



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 4, 2018

CASE NUMBER: 2017OPA-1287

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Sustained
# 2	4.040 - Sick Leave 7. Employees Contact a Sergeant/Supervisor When Taking Sick Leave	Sustained
# 3	5.001 - Standards and Duties 14. Employees Obey any Lawful Order Issued by a Superior Officer	Sustained
Imposed Discipline		
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:

The Complainant alleged that the Named Employee, who is subject to conditions set forth in Performance Management Agreements, failed to abide by those conditions when he did not route a request for time off through his direct supervisor and then later failed to report for a scheduled shift.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) has been the subject of several complaints concerning his use of unscheduled leave and sick time and his attendance at work or lack thereof. As a result of this repeated conduct, which was addressed by NE#1’s chain of command and in an OPA investigation (2015OPA-0383), NE#1 was initially placed on a Performance Management Plan and signed a Performance Management Agreement (PMA). This initial PMA was signed on March 10, 2017. In June 2017, NE#1 was referred to OPA for violations of that PMA. Those alleged violations included failing to seek leave before taking time off for work and inaccurately recording his time. These policy violations were evaluated in OPA case 2017OPA-0644 and the Chief of Police issued Sustained findings and imposed discipline in February 2018.

After the attendance and timekeeping issues that occurred in June 2017, the Complainant, who is NE#1’s supervisor, re-reviewed the requirements of the March PMA with NE#1. The Complainant reiterated to NE#1 the expectation that he comply with SPD Policy 4.010-POL-2, which requires that Department employees schedule time off with their supervisors. He also reminded NE#1 of the following: “You are required to notify your supervisor of your intent to use sick leave prior to the start of your regular shift. This is consistent with SPD Manual section 4.070-7. Notification may be made via telephone, text message.” NE#1 and the Complainant signed this renewed PMA on July 25, 2017.



However, on December 16, 2017, NE#1 took sick leave without notifying his supervisor. NE#1, instead, notified another sergeant.

The Complainant told OPA that he made the requirements of the PMAs clear to NE#1 during their conversations. He stated that the PMAs were in force on December 16. The Complainant stated that NE#1 did not tell him of his intention to use sick leave on December 16, or any of his other supervisors at the West Precinct. The Complainant stated that he viewed NE#1's usage of sick leave without telling him or any of his other supervisors to be a violation of the PMAs. The Complainant stated that he had further explained to NE#1 that there were substantial resources within the Department that he could avail himself of to the extent that he was undergoing personal or familial difficulties. The Complainant recounted, however, that NE#1 indicated that he did not need such resources or services.

NE#1 acknowledged to OPA that he was subject to the PMAs on December 16. He further agreed that he took sick leave on that day and admitted that he did not clear that sick leave with his supervisor. NE#1 told OPA that his wife had a serious blood disorder that needed to be monitored and could, depending on the circumstances, require immediate hospitalization. NE#1 stated that on December 16 he did, in fact, have to take his wife to the hospital. NE#1 explained to OPA that he called the precinct and attempted to reach the Complainant, but was unable to do so. He stated that he spoke with a precinct clerk who told him that another sergeant was available. NE#1 then called that sergeant and let that sergeant know that he was going to be taking sick leave. NE#1 could not verify the identity of the clerk that he spoke with and speculated that she was one of the precinct's "relief" clerks.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor

SPD Policy 4.010 requires SPD employees to schedule time off with their supervisors. It states that: "Employees will contact their sergeant/supervisor before their scheduled work shift to request an unscheduled absence from duty."

As discussed more fully below, NE#1 took leave in the form of sick time without contacting his supervisor. Not only did this violate policy, but even more significantly, it was contrary to the two PMAs that were agreed to and signed by NE#1. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

4.040 - Sick Leave 7. Employees Contact a Sergeant/Supervisor When Taking Sick Leave

SPD Policy 4.040-POL-7 requires that SPD employees contact their supervisors when taking sick leave. The policy instructs that: "Employees will contact a sergeant/supervisor before the start of their regularly assigned shift on the first day of using sick leave."

As discussed above, NE#1 did not notify his supervisor prior to taking sick leave. He told OPA that he tried to reach the Complainant through the precinct clerk, but that he was told that the Complainant was not available. NE#1 could not identify which clerk he spoke with. NE#1 did not explain to OPA why he did not contact his supervisor via cell.



Notably, the PMAs explicitly indicated that notification could be made via cell phone call or text message. Moreover, NE#1 clearly had NE#1's cell number. As indicated in the March 2017 PMA, NE#1 had previously communicated with the Complainant via text.

Instead of calling or texting his supervisor, NE#1 instead contacted another sergeant and informed that sergeant that he would be out sick. This was in direction contravention of the policy, as well as violated NE#1's agreed-to PMAs. Moreover, this was consistent with NE#1's past behavior that was deemed inappropriate by the Department.

For these reasons, I recommend that this allegation be Sustained. In reaching this decision, I am sympathetic to the circumstances facing NE#1 and his wife. The ongoing possibility of hospitalization and serious medical complications has clearly been very stressful to NE#1 and his family. However, this is a factor for mitigation of discipline rather than evidence supporting not sustaining the allegations in this matter. Ultimately, NE#1 agreed in writing to the simple requirement that he would call or text his supervisor if he needed to take unscheduled leave. He had his supervisor's cell phone but did not contact him prior to taking sick leave. Were this a one-time event, I could understand this failure; however, this is a documented repeated course of conduct by NE#1 that is directly contrary to SPD policy and his PMAs.

For these reasons, 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 mandates that Department employees obey any lawful order issued by a superior officer. Failure to do so constitutes insubordination.

Here, the March and July PMAs, which were signed by both the Complainant and NE#1, constituted lawful orders to NE#1 from his superior officer. NE#1 was required to comply with these orders, but, as discussed above, failed to do so in this case. His failure to comply with these orders violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**