




CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 3, 2023

FROM: DIRECTOR GINO BETTS, JR. 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0064

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy, and Department Policy	Allegation Removed
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Sustained
# 3	5.001 - Standards and Duties 5.001-POL 11. Employees Will Be Truthful and Complete in All Communication	Not Sustained - Inconclusive

Proposed Discipline

Two Hundred and Seventy Hours (30-Day) Suspension

Imposed Discipline

Two Hundred and Seventy Hours (30-Day) Suspension

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.

ADMINISTRATIVE NOTE ON PROPOSED FINDINGS:

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

EXECUTIVE SUMMARY:

While off-duty, Named Employee #1 (NE#1) was involved in a motor vehicle collision in Bellevue. It was alleged that NE#1 gave inconsistent explanations about what caused the collision, left the collision scene before Bellevue police arrived, returned, and attempted to use his position as a Seattle police officer to influence the investigation. If proven by the applicable burden of proof, NE#1's conduct violated the Seattle Police Department's standards and duties policies.

ADMINISTRATIVE NOTE:

This DCM is 2022OPA-0064's third iteration. Initially, OPA issued a July 21, 2022, DCM sustaining Allegations #1 (SPD Policy 5.001-POL-2) and #3 (SPD Policy 5.001-POL-11). OPA recommended a not sustained (inconclusive) finding for Allegation #2 (SPD Policy 5.001-POL-10). However, during a July 27, 2022, discipline meeting comprised of OPA and NE#1's chain of command, there was a robust discussion about whether non-criminal traffic violations were sufficient



grounds for sustaining SPD Policy 5.001-POL-2 (“Employees Must Adhere to Laws, City Policy and Department Policy”) violations. Ultimately, OPA decided against setting that precedent. Moreover, the prevailing opinion was that NE#1’s misconduct—leaving a collision scene, providing inconsistent explanations about what caused the collision, and telling the investigating officer that he was a “Seattle South” police officer—poorly reflected NE#1’s and the department’s professionalism to an outside law enforcement officer. Accordingly, in a DCM dated July 27, 2022, OPA amended Allegation #1 from sustained to ‘allegation removed’ and Allegation #2 from not sustained (inconclusive) to sustain. Allegation #3 remained sustained.

On November 30, 2022, SPD’s police chief emailed OPA questioning whether the evidence established that NE#1 violated Allegation #3 by the applicable legal standard.¹ Specifically, he questioned how OPA determined that NE#1 intentionally provided untrue explanations for the collision rather than “cognitive distractions²” causing him confusion. The police chief asked OPA to investigate that allegation further. In response, OPA consulted with a human factors expert who reviewed the case file. That expert concluded that NE#1 acted “consistent with the known effects of driver inattention” before the collision and provided “three conflicting statements regarding (what caused it)” thereafter.

On July 27, 2023, OPA attended NE#1’s second *Loudermill* hearing. There, OPA, NE#1’s chain of command, and his union representative had a robust conversation about whether OPA’s human factors expert’s conclusions established an SPD Policy 5.001-POL-11 violation. Ultimately, given the elevated burden of proof for dishonesty allegations and the expert falling short of concluding that NE#1 was intentionally untruthful, the parties decided that NE#1’s misconduct was best covered by SPD Policy 5.001-POL-10. Accordingly, in this amended DCM, Allegation #1 remains removed, Allegation #2 is changed to sustained, and Allegation #3 is changed to not sustained (inconclusive).

SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint about an August 18, 2021, traffic collision involving NE#1. OPA opened an investigation, reviewing the computer-aided dispatch (CAD) report, an incident report, a Police Traffic Collision Report (PTCR), and video evidence. OPA also interviewed Community Member #1 (CM#1)—the other party to the collision, Witness Officer #1 (WO#1)—the investigating Bellevue police officer, and NE#1.

1. The Collision

The PTCR documented, and a video of the collision established the following: “[CM#1] was westbound NE 8th [street], stopped behind two cars at the 116th [avenue] NE intersection. East and westbound had red lights. Traffic was stacked up in the westbound curb lane (lane 1) of NE 8th [street] since the light had been red for some time. [CM#1] had been there for some time [and] stopped in lane 2. NE#1 was traveling westbound on NE 8th [street] in lane 3. Suddenly, as [NE#1] came closer to the intersection, it suddenly [began] a lane change to lane 2 and [struck] [CM#1]. [NE#1] only came about halfway into lane 2. [CM#1] gets out of his vehicle and speaks with [NE#1] prior to the two of them exiting the roadway to the Whole Foods parking lot nearby.”

¹ NE#1 is a Seattle Police Officer Guild (SPOG) member. Under the SPOG collective bargaining agreement, “an elevated standard of review (i.e., more than a preponderance of the evidence)” applies to dishonesty allegations.

² During NE#1’s October 27, 2022, *Loudermill* hearing, his union representative suggested that cognitive distractions likely caused NE#1 to offer inconsistent explanations for the collision, later disproved by video evidence.



2. CM#1 Interview

CM#1 told OPA that, after the collision, NE#1 said, "I'm sorry. I thought you were...you know, you were moving. It looked like your vehicle was moving. I thought I had enough time to make a lane change." CM#1 said he responded, "Well, really? Cause, I...I was completely stopped. At least, I was pretty sure I was completely stopped." NE#1 reiterated that he thought CM#1 was moving, leading NE#1 to believe he could safely enter CM#1's lane.

CM#1 said while they awaited Bellevue police's arrival, NE#1 said he was going home to retrieve his phone and would return.

CM#1 said that NE#1 eventually returned and provided his insurance information.

3. WO#1 Interview

WO#1's account generally mirrored what he wrote in the PTCR. WO#1 said he arrived at the scene, and CM#1 told him that NE#1 left to get his phone. While awaiting NE#1's return, WO#1 documented CM#1's account concerning the collision. CM#1 said he was stopped at a red light with a couple of cars in front of him, westbound on NE 8th Street. CM#1 said NE#1 rear-ended him. After the collision, CM#1 said that NE#1 questioned why CM#1 stopped so fast. CM#1 said he was confused since he was stopped for some time before the collision. CM#1 was concerned that WO#1 would not believe CM#1's account if NE#1 offered a different story. WO#1 learned there was footage of the collision, which WO#1 retrieved before NE#1 returned to the scene.

NE#1 returned and spoke with WO#1. WO#1 did not initially tell NE#1 about the collision footage. NE#1 told WO#1 that he drove directly behind CM#1 on westbound NE 8th Street as they approached 116th Avenue NE. NE#1 said the westbound light turned yellow, and CM#1 abruptly stopped. NE#1 said he could not avoid colliding with CM#1's car due to CM#1's sudden stop. NE#1 struck the rear of CM#1's vehicle. NE#1 said he ran home to get his phone, which had his insurance information. NE#1 quickly told WO#1, "I work at Seattle South." WO#1 asked whether he meant he was a Seattle police officer assigned to the South precinct, which NE#1 confirmed. WO#1 considered NE#1's comment a "red flag," and his behavior was consistent with someone who did not want to admit fault.

WO#1 asked NE#1 why he did not verbally provide his insurance information rather than leaving the scene. He replied, "The other driver agreed that I could do that." WO#1 then asked NE#1 to explain the discrepancies between his account of the collision and the video footage. NE#1 replied, "I guess I was really distracted." WO#1 asked whether NE#1 was using his cell phone. NE#1 said he did not have his cell phone when the crash occurred. WO#1 cited NE#1 for violating RCW 46.61.400 – Speed too Fast for Conditions.

4. NE#1 Interview

NE#1 told OPA, "I was just distracted," and that the collision was entirely his fault. NE#1 said he did not recall the moments preceding the collision. NE#1 said he left the scene to retrieve his cell phone, containing his insurance information. NE#1 said he retrieved it because he did not want to be cited for driving without insurance. NE#1 said he did not recall telling WO#1 that he was an SPD officer, but he may have mentioned it to establish "camaraderie." NE#1 denied trying to influence WO#1's investigation.



NE#1 said he had no recollection of WO#1 confronting him with a video of the collision at the scene. Similarly, NE#1 denied recollection of a conversation with CM#1 immediately after the collision. Moreover, NE#1 claimed no recollection of what he told WO#1 about the collision. OPA showed NE#1 the collision footage, and NE#1 agreed that CM#1 did not appear to stop abruptly before the collision.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2.

NE#1 was cited for violating RCW 46.61.400 – Speed too Fast for Conditions. At his OPA interview, NE#1 accepted responsibility for the collision and admitted being “distracted.”

Whether by speeding or inattention (*see* RCW 46.61.525, Negligent driving—Second degree), NE#1 was captured on video driving in an unlawful manner, causing a collision.

While OPA originally recommended that this allegation be Sustained, discourse at NE#1’s discipline meeting raised valid concerns about whether non-criminal traffic violations—like speeding or negligent and inattentive driving—constituted SPD Policy 5.001-POL-2 (“Employees Must Adhere to Laws, City Policy and Department Policy”) violations. SPD policy is unclear on this point, as SPD Policy 5.001-POL-2 only references adherence to “laws,” including “state laws” and “laws of the City of Seattle.” While the policy does not limit itself to criminal violations, NE#1’s traffic ticket does not appear to raise to the level of law violations contemplated by it.

Accordingly, OPA recommends this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

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

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.* “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.* Last, employees must “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.*

The original complaint alleged NE#1 left the collision to retrieve his police identification, suggesting he intended to use his law enforcement status to intimidate the other driver and influence the investigating officer. However, NE#1 told CM#1 he was leaving to retrieve proof of insurance. NE#1 later gave WO#1 the same explanation. NE#1 returned to the scene with his insurance information and never displayed law enforcement credentials.



Nevertheless, NE#1, a patrol officer, knew or should have known that he should have awaited the investigating officer before leaving the collision. Moreover, NE#1's behavior throughout the incident was concerning. NE#1 shifted explanations about what caused the accident before vaguely attributing it to distraction: "[I was] just thinking. Just loss of focus." Similarly, NE#1's claim that he was so upset by the collision that he conveniently could not remember details about the accident or WO#1's investigation is underwhelming. Particularly when those details—why he was distracted, his statements to CM#1, his statements to WO#1, and whether he saw the video at the scene—are essential to evaluating his behavior at the scene. Still, among the most disturbing was NE#1 suddenly and without provocation referencing his law enforcement status during WO#1's investigation: "I work at Seattle South." At his first *Loudermill*, NE#1 suggested that he mentioned it as "a professional courtesy" and an attempt to build rapport. However, WO#1 told OPA that the timing and manner—a quick utterance—of NE#1's statement constituted a "red flag." OPA agrees. As discussed below, while the evidence may fall short of establishing that NE#1 was dishonest, it, at minimum, showed he was grossly unprofessional.

During the discipline meeting, OPA and the chain of command concurred that NE#1's string of missteps—leaving a collision, referencing his law enforcement status during an investigation, providing varying explanations about what caused the collision, etc.—called to question NE#1's and the department's professionalism with an outside law enforcement agency.

Accordingly, OPA now recommends this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 5.001-POL 11. Employees Will Be Truthful and Complete in All Communication

Officers are prohibited from engaging in untrue and incomplete communications. SPD Policy 5.001-POL-11. However, deception is allowed when: (1) there is an exigent threat to life safety or public safety; (2) the deception is necessary due to the employee's assignment (i.e., undercover); or (3) there is a need to acquire information for a criminal investigation. Even if deception is permitted under an exception, Washington State law prohibits ruses so "shocking" that "fundamental fairness" is violated. Dishonesty means "intentionally providing false information, which the officer knows to be false... regarding facts that are material to the investigation." The Seattle Police Officers' Guild collective bargaining agreement (SPOG CBA), Article 3.1. Dishonesty is not "mere inaccuracy or faulty memory." *Id.* Moreover, since dishonesty findings have an inherently stigmatizing impact, "an elevated standard of review (i.e. – more than [a] preponderance of the evidence)" is applied. *Id.*

Here, without an applicable exception, NE#1 gave different accounts about what caused the collision. Immediately after the collision, NE#1 questioned why CM#1 braked so hard, suggesting the collision was CM#1's fault. He also indicated that CM#1's acceleration led NE#1 to believe he had time to enter his lane. Later, NE#1 told WO#1 that CM#1 suddenly stopped at a yellow light. However, when video of the collision disproved NE#1's account, NE#1 said he "was distracted."

During his OPA interview, NE#1 adamantly accepted fault for the collision. Nevertheless, NE#1's reportedly inconsistent statements about what caused it are concerning. At his *Loudermill*, NE#1's union representative suggested that the account that CM#1 attributed to NE#1 was self-serving and the comments that WO#1 attributed to NE#1 were uncorroborated. However, WO#1 had no motivation to falsely attribute statements to NE#1, particularly



when he knew NE#1 was a fellow officer. Moreover, WO#1 took detailed notes during his investigation. Further, OPA finds NE#1's union's suggestion that WO#1 and CM#1, separately or in conspiracy, falsely accused NE#1 of making untrue statements unconvincing. NE#1 would have to be the unluckiest person alive for WO#1, a fellow officer, to conspire with CM#1, a stranger, to frame him. Similarly, NE#1 would have to be extraordinarily unfortunate for WO#1 and CM#1 to have separately decided to misrepresent NE#1's behavior at the scene.

Nevertheless, the SPOG CBA demands heightened proof for dishonesty allegations. Where OPA's expert consultant stopped short of opining that NE#1's claimed cognitive distractions were untrue and reasonable parties—OPA and NE#1's chain of command—disagree about whether the evidence established NE#1's intent to deceive, given the heightened burden of proof, OPA refrains from concluding that NE#1 was intentionally dishonest.

Accordingly, OPA recommends this allegation be Not Sustained - Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**