



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 10, 2018

CASE NUMBER: 2018OPA-0523

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	Sustained

Imposed Discipline

Written Reprimand

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 was rude to the Subject during a traffic stop.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) effectuated a traffic stop of the Subject’s vehicle. In the Traffic Contact Report (TCR) that he wrote, NE#1 indicated that the basis for the stop was “lane travel,” presumably meaning that he observed the Subject travel outside of her lane. NE#1 told OPA at his interview that he also perceived that the Subject was “speeding,” but that offense was not referenced in the TCR.

NE#1 explained to the Subject why she had been stopped. He told her that she had swerved into the middle lane. She argued the basis for the stop and the Subject went back and forth with her and ultimately told her that he was not going to argue the stop. He asked her for her driver’s license several times and she eventually complied. He also asked her for proof of insurance and she stated that it was on her phone.

NE#1 asked the Subject where she worked and she stated that she worked at an animal hospital and had just gotten off. NE#1 then returned to his vehicle and ran the Subject’s information through his Mobile Data Terminal. After he got out of his patrol vehicle, he stated to the other officer that the Subject was “way impaired” and indicated that he thought she might try to drive off. He then asked the Subject to step out of her car. She did so and he told her to walk to the front of his patrol vehicle. She complied. At the time, she had her cell phone with her. She placed it on the hood of NE#1’s patrol vehicle.

NE#1 explained to the Subject that he asked her to step out her car because of her driving, her slow speech, and his observation of her eyes. He asked if she had consumed any alcohol or taken any drugs, prescription or otherwise. She stated that she did not drink or take drugs. He asked if she had diabetes and took insulin. She stated no. She told



NE#1 that she was epileptic and she had experienced prior seizures and memory lapses. She said that she had received some treatment for this condition in high school, but explained that there was a lack of services. The Subject told NE#1 that she had some developmental disabilities and cognitive learning disabilities. She stated that she was a veterinary nurse.

The Subject agreed to take field sobriety tests (FSTs). During the second FST, NE#1 gave the Subject instructions as to what he expected her to do. After he was done, she stated: "I can't remember that long, I have short term memory loss. It's mean for you to do this..." NE#1 responded: "You have short term memory loss? You're a nurse. That doesn't affect you at work? You can't remember instructions for the test?" The Subject told NE#1 that her employer made an "accommodation" for her disability and NE#1 replied: "not in nursing." The Subject stated that she was "not a technician." NE#1 again asked the Subject whether she could remember and comply with the FST instructions and she stated that she could. The Subject also told NE#1 that she had her service dogs in her car.

NE#1 then explained the next test, which involved the Subject lifting one foot up in the air. He told her that, while her foot was raised, he needed to count off by "thousands" (i.e. "one thousand one, one thousand two..."). The Subject responded that she did not count by "thousands." NE#1 stated to her: "You can't count? You can't count?" The Subject looked directly at NE#1 and said: "It's not nice for you to treat me this way." NE#1 replied: "I'm not being mean to you, so...I know you usually get a reaction out of people, but you're not going to get a reaction out of me." The Subject said: "I'm not looking for a reaction, I don't need your pity." NE#1 said: "Good, I'm glad. But I think that's what you were looking for."

NE#1 asked the Subject what drugs she had used today and she denied doing so. He then told the Subject that he thought she was "misleading" him. NE#1 walked away from the Subject and told another officer that he thought the Subject was "220," which is code for someone who is mentally ill. NE#1 engaged in a conversation with the other officer several steps away from the Subject. NE#1 then returned to where the Subject was standing and had her put her head back with her eyes closed and then stick out her tongue. After she did both, NE#1 again stated that she was "220," this time while directly in her presence.

NE#1 subsequently offered the Subject what he characterized as "advice." He told her that when she is pulled over by an officer and her license is demanded, she is required to provide that information. He also stated: "You also need to go see your mental health professional and I think you know that." NE#1 then released the Subject and left the scene.

SPD Policy 5.001-POL-9 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-9.) 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 part of its investigation, OPA interviewed NE#1. He told OPA that he believed that he was professional during this incident. He denied that his statements to the Subject were contemptuous and disrespectful. He further denied that anything he said improperly escalated the situation. He asserted that his questions to her – including whether her short-term memory loss affected her work and whether she could count – were necessary to complete his investigation. As he explained: "asking those probing questions can be uncomfortable, but we are not in the



business of comfort at times.” He did not believe that his statement to the Subject that she was trying to “get a reaction” from him was confrontational. Lastly, NE#1 believed that it was professional to recommend to the Subject that she seek mental health treatment.

I agree with NE#1 that, as part of the law enforcement response to an incident, officers are required, at times, to ask difficult questions. However, here, I find that NE#1 went beyond what was permissible and that his statements to the Subject were, when evaluated in their totality, unprofessional. Among the statements that I found problematic were: those concerning her memory and NE#1’s disbelief that she could do her stated job; his sarcastic comment concerning the Subject’s ability to count; his assertion that the Subject was looking for a “reaction” (from a review of the record, OPA is unclear what this meant or what this was based on); NE#1’s referral to the Subject as “220” while in her presence; and NE#1’s “advice” that she see her mental health therapist.

I find particularly problematic the comments concerning the Subject’s mental health condition. While NE#1 stated that he often offers mental health treatment suggestions to those he interacts with, that advice did not appear welcome here and, indeed, was one of the main reasons for the filing of this complaint. I find that it was unwarranted, unwanted, and that it would have been offensive to a reasonable person in the Subject’s place. Accordingly, I find that the statements referenced above, and specifically the comment concerning the Subject’s mental health, were unprofessional and violated policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**