



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 1, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0240

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained - Inconclusive
# 2	4.010 – Employee Time Off 4.010-POL 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Not Sustained - Inconclusive
# 3	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Training Referral

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, an SPD supervisor, alleged Named Employee #1 (NE#1) failed to obey a superior officer's lawful order, violated time off request protocol, and was unprofessional.

SUMMARY OF INVESTIGATION:

The Complainant sent an OPA complaint via Blue Team alleging, on July 10, 2022, he ordered NE#1 to relieve officers on a hospital guard shift. The Complainant alleged, instead of reporting to the hospital, NE#1 returned to the precinct and stated, "It's unfair. Why can't this wait[.] 2nd watch will be in an hour?" The Complainant reportedly told NE#1 2nd watch was not immediately available and the officers on hospital guard were already there for thirteen hours. The Complainant alleged NE#1 responded, "I will have to go home sick if I have to do hospital guard." The Complainant reportedly told NE#1 to go home sick, then ordered another unit to the hospital. The Complainant alleged NE#1 had approved leave July 11-12, 2022, but missed work on July 13, 2022, without approval.

OPA opened this investigation. OPA reviewed the Blue Team complaint, Computer-Aided Dispatch (CAD) remote logs and historical information, and NE#1's staffing sheet and timesheet. OPA also interviewed the Complainant, two witness employees, and NE#1. There was no related Body-Worn Video (BWV) or In-Car Video (ICV).

a. Computer-Aided Dispatch Remote Logs & Historical Information

NE#1's CAD remote logs showed he was assigned to the hospital guard detail at 9:56 AM on July 10, 2022. NE#1 was removed from the hospital guard detail at 10:11 AM that day. NE#1 ended his shift at 10:24 AM. CAD remote logs for another unit on hospital guard detail showed they were assigned at 10:24 AM and removed at 12:23 PM.



Community Safety Communications Center (CSCC) CAD data showed the Complainant had limited options for relieving the hospital guard detail. Unit "1011" was a two-officer car. Unit "102" was NE#1. Unit "103" was a single officer car. Units "1R" and "1S" were both sergeants. Generally, sergeants are not assigned to hospital guard details, nor are two officer cars unless they are the arresting unit, which was not the case here. Accordingly, NE#1 and Unit "103" were the Complainant's only options.

b. Named Employee #1's Staffing Sheet and Timesheet

NE#1's staffing sheet showed he worked a full day July 10th, a sick day July 11th, a holiday July 12th, and was scheduled to work a full day July 13th. July 14-15th were NE#1's regular days off. He was scheduled to work July 16-17th. NE#1 was listed as absent July 18-July 25th on Redcap "AZ" time.¹

NE#1's electronic timesheet showed NE#1 was marked for two-hours sick time July 10th, nine-hours sick time July 11th, nine-hours holiday time July 12th, and nine-hours vacation time July 13th. NE#1 had regular days off July 14-15th and worked full days July 16-17th before taking Redcap "AZ" time starting July 18th.

c. OPA Interview – Complainant

OPA interviewed the Complainant. The Complainant's statement was consistent with their Blue Team complaint.

The Complainant, a sergeant, worked as a supervisor on July 10th. The Complainant said he was instructed to have a unit relieve a specialty unit on hospital guard. The Complainant stated he observed only two units were available for that detail: "102" and "103." The Complainant said he selected the first unit on the list, "102" which was NE#1. The Complainant stated he radioed for NE#1 to report for hospital guard.

The Complainant stated he returned to the precinct and, about fifteen minutes later, was surprised to see NE#1. The Complainant thought NE#1 was en route to the hospital. The Complainant recalled NE#1 stating, "this is unfair, and if I have to stand hospital guard, I'll have to go home sick." The Complainant reportedly told NE#1 to go home and ordered "103" to respond. The Complainant stated his conversation with NE#1 lasted less than two minutes. The Complainant stated NE#1 was clear he would go to the hospital. The Complainant stated the conversation occurred in an open office room. The Complainant also recalled being short-staffed the week of July 10th and that everyone was assigned hospital guard shifts.

The Complainant also described the events of July 13th. The Complainant stated NE#1 was scheduled to work but was a "no show." The Complainant stated he called NE#1's phone but there was no answer. The Complainant stated he texted NE#1's regular supervisor, who was out of military leave, who stated NE#1 had not contacted him. The Complainant stated there was no message from NE#1 on the precinct "sick line" (a voicemail box). The Complainant stated others at the precinct were unaware of NE#1's status. The Complainant also said he did not receive messages from NE#1 on his work or personal phones. The Complainant also stated the calendar marked NE#1 as working that day. The Complainant stated NE#1 was, by all indications, supposed to work that day but did not report to work.

¹ Redcap "AZ" time is most often used for COVID-19 related exposure, testing, or illness.



d. OPA Interview – Witness Employee #1

Witness Employee #1 (WE#1) was a permanent acting sergeant on July 10th. WE#1 recalled there were only two units available for the hospital guard that day. WE#1 stated either the dispatcher or the Complainant decided who to assign. WE#1 recalled the Complainant instructed NE#1 to report for the hospital guard but that, about twenty minutes later, NE#1 was at the precinct. WE#1 stated she was present when the Complainant spoke to NE#1. WE#1 recalled NE#1 told the Complainant the assignment was “unfair.” WE#1 said she and the Complainant responded, “And we’re like, well, there’s only two people available to go and [NE#1] goes, well, I guess if I have to go to hospital guard, I’m going to go home sick.”

WE#1 was also reportedly present July 13th. WE#1’s account of the events that day were consistent with the Complainant’s. WE#1 stated every method of communication was attempted to contact NE#1: work phone, personal phone, and email, all with no response.

e. OPA Interview – Witness Employee #2

OPA interviewed Witness Employee #2 (WE#2). WE#2 was present for the Complainant’s July 10th conversation with NE#1. WE#2 recalled NE#1 “seemed to disagree with being sent [to hospital guard] and [NE#1] – I remember him saying that if he was going to be sent to hospital guard, then he was going to call in sick for the rest of the day.”

WE#2 had no personal knowledge about NE#1’s July 13th absence.

f. OPA Interview – Named Employee #1

OPA interviewed NE#1. NE#1 separated from the Department.

NE#1 recalled that, on July 10th, the Complainant requested NE#1 relieve the hospital guard around 10:00 AM. NE#1 said he went to the precinct to discuss the assignment with the Complainant. Specifically, NE#1 said he wanted to know why the Complainant assigned him to the detail since he was assigned hospital guard a couple days prior. NE#1 said he was concerned the Complainant unfairly distributed hospital guard details.

NE#1 said, when he asked the Complainant how NE#1 was chosen for the hospital guard detail, the Complainant did not have an answer. NE#1 recalled: “I explained to [the Complainant] that I wasn’t feeling well and essentially that I was just trying to power through my shift, being at work that day, trying to power through my shift and if I’m – have to do hospital guard, I’m going to have to use sick time because I’m not feeling well to begin with and so [the Complainant] basically responded with okay.” NE#1 recalled taking sick leave the rest of the day. NE#1 also stated he was the most senior officer on the shift and that the hospital guard assignment was unfair and racially motivated, as NE#1 was the only Black officer.²

² OPA referred NE#1’s racial bias allegation against the Complainant to SPD’s EEO Office for investigation, in accordance with law and policy.



NE#1 recalled having the next couple days—July 11-July 12th—off work. NE#1 stated that, on July 13th, he was feeling unwell, so he texted his sergeant to mark him as sick. NE#1 stated he “just text[ed]” his sergeant and “[left] it at that.” NE#1 could not recall whether he sent the text message to his regular sergeant—who was out on military leave—or another sergeant who was NE#1’s “alternate contact.” NE#1 said there was no response to his text.

NE#1 also recalled getting COVID-19 a few days later and believed “the initial symptoms started around that time, when [the Complainant] assigned me to do hospital guard.”

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 was insubordinate.

Department employees must obey any lawful order issued by a superior officer. SPD Policy 5.001-POL-15. Failure to do so constitutes insubordination. *Id.*

Here, OPA cannot conclude by a preponderance of the evidence whether NE#1 was insubordinate or reported to the precinct to raise legitimate concerns regarding illness.

On one hand, some evidence suggests NE#1 simply disagreed with the assignment and was insubordinate. Specifically, the phrasing reported by the Complainant—and corroborated by both WE#1 and WE#2—suggested NE#1 would have worked the duration of the shift if he was not required to work hospital guard. Moreover, it appeared NE#1 was primarily concerned with his belief the assignment was “unfair,” rather than his reported illness.

However, NE#1’s explanation that he was “trying to power through” the shift before his two scheduled days off is plausible. OPA cannot determine whether NE#1 was genuinely sick. Particularly, where NE#1 was out on COVID-19 leave July 18-25th and NE#1’s symptoms reportedly starting around July 10th. Although NE#1 worked two days before taking COVID-19 leave, NE#1’s symptoms could have been minimal or manageable during that period.

Last, if NE#1 returned to the precinct to report his illness or to express the hardship the assignment would create, that behavior would not necessarily constitute insubordination as opposed to seeking clarification. *Cf.* SPD Policies 5.001-POL-16 (“Supervisors Clarify Conflicts in Orders”) and 5.001-POL-17 (“Employees May Object to Orders Under Certain Conditions”). Moreover, no account provided suggested this was a long conversation, nor did the Complainant attempt to clarify NE#1’s stated position. Instead, the Complainant appeared to go along with NE#1’s decision to take sick leave almost immediately.

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

Recommended Finding: **Not Sustained - Inconclusive**



Named Employee #1 - Allegation #2

4.010 – Employee Time Off 4.010-POL 2. Employees Schedule Time Off With Their Sergeant/Supervisor

The Complainant alleged NE#1 failed to schedule time off with his supervisor.

SPD employees must schedule time off with their supervisors. SPD Policy 4.010-POL-2. The policy states, “Employees will contact their sergeant/supervisor before their scheduled work shift to request an unscheduled absence from duty.” SPD Policy 4.010-POL-2.

Like Allegation #1, OPA cannot determine NE#1 more likely than not failed to contact either his regular supervisor or his alternate supervisor. The Complainant exhaustively searched for communications from NE#1. However, OPA was unable to obtain a comment from NE#1’s regular supervisor due to his leave status. Ultimately, it is possible NE#1 texted either his regular supervisor or alternate supervisor concerning his sick leave and neither of them reported it to the precinct or the Complainant.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #3

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

The Complainant alleged NE#1 was unprofessional.

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.

Unlike Allegations #1 and #2 above, there is sufficient evidence to find NE#1’s behavior fell below the Department’s professionalism policy in two respects.

First, NE#1’s communication with the Complainant on July 10th was poorly handled. After receiving the Complainant’s order, NE#1 should have called or requested a call from the Complainant rather than returning to the precinct. Moreover, once at the precinct, it does not appear NE#1 raised the issue of his illness in a professional way. Rather than explain the hardship he would have completing the detail, NE#1 appears to have raised his illness in a way that suggested NE#1 would not have taken sick time but for the hospital guard assignment.

Second, NE#1’s lack of communication with the Complainant on July 13th was also poorly handled. While texting his regular supervisor or alternate supervisor may have technically complied with the requirements of SPD Policy 4.010-POL-2, failing to confirm receipt by the on-duty supervisor or reply to the calls and emails from the Complainant was ineffective communication. Instead, the person who needed to know NE#1’s status—the Complainant—was left making several unsuccessful attempts to connect with NE#1.

Although NE#1 likely violated 5.001-POL-10, it was not serious misconduct and NE#1 had no prior similar sustained allegations.



Accordingly, OPA recommends this be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 5.001-POL-10 with NE#1 and provide any further retraining and counseling it deems appropriate. Any retraining and counseling conducted should be documented and maintained in Blue Team.

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