



## **CLOSED CASE SUMMARY**

ISSUED DATE: NOVEMBER 13, 2018

CASE NUMBER: 2016OPA-1371

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 – Standards and Duties 10. Employees Shall be Truthful and Complete in All Communications	Not Sustained (Inconclusive)
# 2	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 11. Employees Shall Cooperate with Department Internal Investigations	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 Employee was dishonest during her interview in a prior OPA investigation.

**ADMINISTRATIVE NOTE:**

As set forth in the OPA Auditor’s Certification Memo, even though the Named Employee was out on extended leave and the assigned investigator requested on multiple occasions that an extension be sought to the 180-day deadline, this was not done. It appears that these requests to seek an extension were forwarded at least once to former OPA Director Murphy and multiple times to the investigator’s direct supervisor. However, the extension was never sought or received, even though it would have been warranted under the circumstances. As such, the Director’s Certification Memo in this case was not completed within the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

**ANALYSIS AND CONCLUSIONS:**

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

***5.001 – Standards and Duties 10. Employees Shall be Truthful and Complete in All Communications***

Named Employee #1 (NE#1) was investigated by OPA for allegedly failing to attend work when scheduled to do so. At the time she missed work, NE#1 was subject to a mentoring plan that required her attendance. This mentoring, plan, which was based on ongoing performance and attendance issues on the part of NE#1, set specific expectations. Relevant to this case, it instructed NE#1 on how she was to seek sick leave. NE#1 was required to contact her direct supervisor (referred to here as Witness Sergeant #1 or “WS#1”) by phone and, if WS#1 was not available, she was to contact two other supervisors. The mentoring plan also discussed vacation time and stated that, while the expectation was that NE#1 would seek advance approval for any time off, if she was required to take time off with short notice, she would seek approval consistent with the procedure governing sick time.



During its prior investigation, OPA determined that, on June 7, 2016, NE#1 requested permission to take vacation on June 11, 2016. She made the request to a Sergeant who was neither her direct supervisor nor any other supervisor designated in her mentoring plan as someone from whom the time off could be requested. She requested that she be permitted to take the entire day off, but this other Sergeant (referred to here as Witness Sergeant #2 or "WS#2") stated that she could only take off four hours. However, NE#1 did not attend work at all on the date in question. WS#2, who was not initially aware of the mentoring plan, reported her failure to attend work to WS#1, who ultimately made an OPA referral. The prior case ultimately resulted in recommended Sustained findings. The Chief adopted those recommendations and imposed discipline.

The case discussed here stemmed from the prior investigation. Specifically, it resulted from two statements made by NE#1 at her OPA interview. It was alleged that these two statements, which were inconsistent with the accounts provided by WS#1 and WS#1, may have constituted dishonesty.

The first statement concerned whether NE#1 was told she could take four hours or her entire shift off. WS#2 contended that he was clear that she could only take the four hours. However, NE#1 initially testified that WS#2 told her that she could take the entire shift off. NE#1 stated that WS#2 then spoke to WS#1 who said that she could not do so. NE#1 told OPA that she took the entire shift off because of a "misunderstanding." She further testified that she did not remember being told that she could not have the night off and that she may not have heard that she was only allowed four hours of vacation.

The second statement concerned whether NE#1's mentoring plan was clearly explained to her. She stated that she was given the plan but that no one went through it with her. She recalled two supervisors being present when she was given the plan, but stated that WS#1 was not there. WS#1 stated, however, that he went over the mentoring plan with NE#1 several times and told her exactly what she was required to do.

OPA re-interviewed NE#1 to address these inconsistencies. However, this interview did not occur until a significant amount of time after her first interview given that NE#1 was out on extended leave for more than a year.

With regard to the first statement, NE#1 stated that she must have discussed with WS#2 that he had conferred about her time off request with WS#1. However, she still did not recall being aware that she was not permitted to have the full shift off. She again asserted that her taking the time off was the result of a misunderstanding.

With regard to the second statement, NE#1 this time confirmed that WS#1 did, at least on one occasion, give her a copy of the mentoring plan. However, she again stated that he did not explain it to her in detail. When asked why he would have a different recollection of their discussion(s), NE#1 stated that she did not know. She denied that she had been untruthful.

NE#1 raised that, at the time of her first interview, she was dealing with medical and other issues. She specifically explained that she had been suffering from sleep deprivation and depression. She opined, in response to questions posed by her Guild representative, that these conditions could have negatively impacted her perception of what was happening at the time of the incident, her conversations with WS#1 and WS#2, and her later recall when she testified during the first OPA investigation.



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SPD Policy 5.001-POL-10 states that Department employees shall be truthful and complete in all communications. If NE#1 lied to OPA during her first interview, she would have violated this policy.

It is clear that there are significant discrepancies between the accounts provided by NE#1 on one hand and WS#1 and WS#2 on the other. I note that WS#1 and WS#2 had no discernable reason to fabricate the information they provided to OPA, while NE#1 had a motive to do so in order to cover up her failure to comply with her mentoring plan. I deem it likely that WS#1's and WS#2's accounts are accurate and NE#1's recitation of the facts surrounding this incident is incorrect and possibly purposefully false.

That being said, given the higher quantum of proof required to establish this allegation under the current Collective Bargaining Agreement between the City of Seattle and SPOG, I do not believe that it can be proved that NE#1 engaged in intentional dishonesty in this case. I reach this finding for two main reasons. First, with regard to each inaccuracy, it is NE#1's accounts versus that of one other individual. There is no other independent witness for either claimed dishonest statement. Second, there is no evidence in the record contradicting NE#1's assertion that she was suffering from sleep deprivation and personal and mental health challenges at the time of the incident. I cannot discount the possibility that, even if the incident occurred exactly as WS#1 and WS#2 described, NE#1 perceived it differently or failed to comprehend what she was being told.

Ultimately, while I believe that dishonesty could be proved by a preponderance of the evidence, given the two factors discussed above, I do not believe that this allegation can be established under the higher clear and convincing standard. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegations #2**

***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 11. Employees Shall Cooperate with Department Internal Investigations***

This allegation concerns the requirement for SPD employees to cooperate with Department internal investigations conducted by OPA. If, as it was alleged, NE#1 was deliberately and materially dishonest to OPA, she would have also violated this policy. However, as I find that this question cannot be conclusively determined, I also reach a finding of Not Sustained – Inconclusive with regard to this allegation.

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