



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 26, 2018

CASE NUMBER: 2016OPA-1035

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Allegation Removed

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Allegation Removed

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 failed to act when he was allegedly aware of another SPD employee's inappropriate behavior.

ADMINISTRATIVE NOTE:

Due to high caseloads and the OPA Auditor’s request for additional investigation, this investigation was not completed within the 180-day period.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct

This case stemmed out of an EEO investigation into the conduct of a former SPD employee. That individual was alleged to have sexually harassed multiple Department employees while employed by the Training Unit. He was also alleged to have engaged in an ongoing course of inappropriate and unprofessional behavior. It was alleged that multiple other Training Unit employees, including Named Employee #1 (NE#1) and two supervisors, knew of the individual's misconduct and failed to report it. The individual was later terminated from the Department due to his conduct. He was further criminally prosecuted and pleaded guilty to several offenses.

SPD Policy 5.002-POL-6 requires that SPD employees who learn of possible misconduct report that misconduct. Minor misconduct must be reported to a supervisor, while serious misconduct must be referred to either a supervisor or OPA. (SPD Policy 5.002-POL-6.) SPD Policy 5.002-POL-5 defines minor and serious misconduct. Under this policy, the terminated employee's conduct that was administratively and criminally investigated constituted serious misconduct. As such, if NE#1 was aware of this misconduct, his failure to report it would have been in violation of policy.

With regard to NE#1's claimed failure to report, a female victim alleged that her "butt" was "grabbed" by the terminated employee. The female victim stated that "on this day she ran to [NE#1's] desk hoping that he was there so the touching would stop. [NE#1] was at his desk and made [a] comment for [the terminated employee] to stop doing whatever he was doing, that he didn't want to witness anything."

As part of its investigation, OPA interviewed the female victim referenced above. She recounted running to NE#1's desk to prevent the terminated employee from further grabbing her. She stated that NE#1 was sitting there, but she did not recall whether he even looked up. She remembered that he said something along the lines of: "I don't want anything to do with this." When asked whether she believed that NE#1 was aware that the terminated employee was grabbing her, she responded: "I think he was." She believed this because of what he said to her. However, she stated at her interview that this incident had occurred more than one year prior. The female victim told OPA that she never reported any specific misconduct by the terminated employee to NE#1.

At his OPA interview, NE#1 stated that he and the terminated employee would engage in "racial" and "sexual" banter. He did not provide any detail as to the substance of this back and forth. He did not report this because he did not deem it unprofessional and it did not offend him. He further stated that it was commonplace in the Training Unit for employees to slap each other on the rear ends and say "good game." This was done by both males and females. Again, he did not deem this unprofessional or offensive and no one complained to him about it, so he did not report it. NE#1 stated that the terminated employee groped his penis and hugged him for uncomfortable periods of time. NE#1 did not report this conduct. Again, he stated that it did not offend him. Lastly, NE#1 stated that the terminated employee once showed him a picture of a penis, as well as pictures of women (including SPD employees) topless and in lingerie. He did not report this conduct and reported not being offended by it.



NE#1 stated that no one came to him and reported anything inappropriate that the terminated employee had engaged in. He did not recall any incident in front of his cubicle involving the female victim and the terminated employee.

Ultimately, the question of whether the female victim informed NE#1 that she was being sexually harassed and he failed to report this conduct is inconclusive. The female victim recounts that this occurred, but NE#1 does not recall this incident. As such, I cannot definitively determine whether NE#1 was aware of the misconduct perpetrated by the terminated employee.

As such, the remaining question here is whether NE#1 was required to report the “racial” and “sexual” banter, the terminated employee groping his penis, the repeated contact with NE#1’s and other employees’ rear ends, and NE#1 showing him a picture of a penis and pictures of nude and partially clothed women. Whether this is the case depends on whether it rose to the level of minor misconduct.

NE#1 appeared to recognize that the behavior was problematic, but he denied that it constituted unprofessional behavior. As discussed above, he stated that he did not report the behavior because he did not personally find it offensive or inappropriate. As such, he contended that he acted in compliance with Department policy.

This conduct was certainly below the standard of what is expected in the workplace. The conduct was more akin to that which would occur in a locker room, rather than the behavior of employees in the Training Unit of one of the most progressive and well-respected police departments in the United States. However inappropriate I may think it is, given that in NE#1’s recounting the behavior was directed solely between him and the terminated employee and that NE#1 did not personally find it inappropriate or offensive, I am unsure that it rises to the level of conduct that undermines public trust in the Department. That being said, NE#1 should have known to avoid this conduct and, given his knowledge and experience, should have deferred towards reporting it to a supervisor.

While I do not believe that there is sufficient evidence to support a Sustained finding when applying the requisite burden of proof, I recommend that NE#1 receive the following Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss this incident with him. It should counsel him to avoid such behavior in the future, as well as counsel him to take on a leadership role to ensure that such behavior is not tolerated from his colleagues. NE#1’s chain of command should express their expectation that he reports such conduct in the future. This counseling should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct

Named Employee #2 and Named Employee #3 are listed as unknown employees in this case. However, their identities are known to OPA and whether they failed to report misconduct was investigated in a separate matter



(see 2016OPA-1460). As such, the allegations against these Named Employees in this investigation are removed as duplicative.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct

For the same reason as stated above (see Named Employee #2, Allegation #1), this allegation is removed.

Recommended Finding: **Allegation Removed**