

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1888
Deputy Sgt.)	
Brian A. Acevedo)	
Star # 1030)	

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on September 8 and October 6, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Brian A. Acevedo, hereinafter Respondent, was appointed a Deputy Sheriff on August 21, 2006, and was promoted to Deputy Sgt. on October 10, 2010. Respondent's position as a Deputy Sgt. involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq.*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Comminssioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.")).

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The original Complaint in this matter was filed with the Merit Board's administrative staff on March 25, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on July 26, 2017 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on March 25, 2016. The Sheriff is requesting a 60 suspension.

On August 21, 2006, Respondent was appointed a Deputy Sheriff. On October 10, 2010 Respondent was promoted to Deputy Sgt. On November 27, 2012, Respondent was assigned to George Leighton Criminal Court Building 2650 South California Ave. Chicago, Illinois 60608.

Investigator [REDACTED] has been with OPR since 2013. (R. 70) This matter began after a grievance from detainee [REDACTED]. (R. 73) He reviewed all the documents and statements and the video pertaining to this incident. (R. 73-74) Exhibit 4 is the video and was entered into evidence and reviewed during the hearing. (R. 77) During his investigations he compares the conduct and tactics used in comparison with the use of force model. (R. 84) Investigator [REDACTED] found it problematic that Officer [REDACTED] escalated the situation by pushing the detainee's head into the wall causing the detainee to push off the wall. The investigator had concerns regarding the report authored by Officer [REDACTED] where he reports that he had the detainee by the shoulders and took the detainee down to the ground by his arms, which is not consistent with the video. Investigator identifies at 12:44:24 Officer [REDACTED] and Sgt. Acevedo as being in the room and witnessing the occurrence. (R. 94) Officer [REDACTED] is approximately an arm's length away when the takedown occurs. (R. 96) Investigator [REDACTED] interviewed [REDACTED] regarding his incident report and what he witnessed. (R. 99) [REDACTED] stood by his report and did not think that Officer [REDACTED]'s arm was around the neck area of detainee [REDACTED]. Investigator [REDACTED] further identified Sgt. Acevedo on the video located next to a metal mesh door. (R. 103) In the video at 12:45:41 Sgt. Acevedo turns to the right to look at the door (R. 105) In the video, it is seen that Sgt. Acevedo leaves while keys are unattended and unsecured in the door. (R. 106) At 12:45:56 of the incident, Sgt. Acevedo is watching the incident take place in the hallway. (R. 107) In the video at 12:46:53 it can be seen that Sgt. Acevedo is leaving the scene of a use of force incident. (R. 110) Investigator [REDACTED] concludes that Sgt. Acevedo should have completed a witness statement pursuant to policy. (R. 112) Sgt. Acevedo appeared for an OPR interview and was given all the proper notifications and rights. (R. 113-114) Investigator [REDACTED] determined that Sgt. Acevedo did not report a use of force that

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he witnessed. (R. 117) Sgt. Acevedo saw there was an incident going on and had a duty to investigate and not leave the scene. (R. 162) It was Sgt. Acevedo's job as a supervisor to come out to the scene and investigate and not rely on the officers alone. (R. 164) A separate incident involving Deputy [REDACTED] at the same time is also in the view of Sgt. Acevedo. (R. 165) Sgt. Acevedo, during his interview, stated that he was not present for the entire incident (R. 171-173) The video shows that Sgt. Acevedo allowed Deputy [REDACTED] to leave the key and lock unattended. (R. 181)

[REDACTED] has been a deputy sheriff for 13 years and always working in the Criminal Courts Building. (R. 215) [REDACTED] admits that he put his hand on the back of the detainee's head. (R. 223) At 12:45 of the video, [REDACTED] says detainee [REDACTED] is still in line with the other inmates even though he is talking. (R. 262) He says that in the video it shows that the detainee was walking toward the holding cell and it was [REDACTED] said something to the detainee that made him stop and start the altercation. (R. 263) [REDACTED] thought he was threatened but he did not call for backup or notify any of the other officers in the surrounding area. (R. 267). (R. 274) He says that at 12:45:33 he does not need assistance from other officers and does not ask for backup. (R. 275) He agrees that the left side of the face of the detainee is against the wall. (R. 275) He says that he does not ask Officer [REDACTED], who can be seen in the video, to assist him (R. 276) [REDACTED] admits that he was familiar and trained with the Sheriff's use of force policy.

Deputy [REDACTED] heard yelling and screaming coming from the lock up area and that he went over from behind his desk to investigate. (R. 296) [REDACTED] says that he witnessed the incident. (R. 299) Respondent [REDACTED] agrees that if he sees the use of force and excessive force he is required to complete a witness statement. (R. 300) [REDACTED] admits he was trained on use of force policies and use of force reporting. (R. 314) [REDACTED] identifies himself as being present at 12:44:57 (R. 318) He sees the altercation between Respondent [REDACTED] and detainee. (R. 319) Upon reviewing the video again at the hearing, the he again testifies that the arm of Deputy [REDACTED] was not around the neck of the detainee. (R. 326)

Respondent Acevedo has been with the Cook County Sheriff's Office since 2006 and is currently a Sergeant and the lock up supervisor in the Skokie Courthouse. (R. 330) He is responsible to supervise all duties of the lock up, maintaining safe and secure area for the deputies that work underneath him and provide guidance for all the deputies in their job performance. (R. 330) At the time of this incident in February 2015, he was assigned to 26th & California Criminal Courts Building where he was a supervisor. (R. 331) Respondent Acevedo identified himself on the video at 12:44:57. (R. 33) Respondent says that even when he is busy with paperwork he keeps his head on a swivel and looks up to see what is going on. (R. 336) Respondent Sgt. Acevedo says that the video shows at 12:45:25 that Deputy [REDACTED] takes a set of keys out of the desk (R. 337) Respondent admits that the key is left in the door when [REDACTED] walks down away from the door (R. 339) Respondent says that he did hear a scuffle that there was something going on in the area where the incident with the inmate and Officer [REDACTED] took place. (R. 340) Respondent admits that the video at 12:45:53 shows that he is standing and looking down the hallway and that something has drawn to his attention. (R. 341)

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Respondent says that at 12:46:27 on the video he stands up and believes he was about to make a call to the lieutenant because he had knew something had "gone down." (R. 341-342) Respondent believed there "probably" was a use of force. (R. 342) Respondent called Lt. [REDACTED] after the incident and said that they had a use of force situation in the lock up. (R. 343) Respondent admits that as a Sergeant it is his duty to lead and to supervise and support his fellow officers. (R. 351-352) Respondent agrees that it is his job to be aware of things that could affect the operations of the jail and be aware when the use of force incidents occur because they can impact the operation. R.352) Respondent admits he was close by this incident when it occurred. (R. 352) Respondent knew something was going on. (R. 352) Respondent Acevedo says that he was sitting directly across the desk from Deputy [REDACTED]. (R. 354) Respondent Acevedo admits that [REDACTED] testified that he heard something and got up and went over to the incident. (R. 354) Respondent states that the reason he stayed behind was because there was a detainee in the room handcuffed to the bench. (R.354) Respondent might have been able to have delegated the responsibility to watch the detainee who is handcuffed to the bench to a lower ranking officer and gone over to assist with the incident with Respondent [REDACTED] and the detainee. (R. 355) Respondent states that he does not give any orders and does not ask what is going on to any of the officers during the incident with Respondent [REDACTED]. (R. 357) Respondent says that there were two incidents going on while he had been doing paperwork and stood to make a phone call in a different room even though he had a phone at his desk. (R. 358-359) Respondent states that there was a heated discussion going on between the detainee and [REDACTED] and he left the room. (R. 359) Respondent admits that the fact the keys were in a drawer and had to be pulled out to be used would have been a violation of policy. (R. 363)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that Respondent did not violate Sheriff's Department Rules and Regulations, General Order 11.2.1.0, 11.2.2.0, 11.2.20.0, 24.9.1.0, 11.2.20.1, Court Services General Order 3504 or Sheriff's Merit Board Rules and Regulations Article X Paragraph B.

This is an incident in which Respondent, a Sheriff's Deputy Sgt., was on duty when an altercation involving Sheriff Deputy [REDACTED] and an inmate occurred. At the same time, another incident involving another officer was occurring. The Respondent was aware of at least some portion of the incident involving [REDACTED], however Officer [REDACTED] had already responded to the incident and there was no indication that the Sgt. would be needed for any further backup, and the Respondent was not present in the immediate area where the incident was taking place. Further, a detained inmate was handcuffed and the Respondent did not want to leave him unattended. While the videotape does indicate that keys were left in the door lock, by Ofc. [REDACTED], under the circumstances with two active incidents taking place, it cannot be said that the failure to secure the keys was a violation, and no harm resulted from it. The Respondent did

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report the incident to his Lieutenant. The evidence shows that the Respondent approved the proper reporting paperwork in regard to the incident.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Sgt. Brian A. Acevedo be found not to have violated any of the Rules and Regulations or General Orders of the Sheriff's Department or the Cook County Sheriff's Merit Board effective March 25, 2016.

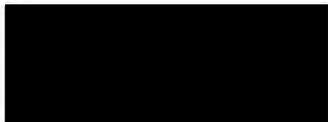
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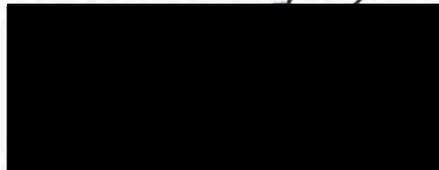
James P. Nally, Chairman



Byron Brazier, Vice-Chairman



John D'Alcandro, Secretary



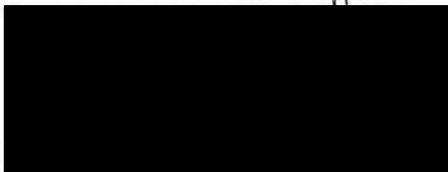
Kim R. Widup, Board Member



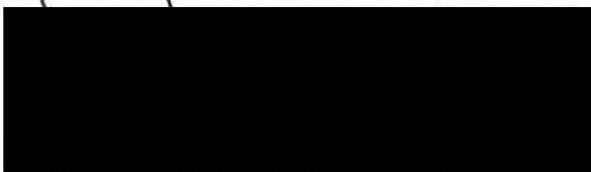
Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date 12/21/18