



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 5, 2019

CASE NUMBER: 2016OPA-0619

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	Not Sustained (Inconclusive)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events	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:

The Complainant alleged that the Named Employee subjected her to a domestic violence assault. It was further alleged that the Named Employee may have failed to timely self-report that he was the subject of a criminal investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant in this case alleged that her ex-boyfriend, Named Employee #1 (NE#1), assaulted her on June 5, 2016. She indicated that he knocked her to the ground and slammed her head into the floor. She stated that she lost consciousness and, when she woke up, NE#1 was gone. She said that she then went outside and saw her daughter, who had been waiting there for around an hour. The Complainant asserted that she sought medical treatment and was diagnosed by a forensic nurse as having a concussion. A criminal investigation was initiated into this matter three days later, on June 8, 2016.

The Complainant relayed what occurred to the criminal investigator. She said that she was watching a movie with NE#1 that involved a female lead character. She stated that NE#1 began to make disparaging remarks about women. She told the investigator that she thought he was joking and teasingly poured some of her drink on his shirt. She recalled that he got angry and sat further away from her. NE#1 continued to make disparaging remarks about women and began to question the Complainant about who she dated when they previously broke up. They continued to argue and the Complainant made the decision to leave the house. Before she did so, she took off a bracelet he had given her and gave it back to him. She stated that NE#1 then pushed her down to the ground and, when she was on the ground, he slammed her head against the floor. She told the investigator that she lost consciousness and, when she awoke, NE#1 was gone. She explained that she could not remember some of the details of the incident due to her concussion. The investigator noted that the Complainant did not have any visible injuries to her hands or face (the interview took place on June 8) and took photographs of her. The Complainant



stated that she had limited interaction after the fact with NE#1 and that he asked her to return a bottle of alcohol to him. One of her friends returned the alcohol. She provided copies of the texts to the investigator.

The criminal investigator also interviewed the friend referenced above. He stated that he was aware that the Complainant was dating a police officer and she had been discussing with him whether she should pursue the relationship. At approximately 10:00 p.m. on June 5, the friend received a text from the Complainant in which she stated that NE#1 had slammed her head into the floor. The Complainant later relayed what had occurred to the friend. He ensured that she received medical treatment and recalled that she was diagnosed with a concussion. He stated that he later told a neighbor what had occurred and that this neighbor ultimately reported NE#1's conduct to the police. The friend showed the investigator texts that the Complainant had sent to him.

The same day, the investigator went to NE#1's residence to interview him. The investigator noted that NE#1 stated that he did not know why the investigator was at his home and, when he was given the reason, he was willing to be interviewed. NE#1 confirmed that he was watching a movie with the Complainant and that he made comments that she was upset by. He said that she threw a glass of red wine on him. He went upstairs, changed his shirt, and came back downstairs. He then sat further away from her and would not interact with her. At one point, she told NE#1 that her daughter was at the house to pick her up and he replied "good." She then walked over to him and slapped him in the face. NE#1 stated that he told the Complainant to leave his home and they both began screaming profanities at each other. NE#1 followed the Complainant as she was walking out in order to close the door. He stated that she then tried to slap him again and, while doing so, lost her balance and fell to the floor. He said that he tried to help her up but she slapped his hand away. He told the investigator that the Complainant then got up and walked out of the home around five minutes later. NE#1 asserted that the Complainant was intoxicated at the time. The investigator reported that NE#1 appeared to be angry during the interview and, at one point, referred to the Complainant as a "bitch" and a "drunken whore." NE#1 told the investigator that he did not initially report this incident because he did not believe that he had been assaulted.

The investigator lastly interviewed the Complainant's daughter on June 9, 2016. The daughter told the investigator that she received a text from her mom asking her to come to the home. The daughter stated that she waited at the house for approximately 45 minutes before her mother came out and told her that NE#1 was "out of control" and that she would be back in five to 10 minutes. She did not come back outside until 30 minutes later and, at that point, the Complainant told the daughter that she had been thrown to the ground by NE#1. The daughter told the investigator that she did not witness or hear any assault.

The investigator then re-interviewed the Complainant concerning the timing of the incident. He further asked her how much alcohol she and NE#1 had consumed. The Complainant said that she had two glasses of wine at dinner and was drinking one more at the time of the incident. She stated that NE#1 had been drinking alcohol at both dinner and at his home.

The investigator deemed there to be probable cause to believe that NE#1 had engaged in assault in the fourth degree. The completed investigation was referred to a prosecutor. The case was initially filed as a misdemeanor on June 23, 2017, but was dismissed and refiled as a felony (due to the alleged concussion suffered by the Complainant) on July 21, 2017. After that date, the prosecutor reported making numerous attempts to set up a victim meeting with the Complainant and to obtain her medical records. The prosecutor noted that it took around 10 months to set up the victim meeting. The prosecutor further stated that, even though the Complainant indicated that she would



provide her medical records, she had not done so. The prosecutor gave a firm deadline to the Complainant's lawyer for provision of the records and, when that deadline was not complied with, the prosecutor dismissed the case. The case was formally dismissed on June 26, 2018, more than two years after it had been originally filed.

OPA then commenced its investigation. OPA interviewed the Complainant, the daughter, the friend, and NE#1. All of them provided similar statements to those they gave to the criminal investigator. OPA also interviewed another one of NE#1's friends and NE#1's supervisor at the time of the incident. Neither were direct witnesses to the incident.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

The allegations against NE#1 are very serious. If true, he clearly violated the law when he assaulted the Complainant. However, based on the totality of the record and when applying a preponderance of the evidence standard, I do not believe that I can definitively determine what occurred in this case. Notably, there were only two witnesses to this incident – NE#1 and the Complainant. While portions of their accounts are the same, their descriptions of the alleged assault are irreconcilable. The Complainant stated that NE#1 pushed her to the ground and slammed her head on the floor. NE#1 stated that he did not do such thing, that the Complainant slapped him, and that she fell down while trying to do so again. There are facts that support the Complainant's account – most notably, the text messages, her recounting of the timing of the incident that is more in-line with the other evidence, and the statements by the witnesses. However, there are also facts that support NE#1's account – the Complainant had been drinking, she indisputably threw wine on him, and she had no discernable injuries just three days after the alleged assault. For these reasons, I cannot conclusively determine whether NE#1 violated the law and, accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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

It was alleged that NE#1 may have failed to timely report to his supervisor that he was the subject of a criminal investigation.

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.)

The incident occurred on June 5; however, the police did not commence an investigation until three days later. On that day, police came to NE#1's home, contacted him, and made him aware that he was the subject of a criminal complaint. After becoming aware of this, and prior to his next shift, NE#1 informed a Department supervisor of what had occurred.

The policy also states that an officer must self-report if "they believe they may be the subject of a criminal investigation." Arguably, if NE#1 engaged in assaultive behavior, as the Complainant alleged, he could have



reasonably believed that he may be a criminal subject. However, NE#1 asserted that he did not engage in any such conduct and, as discussed above, the evidence in the record is inconclusive.

As such, while I find that NE#1 properly self-reported on June 8, given that I cannot definitively say that NE#1 did not engage in the behavior alleged by the Complainant, I also cannot definitively say that he did not know on June 5 that he may be the subject of a criminal investigation. Accordingly, as with Allegation #1, I recommend that this allegation be Not Sustained – Inconclusive.

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