



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 6, 2020

CASE NUMBER: 2019OPA-0489

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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:

The Complainant alleged that the Named Employee cited her for a traffic infraction based on her disability and treated her rudely and unprofessionally.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

On July 12, 2019, Named Employee #1 (NE#1) responded to an accident on Mercer street in which a Toyota Prius that was changing lanes collided with a truck. The involved vehicles blocked two busy lanes of traffic, leaving only the turn lane clear. A Parking Enforcement Officer (PEO) stood by to control traffic with his vehicle. NE#1 first contacted the truck driver, who verified that he was involved in the accident. He then spoke to the passenger in the Toyota, a male. The male explained that his mother was the driver. NE#1 also spoke to the mother, the Complainant in this case.

NE#1 told the Complainant and her son that they were being recorded on Body-Worn Video (BWV). The Complainant stated that the car was on loan from her daughter, who was not present. She also said that she was hearing impaired and she asked NE#1 to be careful when he spoke because she mostly lip-reads to communicate. NE#1 said that he understood. The Complainant described the accident, stating that she was in the process of changing lanes when the truck struck her car. She also alleged that the truck backed up and scraped her car again.



NE#1 explained that when a car is changing lanes, it loses the right-of-way until it completes the lane change and must yield to traffic.

The Complainant's son said that NE#1's explanation did not seem correct. The Complainant told her son not to interrupt and explained to NE#1 that her son was autistic, and asked NE#1 to be patient. NE#1 said that he understood. The Complainant's son was agitated due to noise and the presence of strangers; however, the BWV showed that NE#1 remained calm and quiet. During this time, the truck driver approached with his license and registration information. The Complainant asked the truck driver to back off and explained to NE#1 that, before he arrived, the truck driver had been frustrated and angry with her. She told NE#1 that she felt intimidated by the truck driver. NE#1 said that he understood and that he would oversee getting the license and registration information from the Complainant and the truck driver.

The Complainant's son asked if he could show NE#1 some of the damage. He indicated that the truck's front wheel caused large scratches when the truck driver tried to back his truck away. The Complainant agreed and said that most of the damage was caused by the truck driver's "rocking back and forth" against her vehicle. NE#1 said that he wanted to separate the vehicles so that they could clear the lanes of oncoming traffic. The Complainant said that she couldn't do that, because the truck was "dug in" to the side of her vehicle. NE#1 replied that he would try to get the truck driver to back his vehicle out instead. The Complainant's son became upset and said that backing the vehicles apart would exacerbate the damage. NE#1 started to say something to the Complainant and her son and the Complainant asked him to hold on. She spoke to her son to calm him down and asked him to be seated. NE#1 waited while they conversed. The Complainant's son went and sat on the curb to calm down.

The Complainant turned back to NE#1 and told him: "Like I said, he's autistic, and I just need you to be patient." NE#1 said that he was. The Complainant continued: "That means don't talk to me when I'm looking that way because it means I can't hear you." BWV recorded that NE#1 stood by silently while the Complainant was facing away. NE#1 began to explain that the two vehicles would need to be separated. As NE#1 was speaking, the Complainant looked down at her phone. NE#1 pointed out that the Complainant was looking at her phone. The Complainant put away her phone and NE#1 explained that separating the vehicles could cause additional damage to the Complainant's vehicle.

The Complainant said she would like to take pictures first for insurance. NE#1 said she could do so, and that he would collect the truck driver's information. He did and returned to the Complainant, who was inspecting the damage. She explained to NE#1 that the initial damage was exacerbated by the truck driver. NE#1 stood by. After several minutes, NE#1 asked if the Complainant and her son if they had all the photos they needed. She said no. The Complainant's son said that they were waiting on their insurance company to respond. NE#1 briefly interjected that the insurance company was not going to respond, and the Complainant asked him to be quiet while she explained to her son what was happening. NE#1 stood by.

The Complainant asked NE#1 if he knew what autism was. NE#1 indicated that she told him her son was autistic. The Complainant said: "that's not what I asked you." NE#1 replied that he knew there were varying degrees of autism on a spectrum. The Complainant nodded and returned to photographing damage. NE#1 spoke to the truck driver about uncoupling the vehicles. He then went back to stand by with the Complainant. The Complainant informed NE#1 that she had Ménière's disease, and that she needed additional time to manage the uncoupling of the vehicles. NE#1 said he understood, but that at some point they would need to move the vehicles. He said that he understood the



Complainant was faced with a difficult situation and that a lot was happening. NE#1 went to his motorcycle to enter data. When he was done, he returned to the Complainant, who was then seated on the curb.

NE#1 asked if she was done photographing, and the Complainant said she was. He asked the Complainant to get in the driver's seat so that they could uncouple the two vehicles. Rather than get in the driver's seat, she made a phone call and began describing the accident. Seattle Department of Transportation (SDOT) personnel arrived to set up cones and signals. SDOT personnel asked NE#1 to facilitate moving the vehicles to allow traffic to pass and said that both vehicles appeared drivable. NE#1 agreed. He stood by with the Complainant, who was still on the phone.

NE#1 said that he needed to move the vehicles. The Complainant said she couldn't move hers because of the positioning of the truck, and NE#1 said he would move the truck. He went to block traffic. The PEO, who was still on the scene, came up to NE#1 to say that the Complainant had asked if SDOT personnel or the PEO could move her car instead of her. NE#1 said that was not normal procedure, but that they would make it happen. The truck pulled away from the Complainant's vehicle. SDOT personnel began to move the car. NE#1 spoke to the son to obtain his information for the report. The son gave his legal and preferred names but declined to give NE#1 further information. The Complainant gave her son's date of birth as well as her phone number. NE#1 discussed with the Complainant whether she wanted to move her vehicle, and she said that her daughter was coming to help. NE#1 said that "sounded great" and went to work on his report.

NE#1 returned to the Complainant. He started to explain something, but the Complainant indicated that she was having trouble hearing and that her daughter was on the way to the scene. NE#1 said he understood, but that he needed to let the truck driver go. He asked the Complainant to photograph the truck driver's information and she agreed. She explained that she "[knew] you guys don't get a lot of training," and she could hear some things NE#1 was saying but not others. The Complainant and her son engaged in conversation, and the son began to explain Ménéire's disease to NE#1 while the Complainant photographed the truck driver's information. NE#1 stood by and listened while he explained. Afterward, NE#1 went to return the truck driver's license and information. He said that once the Complainant photographed the truck's wheel well, they could depart. The Complainant photographed the truck, and NE#1 explained the citation.

The Complainant's daughter arrived on scene. The Complainant asked if NE#1 could explain the citation to the daughter, because she was having trouble hearing. NE#1 agreed. He told the daughter that the conversation was being audio and video recorded, per policy. The daughter said: "Does that mean I can complain about your treatment of my mother, who is disabled?" Before NE#1 could respond, the Complainant asked everyone to be quiet and requested that her daughter "just deal with the car." NE#1 explained the document and said: "I am citing her for unsafe lane change." He said that they could contest the ticket.

The Complainant reiterated that the truck driver exacerbated the damage, and that the damage was physically impossible without events transpiring as she described. NE#1 explained that based on his observations of the scene, he was unable to determine what damage occurred during the initial collision and what was caused by the truck driver's alleged subsequent actions. The Complainant asked if NE#1 was citing the truck driver and he confirmed that he was not. The daughter asked if the Complainant was being cited "for changing lanes in a safe manner having looked in both of her mirrors." NE#1 told the daughter that she was not present for the accident and neither was he. NE#1 stated that, under the law, vehicles changing lanes are required to yield. The Complainant summarized the interaction by stating that the truck driver was being allowed to damage her vehicle, drive away, and potentially



repeat the conduct. The daughter indicated that she would file a discrimination complaint against NE#1, and NE#1 confirmed that she had that option.

Later that day, the Complainant called OPA to file this complaint. She alleged that the truck driver exacerbated the damage to her vehicle by backing into her wheel well, and that NE#1 was “not terribly respectful about [her] disabilities and basically brushed off [her] concerns.” This OPA investigation ensued.

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.*)

OPA finds insufficient evidence to determine that NE#1 cited the Complainant or took other law enforcement action based on her disability. OPA’s conclusion rests on two main determinations. First, the Complainant acknowledged that she was changing lanes at the time of the collision, giving NE#1 a legal reason to find that she did not have the right of way when the collision occurred. Second, while the Complainant’s assertions about the truck driver’s subsequent conduct may be relevant at trial to establish contributory negligence and the amount of damages owed, they are not relevant to whether the Complainant was legally at fault for an unsafe lane change. Ultimately, that the Complainant does not agree with the outcome of NE#1’s investigation is not reason to find that he was biased against her, and nothing on BWV shows that NE#1 modified his findings based on her disability or other identifiable characteristics. For this reason, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

Based on its review of BWV, OPA does not find evidence supporting a finding that NE#1 acted unprofessionally. Rather, NE#1 appeared to have offered the Complainant additional time and space to manage what was a difficult and stressful situation for her and her son. NE#1 stood by calmly and silently for extended periods while the Complainant documented the accident, worked to keep her son calm, and communicated with those she needed to. He did this despite the accident blocking travel on a major arterial for approximately half an hour. He coordinated with SDOT and the trucking company and managed the records of both parties so they would not have to interact and add to the Complainant’s stress. During this time, NE#1 did not become frustrated, escalated, or even issue directives to the Complainant.



While OPA fully understands that this situation was far from ideal from the Complainant's point of view, and indeed sympathizes with her difficulty, a review of NE#1's BWV suggests that he did not intentionally add to it but rather did his best to mitigate it and be understanding. NE#1 also worked to deescalate the situation, including when he was accused of bias by the Complainant's daughter seconds after her arrival.

For these reasons, OPA finds that NE#1 acted consistent with policy during this incident and, as such, recommends that this allegation be Not Sustained – Unfounded.

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