



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 15, 2020

CASE NUMBER: 2018OPA-0533

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
# 2	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained

Imposed Discipline

Suspension without Pay – 2 days

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 stated that the Named Employee was given lawful orders to comply with dress code requirements and that she did not immediately comply with those orders. The Complainant further alleged that the Named Employee made unprofessional statements.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant asserted that Named Employee #1 (NE#1) was given lawful orders to comply with Department dress code requirements. Specifically, NE#1 was directed to either wear her hair in a ponytail or wear it up as required by SPD policy. He stated that NE#1 did not immediately do so. He told OPA that he later learned that when NE#1 was discussing the orders with a Sergeant and the fact that the Complainant wanted her to be in compliance with this policy, she stated: "fuck [the Complainant], he's not my Lieutenant." OPA also interviewed the Sergeant who this statement was purportedly made to. The Sergeant confirmed that the statement was, in fact, made by NE#1. He recounted that she stated: "fuck [the Complainant], he's not my Lieutenant." At his OPA interview, the Sergeant added that NE#1 told him: "I don't have to do what [the Complainant] says." The Sergeant told OPA that it was not his impression that NE#1 was joking when she made that statement. He further stated that she appeared angered by the orders concerning her hair.

As part of its investigation, OPA interviewed NE#1. NE#1 told OPA that she made the following statement concerning the Complainant: "he's not my fucking Lieutenant." She stated that she then winked at the Sergeant because, in her opinion, she was being satirical. She denied saying "fuck [the Complainant]."



NE#1 was counseled concerning her statement and her purported failure to comply with lawful orders by the Complainant. The Sergeant was also present during that meeting. NE#1 described the meeting as hostile on the part of the Complainant. Neither the Complainant nor the Sergeant described the meeting similarly.

SPD Policy 5.001-POL-10 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-10.) 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.*)

Applying a preponderance of the evidence standard, I find it more likely than not that NE#1 made the statement attributed to her by the Complainant and the Sergeant. Fundamental to this finding is my determination that the Sergeant’s testimony was credible, and that the Sergeant had no motive to fabricate the content of what NE#1 said. Even under NE#1’s account, she used profanity when referring to the Complainant and her statement – “he’s not my fucking Lieutenant” – intimated disdain for the Complainant and NE#1’s belief that she did not have to do what he said. Her statement, particularly in the context of the chain of command that is fundamental to law enforcement agencies, was inappropriate and unprofessional. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer

NE#1 stated that she did not recall being given orders by the Sergeant to adjust her hair. She contended that she viewed the Sergeant’s statements to her as “suggestions.” NE#1 told OPA that she adjusted her hair five minutes after the issue was mentioned by the Sergeant and that she was not insubordinate.

The Sergeant said that he told NE#1 twice to adjust her hair. He did not indicate that these were suggestions; however, he also did not characterize them as clear and explicit orders. He informed OPA that she did not immediately do so.

OPA’s investigation further yielded that NE#1 had been counseled on not wearing her hair consistent with policy on at least one other occasion. The Sergeant also noted in a memorandum submitted to the Complainant (and reiterated at his OPA interview) that: “this has been a chronic historical issue with [NE#1] during her time at the South Precinct for which various supervisors have counseled her on.”

SPD Policy 5.001-POL-15 requires that Department employees obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination.

While NE#1 claimed that she did not receive an order to adjust her hair, from my review of the record, I disagree. The Sergeant stated that he twice told NE#1 to adjust her hair and she did not immediately do so as a result of either request. Notably, a supervisor does not have to use the specific term “order” for a direction to be characterized as such. If a supervisor tells a subordinate officer to do something, it is an order largely regardless of the phrasing.



I further note that, as discussed above, non-compliance with the policy concerning the wearing of her hair appears to be an ongoing issue for NE#1. While not dispositive in and of itself, this suggests that NE#1 was also non-compliant in this case and provides corroborating evidence supporting a finding that NE#1 deliberately refused to comply with the Sergeant's direction

When applying a preponderance of the evidence standard, I find that the information in the record establishes that it is more likely than not that NE#1 received and refused to comply with lawful orders. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**