



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 21, 2018

CASE NUMBER: 2018OPA-0301

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained

Imposed Discipline

Had the employee not previously been terminated, this would have resulted in termination.

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 violated a lawful order given by a superior officer.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) received a sustained finding in an earlier OPA case (2017OPA-0997), which resulted in the Chief of Police recommending that his employment be terminated. Prior to that final decision being reached, on March 13, 2018, NE#1 was placed on administrative leave by his chain of command. As part of that process, NE#1 was required to read and sign various documents. One provision of the documents stated the following: “You will not access any restricted areas of any Department facility without prior authorization and escort by your Captain or his designee.”

On March 30, 2018, NE#1 came to the North Precinct and accessed the Community Police Team office by using the door code. NE#1 was observed doing so by a Crime Prevention Coordinator.

On March 31, 2018, the Department HR Lieutenant received an email from a Crime Prevention Coordinator in which she stated that she observed NE#1 in the North Precinct Community Police Team (CPT) office. The Crime Prevention Coordinator relayed that prior to his arrival at the precinct, NE#1 called her and asked her if anyone was in the CPT office. She responded no. NE#1 arrived shortly thereafter and told her that he needed to pick something up. She believed that NE#1 entered a Sergeant’s office – notably, the Sergeant who referred his prior case to OPA. She reported this matter to the Sergeant.

The Sergeant, in turn, notified the North Precinct Operations Lieutenant. He updated both the HR Lieutenant and the Chief of Patrol and informed them that he was in the process of changing the code to the CPT door. Also on this email chain were two peer support personnel. One of the peer support officers indicated that he had previously



accompanied NE#1 twice throughout the precinct to access personal property and documents. He further stated that he thought NE#1 “understood that he needed permission and to be escorted every time he wanted inside any SPD facility.” The other peer support officer stated: “It is clear on the form [NE#1] signed when placed on ADMIN leave that he is not to enter any SPD facility without prior authorization and an escort.”

The Operations Lieutenant further explained that there was a notice at the front desk of the precinct to not let NE#1 in “without command-level approval and an escort” but that the CPT office was across the street, only staffed by the Crime Prevention Coordinator on that date, and was accessible by a key code and without having to enter the precinct.”

Based on this information, the HR Lieutenant referred this matter to OPA and this investigation ensued. OPA interviewed the Crime Prevention Coordinator who confirmed that the CPT office was a restricted area that was only accessible by authorized SPD employees with the proper key code. She was aware that NE#1 was not permitted to be at the CPT office and she knew that he needed approval and an escort to be anywhere within the precinct. She recounted that she was working alone at the office when she received a phone call from NE#1. He asked her if anyone was at the CPT office and, when she said no, he hung up the phone. She stated that he arrived at the office shortly thereafter and accessed the door using the code. She told OPA that she believed that NE#1 went inside of the Sergeant’s office and that he was shuffling papers around. She stated that he then left and did not appear to take anything with him.

OPA also attempted to interview NE#1. At that time, he had already been terminated and was no longer entitled to Guild representation. As such, OPA called him directly. NE#1 answered and spoke to the OPA Investigator. The investigator asked NE#1 whether he would consent to an interview and NE#1 said that he would provide a statement, that the statement would be “brief,” that he would “admit” to the allegations, and that he “did it.” The investigator then asked NE#1 if he was appealing his termination from SPD and, when he said that he was, the investigator suggested that he seek advice before agreeing to be further interviewed. NE#1 and the investigator decided that the investigator would take a recorded interview from him the following day. Prior to the time set for the interview, the investigator was contacted by the Guild Vice-President who stated that the Guild would not send a representative for an in-person interview of NE#1 and that the Vice-President had provided NE#1 advice that any statement was voluntary and he was under no obligation to participate. The investigator called NE#1 at the previously agreed upon time, but NE#1 did not answer. The investigator left a message requesting a call back, but NE#1 did not respond and no further interview was conducted.

SPD Policy 5.001-POL-15 requires that Department employees obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination. NE#1 received a lawful order to not enter any Department facility without pre-approval and without an escort. Here, a non-interested witness confirmed that NE#1 accessed a restricted area without meeting any of those pre-conditions and in a surreptitious manner. When he did so, NE#1 acted contrary to a clear order and, thus, violated this policy. I find that any argument by NE#1 that he was not aware of these restrictions is unsupported by the record. First, the paperwork clearly outlined the steps needed for him to properly access the precinct. Second, NE#1 abided by these steps on at least two other occasions. Third, NE#1 admitted that he acted contrary to the order and in violation of policy during his conversation with the OPA investigator.



I find it concerning that NE#1 behaved in the manner that he did in this case. Moreover, it was clearly alarming to the Crime Prevention Coordinator. Not only did this constitute inappropriate conduct on NE#1's part, but it also presented a significant safety and security threat for the Department and its employees. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**