



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 2, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2018OPA-0337

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 (Unfounded)
# 2	5.001 - Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	4.010 – Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	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:

An anonymous Complainant alleged that the Named Employees were misreporting their work hours and that Named Employee #1, a supervisor, applied inconsistent work standards to unit employees.

ADMINISTRATIVE NOTE:

After OPA submitted its investigation in this matter for certification, the OPA Auditor (the precursor to the Office of Inspector General) requested additional investigation be conducted. OPA was unable to complete this investigation prior to the expiration of the 180-day deadline due to heavy workloads and the primary case investigator transferring to another unit. Accordingly, this DCM is unfortunately submitted well after the deadline concluded.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant, who initiated this matter anonymously, alleged that both Named Employee #1 (NE#1), then a Sergeant in the Domestic Violence (DV) Unit, and Named Employee #2 (NE#2), a Detective in that same unit, regularly misreported the hours they worked on their time sheets. The Complainant contended that both would routinely come in to work late and leave work early, but then indicate that they worked a full nine hours on their timesheets. Lastly, the Complainant stated that NE#1 did not apply the same time and leave standards to all employees. The Complainant



specifically identified one employee, a retired DV Unit Detective, as being singled out to receive different and less favorable treatment.

Pursuant to these claims, OPA initiated this investigation. OPA first reviewed proxy card access records, monthly staffing sheets, and timesheets for December 1, 2017 to April 17, 2018 to see whether any patterns consistent with the Complainant's allegations could be identified. OPA picked this date range because the Complainant failed to provide any specificity concerning the time period during which this purported misconduct occurred.

Based on OPA's review, the monthly staffing sheets for NE#1 and NE#2 were consistent with their timesheets. That being said, the Complainant alleged (without providing corroborating evidence) that the Named Employees were working together to conceal their inaccurate timekeeping.

The Named Employees' proxy card access was also consistent with their recorded time worked; however, the probative value of this evidence was limited as it only recorded entries into Department facilities and not exits.

OPA interviewed both of the Named Employees. Both denied inaccurately recording their time or engaging in a pattern of working less than their required nine-hour shifts. Given that the Complainant was anonymous, OPA could not interview this individual to learn more information that might substantiate these allegations. Moreover, OPA attempted to interview the retired Detective that was referenced in the Complainant's emailed complaint. OPA spoke with this Detective, and she expressed concerns with how NE#1 ran the DV Unit. However, she did not identify any time theft on the part of either NE#1 or NE#2.

SPD Policy 4.010-POL-2 governs how Department employees are to seek approval for scheduled and non-scheduled leave. Moreover, SPD policy (and the law) generally prohibits officers from seeking compensation for time that they did not work. If the Complainant's allegations were true, both NE#1's and NE#2's conduct would have constituted a violation of this policy.

When evaluating this allegation, OPA is required to apply a preponderance of the evidence standard. This means that there must be information in the record proving that it is more likely than not that the claimed misconduct occurred. Here, when looking at the totality of the record, the evidence is simply insufficient to meet this burden. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is Prohibited

The Complainant alleged that NE#1 strictly applied time and leave policies to the retired DV Unit Detective, but not to NE#2 and other members of the unit. The Complainant claimed that this was retaliatory and, in part, was the reason why that Detective retired from the unit.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who



otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Even if the Complainant’s allegations were true, it would not be retaliation if NE#1 prevented the retired Detective from engaging in the same fraudulent time keeping practices that NE#1 was purportedly engaging in.

Moreover, there is simply no evidence in the record establishing that NE#1 and NE#2 actually engaged in these practices, or that NE#1 retaliated against the retired Detective in any way. Notably, the Complainant remained anonymous throughout this investigation and never provided a statement to OPA, which hampered OPA’s investigation into this matter.

Based on the evidence that is available to OPA and within the record, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (*see* Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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