



## **CLOSED CASE SUMMARY**

ISSUED DATE: FEBRUARY 15, 2019

CASE NUMBER: 2018OPA-0678

### **Allegations of Misconduct and the Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 3	4.010 - Employee Time Off 1. Employee Time Off is Regulated	Sustained
# 4	4.130 - Military Leave 1. Employees May Refer to City Personnel Rule 7.9—Military Leave and RCW 38.40.060 For Definitions and Application	Sustained

**Imposed Discipline**

**Written Reprimand and Forfeiture of 13.5 Hours of Leave Balance**

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employee violated multiple policies and the law when he sought compensation for military leave when he did not actually report to the military on those dates in question.

### **ADMINISTRATIVE NOTE:**

At the *Loudermill* hearing in this matter, the Named Employee raised the point that he does not enter, complete, verify, and certify his own timesheet. In this case, timesheet entries for the Named Employee were made and submitted to payroll by his Sergeant. OPA agreed to correct this DCM to properly reflect the reality of how the Named Employee’s timesheet entries are made and submitted. Additionally, and in the process of making those corrections, OPA reviewed its findings associated with Allegations #3 and #4, since its original argument included a reference to the incorrectly listed timesheet completion and submission process. After doing so, OPA finds that it did not impact its Sustained findings and both remain as originally submitted.

### **ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

An anonymous Complainant alleged that Named Employee #1 (NE#1) was paid by the Department for military leave but that he failed to actually report to the military on multiple occasions. SPD Human Resources confirmed that NE#1 had potentially inappropriately used military leave on six occasions, which totaled a loss to the Department of \$1,949.40. The dates in question were: April 22, 2018; May 19, 2018; June 23, 2018; June 24, 2018; August 26, 2018; and September 22, 2018. OPA further determined, after contacting the military, that NE#1 did not report for duty on any of those six dates. OPA accordingly referred this matter for criminal investigation.



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After conducting her investigation, the assigned criminal investigator determined that NE#1 was paid for 54 hours of military leave that he did not work. The criminal investigator found sufficient probable cause that a crime had been committed and referred this matter to the King County Prosecuting Attorney's Office (KCPAO). The KCPAO ultimately declined to prosecute this matter. In the decline notice, the KCPAO indicate that the amount that had been allegedly improperly received by NE#1 was not high enough to warrant a prosecution and that any trial would likely not result in a guilty verdict. This case was also screened with the Seattle City Attorney's Office (SCAO). The SCAO also declined to prosecute, citing the low amount of the alleged theft. Notably, neither prosecuting agency declined to prosecute because they did not believe that there was a lack of criminal culpability on NE#1's part.

Once the case was referred back to OPA, this administrative investigation ensued. NE#1 told OPA that he had requested full or partial furlough leave on five of the six dates in question. For two of those dates (April 22 and May 19), he was able to produce email correspondence that confirmed that he made those requests to his direct supervisor. For two others (August 26 and September 22), he stated that he discussed the requests for furlough leave in an oral conversation. However, there was no documentation proving that those oral conversations occurred. Moreover, NE#1's direct supervisor and two other Sergeants all denied any recollection of any such conversations taking place. For June 23, 2018, NE#1 provided email correspondence to his direct supervisor that confirmed that he requested 4.5 hours of furlough leave and 4.5 hours of military leave. He stated that his plan was to engage in military duties for the first 4.5 hours and then attend a soccer game during the latter 4.5 hours. He explained that he felt sick upon arrival for military duty. He said that he could not locate anyone, did not sign in for military duty, and then went home. He did not report that he was sick and that he did not attend military duties to any Department supervisor. He stated that he was also sick the next day, June 24, and that he was unable to attend his scheduled military duties. However, he again failed to notify anyone in the military or in his chain of command that he was sick.

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

By his own admission, NE#1 was improperly paid for at least 13.5 hours of military leave that he did not work. While this clearly represented a violation of Department policy, OPA cannot definitively establish that his actions were contrary to law. The impediment to doing so is OPA's inability to establish criminal intent on NE#1's part. While OPA could sustain this allegation based on the violations of policy, this conduct is already captured by findings in Allegations #3 and #4 below, and recommending a Sustained finding here would be duplicative.

This should not be interpreted as OPA finding that NE#1 did not violate the law. OPA simply cannot prove such conduct one way or the other. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**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.

If NE#1 deliberately attempted to steal money from the Department by being compensated for military leave when he did not actually engage in that activity, this would constitute dishonesty. Moreover, if NE#1 then falsely reported



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his leave status to Department supervisors, as well as misled OPA when he stated that he had an oral conversation with his supervisors about taking furlough pay, this would also constitute a significant violation of this policy.

Ultimately, however, the evidence is inconclusive to establish that NE#1 was dishonest. As discussed above, while NE#1 clearly received compensation for time that he did not work, OPA cannot establish that he intended to violate the law by purposefully seeking pay for military leave that he did not work. Indeed, it is possible that NE#1, as he contends, made mistakes and simply negligently failed to correct them. Moreover, while NE#1's supervisors claimed that they had no recollection of him ever telling them about his plan to use furlough leave for August 26 and September 22, I cannot conclusively prove that NE#1 fabricated these conversations.

For these reasons, and while a close call, I recommend that this allegation be Not Sustained – Inconclusive.

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

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

***4.010 - Employee Time Off 1. Employee Time Off is Regulated***

SPD Policy 4.010-POL-1 provides general guidance as to how SPD employees are to use time-off. It specifically states that employees must use time-off “as prescribed by the Fair Labor Standards Act (FLSA), state law, city ordinance, city personnel rules, collective bargaining agreement and any other lawful agreements.” (SPD Policy 4.010-POL-1.)

Here, NE#1 received compensation for military leave that he did not work on at least two dates. Though NE#1 did not directly make entries to his timesheet, it is his responsibility to ensure that time off and military leave information, that is submitted on his behalf by his Sergeant, accurately reflects his work and leave payment status, and, indeed, is a requirement of City and SPD policy. When he did not do so, he acted contrary to policy and the Department's expectations. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegations #4**

***4.130 - Military Leave 1. Employees May Refer to City Personnel Rule 7.9—Military Leave and RCW 38.40.060 For Definitions and Application***

SPD Policy 4.130-POL-1 concerns the seeking and usage of military leave. As discussed above, NE#1 was compensated for at least 13.5 hours of military leave that he did not work. Moreover, it is his responsibility to ensure that time off or military leave information, that is submitted on his behalf by his Sergeant, accurately reflects his work and leave payment status. In failing to do so, he also violated this policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**