



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 12, 2018

CASE NUMBER: 2017OPA-0998

### 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	Allegation Removed
# 2	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Sustained
# 3	5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained
# 4	5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)	Sustained

**Imposed Discipline**

Termination
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***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 learned that the Named Employee was working secondary employment without a valid and approved work permit. It was also alleged that this was in direct violation of an order given by the witness Lieutenant who had denied a work permit for the employee based on the lack of time balances. The Complainant also learned from the witness Sergeant that she had inquired of the Named Employee if he was working secondary employment and he stated that he had not. It was alleged that this statement was potentially dishonest.

### ADMINISTRATIVE NOTE:

At the discipline meeting held with the Named Employee’s chain of command, it was agreed that, while a violation of Allegation #1 was established under the facts, the conduct that violated this policy was already fully captured by the Sustained findings in Allegations #2, #3 and #4. As such, I agreed to amend my finding on Allegation #1 from Sustained to Allegation Removed and I, accordingly, issue this amended Director’s Certification Memo.

I further note that OPA and the chain of command agreed concerning the other allegations that were recommended Sustained, as well as on the recommended discipline.

### ANALYSIS AND CONCLUSIONS:

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

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



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SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department policy. It further itemizes that employees comply with the SPD Manual. (SPD Policy 5.001-POL-2.)

As indicated above, I recommend that this allegation be removed given that the conduct that establishes the violation of this policy is already fully captured by the three Sustained findings below.

Recommended Finding: **Allegation Removed**

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

***5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication***

SPD Policy 5.001-POL-10 requires that SPD employees be truthful and complete in all communications.

In this case, it was alleged that NE#1 engaged in dishonesty on a number of occasions concerning his secondary employment. At his OPA interview, NE#1 was asked about a conversation he had with his Sergeant. While the Sergeant recalled that the conversation occurred on September 14, NE#1 did not remember the date but believed that it occurred sometime in August or September. NE#1 stated that, during this conversation, his Sergeant asked him if he had been working secondary employment (“off-duty”), and he said “no.” NE#1 told OPA that he believed that his Sergeant was asking him about the “24-hour rule” (where SPD employees are only allowed to work 24 hours of secondary employment in a seven-day period). His exact answer to his Sergeant was: “no, I haven’t been working off-duty.”

The OPA investigator conducting the interview then provided NE#1 with the records obtained from his secondary employer, which indicated that he had worked on August 11, 14, 18, 28, 29, 30 and September 5, 6, 11, 13 and 15. NE#1 stayed firm to his account that his answer was not dishonest because he “had not worked within a week of [the Sergeant] and {NE#1} having that conversation.” At his supplemental interview with OPA, however (which NE#1 requested), he stated that, upon reflection, “he could’ve had a conversation on September 14<sup>th</sup> and it, it could’ve been about off-duty.” I note that I conclusively find that this was the date of the meeting based on both my review of the OPA complaint filed in this case by an Acting Lieutenant, which memorialized the conversation he had with the Sergeant during which she discussed having the meeting on that date, as well as on the Sergeant’s two OPA interviews.

NE#1 contended at his second OPA interview that when he told his Sergeant that he was not working off-duty, he was referring to the fact that he had not worked and was not planning to work off-duty on that day. He stated, however, that he did not clarify with his Sergeant whether this was the information that she was seeking. He further failed to mention to her that he had worked secondary employment on the previous day and was planning to and did so again on the following day.

I find that NE#1 was dishonest on at least two occasions. First, he was untruthful when he told his Sergeant that he had not been working secondary employment. His explanations for why he made that statement, which changed over his two OPA interviews, were frankly unbelievable. Moreover, his Sergeant told OPA that when she asked NE#1 if he had been working secondary employment, there was no confusion as to what she was asking him (contrary to NE#1’s contentions). I find that, when NE#1 told his Sergeant that he was not working secondary employment, that was a statement that was made with the deliberate intent to mislead her. I find this to be further supported by the



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fact that NE#1 did not log-in via radio on any of the dates that he improperly worked secondary employment, which was, at best, a violation of policy and, at worst, was a deliberate attempt to cover up his dishonesty and insubordination.

Second, I find that NE#1 was dishonest during his OPA interviews. NE#1 first told OPA that he denied working secondary employment to his Sergeant because he thought that she was asking him whether he did so in violation of the 24-hour rule. However, records from his secondary employer indicated that he did work both immediately before and after the meeting. As such, even if he truly believed that he was being asked whether he had engaged in secondary employment in violation of the 24-hour rule, his answer was still dishonest. This is likely the reason why he then requested a second OPA interview and materially changed his answer. He stated that, instead, he believed that his Sergeant was asking specifically whether he worked or was planning to work secondary employment on September 14. As indicated above, not only do I find these answers to be frivolous and incredible, but I further find that they were made with the intent to mislead the OPA investigator assigned to this case and to cover up NE#1's clear misconduct.

Lastly, while I cannot ultimately find that it rises to the level of dishonesty, NE#1's stated belief that the Chief Operating Officer's email somehow absolved him from seeking a valid and approved work permit is patently absurd. Notably, I have not seen any other case in which an officer made a similar assertion during the almost one and a half years since that email was sent.

While I do not take my decisions in this regard lightly, I find that the evidence conclusively establishes that NE#1 was materially and intentionally dishonest in this case. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer***

SPD Policy 5.001-POL-14 requires that employees obey any lawful order by a superior officer. The failure to do so constitutes insubordination. (SPD Policy 5.001-POL-14.)

Here, both NE#1's Sergeant and a Department Lieutenant directed him to cease working secondary employment during several meetings, the last of which occurred prior to June 2017. The Sergeant told OPA that both she and the Lieutenant were present at one of the meetings during which this issue was discussed. The Sergeant recounted that the Lieutenant explicitly ordered NE#1 to not work secondary employment. The Lieutenant (now a Captain) also recounted that meeting occurring. The Lieutenant had a similar recollection of the meeting as the Sergeant. The Lieutenant stated that he ordered NE#1 to not engage in any secondary employment or Department overtime. The basis for that order was that NE#1's sick leave and discretionary leave balances were too low, which was a permissible basis to deny secondary employment under SPD Policy 5.120(IV)(G). The Lieutenant indicated to OPA that there could not have been any confusion on NE#1's part concerning this order. Moreover, the Lieutenant stated that he had a number of additional conversations with NE#1 concerning this issue and that the order restricting overtime and secondary employment was not lifted. Lastly, the Lieutenant opined that if NE#1 worked secondary employment in either August or September 2017, such action would have constituted insubordination.



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When asked at his OPA interview, NE#1 stated that he did not recall being ordered to not work secondary employment by his Sergeant. At his follow-up interview with OPA, NE#1 further stated his opinion that his Sergeant had a tendency to be unclear or confusing with directions, which was an apparent explanation for why he failed to comply with her direction. His Sergeant, however, indicated that there could not have been any confusion as to nature of their conversation and her orders. NE#1 also stated that he was not aware that he had been ordered by the Lieutenant to not work secondary employment, even though he stated that the Lieutenant did tell him at some point in August or September 2017 that if his sick balances remained low his secondary employment would be restricted. However, the Lieutenant similarly stated that his orders were clear.

Based on my review of the record, I credit the Sergeant's and the Lieutenant's accounts over NE#1, who I find to have engaged in dishonesty. Applying a preponderance of the evidence standard, I conclude that NE#1 received direct orders to not engage in secondary employment from both his Sergeant and the Lieutenant but that he continued to do so on numerous occasions thereafter. These were lawful orders that NE#1 was required to comply with. His deliberate failure to do so constituted insubordination and constituted a violation of policy. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #4**

***5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)***

SPD Policy 5.120(IV) requires that SPD employees who seek to work secondary employment have a valid Secondary Employment Form for that specific employment that has been approved by the employee's chain of command.

At his OPA interview, NE#1 acknowledged that he did not have a work permit for the secondary employment that he engaged in. NE#1 stated that he did not think he needed to have a work permit based on his purported reading of a Department-wide email that was sent by SPD's Chief Operating Officer concerning Blucadia. At that time, Blucadia was an online marketplace for secondary employment positions. It was offered by the Department as an alternative method for employees to seek secondary employment. NE#1 further stated that he spoke with a representative of his secondary employer, who told NE#1 that the company was "affiliated" with Blucadia. However, there is no evidence in the record, and NE#1 does not contend, that he ever registered with Blucadia and sought secondary employment through that platform. Moreover, the email sent by the Chief Operating Officer specifically indicated that the service was only available to employees "who have been approved to work secondary employment." NE#1 was not approved to do so and, based on my review of the evidence in the record, he knew that.

As such, I find that NE#1 worked secondary employment without a valid and approved Secondary Work Permit. Accordingly, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**