



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 26, 2019

CASE NUMBER: 2018OPA-1043

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	13.010 - Collisions Involving Department Vehicles 13.010-TSK-1 Department Employee Involved in a Collision	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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 struck the Subject with her vehicle while on duty, but that she did not stop, offer to call for medical assistance, or report the accident to a supervisor.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant sent an email to OPA in which she alleged that her boyfriend, the Subject, was walking in a crosswalk when he was struck by a Department vehicle. It was reported that the vehicle was driven by a female Parking Enforcement Officer (PEO) and provided the license plate. It was also reported that, after the PEO hit the Subject, the PEO briefly stopped and said that the Subject should not have been wearing dark clothing. Lastly, it was alleged that when the Subject and the Complainant took out their cellphones to record the interaction, the PEO drove off.

OPA determined, based on the license plate number, that the employee who was driving the car was Named Employee #1 (NE#1). OPA also determined, based on GPS records, that NE#1 was in the location described at the time of the incident. OPA believed that the complaint, if true, raised potential criminal activity on NE#1’s part. As such, OPA referred this matter to SPD for criminal investigation. SPD returned the case shortly thereafter stating that: “There is no evidence of a crime.” However, there is no indication what criminal investigation, if any, SPD actually conducted. Upon return of the case, OPA commenced this investigation.

As part of its investigation, OPA interviewed the Subject. He stated that he was walking in a crosswalk when NE#1 drove out of a parking lot and hit him with her car. He stated that she was driving around five miles-per-hour, if not



less, and acknowledged that she may not have seen him when she pulled out of the lot. The Subject told OPA that, after he was hit, NE#1 rolled down her window and he yelled: "You just hit me!" He stated that, in response, NE#1 said: "You shouldn't be wearing dark clothing." He recounted that she then drove off.

The Subject stated that he was with the Complainant at the time, but that she was ahead of him and did not witness the incident. He told OPA that he did not call 911 after the incident because "there's no reason to." He stated that, as NE#1 worked for SPD, she should have known better than to drive off. He further told OPA that he did not want to wait at the scene for police to arrive, which he believed would have taken a long time. The Subject asserted that NE#1 broke the law when she engaged in a hit and run accident and that some disciplinary action should be taken against her for doing so.

Several weeks after his interview, the Subject wrote OPA an email in which he stated that he had discussed the case with friends and it was suggested that he obtain a lawyer. He further asked whether NE#1 reported the accident to anyone at SPD and whether NE#1 was still working as a PEO.

OPA further interviewed NE#1. She acknowledged that she was in the location of the incident but denied that she struck the Subject with her vehicle. NE#1 recalled pulling out of the parking lot and nudging her car forward several times so that she could see past a van that she said was blocking her view. When she did so, she saw the Subject by the passenger side of her vehicle. He was yelling at her that she should "learn how to fucking drive." She opened her window and said: "excuse me." She recounted that the Subject responded: "learn how to fucking drive, can't you see me?" She stated that she told him: "anyone would have a hard time seeing you, you're wearing dark clothes from head-to-toe." He replied: "fuck you, you fucking bitch, learn how to fucking drive your fucking car." She said that, at that point, she rolled up her window and drove away.

NE#1 denied that the Subject ever asserted to her that he was struck with her vehicle. Specifically, she contended that she never heard him say: "you hit me." When asked, she stated that she was 99% sure that it did not occur. In explaining why she was not 100% sure, she stated that "anything was possible." She told OPA that she looked at her car after receiving notice of this complaint and determined that it had no marks. She also asserted her belief that she would have felt something had she hit the Subject. NE#1 stated that the Subject never told her that he was hurt or that he needed medical assistance. Lastly, NE#1 asserted that, had she been aware that she struck the Subject with her car, she would have stopped, gotten out, determined whether the Subject was okay, called for medical attention if needed, and reported the incident.

Lastly, OPA looked for security cameras that may have recorded this incident but were unsuccessful in this regard. Moreover, no additional witnesses to this event were located.

OPA finds the allegations in this case to be concerning. If a Department employee struck a community member with her vehicle, did not stop, did not call for medical attention, and did not report this matter to a supervisor, it would violate multiple policies, including that governing professionalism. It would further constitute a hit and run and would, thus, be a violation of law. However, the evidence here is insufficient to conclusively establish what occurred. The Subject stated that he was struck by NE#1's vehicle and NE#1 contended that she was 99% sure that this did not occur. There are no witnesses and no video that prove one of the accounts over the other.



For these reasons, I cannot determine whether NE#1 violated policy in this incident and, accordingly, I recommend that this allegation and Allegation #3 be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

13.010 - Collisions Involving Department Vehicles 13.010-TSK-1 Department Employee Involved in a Collision

SPD Policy 13.010-TSK-1 instructs SPD employees on the steps that they must take when involved in a collision with a Department vehicle. Included among these is the requirement to immediately notify a supervisor.

As discussed above, OPA cannot prove that NE#1 struck the Subject with her car. However, based on a reading of her OPA interview, even she cannot definitively say that it did not occur. Given this and based on the specific circumstances of this case, OPA believes that NE#1 should have contacted a supervisor and informed that supervisor of what occurred. Had she done so and had an investigation been performed that evening, even if perfunctory, it would have greatly aided OPA's evaluation of this matter and could have helped NE#1 avoid being subject to both administrative and criminal investigations.

For these reasons, I recommend that NE#1 receive the below Training Referral.

- **Training Referral:** NE#1's chain of command should discuss this incident with her and should, specifically, review her decision to not inform a supervisor of this incident. NE#1 should be counseled that it would have been advisable to have done so. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Inconclusive.

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