



## CLOSED CASE SUMMARY

ISSUED DATE:      JANUARY 31, 2019

CASE NUMBER:     2018OPA-0862

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force	Sustained
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)

**Imposed Discipline**

Oral Reprimand
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.400 - Use of Force Reporting and Investigation 2. Officers, Including Witness Officers, Will Verbally Notify a Supervisor Immediately, Unless Not Practical, Following any Use of Reportable Force	Not Sustained (Inconclusive)

***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 Employees may have failed to report force to a supervisor. It was further alleged that Named Employee #1 may have deliberately provided false information to his supervisor when he was asked whether he used force and denied doing so.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

The Named Employees responded to a call concerning a possible trespass and domestic violence situation. An individual, later identified as the Subject, was placed under arrest and was handcuffed. At that time, the Subject made several clear complaints of pain, which were recorded by NE#1’s Body Worn Video (BWV).

NE#1’s supervisor came to the scene to investigate an allegation of bias that had been made by the Subject. When he arrived, the supervisor asked NE#1 whether he used any reportable force. NE#1 responded that he had not. During his later review of this matter, the supervisor watched NE#1’s BWV. He discovered that the Subject had made clear complaints of pain from his handcuffs to NE#1 but that NE#1 did not report these complaints of pain, which



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constituted a Type I use of force. The supervisor made an OPA referral based on the failure to report and this investigation ensued.

NE#1 told OPA that while he heard the complaints of pain, he did not “comprehend” them. This was the case even though he acted in response to the complaints by readjusting the Subject’s handcuffs and, in fact, acknowledged in real-time that the Subject was in pain from the handcuffs making contact with his bone. Lastly, NE#1 told OPA that he was focused on other matters at the time, which impacted his comprehension of the complaints.

SPD Policy 8.400-POL-2 states that officers, including witness officers, will verbally notify a supervisor immediately, unless not practical, following any use of reportable force. SPD Policy 8.400-POL-1 categorizes a complaint of transient pain, including that from the wearing of handcuffs, as Type I force that must be reported to a supervisor.

Ultimately, this policy sets forth a clear expectation for officers – anytime a complaint of pain is made, including from handcuffs, that complaint must be reported to a supervisor. Here, NE#1 heard and responded to the Subject’s complaints and, as such, he was required to report them. While I recognize the significant duties and multi-tasking that officers are expected to carry out, this does not excuse compliance with this policy. Moreover, other officers regularly comprehend and report similar complaints of pain in equally if not more complex and fast-moving situations. To this end, it would be inconsistent with past precedent to excuse NE#1’s failure to report the Subject’s complaints of pain here. For these reason, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

This allegation was classified based on NE#1’s statement to his supervisor that he did not use force in response to the supervisor’s direct question. To the contrary, he was involved in a Type I use of force when the Subject made complaints of pain from the handcuffs.

While NE#1’s response to his supervisor was inaccurate, I do not believe that it constituted dishonesty. I base this on NE#1’s account at his OPA interview, which I credit. I further base this on the fact that NE#1 simply had no motive to lie. He knew that a supervisor would likely later review BWV of this incident. As such, given the risk that the supervisor would later discover the complaint of pain, it would make no logical sense for NE#1 to deliberately hide this information from and mislead his supervisor.

Accordingly, and when applying the requisite burden of proof, I recommend that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #2 - Allegation #1**

***8.400 - Use of Force Reporting and Investigation 1. Officers Shall Report All Uses of Force Except De Minimis Force***

It was further alleged that Named Employee #2 (NE#2), who was also in the vicinity of the Subject when he made the complaints of pain, similarly failed to report the complaints to a supervisor.

NE#2 told OPA that he did not hear the complaints of pain. He said that he was focused on making sure that the Mobile Fingerprint Reader was operational as the officers intended to use it to identify the Subject. He stated that he did not hear the complaint of pain even though he was approximately 1 ½ to 3 feet away from the Subject at the time and was aware that NE#1 was applying handcuffs to the Subject and adjusting those handcuffs.

Ultimately, there is insufficient evidence to establish whether NE#2 heard or should have heard the complaints of pain. While he was relatively close to the Subject at the time, I credit NE#2's assertion that he was predominantly focused on the Mobile Fingerprint Reader.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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