the Lyft and that the Complainant had difficulties walking up hills, she would have ensured that the Lyft was allowed to drive up the hill to drop the Complainant off. NE#1 denied



that she was rude or dismissive to the Complainant. She also denied laughing at or mocking the Complainant. While she stated that she did not “shoo” the Complainant away, she explained that, at one point, she did engage in an exaggerated waving gesture towards the Complainant. NE#1 told OPA that this was intended to convey to the Complainant to step out of the road and onto the sidewalk for her safety. NE#1 also said that she may have unintentionally yelled at the Complainant due to a failure to modulate the volume her voice given that she was wearing earplugs at the time and there was a lot of loud construction noise.

NE#1 did not have Body Worn Video during the incident, because she was working secondary employment and because she was not assigned that equipment as a Parking Enforcement Officer. OPA was further unable to locate any other video evidence of the incident or any other witnesses that could conclusively indicate what occurred.

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.*)

As discussed above, there are no accounts from witnesses other than the involved parties concerning what happened during this incident. Moreover, there is no video capturing the interaction and documenting NE#1’s physical actions and statements towards the Complainant. All that OPA has to rely upon is the contrary and irreconcilable accounts of the parties. As such, and even though I find the Complainant to be credible, I conclude that there is simply not enough evidence in the record to prove that NE#1 acted unprofessionally and OPA cannot ultimately determine what occurred during this incident. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities

During its investigation, OPA attempted to locate NE#1’s secondary work permit from the date of the incident. OPA requested this information from SPD Human Resources but OPA was informed that no permit could be found. However, NE#1 later presented a valid work permit to OPA at her interview.

Given that NE#1 proved that she had a work permit on the date in question, she acted in compliance with Department policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

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