



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 10, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0335

Allegations of Misconduct and Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.300-POL-10 – Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional	Sustained
# 2	8.300-POL-10 Use of Force – Blast Balls 5. Officers Must Justify Each Separate Blast Ball Deployment	Sustained
# 3	8.300-POL-10 Use of Force – Blast Balls 7. As Soon As Reasonably Possible, Officers Will Request and/or Render Medical Aid for Subjects Who Appear to Have Been Injured by a Blast Ball Deployment	Not Sustained (Unfounded)

Imposed Discipline

Disciplinary decision pending before the Chief. CCS will be updated when discipline is final.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee deployed a blast ball in violation of policy. It was further alleged that the Named Employee may not have properly documented the deployment and may not have rendered medical attention.

SUMMARY OF INVESTIGATION:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the aftermath of the killing of George Floyd by a Minneapolis Police Officer. The specific case addressed here occurred on the evening of June 1, 2020.

A community member videotaped an unsheltered man – referred to here as the Subject – being struck by a blast ball. At the time of the deployment, the Subject was lying on the ground in Cal Anderson Park with his face covered. The blast ball appeared to strike the Subject directly in the vicinity of his face and chest. The Subject suffered injuries from the blast ball for which medical attention was required. After learning about this incident and viewing the video, OPA initiated this investigation.

As part of its investigation, OPA reviewed Body Worn Video (BWV). From that review, OPA determined that the blast ball that struck the Subject was thrown by Named Employee #1 (NE#1). The BWV showed that NE#1 deployed a number of blast balls while walking westbound down East Pine Street. At approximately 9:07 p.m., NE#1 threw a blast ball overhand into the southwest corner of the park. It was unclear from the video what threat NE#1 was responding to as there was no indication of projectiles being thrown at officers at the time or any acts of violence



occurring in that vicinity of the park. The blast ball detonated, and movement of an individual could be seen. From cross-referencing this BWV with other video, including that taken by the community member, OPA was able to verify that this individual was the Subject.

OPA reviewed the use of force report completed by NE#1. In that report, he wrote: "I deployed several blast balls and CS munitions while dispersing an assaultive crowd westbound from 11th/Pine then northbound from 11th/Pine." NE#1 did not detail each specific deployment, provide a basis for why each was appropriate, and/or explain why overhand throws were warranted.

OPA also reviewed the training provided to officers on blast ball deployment. As part of that training, officers were advised on the five P's: palm, prep, peek, pull, and pitch/place. Relevant to this case, "peek" refers to the prohibition on "blind" deployments. This portion of the training stated the following: "You must look or peek and identify where you intend to deploy the blast ball. No blind deployments. This is the most important step of the five P's, because blind deployments are not an option."

OPA interviewed NE#1. He asserted that the use of force was warranted given that the officers were trying to disperse an assaultive crowd. He said that the area of the fence was a weak spot for them and that he believed that projectiles were coming from that location. NE#1 said that he did not aim the blast ball at the Subject and that the blast ball striking him was unintentional. NE#1 could not recall what his specific target was at that time, but he assumed that it was to the west of the Subject. NE#1 denied that he engaged in a blind deployment. He said that his target was not the bush area where the Subject was but was to the west. He asserted that his throw was inaccurate and was due to fatigue, the chaotic situation, the amount of gear he was wearing at the time, and his lack of athleticism.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.300 – POL – 10 Use of Force – Blast Balls 3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional

SPD Policy 8.300-POL-10 governs the use of blast balls. SPD Policy 8.300-POL-10(3) generally provides for when such force is appropriate. It states that the use must be objectively reasonable, necessary, and proportional. (SPD Policy 8.300-POL-10(3).) This section of the policy further directs that: "When feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property." (*Id.*) Lastly, SPD Policy 8.300-POL-10(4) instructs that: "The preferred method of blast ball deployment is low deployment ('bowling style'). Officers may use a high deployment ('overhand throw') when the need for a farther deployment or the need to get around an obstruction outweighs the risk created by the separating sub-munition."

OPA finds that NE#1's blast ball deployment violated policy in two main respects. First, OPA finds that NE#1 deployed the blast ball in the proximity of individuals who were not posing a risk to public safety or property. As indicated above, there was no indication from the BWV that individuals in the area where NE#1 threw the blast ball were actively throwing projectiles at officers. Indeed, the blast ball ultimately struck an innocent person. Second, OPA finds that NE#1's use of an overhand throw was unduly risky under the circumstances. In furtherance of this finding, OPA concludes that NE#1 did not satisfy the "peek" element of his training. He threw a blast ball in an area



that was obstructed, at least in part, and in which he could not see if there were any innocent parties present. As indicated in the training, such blind deployments are simply not an option and, thus, violate policy.

While OPA has no doubt that NE#1 did not intend to target the Subject and he expressed his regret for this at his OPA interview, the fact remains that this occurred because he engaged in a risky overhand deployment without complete knowledge of where he threw the blast ball. The circumstances of this incident and the other mitigating factors cited by NE#1 go towards the level of discipline but do not change OPA's conclusion that he acted contrary to policy. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.300-POL-10 Use of Force – Blast Balls 5. Officers Must Justify Each Separate Blast Ball Deployment

SPD Policy 8.300-POL-10(5) requires that officers justify each separate blast ball deployment. In addition, where officers deploy blast balls overhand, SPD Policy 8.300-POL-10(3) states that: "Officers must document their deployment method and the reasoning for using such in their use-of-force report."

As indicated above, when documenting his multiple blast ball deployments from the date in question, including several that were overhand, NE#1 provided no detail. He did not itemize the number of deployments, where they occurred, when they occurred, who was in the vicinity at the time, or why each one was made. Moreover, he did not itemize which blast balls were thrown overhand and, where this was the case, what justified those deployments.

At his OPA interview, NE#1 recognized that he did not detail each deployment and he cited as reasons for this the number of deployments and long shifts over continuous days. He stated that, had his chain of command needed more information, they could have sent the case back to him and he would have supplemented his reports. The problem with this explanation, however, is that, given the dearth of information provided by NE#1, the chain of command would simply not have known enough to ask for more information. Indeed, without OPA becoming aware of the video recorded by the community member, it is possible that this deployment and the striking of the Subject may not ever have been fully fleshed out. This is the exact purpose of use of force reports – to provide sufficient information to allow for the critical review of the force. This is crucial to maintaining compliance with the Consent Decree and is particularly important where the force is of a relatively high level, such as the use of blast balls.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

8.300-POL-10 Use of Force – Blast Balls 7. As Soon As Reasonably Possible, Officers Will Request and/or Render Medical Aid for Subjects Who Appear to Have Been Injured by a Blast Ball Deployment

SPD Policy 8.300-POL-10(7) states that: "As soon as reasonably possible, officers will request and/or render medical aid for subjects who appear to have been injured by a blast ball deployment."



For the same fundamental reason that OPA recommends that Allegation #1 be Sustained, OPA finds that NE#1 did not violate this policy. Specifically, in Allegation #1, OPA found that NE#1 failed to recognize all those that were present in the area in which he deployed the blast ball and, thus, he did not know that the Subject was struck and injured. He cannot be held liable for failing to provide medical assistance to someone he did not know where there. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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