



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 29, 2020

CASE NUMBER: 2019OPA-0432

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained

Imposed Discipline

Terminated Prior to Proposed Discipline

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 was arrested for DUI.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On May 27, 2019, Named Employee #1 (NE#1) was pulled over for speeding by a Washington State Patrol (WSP) trooper. Upon stopping NE#1, the trooper reported smelling the strong odor of intoxicants. Initially, NE#1 stated that she had consumed two alcoholic beverages. She later revised that count to state that she had four drinks, which included a mixture of beer and hard liquor. The trooper asked NE#1 to step out of her vehicle and asked her if she would perform voluntary field sobriety tests. She agreed to do so and performed the tests. The trooper documented that NE#1 failed three aspects of the tests – the Horizontal Gaze Nystagmus, the walk and turn, and the one leg stand. NE#1 provided a .094 Portable Breath Test sample. NE#1 was placed under arrest and was taken into custody. She was transported to a WSP station where she provided two more breath samples on a BAC machine. Those samples were all slightly below the legal limit (.072 and .075; and .068 and .071). NE#1 was transported to the King County Jail where she was booked for DUI. The King County Prosecuting Attorney's Office (KCPAO) ultimately declined to bring charges against NE#1 due to the BAC tests being below the legal limit and their belief that they could not prove the case beyond a reasonable doubt given the available evidence.

NE#1 later self-reported her DUI arrest to her SPD supervisor. The supervisor, per policy, made an OPA referral and this investigation ensued. During the course of this investigation, NE#1's employment was terminated by SPD. As such, OPA was unable to interview her as part of this investigation.

SPD Policy 5.001-POL-2 states that Department employees must adhere to laws. This includes the RCW prohibiting DUI. While the KCPAO is governed by a beyond a reasonable doubt standard, OPA applies a lower preponderance of the evidence standard in its administrative investigations. As such, the fact that the KCPAO declined to prosecute a case does not limit OPA from finding that a criminal act still occurred. Given this less stringent standard, OPA



concludes that there is sufficient evidence in the record establishing that NE#1 was DUI. As articulated by the trooper, at the time of the traffic stop, NE#1 was driving 19 miles over the speed limit and was weaving in her lane. This coupled with her failure of the field sobriety tests and her initial PBT result of .094, proves by a preponderance of the evidence that she was affected by the alcohol and that this caused her to drive unsafely. While the later BAC results were below the limit, this was likely due to the fact that nearly an hour passed between the administration of the PBT and BAC tests.

OPA finds that the above evidence supports a determination that NE#1 was DUI. As such, OPA concludes that she violated law and, as a result, acted contrary to SPD Policy 5.001-POL-2. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**