



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 21, 2018

CASE NUMBER: 2017OPA-1323

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer	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 Named Employee #1 took unscheduled vacation without seeking leave to do so, which was in violation of SPD policy, previously agreed upon Performance Management Agreements, and direct orders from a Department supervisor.

STATEMENT OF FACTS:

This is the fourth complaint handled by OPA concerning the use by Named Employee #1 (NE#1) of leave and/or sick time and his attendance at work or lack thereof. As a result of this repeated conduct, which was initially addressed by NE#1’s chain of command and in an OPA investigation (2015OPA-0383), NE#1 was placed on a Performance Management Plan and signed a Performance Management Agreement (PMA). This first PMA was signed on March 10, 2017. In June 2017, NE#1 was referred to OPA for violations of that PMA. Those alleged violations included failing to seek leave before taking time off for work and inaccurately recording his time. These policy violations were evaluated in OPA case 2017OPA-0644 and the Chief of Police issued Sustained findings and imposed discipline in February 2018.

After the attendance and timekeeping issues that occurred in June 2017, the Complainant, who is NE#1’s supervisor, re-reviewed the requirements of the March PMA with NE#1. The Complainant reiterated to NE#1 the expectation that he comply with SPD Policy 4.010-POL-2, which requires that Department employees schedule time off with their supervisors. He also reminded NE#1 of the following: “You are required to notify your supervisor of your intent to use sick leave prior to the start of your regular shift. This is consistent with SPD Manual section 4.070-7. Notification may be made via telephone, text message.” NE#1 and the Complainant signed this renewed PMA on July 25, 2017. However, on December 16, 2017, NE#1 took sick leave without notifying his supervisor. NE#1, instead, notified another sergeant. That conduct was investigated in OPA case 2017OPA-1287 and also resulted in recommended Sustained findings. Discipline has not yet been imposed in that case.

This case concerns NE#1 taking leave on December 29, 2017. When his supervisor, the Complainant, realized that NE#1 was not present for work, he checked the duty roster. The duty roster indicated that NE#1 was working that day.



The Complainant called NE#1 at 0600 hours, which was approximately three hours after his shift began, to determine where he was. The Complainant reported that NE#1 stated that it was his furlough day; however, based on the duty roster, NE#1 was incorrect. The Complainant ordered NE#1 to come to work and he arrived at the precinct at 0630 hours. The Complainant stated that, when NE#1 arrived at work, NE#1 showed the Complainant his personal calendar. NE#1's calendar indicated that he was "off" on December 29. However, the Complainant denied that NE#1 ever cleared this off day with him and received the Complainant's approval as required.

The Complainant told OPA that NE#1 was operating off of the same work schedule that he had been assigned to for the last several years. This schedule, which is called a 4/2 (four days on, two days off that rotates throughout the year). The Complainant confirmed that NE#1's PMAs were in force on December 29 and asserted that NE#1's failure to appear for his shift violated these agreements.

NE#1 acknowledged that his PMAs were in force on December 29, as well as that these agreements required him to seek advance approval from a supervisor before taking any time off, whether scheduled or unscheduled. NE#1 told OPA that, before that date, he met with the Complainant to establish and mark down the days he would be taking off in December. One of those days was December 29. He then marked it off on his personal calendar. NE#1 stated that he took steps to carefully write down his planned off days due to the other OPA investigations into his conduct.

In support of his account, NE#1 stated that another sergeant witnessed the Complainant reviewing the duty roster and mentioning out loud that the Complainant, not NE#1, may have made a mistake by not properly recording NE#1's vacation days.

OPA interviewed that witness sergeant. The witness sergeant recalled observing the Complainant reviewing the master staffing sheet. During that review, the witness sergeant told OPA that he heard the Complainant state: "that may be on me." The witness sergeant interpreted this to "mean that maybe the [Complainant] forgot to mark that day."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor

SPD Policy 4.010-POL-2 requires SPD employees to schedule time off with their supervisors. The policy states that: "Employees will contact their sergeant/supervisor before their scheduled work shift to request an unscheduled absence from duty." (SPD Policy 4.010-POL-2.)

In addition to the requirements of this policy, NE#1's agreed-to PMAs also explicitly required him to comply with this policy, identified his past failures to do so, and instructed him that further violations could result in disciplinary action up to termination.

The Complainant was adamant that NE#1 not seek preapproval for his vacation and, in support of that belief, he pointed to the lack of any indication of NE#1's vacation date on the duty roster. NE#1, on the other hand, recalled prescreening the vacation day with the Complainant and getting the Complainant's permission to take the time off. In support of his recollection of the incident, NE#1 pointed to his personal calendar, which had the date in question marked as a vacation day.



Were my analysis based solely on past conduct of NE#1, I would find that he violated this policy and the PMAs. He has repeatedly done so, even after counseling and discipline has been imposed. However, in this specific case, the record is unclear as to whether he properly sought permission and received approval to take the leave in question. This is primarily due to the statements of the witness sergeant to OPA. The witness sergeant provided evidence that, at the very least, raised the possibility that NE#1 had been approved to take the vacation day but that the Complainant failed to update the duty roster/master staffing sheet. This evidence is sufficient to create enough of a question as to what occurred to preclude me from reaching a Sustained finding. Instead, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer

SPD Policy 5.001-POL-14 mandates that Department employees obey any lawful order issued by a superior officer. Failure to do so constitutes insubordination.

NE#1's PMAs were in force on the date in question and, as such, he was required to seek and obtain approval from the Complainant prior to taking any time off. If he failed to do so, this would have constituted insubordination under this policy.

However, as discussed, above, the record is unclear as to whether or not NE#1 obtained leave to take vacation on the date in question. For these reasons, I reach a similar finding as in Allegation #1 and I recommend that this allegation be Not Sustained – Inconclusive.

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