



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 2, 2019

CASE NUMBER: 2018OPA-0799

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Sustained
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Allegation Removed
# 4	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity	Sustained

Imposed Discipline

Suspension without Pay – 2 days

EXECUTIVE SUMMARY:

It was alleged that the Named Employee violated policy when he was unprofessional, failed to exercise appropriate discretion, did not document a primary investigation in a General Offense Report, and failed to activate Department video.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The Complainant, a security guard, called 911 and reported that he was observing a physical altercation between multiple individuals. He described that one male was on the ground and was being kicked at and stomped on by four other individuals. The Complainant also reported that he was being yelled at by the assailants. Approximately 40 minutes after his initial call, the Complainant again called 911 and stated that he had been assaulted, pushed, and spit on by one of the assailants, referred to here as the suspect.

NE#1 arrived at the scene at 2332 hours and logged to the call three minutes later. GPS showed that NE#1 then drove around the parking lot for a period of time. At 2350 hours, the Complainant called 911 and stated that he still had not been contacted by the police. NE#1 interacted with him shortly thereafter.

The Complainant later completed an incident report that documented his interaction with NE#1. In that report, the Complainant wrote that he informed NE#1 that he had been assaulted and requested that NE#1 take action in the form of arresting the suspect. The Complainant recounted that NE#1 responded: “And what is that going to do? I go over here, get in a fight with this drunk asshole, and lose my job for defending myself?” The Complainant reported



that NE#1 then engaged in a “tirade” during which NE#1 stated that he would get into more trouble than it was worth were he to take action against the suspect and also stated that no one ever showed up to court to press charges. The Complainant wrote that NE#1 also told him: “Why do you think it took me so long to get here? we are losing officers faster than they can hire them. Look, this guy got his ass kicked earlier, me going over there because you want to press charges isn’t going to teach him anything. You just need to get out of here. I don’t even know how you do this job, just walk away, for your safety.”

NE#1 did not detain or arrest the suspect and did not even identify him. NE#1 waited in the parking lot while the Complainant finished up his shift. When the Complainant left his work and walked towards his car, the suspect again approached him. The Complainant reported that NE#1 pulled his patrol vehicle between them but that the suspect began hitting the Complainant’s vehicle and called him a racist. The Complainant stated that NE#1 did not take any law enforcement action against the suspect at that time. NE#1 left the scene at approximately 0015 hours. In a later MDT message sent to another officer, NE#1 said to that officer that he did not need to come to the scene because the suspect and the Complainant were just yelling at each other.

OPA interviewed NE#1 regarding the Complainant’s allegations. NE#1 confirmed that he made the statements attributed to him. NE#1 also told OPA that he said the following to the Complainant: “if I go contact this dude, and he’s drunk, he’s got a busted eye, I said, I’m going to start—have to fight this dude, and that’s going to be a FIT callout, I said I got to de-escalate, you know. And, he goes, I can’t touch the guy because I’ll get in trouble, and I’ll go well, I’m in the same boat now. I said 20 years ago it would have been a different story.”

When asked whether he believed that his comments to the Complainant were professional, NE#1 said that they were because he told the Complainant “the truth of what’s happening.”

SPD Policy 5.001-POL-10 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-10.)

Based on OPA’s review of the record, it is clear that NE#1 made comments and engaged in behavior that undermined public trust in himself and in the Department. NE#1 decided to take no action towards a suspect that he knew had engaged in an assault. This was the case even though the Complainant, who was the victim in the crime, asked him to do so. Notably, NE#1’s refusal to do so was not based on a lack of proof that the suspect committed a crime, but was instead based NE#1’s concern that he would have to use force and his speculative belief that he could get in trouble. The Complainant was clearly disturbed by NE#1’s statements, conduct, and lack of action. Taking law enforcement action is NE#1’s job. When he purposefully failed to do his job, he diminished public confidence in SPD to keep the citizens of Seattle safe. This was simply unacceptable and, for the above reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

Officers are required to document all primary investigations on a General Offense Report. The General Offense Report must be complete, thorough, and accurate. (SPD Policy 15.180-POL-5.)

Here, NE#1 admittedly did not complete a General Offense Report. Indeed, he did not complete any documentation concerning his response to this incident and the action he took (or did not take). This was the case even though a General Offense Report was required given that NE#1 was responding to the scene to investigate a reported assault.

The failure to complete a General Offense Report under the circumstances was inconsistent with policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

NE#1 engaged in a number of acts or omissions during this incident that collectively represented the failure to exercise reasonable discretion. These included the following: he failed to thoroughly investigate this incident; he failed to detain the subject or to make an arrest; he failed to identify the suspect; he failed to document this case in any fashion; he engaged in unprofessional behavior; and he failed to activate his BWV.

While I find that the above conduct is sufficient to warrant a Sustained finding, I note that the majority of this conduct is captured by the Sustained findings in Allegations #1, #2, and #4. As such, I conclude that it is unnecessary to also sustain this allegation and I deem it duplicative. For these reasons, I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #4

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity

SPD Policy 16.090-POL-1(5) concerns when Department employees are required to record police activity. SPD Policy 16.090-POL-1(5)(b) sets forth the categories of activity that must be recorded, which include: responses to dispatched calls starting before the employee arrives on the scene; arrests and seizures; and questioning victims, suspects, or witnesses. Given the facts of this case, it cannot be disputed that NE#1 was required to record his law enforcement response to this incident.



OPA's investigation indicated that NE#1 had neither In-Car Video (ICV) nor Body Worn Video (BWV) for this incident. Upon further review, it was determined based on information provided by Seattle ITS that NE#1's ICV system was malfunctioning at the time.

When he was asked about his BWV, NE#1 simply stated that he did not turn it on. He did not have any explanation for why he did not do so. Moreover, NE#1 did not update the CAD Call Log to report the lack of video or document the absence of BWV and the reason why in an appropriate report.

Where officers take the initiative to self-report and document and where they have some plausible explanation for the failure to record, OPA has recommended Training Referrals rather than Sustained findings. However, here, NE#1 had no excuse for his failure to record and took no steps to be accountable for that failure. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**