



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 7, 2020

CASE NUMBER: 2019OPA-0540

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 (Lawful and Proper)

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 abused his discretion when he did not make an arrest.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with review and approval of the Office of Inspector General for Public Safety, 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 Employees was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 6. Employees May Use Discretion

Officers, including Named Employee #1 (NE#1), responded to a disturbance at a gas station. At the gas station, the officers spoke with the involved parties – an employee of the gas station and the Complainant. The Complainant asserted that, earlier in the day, he was given a discount on a purchase. The Complainant alleged that, when he asked the employee for another discount, the employee slapped him on the back of the neck. When asked for his account, the employee told the officers that the Complainant came into the gas station to buy medication and that the employee gave him a discount because he only had two dollars. The employee said that the Complainant lingered in the store for the next hour in an attempt to befriend the employee. The employee reported that the Complainant wanted free food and the employee said no and told him to leave the store. The Complainant refused to leave. The employee stated that, at that point, he physically removed the Complainant from the store by grabbing him by the back of the neck. The employee acknowledged to the officers that he did slap the back of the Complainant's neck.

The officers conferred together and made the decision to write a report rather than arrest either of the involved parties. NE#1 informed the Complainant that no arrest would be made. He explained that, given the conflicting accounts, the officers could not determine what occurred.

The Complainant later alleged to OPA that NE#1 abused his discretion when he failed to arrest the employee. The Complainant further contended that NE#1 did not complete a thorough investigation because NE#1 did not watch video of the incident.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees 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-6.)

OPA’s review of this incident indicated that NE#1 did thoroughly investigate this matter. Notably, as part of that investigation, NE#1 reviewed video that was recorded by the Complainant. While NE#1 did not review security video from the gas station, that video would have been of limited utility as there was agreement between the involved parties that the employee slapped the Complainant on the back of the neck. The determinative question was whether, under the circumstances, the employee was permitted to use force to remove the Complainant from the store. That was a dispute of fact that would not have been conclusively resolved by the video, which would not have had sound.

OPA concludes that NE#1 did not abuse his discretion when he made the decision to write a report rather than to effectuate an arrest. Again, based on the dispute of facts in this case, it is doubtful that NE#1 had sufficient evidence to arrest the employee. He acted reasonably when he opted not to do so.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**