



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 11, 2018

CASE NUMBER: 2018OPA-0520

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events	Sustained
# 4	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained

Imposed Discipline

Five (5) Day Suspension

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 number of policies when he was involved in a physical altercation while off-duty.

STATEMENT OF FACTS:

Officers were dispatched to a call concerning an assault that had occurred in a bar. The call indicated that a male suspect had punched a bar employee. The call further indicated that the male was currently outside with another bar employee. The call also provided a description of the male suspect.

The officers arrived at the bar and located an individual who matched the description. This individual, who was later identified as Named Employee #1 (NE#1), was attempting to enter the passenger side of a vehicle. An Officer told NE#1 to stop and identified himself as a police officer. He told NE#1 to step away from the vehicle and walked NE#1 to the front of the vehicle. The Officer identified NE#1, who voluntarily disclosed that he was a civilian employee of SPD who worked for the Office of Emergency Management (OEM). The Officer told NE#1 that he was investigating an assault and asked NE#1 whether he was involved in a fight earlier while inside of the bar. NE#1 said that he had.

The Officer also spoke with one of the bar employees. The bar employee told the Officer that NE#1 and NE#1’s friend had been outside of the bar in the vicinity of the seating area and were heavily intoxicated. He reported that they were outside of the bar for around an hour and were disruptive and verbally abusive towards him during that time. The bar employee stated that he then asked NE#1 to take his friend and sit on the curb as opposed to remaining by the railing in front of the café. He reported that, at this time, NE#1 attempted to punch him in the face. He stepped



back and was able to block much of the punch; however, NE#1's fist still grazed the left side of his face. The bar employee reported shoving NE#1 back to prevent a further assault. The bar employee stated that his manager then ordered him to come back inside of the bar and he walked in that direction. While he was doing so, NE#1 tried to unsuccessfully kick him. A security guard from another bar restrained NE#1 and allowed the bar employee to walk away.

Both the bar employee and his manager told the responding officer that they were not interested in pursuing assault charges against NE#1, but that they wanted him trespassing from the bar. The manager later informed NE#1 that he was not to return there and NE#1 stated that he understood.

A Sergeant came to the scene to screen the incident. The Sergeant indicated that he was briefed as to what had occurred by the Officer. The Officer told the Sergeant that NE#1 had assaulted the bar employee but that the bar only wanted NE#1 trespassing and was not interested in pursuing criminal charges. The Sergeant reported that he spoke with NE#1 at the scene. He stated that he confirmed that NE#1 was a Department employee. He stated that he also advised NE#1 that the assault was going to be investigated and asked for NE#1 to provide the name of his direct supervisor so that the Sergeant could notify the supervisor of the incident. NE#1 refused to do so. The Sergeant then ordered NE#1 to provide this information and NE#1 again refused to do so.

The incidents that preceded the law enforcement response to this incident, including the assault, were not captured on video. However, the interactions between NE#1, the Officer, and the Sergeant were recorded on Body Worn Video (BWV). The BWV reflected that the Sergeant asked NE#1 for his supervisor's name multiple times. NE#1 ultimately told him that he did not believe that this information was relevant and did not provide it.

The BWV also captured NE#1's conversation with the Officer. NE#1 stated that he was outside with his friend, who was inebriated, when a bar employee came outside and punched him in the face. He told the Officer that he then went after the bar employee and the bar employee then re-entered the bar. Based on OPA's review of the BWV, NE#1 was clearly intoxicated at the time that he was contacted by the police. The Officer questioned NE#1's account of the incident, asking him why the bar employee would have attempted to assault NE#1, apparently for no reason and an hour after their initial interaction. NE#1 did not have a response to this question. At this time, NE#1's friend was passed out in the rear of their vehicle.

The Officer then spoke with the bar employee. The bar employee verified that NE#1 had attempted to assault him. The Officer also spoke with the bar manager, who corroborated the bar employee's statement. Both individuals contradicted NE#1's account that the bar employee was the primary aggressor.

When NE#1 refused to provide his supervisor's name to the Sergeant, the Sergeant informed him that he would be initiating an OPA complaint based on this incident. The Sergeant did so and this OPA investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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



It was alleged that NE#1's conduct during this incident violated the law, as well as multiple policies. SPD Policy 5.001-POL-2 states that employees must adhere to laws, City policy, and Department policy.

First, I find, when applying a preponderance of the evidence standard, that there was probable cause to believe that NE#1 assaulted the bar employee. Notably, there were multiple witnesses who supported this account of how the incident unfolded. NE#1's explanation – that the bar employee sought him out after an hour and initiated the assault – makes no sense and is not supported by the record. Moreover, I note that NE#1 was admittedly intoxicated, which lessens his credibility in my opinion.

Second, I find that NE#1's conduct violated multiple provisions of OEM's Administrative Policy and Procedures Manual. Most notably, he acted contrary to policies set forth in Sections 7.1 and 7.2. That being said, as these policy sections mirror the Departments' regulations set forth in SPD Policies 5.001-POL-10, 5.002-POL-8, and 5.001-POL-15, this specific conduct is addressed below rather than here.

However, as there was probable cause to find that NE#1 engaged in criminal activity, I recommend that this allegation be Sustained on that ground.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.) The policy further states the following: "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.*)

NE#1's conduct in this incident, which included engaging in a physical assault while intoxicated and refusing to provide the name of his supervisor when requested, violated the Department's professionalism policy. This is the case regardless of whether the conduct was off-duty. Indeed, as indicated in both this policy and in Section 7.1 of OEM's Manual, the Department's expectations of an employee's professionalism apply regardless of the employee's "duty status."

NE#1's behavior undermined public trust in himself, as a Department employee, as well as in the Department as a whole. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events

SPD Policy 5.002-POL-8 states that where a Department employee is the subject of a criminal investigation, that employee shall report this information to a supervisor in writing and as soon as practical. In defining "as soon as



practical,” the policy instructs that this notification must be made “before the start of their next work shift.” (SPD Policy 5.002-POL-8.)

Here, the incident in question occurred in the early morning hours of June 10, 2018; however, NE#1 did not report this incident to any supervisor prior to beginning his shift on the following Monday. Indeed, NE#1 did not self-report at all, and his supervisor raised this issue with him on his first day back to work.

As NE#1 did not report this incident to his supervisor in writing before he began his shift on Monday, he violated Department policy. Notably, in doing so, he also violated Section 7.2 of OEM’s Manual. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #4

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

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.

At the outset, I reject the argument that this policy was somehow inapplicable to NE#1 as a civilian SPD employee. Notably, the preamble of SPD Policy 5.001 explicitly states the following: “This section applies to all Department employees.” Moreover, this policy is also set forth in its entirety in Section 7.1 of OEM’s Manual. As such, NE#1 was required by policy to obey any lawful order issued by a superior officer.

Further, a sergeant is a supervisor in the Department and is, accordingly, a superior officer as defined in this policy. As such, NE#1 was obligated to respond to the Sergeant’s order in this case that he provide the name of his supervisor. When he repeatedly declined to do so, even after being given multiple opportunities to disclose this information, he engaged in insubordination and acted contrary to this policy.

For the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**