



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 30, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0370

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	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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 may have violated the law and policy when he was purportedly involved in a domestic violence incident.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Kenmore Police Department (KPD) officers were dispatched to a verbal dispute at a residence. The wife had called 911. She told the 911 caller that, while the argument was verbal, her husband – Named Employee #1 (NE#1) had been physical with her the day before. She further stated that NE#1, who was an SPD officer, had his gun out during the argument but it was now “locked up.” The 911 dispatcher advised the wife to leave the residence to separate from NE#1; however, she did not do so. The wife was heard by the 911 dispatcher yelling at NE#1.

When the KPD officers arrived, they spoke with the wife, who was by the front door. She stated that NE#1 was upstairs. She continued to yell at NE#1 and the officers asked her to step outside. She said that she was upset because NE#1 left his gun out. She did not like guns and wanted them to be locked up at all times when inside of the house for safety reasons. The wife did not allege that NE#1 had pointed the gun at her at any time.

When asked about the argument, the wife stated that both she and NE#1 were dealing with high levels of personal and professional stress. When asked about the argument from the prior day, she said that it was also caused by significant household stress and she did not initially mention any physical contact. A KPD officer pressed her on the physical altercation that had been noted by the 911 dispatcher. The KPD officer later reported that the wife's eyes grew watery and she started to cry. She told the KPD officer that she would “plead the fifth” and did not want to



discuss any physical assault as it could cause NE#1 to lose his job. She indicated that, even by calling 911, she knew that NE#1 could get in trouble at work, but she could not take their arguments anymore. She continued to deny that there had been any physical conflict between them. The KPD officer documented that there was no indication that she had any physical injuries consistent with being physically assaulted. The KPD officer noticed a cut on one of the wife's fingers but recognized that this was similar to marks on her other fingers and was consistent with frequent hand washing.

Another KPD officer spoke with NE#1. He confirmed that he and his wife had been in a verbal argument but that there had been no physical contact between them. He acknowledged that he left his gun out when he got home from work; however, he denied that he ever pointed the gun at the wife or brandished it. He said that he normally locked the gun up when he got home but that he did not do so that evening because he forgot after a long shift.

A KPD sergeant who also responded to the residence spoke with the wife once more. She again denied that NE#1 physically assaulted her the previous day. No arrest was made. The primary KPD officer wrote the following: "A thorough investigation was completed at the scene and there was no evidence that an assault had occurred at this time. The case is for information only at this time."

NE#1 reported this incident to his chain of command who, in turn, made an OPA referral. This OPA investigation ensued.

As part of its investigation, OPA obtained and reviewed the KPD report. OPA attempted to interview the wife. She did not respond to OPA and, thus, she was not interviewed. OPA interviewed NE#1.

NE#1 confirmed that his wife called 911 to report a verbal argument between them. NE#1 denied that he ever pointed his gun at his wife or brandished it. He said that he forgot to lock it up as he normally did because he had worked a long shift. He said that he left it out but in the holster. He told OPA that this angered his wife. NE#1 further denied ever physically assaulting his wife. He noted that he removed himself from her vicinity in order to de-escalate the situation. He said that he left the home shortly after the KPD officers departed and he stayed out for several hours. He noted that no further domestic disputes had been reported since this incident and that he and his wife were still living together. NE#1 asserted that he did not violate the law or Department policies during this incident and indicated that he did not believe that charges were filed against him.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (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.*)

If the evidence established that NE#1 physically assaulted his wife, this would constitute a violation of law and unprofessional behavior. However, whether this, in fact, occurred is inconclusive. On one hand, while the wife initially claimed that she had been physically assaulted, she later recanted this when questioned by KPD officers. On the other hand, her recanting was not overly convincing, given that she referenced not wanting to get NE#1 into



trouble with his employer and “taking the fifth.” Ultimately, given these contradictions and without the interview of the wife, OPA cannot fully discern what happened here. For these reasons, OPA recommends that Allegation #1 and Allegation both be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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