

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

DECISION BY FINAL REVIEW PANEL

Complaint No.:	14-0078
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment by Physically Threatening Language
Final Review Panel Members:	Meaghan H. Davant, Laurie S. Kohn, Arthur Sidney
Decision Date:	November 30, 2015

Pursuant to D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2121.1, the Chief of Police of the Metropolitan Police Department (MPD) [the D.C. Housing Authority Office of Public Safety (DCHA OPS)] has returned the Merits Determination issued in this matter on July 28, 2015, for review by a final review panel.

This Final Review Panel was convened by the Office of Police Complaints (OPC), and issues this decision in accordance with D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2121.3.

I. SUMMARY OF COMPLAINT EXAMINER DECISION

On July 28, 2015, the Complaint Examiner reviewing this complaint issued Findings of Fact and a Merits Determination and reached the following conclusion(s) regarding the allegation(s) in the complaint:

Allegation 1: Sustained.

II. STANDARD OF REVIEW

Under District law, a final review panel is charged with reviewing the record regarding a complaint, and without taking any additional evidence, issuing a written decision, with supporting reasons, regarding the correctness of the merits determination issued for the

complaint to the extent that the Police Chief has concluded that it erroneously sustained one or more allegations. D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2121.3. The final review panel “shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record.” D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2121.4.

III. ANALYSIS AND DISCUSSION

The final review panel (“Panel”) reviewed the June 5, 2015 Report of Investigation and attached exhibits, the Merits Determination of the Complaint Examiner filed July 28, 2015, and the October 8, 2015 letter from Police Chief Cathy L. Lanier (“Chief Lanier”).

This panel was convened in response to Chief Lanier’s request, pursuant to her October 8 letter, to review one of the two grounds for the allegation of harassment¹ against SUBJECT OFFICER. Specifically, Chief Lanier objected to the determination that SUBJECT OFFICER harassed COMPLAINANT by physically threatening to “knock [him] out.” *Id.*

The Panel concludes that the allegation that SUBJECT OFFICER physically threatened COMPLAINANT misapprehends the record before the original complaint examiner and is unsupported by substantial, reliable, and probative evidence in the record. The Panel reverses the Complaint Examiner’s determination of harassment, to the extent such finding was based upon physically threatening language in violation of D.C. Code Section 5-1107(a), MPD General Order 201.26 and OPC’s internal regulations, D.C. Mun. Regs. Tit. 6A, § 2199.1 (2015).

The Complaint Examiner determined that on December 18, 2013 at approximately 10:50 a.m., SUBJECT OFFICER approached COMPLAINANT and asked him to empty his pockets. COMPLAINANT complied producing, among other items, three packs of Newport cigarettes. SUBJECT OFFICER observed that the cigarettes had a state of Virginia tax stamp and asked COMPLAINANT to produce a receipt. When COMPLAINANT could not produce a receipt, SUBJECT OFFICER took the three packs of cigarettes.

SUBJECT OFFICER denied COMPLAINANT’S request to return the cigarettes and walked away. COMPLAINANT followed SUBJECT OFFICER, again asking him to return the cigarettes. According to COMPLAINANT, SUBJECT OFFICER then said words to the effect, “don’t walk up on me like that again or I’ll knock you out.”

¹ Chief Lanier did not request review of the determination that SUBJECT OFFICER unlawfully harassed COMPLAINANT when SUBJECT OFFICER seized three packs of cigarettes from COMPLAINANT and failed to document the seizure. This decision does not analyze that determination.

D. C. Code § 5-1111(h) states, in pertinent part:

[W]ritten findings of fact and determinations by the complaint examiner (collectively, the ‘merits determination’) may not be rejected unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.

The Complaint Examiner found COMPLAINANT credible for a number of reasons. First, the Complaint Examiner noted that COMPLAINANT filed the complaint with OPC almost immediately after the event occurred. The Complaint Examiner thereby inferred that SUBJECT OFFICER made the harassing comment from the fact that COMPLAINANT filed the complaint right away, adding that it showed how upset COMPLAINANT must have been by the alleged comment. Second, the Complaint Examiner credited COMPLAINANT’S determination to file a formal complaint against the officer as a strong indication of his overall credibility.

However, other than COMPLAINANT’S allegation and the timing of his actions, there is no evidence in the record that SUBJECT OFFICER made physically threatening statements. Conversely, in addition to SUBJECT OFFICER’S own version of the events, there is ample evidence in the record that supports a finding that SUBJECT OFFICER never uttered any threatening statements. Indeed, an examination of the evidence before the Complaint Examiner cannot support a finding that SUBJECT OFFICER made physically threatening statements and any conclusion to the contrary clearly misapprehends the record and is not based upon substantial, reliable, and probative evidence.

In his October 23, 2014 statement, SUBJECT OFFICER explicitly denied the allegation, stating, “I have never threatened to “[k]nock out” COMPLAINANT,” and adding, “COMPLAINANT is an older gentleman and I believe he has an eye injury. I also do not conduct myself in a manner that I’m threatening individuals.” *Merits Det.*, Ex. 4.

WITNESS OFFICER #1, was also at the scene on December 18, 2013. In his February 24, 2015 statement, WITNESS OFFICER #1 said that while he “recall[ed] COMPLAINANT making loud and boisterous accusations towards [SUBJECT OFFICER],” that SUBJECT OFFICER “did not make *any comments* regarding [COMPLAINANTS’] accusations” (emphasis added), that SUBJECT OFFICER had taken his cigarettes unlawfully. *Id.*, Ex. 5. WITNESS OFFICER #1 also stated that he “did not hear [SUBJECT OFFICER] threaten COMPLAINANT.” *Id.*

The Panel holds that there is insufficient evidence in the record to support a finding that SUBJECT OFFICER made any physically threatening statements to COMPLAINANT. The Complaint Examiner’s decision is not supported by substantial, reliable, and probative evidence as required under D. C. Code § 5-1111. Thereby, the finding of harassment based upon

physically threatening language can only be based upon a clear misapprehension of the record, and is reversed.

IV. SUMMARY OF FINAL REVIEW PANEL DECISION

SUBJECT OFFICER

Merits Determination issued on July 28, 2015.

Merits Determination Conclusion Regarding Allegation 1: Harassment by Physically Threatening Language	Reversed.
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Submitted on November 30, 2015.

Meaghan H. Davant
Complaint Examiner

Laurie S. Kohn
Complaint Examiner

Arthur Sidney
Complaint Examiner