

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

DECISION BY FINAL REVIEW PANEL

Complaint No.:	16-0020
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Final Review Panel Members:	Meaghan Davant, Danielle Davis, Adav Noti
Decision Date:	February 22, 2017

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) has returned the Merits Determination issued in this matter on September 6, 2016, 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 September 6, 2016, 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 July 25, 2016 Report of Investigation and attached exhibits and the Merits Determination of the Complaint Examiner filed September 6, 2016.

The Complaint Examiner determined that on October 3, 2015 at approximately 4:45 p.m., Complainant was driving his taxi when he was pulled over by Subject Officer. The Complaint Examiner further found—based on the credible and consistent testimony of both the Complainant and the Subject Officer—that the dome light of Complainant’s vehicle was not on, or illuminated, at the time of the traffic stop, and that two children’s booster seats were present and visible in the back seat of the car. Finally, the Complaint Examiner found that, while Complainant made three failed attempts to produce a valid insurance card during the stop, he ultimately produced valid proof of insurance within several minutes of the Subject Officer’s initial request.

As a result of the traffic stop, Subject Officer issued two separate traffic citations to Complainant for: (1) failing to have his taxi dome light illuminated and (2) failing to comply with a lawful order to readily produce valid insurance information.¹

In the Merits Determination of the Complaint Examiner filed September 6, 2016, the Complaint Examiner found that, with respect to Complainant’s failure to have his dome light illuminated, that the “overwhelming evidence”—including the presence of the children’s booster seats—supported the conclusion that Complainant was off duty. On these grounds, and based on the fact that “[Subject Officer] did not challenge [Complainant]’s claim that he was off duty and using the vehicle for his personal use,” “[b]eyond the failure to produce a manifest,” the Complaint Examiner held that the Subject Officer harassed Complainant by issuing a traffic violation for failing to illuminate his dome light.

Similarly, with respect to the second traffic citation for failure to comply with a lawful order, in this case to produce proof of insurance, the Complaint Examiner found that it was an “unfounded leap” for Subject Officer “to conclude that two or three minutes of active searching constitutes failure to obey,” and that the Subject Officer had therefore harassed Complainant by issuing that citation.

¹ Complainant also alleged that the Subject Officer harassed him by issuing two unwarranted traffic citations for stopping in a traffic zone marked “No Standing Anytime,” and for “Failure to Provide Manifest.” Complainant also alleged that the Subject Officer used language or engaged in conduct that was insulting, demeaning or humiliating in violating of D.C. Code § 5-1108(1). These violations were, however, dismissed as part of the original Report of Investigation made by the OPC and pursuant to a concurrent determination made by the OPC’s executive director, and were not included in the September 6, 2016 Merits Determination. This decision, thereby, does not analyze those allegations.

The Panel hereby reviews the Complaint Examiner's findings to determine whether such findings clearly misapprehended the record before him or her and/or were not supported by substantial, reliable and probative evidence therein as follows:

1. Subject Officer Harassed Complainant By Unlawfully Issuing a Citation for Failing to Have His Taxi Dome Light Illuminated.

Pursuant to D.C. Mun. Regs., Title 31 § 605.1(b), the dome light of a taxi must "remain on at all times when the car's engine is on," unless "the vehicle is either off-duty or being utilized for personal use." The Complaint Examiner determined that the Subject Officer harassed the Complainant by issuing him a citation for driving on duty without an illuminated dome light.

There is substantial reliable evidence in the record to support the Complaint Examiner's determination. Specifically, the undisputed evidence shows that the Complainant was off duty — and therefore not required to have his dome light illuminated — and that the Subject Officer nonetheless issued a citation for a non-illuminated dome light solely because the Complainant did not produce his taxi driver's manifest.

According to the Subject Officer, this citation was justified because, in the absence of a manifest listing him as off duty, the Complainant was "technically" on duty. The Subject Officer cites two authorities, but neither of these supports his argument. First, he cites D.C. Mun. Regs., Title 31 § 820.3, which governs taxi manifests. That regulation, however, merely requires a driver to contemporaneously record his or her off-duty status in his or her manifest. *See id.*; *see also* D.C. Mun. Regs., Title 31 § 823 (governing taxi manifests in general). Nothing in the regulation states or suggests that the absence of a manifest means that a driver is necessarily on duty (or off duty, for that matter). Indeed, to assert that an off-duty taxi driver who does not produce a manifest must be "technically" on duty is equivalent to asserting that a driver who fails to produce a valid registration must be "technically" driving a stolen car. It is not a plausible consequence of the documentation requirement.²

Second, the Subject Officer notes that he issued "these exact same citations" to another driver under similar circumstances, and he claims that an Administrative Law Judge of the D.C. Office of Administrative Hearings upheld the citations in *D.C. Taxicab Comm'n v. Rizvi*, NOI Nos. 7019740464 et al. (D.C. Office of Admin. Hrngs. Dec. 16, 2015). As the Complaint Examiner observed, however, the Subject Officer's assertion is simply incorrect: The ALJ *rejected* the dome light citation that the Subject Officer issued to the off-duty taxi driver in that

² One of the purposes of the manifest requirement is presumably to prevent taxi drivers from falsely claiming to be off-duty to decline particular passengers. Thus, if a driver accused of such a violation were unable to produce a manifest showing that he was off duty at the time in question, a reasonable inference might be drawn that the driver had declined the fare while on duty as alleged. But interpreting the absence of a manifest as *evidence* that a driver was on duty is entirely different from what the Subject Officer did here, which was to deem the absence of a manifest to have the legal *consequence* of placing the Complainant on duty, even though he undisputedly was not. The law does not establish such a consequence.

case. Subj. Officer's Obj. Ex. 1 at 1 ("[The ALJ] found Respondent not liable for . . . misuse of a dome light.").

Here, the Subject Officer effectively sought to transform the Complainant's paperwork violation (a missing manifest) into a substantive violation (driving on duty without a dome light) that the Complainant had undisputedly not committed. The penalty for failing to produce a manifest was the citation the Subject Officer properly issued to the Complainant for failing to produce a manifest.³ But the Subject Officer's additional issuance of the dome light citation, based solely on the same missing manifest, had no plausible basis in law, and the Subject Officer therefore acted with "knowing[] or reckless[]" disregard for the law in issuing it. D.C. Mun. Regs., Title 6A § 2199.1. Accordingly, the Complaint Examiner's determination that the Subject Officer harassed the Complainant by issuing the dome light citation does not clearly misapprehend the record and must be upheld pursuant to section 2121.4.⁴

2. Subject Officer Harassed Complainant by Unlawfully Issuing a Citation for Failing to Comply with a Lawful Order.

Pursuant to D.C. Mun. Regs., Title 31 § 1904.1(e), taxi cab operators must keep written proof of insurance coverage "present in the vehicle, readily accessible for inspection by a . . . police officer." Under D.C. Mun. Regs., Title 31 § 1904.1(f), "[t]he operator shall fully and timely cooperate with . . . police officers . . . during traffic stops, and during all other enforcement and compliance actions under this title and other applicable laws." A violation of this section, "shall be treated as a violation of a compliance order under § 702(g)." Pursuant to D.C. Mun. Regs., Title 31 § 702.2, a compliance order by a police officer may require a taxi cab operator to "[s]urrender, or produce for inspection and copying, a document or item related to compliance with a provision of this title or other applicable law, such as a licensing document."

Here, the Complaint Examiner determined that the Subject Officer harassed the Complainant by issuing him a citation for failure to comply with the Subject Officer's order to provide written proof of insurance coverage. There is substantial reliable evidence in the record to support the Complaint Examiner's determination. Specifically, the undisputed evidence shows that the Complainant actively searched for and ultimately provided written proof of insurance coverage within two or three minutes of the Subject Officer's initial order — and that the Subject Officer nonetheless issued a citation for "Fail[ure] to Comply With a Lawful Order," solely because the Complainant did not immediately produce his insurance card.

³ See ROI Ex. 6 (citation for missing manifest); ROI at 1 n.1 (noting OPC dismissal of Complainant's allegation that Subject Officer harassed him by issuing citation for missing manifest).

⁴ The Panel acknowledges that the reasoning above differs in some respects from the reasoning of the Complaint Examiner. In particular, the Panel does not concur with the Complaint Examiner's finding that the issuance of the dome light citation was unlawful regardless of whether the Subject Officer was correct that the Complainant "remained technically on duty." If indeed the applicable regulations established that the Complainant was on duty — "technically" or otherwise — the dome light citation would have been lawful under section 605.1. But as noted above, that is not what the regulations provide, and so we uphold the determination of harassment.

According to the Subject Officer, this citation was justified because Complainant was required to have his insurance card readily available. Instead, Complainant handed the Subject Officer three expired insurance cards before he finally produced an unexpired insurance card. In support of his argument, the Subject Officer cites two authorities, neither of which are persuasive. First, the Subject Officer cites Section 1904.1, which requires an operator to: (1) keep written proof of insurance coverage in his vehicle and readily accessible for inspection; and (2) timely cooperate with police officers during traffic stops. However, it is clear from the record that Complainant had written proof of insurance in his vehicle. Moreover, Complainant immediately followed the Subject Officer's order – and except for a 30 to 45 second break, during which the Subject Officer inspected Complainant's vehicle – actively searched for and ultimately produced valid proof of insurance. This substantial reliable evidence amply supports the Complaint Examiner's determination that the Complainant fully complied with the Subject Officer's order, and therefore that the Subject Officer harassed the Complainant by issuing him a citation for failure to comply.

Second, in his written objections, the Subject Officer cites to *D.C. Taxicab Comm'n v. Rizvi*, in which an Administrative Law Judge found that the Subject Officer correctly issued a "failure to obey an officer" citation to a taxi cab operator who failed to obey "six distinct orders to produce credentials." The instant matter, however, is distinguishable in that nothing in the record supports the conclusion that Complainant failed to act or obey. Indeed, while the Subject Officer asserts that he made five requests for Complainant's proof of insurance, he concedes that Complainant began searching for his insurance card *immediately* after the Subject Officer's initial order, and actively searched for an unexpired insurance card until he produced one two or three minutes later. As such, *D.C. Taxicab Comm'n v. Rizvi* is inapplicable.

The Panel thereby concludes that the allegations that the Subject Officer harassed Complainant by issuing unlawful traffic citations are supported by substantial, reliable, and probative evidence in the record. The Panel thereby upholds the Complaint Examiner's determination of harassment, to the extent such finding was based upon D.C. Code Section 5-1111, MPD General Order 201.26 and OPC's internal regulations, D.C. Mun. Regs., Title 6A, § 2199.1 (2015).

IV. SUMMARY OF FINAL REVIEW PANEL DECISION

Subject Officer

Merits Determination issued on September 6, 2016.

Merits Determination Conclusion Regarding Allegation 1: Harassment	Upheld.
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Submitted on February 22, 2017

Meaghan Davant
Complaint Examiner

Danielle Davis
Complaint Examiner

Adav Noti
Complaint Examiner