



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 20, 2018

CASE NUMBER: 2018OPA-0243

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings	Chief’s Findings
# 1	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Sustained	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 Employee engaged in intentional and material dishonesty during his OPA interview.

#### **ANALYSIS AND CONCLUSIONS:**

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

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

Named Employee #1 (NE#1) was the subject of a previous OPA investigation (see 2017OPA-0982) wherein it was alleged that he engaged in insurance fraud when he falsely reported to his insurance company that he was involved in a car accident when, in fact, NE#1’s nephew was the driver. It was further alleged that NE#1 made a similar false report to the homeowner whose property was damaged by NE#1’s nephew. The OPA Director’s Certification Memorandum for that case contains a full recitation of the relevant facts.

This prior complaint was initiated by NE#1’s ex-wife. During her interview in that case, she indicated that, at the time of the accident, NE#1’s nephew was intoxicated. She further contended that NE#1 falsely reported that he was driving in order to cover up the DUI and prevent his nephew from being arrested, as well as to ensure that the damage to NE#1’s vehicle and the property was covered by his insurance.

NE#1 was interviewed on March 8, 2018. While he admitted to filing a false insurance report, claiming to have been driving the car during the accident when his nephew was the driver, contracting with a private tow company to tow the car from where it was left, and failing to notify the police of the accident, he denied that NE#1 was intoxicated at the time he arrived on the scene.

On March 19, 2018, OPA interviewed a witness who was residing at NE#1’s residence at the time of the incident. She informed OPA that she was told by both NE#1 and his ex-wife that NE#1’s nephew was “very intoxicated” at the time of the accident. She further told OPA that she and the ex-wife were very “uncomfortable” with this situation and that she was unsure whether she should say something.



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Notably, both NE#1's nephew and his grand-nephew – who drove his nephew home from the scene of the accident – did not respond to multiple attempts by OPA to interview them. This was the case even though they were still in touch with NE#1 and had referenced the case and the OPA investigator's attempts to reach them with NE#1.

The prior case resulted in OPA recommending that the allegations concerning dishonesty and violation of law be sustained. The Chief of Police agreed to sustain these allegations and imposed discipline on NE#1.

In addition, OPA initiated this separate case to determine whether NE#1 was intentionally and materially dishonest at his OPA interview when he said that his nephew was not intoxicated at the time of the incident.

As part of this second investigation, OPA re-interviewed the witness and NE#1's ex-wife. OPA also interviewed the homeowner whose property was damaged by NE#1 and the tow truck driver who towed NE#1's vehicle from the scene.

The witness again confirmed that NE#1 told her that his nephew was intoxicated on the date of the incident. She indicated that NE#1 told her that his nephew had previous trouble with "that" – presumably driving while intoxicated – and he did not want to get his nephew in trouble again. When asked whether she was colluding with NE#1's ex-wife to retaliate against NE#1, she denied doing so. The witness told OPA that she knew the ex-wife from working together previously but that she had no reason to retaliate against NE#1.

OPA also re-interviewed NE#1's ex-wife. She denied that she was colluding with the other witness to NE#1's statement concerning his nephew's intoxication. She stated that she had only seen the witness twice in the past year and that they talk on the phone around once a month. The assigned investigator informed the ex-wife that neither NE#1's nephew or his grand-nephew had cooperated with OPA's requests for an interview. The ex-wife indicated that she was not surprised given that these individuals were related to NE#1.

OPA further interviewed the tow truck driver who towed NE#1's car from the scene. The tow truck driver stated that NE#1's nephew had left the scene at the time he arrived. The tow truck driver stated that no one referenced in his presence a drunk driver of the vehicle; however, he said that it was not his practice to ask many questions.

OPA lastly interviewed the owner of the property that was damaged. He recalled interacting with NE#1, who he described as being in uniform. He stated that NE#1 told him that he was returning home from finishing a shift and that he crashed into his wall. The homeowner stated that NE#1 provided him with insurance information and NE#1 told the homeowner that he had already notified the insurance company.

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. Here, it was alleged that NE#1 was dishonest to OPA when he stated that his nephew was not intoxicated that evening.

In reviewing the evidence, I find that NE#1 was, in fact, dishonest. As a starting point, I place significant weight on the account of the witness who stated that NE#1 disclosed to her that his nephew was intoxicated. She was credible from my review. Moreover, while NE#1 alleged that she was "crazy" and was colluding with his ex-wife, NE#1 presented no reliable evidence to establish this. Indeed, there is no evidence indicating that the witness was anything other than forthcoming and honest. It does not appear as if she has any motive to fabricate this



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information. The witness's account is corroborated by NE#1's ex-wife. The ex-wife not only told OPA that the nephew was intoxicated, but she also relayed this to the witness.

In addition, during her interview, the witness stated that NE#1 was concerned that his nephew would get in trouble for being intoxicated and intimated that the nephew had previously been arrested for DUI. OPA learned that the nephew had, in fact, been arrested for DUI on at least one other occasion. This was acknowledged by NE#1 at his OPA interview. This is additional evidence that corroborated the witness's account.

That the nephew had been previously arrested for DUI also weighs in favor of finding that he was intoxicated on the date in question. It certainly provides the motive for why the nephew moved the car from the scene of the accident, why NE#1 had it towed by a private tow company and did not notify the police, and why NE#1 took responsibility for the accident and filed the false claim. Had he filed a claim where he indicated that his nephew had been driving the vehicle while intoxicated, the claim almost certainly would not have been paid out. Moreover, had his nephew been arrested for DUI, he would have lost both his driver's license and his job. As NE#1 stated during his interview in the prior case, he had gotten his nephew a job at a car dealership as a salesman and that, because of NE#1's relationship with the dealership, they overlooked the fact that the nephew had been in a previous accident and agreed to put him on their insurance in order to drive their cars.

Further weighing in favor of a finding of dishonesty is that, when NE#1 described at his prior OPA interview what his nephew had been going through in the months prior to the incident, he failed to make any mention of the fact that his nephew had at least one prior DUI. This was the case even though he discussed with OPA the nephew's prior vehicle accidents and concerns with him obtaining car insurance for his work at the car dealership.

As part of his defense in this case, NE#1 provided OPA with several texts between himself and his ex-wife. He also provided screenshots that were apparently purposed to prove collusion between the witness and his wife. From my review of the screenshots, such a link is not proved. Both the ex-wife and the witness admitted that they were friends and that they had previously worked together; however, without more, this does not establish the bias suggested by NE#1. Moreover, several of the texts, which were sent by the ex-wife to NE#1 on the evening of the incident suggested her contemporaneous belief that the nephew could be intoxicated. She wrote, concerning their vehicle that had not yet been returned home by the nephew, "I'll go see if he's asleep in the car." Later, in response to NE#1's question concerning whether she had located the nephew, the ex-wife wrote: "Nope. Don't wig out. He's a grown up. Probably had 1 too many and is sleeping in the car for a bit." NE#1 did not contradict this possibility.

Lastly, at his OPA interview in this case, NE#1 admitted that his nephew was at Seeders, a bar/restaurant, prior to the accident. He stated that his nephew was there until closing (2:00 a.m.) and he did not know when he arrived, suggesting that the nephew was there for a period of hours. NE#1 opined that the nephew was at Seeders that late because he had a crush on a bartender. However, when viewed with the other facts of this case, it seems inordinately likely to OPA that he was there until closing because he was drinking and was intoxicated.

Based on the totality of the circumstances and on the above information, I find that there is sufficient evidence to establish that NE#1 engaged in intentional and material dishonesty during his OPA interview when he told OPA that his nephew was not intoxicated on the evening of the accident. I believe that the heightened standard of proof for this allegation has been met and, as such, I recommend that this allegation be Sustained.



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Recommended Finding: **Sustained**

**CHIEF'S FINDINGS:**

Chief Best concluded that after fully assessing all the evidence in this case, reasonable minds could disagree about whether the Named Employee engaged in intentional and material dishonesty during his OPA interview. Chief Best changed the finding to Not Sustained (Inconclusive) for *Standards and Duties: Employees Shall Be Truthful and Complete in All Communication*.

See attached letter from Chief Best regarding her findings of this case.