



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0416

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties. 11. Employees Shall be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 2	4.040 – Sick Leave 2. Employee Use of Sick Leave is Regulated by City Personnel Rules and Collective Bargaining Agreements	Not Sustained (Inconclusive)
# 3	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 policy when he called in sick during a mandatory shift in order to attend a polygraph at another agency.

ADMINISTRATIVE NOTE:

The Named Employee resigned from SPD and, as such, the 180-day timeline is inapplicable to him. Given this, OPA administratively set the date of this DCM as the expiration of the 180-day period.

SUMMARY OF INVESTIGATION:

OPA received a referral from Sergeant #1 concerning the alleged failure of Named Employee #1 (NE#1) to attend a mandatory shift. The shift was scheduled to take place from 6:30 p.m. on July 5, 2020, until 7:00 a.m. on July 6, 2021. A supervisor became aware that NE#1 was planning on calling in sick for his shift on July 5/July 6 because he had a polygraph appointment with another agency on July 6. NE#1 did, in fact, call in sick on July 5, and then attended the polygraph on July 6. Sergeant #1 noted that she conferred with NE#1's direct supervisor – Sergeant #2 – and he stated that NE#1 had a scheduled doctor's appointment on July 5, 2021, but that NE#1 did not mention it after the mandatory shifts had been set.

OPA interviewed an officer – referred to here as Witness Officer #1 (WO#1) – who said that she was working with NE#1 when he told her that he was going to take a sick day on July 5. He stated that he had a polygraph with another agency on July 6. He indicated that Sergeant #2 agreed to allow him to take the sick day. WO#1 did not think that this was something that the Sergeant #2 would agree to, and she raised it with Sergeant #1, as well as with Sergeant #2. OPA interviewed NE#1. He stated that it was well known that he had a polygraph appointment with another agency on July 6. He even confirmed this date with Sergeant #2 to make sure that he still had the time off that he had requested on July 6. He provided further background to OPA about the timing surrounding the polygraph and his



taking off on July 5. He told OPA that, on June 16, 2020, he attended an appointment with his doctor where he was diagnosed with high blood pressure that his doctor believed was stress induced and potentially associated with working the ongoing demonstrations and long hours. He suffered from headaches as well. His doctor scheduled him for two follow-up appointments. One of the follow-up appointments was scheduled for July 5.

NE#1 recalled speaking with WO#1. He said that, at that time, he had not slept well for two straight days, and he had a severe headache. He told WO#1 this and they discussed the possibility that he might call in sick. He told WO#1 that he did not want to do so – mostly because he was being paid time and a half – but would if needed. While speaking with WO#1, he said that he needed to go to a 7-11 store to get some aspirin. He took the aspirin. At that time, other officers were aware that he was suffering from a headache and might call in sick. He then did so due to how he felt. He said that Sergeant #2 was aware that he was out sick, as well as that he was planning on taking leave on July 6 to attend the polygraph. He told OPA that he did not ultimately attend the doctor's appointment on July 5 because of his headache. He did attend the polygraph on July 6, but it was inconclusive because of his headache. He had to retake the test at a later date.

NE#1 denied that he was unprofessional, that he misused leave, or that he engaged in dishonesty. He stated that he communicated with his supervisors constantly regarding his time off and that he disagreed with how WO#1 interpreted this matter and what he told her.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties. 11. Employees Shall be Truthful and Complete in All Communication

SPD Policy 5.001-POL-11 states that Department employees shall be truthful and complete in all communication. If, as the Complainant alleged, NE#1 called in sick in order to prepare for a polygraph, this could constitute dishonesty. However, OPA ultimately finds that there is insufficient evidence to establish that this was the case.

Most notably, OPA cannot disprove that NE#1 was suffering from a severe headache, as he claimed. If this was the case, NE#1 would have been permitted to take sick leave to recover. This is particularly the case if, as NE#1 contended, the headaches were connected to diagnosed high blood pressure.

The timing of the sick day is certainly suspicious given the scheduled polygraph for July 6, but this is not enough to establish dishonesty on NE#1's part, which requires a high burden of proof.

For these reasons, OPA recommends that this allegation be Not Sustained - Inconclusive.

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

Named Employee #1 – Allegation #2

4.040 – Sick Leave 2. Employee Use of Sick Leave is Regulated by City Personnel Rules and Collective Bargaining Agreements

SPD Policy 4.040-POL-2 governs the use of sick leave by Department employees. Relevant to this case, it prohibits officers from abusing such time and using it fraudulently. In addition, 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.) If NE#1 misused sick leave, particularly during a mandatory shift, it would constitute an abuse of both of these policies.

At the end of the day, whether NE#1 violated these policies rises and falls with whether NE#1 was dishonest. OPA’s finding above that the evidence is insufficient to reach a determinative conclusion requires a similar finding here. Accordingly, OPA recommends that this allegation and Allegation #3 be Not Sustained - Inconclusive.

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

Named Employee #1 – Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Inconclusive.

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