



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 15, 2018

CASE NUMBER: 2017OPA-1294

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 2	4.100 – Family and Medical Leave 1. Sends a completed Employee Request for Family and Medical Leave (form 2.10), and [...]	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	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:

It was alleged that the Named Employee may have deliberately provided an incorrect signature page with medical leave documents.

ADMINISTRATIVE NOTE:

This matter involves an investigation into possible misconduct committed by a civilian SPD employee. Given the employee’s status, there are no contractual disciplinary deadlines that apply to this matter, including no 180-day period. As such, and for administrative purposes, OPA has set the date of this DCM, August 15, 2018, as the 180-day deadline.

STATEMENT OF FACTS:

On November 29, 2017 and again on December 6, 2017, Named Employee #1 (NE#1) submitted medical documentation to SPD Human Resources concerning his leave status, including leave taken pursuant to the Family Medical Leave Act (FMLA). Upon review of the documents, the HR Lieutenant, who is the Complainant in this case, realized that the signature page was dated April 28, 2016 and was identical to the signature page that was included with medical leave documents submitted by NE#1 in May 2016. The Complainant believed that it was possible that this new documentation was submitted without a valid signature page and that, instead, NE#1 had deliberately used a prior signature page, potentially inappropriately. As such, the Complainant referred this matter to OPA as potential misconduct.

After it reviewed this initial complaint, OPA believed it possible that NE#1 might have engaged in criminal behavior. OPA accordingly referred this matter to SPD’s Investigations Bureau for criminal review. The Investigations Bureau



conducted an investigation and determined that there was no criminal conduct. They reached that conclusion for two primary reasons. First, the Investigations Bureau determined that, based on its investigation, it was unclear whether the documentation that NE#1 submitted in December 2017 was either required or requested. Second, the Investigations Bureau noted that NE#1 took unpaid medical leave during this time and, thus, there was no theft of public funds even had NE#1 submitted fraudulent paperwork.

This matter was referred back to OPA and this investigation ensued. OPA reviewed the leave documentation submitted by NE#1, email correspondence, text messages, and the criminal investigation completed by the Investigations Bureau. OPA also interviewed NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

OPA investigated whether NE#1 purposefully submitted the 2016 signature page with the leave paperwork he provided in 2017. Had he done so, that behavior would have likely been in violation of SPD Policy 5.001-POL-10 (since renumbered), which requires Department employees to be truthful and accurate in all communications.

NE#1 acknowledged that he submitted the incorrect paperwork, but contended that this was a mistake. He stated he had not realized that he submitted the incorrect form until he received notice of this complaint from OPA. NE#1 further explained to OPA that he had requested an updated signature page from his medical provider and, in order to assist them in doing so correctly, had sent them the 2016 signature page as a sample document. He stated that, instead of providing a new form, his medical provider simply reattached the 2016 signature page. He admitted that he did not closely review the forms when he resubmitted them to OPA and he explained that, on that date, he was suffering from a severe headache.

He noted that he raised the issue of the incorrect form with his medical provider, who confirmed that the new signature page had, in fact, been executed but was errantly not sent. The medical provider ultimately gave the proper form to NE#1 and he, in turn, submitted it to his chain of command and also provided it to OPA.

Based on the above, I find insufficient evidence to meet the heightened burden for proving dishonesty. Instead, it appears to OPA that the submission of the incorrect form was based on a confluence of errors. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

4.100 – Family and Medical Leave 1. Sends a completed Employee Request for Family and Medical Leave (form 2.10), and [...]

SPD Policy 4.100-PRO-1 provides guidance for the proper completion and submittal of FMLA paperwork. The policy specifically instructs that the employee: “1. Sends a completed Employee Request for Family and Medical Leave (form 2.10), and certification directly to the Family and Medical Leave Coordinator in the Human Resources Section.”



This allegation was classified for investigation in this case because NE#1 submitted paperwork that had an incorrect and invalid signature page. Accordingly, the documentation was not “completed” as required by policy. As discussed above, I find that the submission of the 2016 signature page with the 2017 forms was based on a mistake and was not intentional misconduct and dishonesty.

Moreover, based on SPD’s criminal investigation into this matter, and as confirmed by OPA, it is unclear whether NE#1 was actually required to submit any FMLA paperwork. SPD Human Resources indicated that NE#1 had been granted FMLA leave for 2016 through 2017, and that this leave was not scheduled to expire until May 2018. As such, additional paperwork was unnecessary. However, the HR Lieutenant stated that NE#1 had nearly run out of FMLA leave and was asking for an additional approved leave of absence, which required a new APF form. Either way, given my findings above, this issue is largely academic.

For the reasons discussed herein, and even though NE#1 should have been more careful in reviewing his leave paperwork prior to submitting it to the Department, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

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

SPD Policy 5.001-POL-2 requires that Department employees comply with laws, City policy, and SPD policy. If the allegations against NE#1 could be proved, the knowing submission of an incorrect form would have violated this policy. However, as discussed more fully above, the evidence tends to show that the provision of the 2016 signature page was based on a mistake, not any intentional misconduct by NE#1. As such, I recommend that this allegation be Not Sustained – Unfounded.

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