



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 29, 2022

FROM: DIRECTOR Gino Betts
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0075

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties.10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 2	5.001. Standards and Duties.14. Retaliation is prohibited.	Not Sustained - Unfounded

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, on 02/14/22, NE#1 made derogatory comments about another employee. It was further alleged NE#1 subsequently engaged in retaliatory behavior in response to the original complaint.

SUMMARY OF INVESTIGATION:

A. Incident, Chain of Command Response, Equal Employment Opportunity Office Involvement, and OPA Referral

On February 15, 2022, Witness Employee (WE#1), a North Precinct sergeant sent the Seattle Police Department's Equal Employment Opportunity Office (EEOO) two emails detailing possible EEO violations. Specifically, the sergeant's emails outlined the Named Employee's (NE#1) February 14, 2022, remarks to the Complainant reportedly disparaging the Complainant's appearance. The following day, the same sergeant notified the EEOO of NE#1's reportedly retaliatory action against the Complainant in response to the Complainant's initial report against NE#1. Thereafter, NE#1 was transferred to the West Precinct pending the outcome of both investigations. On February 24, 2022, the EEOO notified OPA via Blue Team its determination that OPA was the proper investigative body for the allegations:

The EEO Office has determined that these acts of alleged harassment and/or retaliation are not EEO complaints as both referenced officers are over the age 40. Therefore, the SPD EEO Office is referring this complaint to OPA for investigation as unprofessional behavior.

On February 28, 2022, OPA began its intake.

B. OPA Investigation



OPA investigated the matter, including separate interviews of the Complainant, NE#1, WE#1, and WE#2 (another North Precinct sergeant who allegedly saw the initial incident). OPA also reviewed emails from WE#1 to EEOO and NE#1's precinct transfer order.

1. Complainant's EEOO and OPA Interviews

On February 22, 2022, the EEOO conducted a recorded intake interview of the Complainant. The Complainant recounted the initial incident, stating in summary:

(The Complainant) was at precinct a charging station preparing to leave for the evening. NE#1, standing about 10 feet in proximity, yelled 'Jesus (Complainant), you're looking old as shit. You used to look pretty young but Jesus, you look old as shit.' The Complainant approached NE#1 and said 'Thanks a lot (NE#1), that really helps.' NE#1 responded, 'Sure anytime man.' An unidentified officer said 'Jesus (NE#1).'

Prior to that encounter the Complainant and NE#1 "got along pretty well." However, that incident, left the Complainant feeling embarrassed and demeaned. Due to the embarrassment, the Complainant could not sleep that night and did not want to return to work. The next day, a North Precinct lieutenant addressed the incident with NE#1. Initially, the Complainant did not want to take the issue further. However, that day as the Complainant walked toward the locker room, NE#1 'came around the corner and slammed himself up against the wall really hard.' They did not exchange words at that time. Following the Complainant's encounters with NE#1, another officer disclosed to the Complainant they too experienced NE#1 verbally embarrassing them. That officer expressed regret about not reporting that situation.

On May 10, 2022, OPA interviewed the Complainant. That interview was wholly consistent with the Complainant's EEOO interview. However, the Complainant did mention an unidentified "young 3rd watch officers" saw the initial incident. The Complainant also acknowledged he and NE#1 had a history of "talking smack...like guys do." He gave the example, "hey baldy, what's going on" without clarifying which of them directed that type of comment. The Complainant also indicated he would have been okay with NE#1's comments if they were not made in front of unfamiliar officers. Ultimately, NE#1's remarks came "at a bad time and it hit (the Complainant) a little harder at the time." The Complainant acknowledged NE#1 would not have known he was going through "a bad time." While not dispositive, the Complainant suggested NE#1's comments potentially violated the Department's professionalism policy: "if you stretch it, it could be, I guess so." However, he disagreed that NE#1 slamming himself against a wall when the Complainant walked by amounted to retaliation: "just him, just again, kinda, making a dramatic move I don't think it's retaliation, I think it's just him being him. You know, he was just like they want me to stay away from you, so I'll slam myself against the wall so I stay as far away from you as I possibly can."

2. NE#1's OPA Interview

On May 17, 2022, OPA interviewed NE#1. He and the Complainant knew each other for years and bonded over being older officers capable of physical exertions younger officers complained about. They "joked about their age, (their) entire



careers.” He recounted the incidents from which the allegations stemmed. NE#1 saw the Complainant in the “write up room, outside of the roll call room,” where he claimed to tell the Complainant, “You’re looking old, I’m feeling old but we’re still here. Proud that we’re still here.” NE#1 did not recall who else was present. He acknowledged he may have used expletives when addressing the Complainant but did not intend to insult him. The next day, after the lieutenant directed NE#1 to stay away from the Complainant, he saw the Complainant in a narrow hallway (less than 4 feet wide). NE#1 “stepped back and stepped against the wall to leave him, to make space for him because I didn’t want any misunderstanding.”

3. WE#1’s OPA Interview

On May 27, 2022, OPA interviewed WE#1, who contacted EEOO about both encounters involving the Complainant and NE#1. After the initial incident, the Complainant entered WE#1’s office and shut the door. The Complainant appeared upset. He told WE#1 he wanted to file an EEO complaint against NE#1. The Complainant’s report to WE#1 was substantially consistent with his subsequent interviews with the EEOO and OPA. WE#1 did not witness either encounter between the Complainant and NE#1.

4. WE#2’s OPA Interview

On May 24, 2022, OPA interviewed WE#2, who was present when a lieutenant confronted NE#1 about the remarks made to the Complainant. It was a short meeting following roll call. The lieutenant directed NE#1 to stay away from the Complainant. NE#1 was also told the incident was elevated to EEOO and not to discuss it. WE#2 did not see either encounter between the Complainant and NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-10 requires SPD employees “strive to be professional.” The policy also instructs, “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.) Further, the policy states: “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.*)

Here, the evidence suggests the Complainant and NE#1 were on friendly terms prior to these allegations. They knew each other for years and, by the accounts of both, routinely traded lighthearted barbs. On February 14, 2022, when NE#1 remarked about the Complainant looking old, he had no idea the Complainant was having a bad day and would be triggered the comment. Further, given both parties are roughly the same age, there is no evidence of ageist intent. Ultimately, the totality of the circumstances suggests, even if the Complainant’s account is accurate, NE#1’s actions, while not ideal, do not undermine “public trust in the Department, the officer, or other officers.” Last, while NE#1 acknowledged he may have used profanity in his remarks to the Complainant, OPA believes a training referral is the most appropriate correction.



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- **Training Referral:** OPA requests SPD review its professionalism policy with NE#1 and require relevant and corrective training, if it is deemed necessary.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #2

5.001. Standards and Duties.14. Retaliation is prohibited.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Here, the Complainant engaged in the lawful action of making EEO allegations against NE#1, where the Complainant believed NE#1 violated workplace policies. However, there is insufficient evidence that NE#1 slamming *himself* against the wall of a narrow hallway as the Complainant walked by amounts to retaliation (emphasis added). At worst, NE#1’s action amounts to immaturity.

Recommended Finding: **Not Sustained - Unfounded**