



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 23, 2020

CASE NUMBER: 2019OPA-0569

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Unfounded)
# 2	4.040 - Sick Leave 5. Employees Will Not Use Sick Leave Under Specific Conditions	Allegation Removed

***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 engaged in insubordination when he did not appear for a mandatory assignment. It was further alleged that he may have improperly used sick leave.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

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

Named Employee #1 (NE#1) received a Special Order directing him to work at the Torchlight Event. This assignment was mandatory. Three days before Torchlight, NE#1 contacted his direct supervisor and informed her that he had a medical appointment that conflicted with the event. He asked to be marked "sick beneficiary," which indicated that the appointment was either for or involved a member of his family. The supervisor forwarded NE#1's email up the chain of command. As a result, the supervisor was instructed to inform NE#1 that he did not have authorized leave for the event and that he was expected to attend. NE#1 was informed of this and was told to contact the Human Resources Lieutenant with any concerns. NE#1 did so. During that conversation, the Human Resources Lieutenant told NE#1 that he could be referred to OPA if he did not attend Torchlight. NE#1 responded that he did not care as he was unhappy with his employment at OPA. NE#1 did not report for duty and this matter was sent to OPA. OPA then commenced this investigation.

OPA interviewed NE#1. He acknowledged receiving the Special Order and said that he understood that he had been directed to attend Torchlight. He stated that he scheduled the medical appointment in question around one month prior. When asked why he informed his supervisor in advance of the medical appointment as opposed to just calling in sick that day, he said that he believed that it was more professional and courteous to do so. NE#1 recalled his conversation with the Human Resources Lieutenant and recognized that he was upset during that call. He did not remember the specifics of what he said. NE#1 did remember that the Human Resources Lieutenant strongly advised him to reschedule his medical appointment; however, NE#1 did not perceive this to be a direct order to do so. When asked why he did not comply with the order to attend Torchlight, he told OPA that he felt he needed to put his family first and the order second.

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.

It is not disputed by NE#1 that he received a lawful order to appear at Torchlight. It is further not disputed that he did not do so. As NE#1 indicated at his OPA interview, he made the conscious decision to attend his previously scheduled medical appointment and, in doing so, to put his family first.

In reaching its conclusion on this case, OPA notes that NE#1 could have just called in sick that morning. If he had done so, this matter almost certainly would not have been referred to OPA. However, here, NE#1 tried to do the right thing by letting the Department know in advance that he had a previously scheduled medical appointment. He also expressed to the Department, as he did to OPA, that the medical appointment involved a family member and was important for him to attend.

OPA understands why the Department referred this matter to OPA. There is a significant Department interest in ensuring that officers attend mandatory assignments. Were this not strictly enforced, it could result the widespread avoidance such assignments and, in turn, undermine the Department's ability to properly police and keep safe such events. However, non-attendance by officers has become increasingly rare. While there are a few exceptions each year, officers virtually always attend mandatory assignments when ordered to do so. This, coupled with the specific facts of this case and NE#1's proven commitment as an officer, is why this referral feels to OPA to be a missed opportunity by the Department.

Anyone who has worked with NE#1 knows how dedicated he is to his job. NE#1 is a hardworking and well-respected officer in one of the most proactive squads in the North Precinct. Moreover, officers, such as NE#1, are regularly augmenting, working special operations, and engaging in other Department activities that take them away from their families. Here, NE#1 scheduled a family-related appointment a month in advance that he told supervisors that he could not miss. Given this, OPA imagines that this appointment was very important to him. Moreover, that NE#1 responded to being confronted with a possible referral to OPA by saying he did not care because he was unhappy with his job should have been a red flag that something was not right with him. Indeed, based on OPA's understanding, this statement was substantially out of character for NE#1. The Department should also have considered that NE#1 has been involved or a direct witness to three officer-involved shootings over the past five years, in addition to numerous other significant and/or traumatic incidents. As such, instead of making an OPA referral, it would have been more appropriate and, for that matter, consistent with the Department's stated commitment to officer wellness, to determine whether NE#1 was doing okay and whether there were any Department resources that could be offered to him.

Ultimately, for all of the reasons stated above, OPA declines to find that NE#1 engaged in insubordination. OPA concludes that he was put between a rock and a hard place – between his family and his employer. NE#1 chose his family and, based on the facts of this case, OPA cannot fault him for that. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

#### **Named Employee #1 - Allegation #2**

##### ***4.040 - Sick Leave 5. Employees Will Not Use Sick Leave Under Specific Conditions***

SPD Policy 4.040-POL-5 restricts when Department employees can use sick leave. Based OPA's review of the facts of this case, this policy does not apply here. As such, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**