

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1804**
Correctional Officer)
Joseph Fabian)
Star # 8820)

DECISION

This matter coming on to be heard pursuant to notice before Vincent T. Winters, Board Member, on March 28, 2017, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Joseph Fabian, hereinafter Respondent, was appointed a Correctional officer on April 17, 2006. Respondent's position as a Correctional Officer 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. Commisssioners 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.")).

The original Complaint in this matter was filed with the Merit Board's administrative staff on March 16, 2015. Regardless of whether or not Merit Board Members were properly

Docket No. 1804
Correctional Officer
Joseph Fabian
Star # 8820

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 March 16, 2015 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 16, 2015. The Sheriff is requesting termination.

On April 17, 2006, Respondent was appointed a Correctional Officer. On October 28, 2012 Respondent was assigned to Cermak/ Division X of the Cook County Department of Corrections ("CCDOC"), located at 2950 S. California Avenue, Chicago, Illinois 60608. On December 12, 2012 Respondent was involved in a use of force incident involving detainee [REDACTED]. (Tr. 69)

The Sheriff called [REDACTED], who is employed at the University of Tennessee, County Technical Assistant Services and Jail Management Consultant. [REDACTED] testified that he reviewed all of the Sheriff's documents including statements, use of force reports, video, Sheriff's Orders, Policies and Procedures as well as the OPR Investigative Report. (R. 12). Sheriff and Respondent stipulated to Sheriff's exhibit 2, which is the video of the incident. (R. 13). Both parties also stipulated to the parties identified in the video. (R. 15). [REDACTED] testified that in his opinion between 5:40 to 5:51 the Respondent kicked the detainee in the vicinity of the shoulder/head area. (R. 16). The video clearly shows that the detainee was handcuffed, lying face down on the bed and was physically restrained by the Respondent. (R. 16). [REDACTED] also testified that while looking at the resistance/ use of force document report, which was completed by the Respondent, there was no documentation of the strike with the foot to the shoulder/head area of the detainee. (R. 19). [REDACTED] testified that he believed that the Respondent violated General Order 11.2.1.0 and 11.2.2.0 because of the kick to a handcuffed, restrained subject as well as not reporting the kick in his report. (R. 16, 19, 20).

[REDACTED], testified that on December 12, 2012 he was working with the Sheriff's Office and was involved in an incident with a detainee named [REDACTED] at the Cermak Hospital. (R. 49). Cobbs testified that he recalled that detainee [REDACTED] was agitated and that he was hit by [REDACTED]. (R. 49). He also testified that he saw the video and provided testimony to OPR but that he did not have an independent recollection of seeing the Respondent's foot strike the detainee. (R. 50, 53). [REDACTED] then testified that detainee [REDACTED] was not resisting at that time and if he did spit it should have been in the report. (R. 55, 56).

Respondent Fabian testified that he has been employed with the Cook County Sheriff's Department for 11 years and that he marked the box in his report that detainee [REDACTED] was a non-

Docket No. 1804
Correctional Officer
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Star # 8820

moving resister and that nowhere in his narrative did he write that he had kicked detainee [REDACTED]. (R. 63, 64, 66). Respondent testified that he reviewed the portion of the video that depicts him kicking the detainee and said that he believed that he was readjusting his foot and that the sound was not him kicking the detainee but kicking the bottom of the bed. (R. 67, 71). Respondent testified that he read the OPR report and nowhere did it talk about getting his foot tangled in his sheet nor was there anything in his resistance/ use of force documentation. (R. 81). Respondent also testified that at the time in question on the video, between 5:40- 5:51, the detainee was not actively resisting nor was he spitting. (R. 82).

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 violated the Cook County Sheriff's Department Rules and Regulations, General Order #11.2.1.0 Response to Resistance/Use of Force; General Order 11.2.2.0 Response to Resistance/ Use of Force Duties, Notifications and Reporting Procedures; General Order 3.8 Ethics and Standards of Conduct; General Order 4.1 Internal Investigations; General Order 24.9.1.0 Reporting Incidents; Sheriff's Order 11.2.20.0 Rules of Conduct; and Cook County Sheriff's Department Merit Board Rules and regulations, Article X, Paragraph B.

Order:

Wherefore, based on the foregoing, it is hereby ordered that Respond Joseph Fabian be terminated from the Cook County Sheriff's Office effective March 16, 2015.

MB1804 Joseph Fabian
Correctional Officer
Star #8820

[Redacted]

James P. Nally, Chairman

[Redacted]

Byron Brazier, Vice-Chairman

[Redacted]

John Galicandro, Secretary

[Redacted]

Kim R. Widup, Board Member

[Redacted]

Vincent T. Winters, Board Member

[Redacted]

Juan L. Baltierres, Board Member

[Redacted]

Patrick M. Brady, Board Member

[Redacted]

Kimberly Pate Godden, Board Member

Date July 2, 2019