

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

FINDINGS OF FACT AND MERITS DETERMINATION

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|-------------------------------------------------|-----------------------------------------|
| Complaint Nos.: | 23-0707 & 23-0857 |
| Complainant: | COMPLAINANT |
| Subject Officer(s), Badge No., District: | SUBJECT OFFICER |
| Allegation 1: | Language or Conduct – Demeanor or Tone |
| Allegation 2: | Language or Conduct – Gesture or Action |
| Allegation 3: | Retaliation |
| Complaint Examiner: | Adav Noti |
| Merits Determination Date: | April 4, 2024 |

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by § 5-1107(a). This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT alleges that on July 12, 2023, SUBJECT OFFICER used language or engaged in conduct toward her that was insulting, demeaning, or humiliating, and that SUBJECT OFFICER retaliated against COMPLAINANT by contacting COMPLAINANT’s employer.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC’s Report of Investigation, the objections submitted by SUBJECT OFFICER on February 29, 2024, and OPC’s response to the objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on February 29, 2024, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 12, 2023, SUBJECT OFFICER and WITNESS OFFICER responded to a call regarding a car crash in a parking lot outside a medical facility in the District.
2. Upon SUBJECT OFFICER's arrival on the scene, COMPLAINANT was discussing the situation with WITNESS OFFICER. In the process of that discussion, COMPLAINANT stated that her parked car had been hit by a car whose driver had then walked into the medical facility and appeared to be an employee there. COMPLAINANT suggested that the other driver might be under the influence of alcohol or drugs.
3. SUBJECT OFFICER challenged COMPLAINANT's suggestion about the other driver's supposed intoxication, noting that this was a serious allegation to make with no evidence over what appeared to be a minor incident.
4. COMPLAINANT and SUBJECT OFFICER engaged in an increasingly heated back-and-forth for approximately 10 minutes. COMPLAINANT stated repeatedly that she might file a complaint against the other driver for allegedly being intoxicated while working in a medical facility. SUBJECT OFFICER angrily responded multiple times that COMPLAINANT was making false allegations.
5. At two points during this exchange, COMPLAINANT also mentioned potentially filing a complaint for how she was being "treated" by SUBJECT OFFICER.
6. Approximately 9 minutes into the argument, when COMPLAINANT yet again mentioned filing a complaint against the other driver, SUBJECT OFFICER aggressively clapped her hands at COMPLAINANT in close physical proximity to her and yelled at her sarcastically, "Feel free! File your complaint, thank you! Jesus!"
7. Less than an hour later, SUBJECT OFFICER sent an email to the HR department of COMPLAINANT's employer alleging that COMPLAINANT had been "very unprofessional and disrespectful while speaking with officers" regarding the car incident. This email resulted in COMPLAINANT subsequently being suspended from her job for three days.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority to adjudicate “a citizen complaint against a member or members of the MPD . . . that alleges abuse or misuse of police powers by such member or members, including “(1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

A. Language or Conduct

According to MPD General Order 201.26, Part V, Section C, “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

SUBJECT OFFICER engaged in a prolonged, contentious back-and-forth with COMPLAINANT. While this exchange was unnecessary and not a model of courtesy, much of it fell within the bounds of permissibility. However, SUBJECT OFFICER exceeded that boundary when she sarcastically clapped her hands several times at, and in close proximity to, COMPLAINANT and yelled, “Feel free! File your complaint, thank you! Jesus!” Both the applause and the aggressively loud encouragement to file a complaint that SUBJECT OFFICER believed was meritless were undeniably sarcastic. This conduct therefore violated the general order’s ban on “sarcastic or insolent language” and the requirement to “remain[] calm regardless of provocation.”

In her response to the ROI, SUBJECT OFFICER argues that she raised her voice and clapped her hands “to gain control of the situation.” This assertion is unsupported by the evidence, which shows that COMPLAINANT was peaceful and nonthreatening throughout the interaction, and no control needed to be gained over her. SUBJECT OFFICER’s response is also unpersuasive because the video footage demonstrates that SUBJECT OFFICER herself repeatedly prolonged and exacerbated the encounter by choosing to heatedly debate with COMPLAINANT, instead of simply processing the paperwork for the car incident (as WITNESS OFFICER on the scene did, politely and efficiently). In other words, SUBJECT OFFICER’s escalating actions demonstrated a lack of control over her own conduct, not any need to control COMPLAINANT.

The allegation that SUBJECT OFFICER used demeaning or sarcastic language and conduct is accordingly sustained.

B. Retaliation

The regulations governing OPC define retaliation as “[a]ction that discriminates against a person for making or attempting to make a complaint pursuant to the [OPC Statute], including action taken against a person because he or she has opposed any practice made unlawful by this [Statute] or because he or she has made a complaint or expressed an intention to file a complaint, testified, assisted, or participated in any manner in an investigation, mediation, conciliation, complaint examination or other proceeding under this [Statute].” D.C. Mun. Regs. tit. 6A, § 2199.1. MPD General Order 120.25 defines retaliation in a similar fashion.

There is no dispute that SUBJECT OFFICER sent an email to COMPLAINANT’s employer alleging that COMPLAINANT’s conduct had been “unprofessional and disrespectful.” There is also no dispute that COMPLAINANT had committed no crime, had not been arrested, and was not under police investigation. Accordingly, SUBJECT OFFICER likely committed misconduct in the form of harassing COMPLAINANT. *See* OPC Case No. 22-0377 (finding harassment where a different subject officer “call[ed] the employer of a civilian whom she had not arrested to report that he had engaged in conduct that was not illegal”).

However, the allegation presented to the Complaint Examiner in this case is not for harassment, but for retaliation, and the Complaint Examiner has no authority to amend the nature of the allegation.

Retaliation consists of an officer taking discriminatory action in response to the complainant “express[ing] an intention to file a complaint ... or other proceeding under this [OPC statute].” COMPLAINANT here stated many times her intention to file a “complaint,” which the ROI generally interprets to be references to filing a complaint against SUBJECT OFFICER. But the video evidence demonstrates that nearly every time COMPLAINANT mentioned filing a complaint, she was indicating her intent to file a complaint against the other driver, not SUBJECT OFFICER. It was this putative complaint—i.e., COMPLAINANT’s insistence that the other driver might have been intoxicated—that led to the escalating debate and ultimately to SUBJECT OFFICER’s characterization of COMPLAINANT to her employer as “unprofessional and disrespectful.”

At two points during their interaction, COMPLAINANT also referred to potentially filing a complaint against SUBJECT OFFICER, but those references do not appear to have generated any particular reaction from SUBJECT OFFICER. There was no change in SUBJECT OFFICER’s demeanor, tone, or language in response to those two statements, in contrast to her heated reactions to COMPLAINANT’s statements regarding filing a complaint against the other driver. While it is certainly *possible* that SUBJECT OFFICER contacted COMPLAINANT’s

employer in response (at least in part) to COMPLAINANT's statements regarding a complaint against SUBJECT OFFICER, it is at least equally possible, if not more so, that SUBJECT OFFICER acted out of the anger she repeatedly expressed regarding COMPLAINANT's allegations against the other driver.

Accordingly, I find that the record in this matter is insufficient to demonstrate by a preponderance of the evidence that SUBJECT OFFICER retaliated against COMPLAINANT within the meaning of section 2199.1.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

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|--------------------------------------------------------------|--------------------|
| Allegation 1: Language or Conduct – Demeanor or Tone | Sustained |
| Allegation 2: Language or Conduct – Gesture or Action | Sustained |
| Allegation 3: Retaliation | Insufficient Facts |

Submitted on April 4, 2024.

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Complaint Examiner