



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 26, 2019

CASE NUMBER: 2018OPA-1047

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

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 may have engaged in biased policing and may have abused his discretion when he issued a citation to the Subject.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 6. Employees May Use Discretion

The Subject initiated an OPA complaint in which he alleged that Named Employee #1 (NE#1) improperly cited him. The Subject contended that there was insufficient evidence to determine that was at fault in a collision; however, he said that NE#1 still cited him instead of the other driver. The Subject also asserted that he had been trying to contact NE#1 for two weeks but had not received a response. That prior case was classified as a Supervisor Action and was referred back to the chain of command in order for a supervisor to discuss the incident with NE#1.

Subsequently and after his review of that case, the former OPA Auditor raised additional concerns regarding this matter. Specifically, the OPA Auditor alleged that NE#1’s decision to cite the Subject rather than the other driver may have been based on bias and may have also constituted an abuse of discretion. This investigation ensued.

OPA’s investigation revealed that, at the scene in the aftermath of the accident, both the Subject and the other motorist stated that they had a green light. The other motorist was upset and was crying. She told NE#1 that the Subject ran a red light. The Subject stated, however, that the other motorist was driving very fast. Both contended that the other individual was at fault. After conducting a preliminary investigation, NE#1 returned to the Subject and asked him whether he had been drinking. The Subject said that he had not and NE#1’s Body Worn Video (BWV) indicated that he did not detect the odor of alcohol. NE#1 further asked the Subject whether he understood English well. The Subject stated that he understood English, but not perfectly. NE#1’s BWV then captured him stating his opinion to the other motorist’s father that the Subject ran a red light. He further told the father that he did not



believe that the Subject was drunk but that “he’s a bad driver.” Based on OPA’s review of the BWV, it is unclear what evidence these statements were based on.

The report generated by NE#1 included an image of the crash and depicted the other motorist’s vehicle striking the Subject’s car in the rear right quadrant. It further depicted the Subject as having a red light and the other motorist as having a green light. The narrative stated that the Subject: “was driving north along Roosevelt Wy and is reported to have failed to stop at the red traffic light. His vehicle pulled into the intersection and in front of Driver 2. This caused a collision in which both vehicles were towed from the scene.” NE#1 found that the Subject was at fault and issued him a citation.

At his OPA interview, NE#1 stated that he determined that the Subject was at fault based on his review of the scene, as well as based on his training and experience. Specifically, he contended that, due to the position of the vehicles, he believed that the other motorist was in the right of way at the time of the accident. However, there does not appear to be conclusive evidence establishing this to be the case. NE#1 told OPA that he believed that he was mandated to cite the at-fault driver based on SPD Policy 15.260-POL-4. He further asserted that doing so was consistent with what he learned in post-BLEA and during field training.

Pursuant to SPD Policy 5.001-POL-5: “Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

From OPA’s review of the record, it is unclear why NE#1 credited the account of the other motorist over the Subject and what information supported NE#1’s finding that the Subject caused the accident. Notably, the report generated by NE#1 appeared to solely rely on the other motorist’s account and failed to provide a recounting of what the Subject contended occurred. Moreover, the report provided virtually no insight into what facts NE#1 relied upon to reach his decision other than the account of the other motorist. It did not cite to any objective witnesses or any other evidence supporting a finding that the Subject was at fault. Lastly, the report lacked sufficient detail and was vague. While NE#1 is right that he is required to cite an at-fault driver, OPA sees insufficient evidence in the record to actually believe that the Subject was at fault.

Ultimately, even though OPA may disagree with NE#1’s decision, OPA was not at the scene and did not evaluate the evidence in real-time or speak with the involved parties. As such, OPA is disinclined to substitute its judgment for NE#1 and, in doing so, to find that he violated policy by abusing his discretion. Accordingly, OPA believes that the question of who was at fault and whether NE#1 abused his discretion during this incident to be inconclusive.

The above being said, OPA believes that NE#1’s report for this incident was insufficient and did not provide enough information to clearly indicate why NE#1 reached the decision that he did. OPA believes that NE#1 should receive the below Training Referral to help him write more thorough and detailed reports in the future.

- **Training Referral:** NE#1 should be provided training regarding his chain of command’s expectations for his reports concerning traffic accidents. NE#1 should be counseled to provide sufficient detail to allow the reader to understand what evidence he relied upon to reach his determination. Moreover, NE#1’s chain of command should discuss his decision to rely solely on the account of the other motorist and to not include



any information concerning the contrary statement provided by the Subject. This made the report seem one-sided, even though this was almost certainly not NE#1's intention. This retraining and associated counselling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

As discussed above, even if NE#1's decision to cite the Subject was unwarranted, I find insufficient evidence to determine that it was based on bias. At his OPA interview, NE#1 provided a race-neutral explanation for his actions. Based on OPA's review of the record, the information therein does not contradict NE#1's account in this regard.

For the above reasons, I recommend that this allegation be Not Sustained – Unfounded.

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