

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1880**
Correctional Officer)
David F. Beltran)
Star # 16360)

DECISION

This matter coming on to be heard pursuant to notice before Vincent T. Winters, Board Member, on May 12, 2017, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

David Beltran, hereinafter Respondent, was appointed a Correctional officer on November 9, 2009. 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. 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.")).

The original Complaint in this matter was filed with the Merit Board's administrative staff on February 26, 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

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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 February 26, 2016 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 February 26, 2016. The Sheriff is requesting termination.

On November 9, 2009, Respondent was appointed a Correctional Officer. On April 19, 2010 Respondent was assigned to Division IX of the Cook County Department of Corrections ("CCDOC"), located at 2834 W. 31st, Chicago, Illinois 60608. On December 20, 2013 Respondent was involved in a use of force incident involving detainee [REDACTED]. (R. 25-26)

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 the OPR file, the investigation, the video and the Sheriff's Orders. (R. 18). [REDACTED] testified that the Respondent's actions up until 1:10 in the video were appropriate but that at 1:27, in the video, the detainee was subdued and was a non-moving resister. (R. 23, 25). Between 1:28 and 1:33 on the video Respondent gave 3 knee strikes to the side of the detainee even though the detainee is under control and his hands are behind his back. (R. 26, 27, 28). Between 1:32 and 1:43 the Respondent makes an additional 5 knee strikes to the side of the detainee. (R. 28). [REDACTED] testified that he concluded that the Respondent used excessive force based on the Desmedt model and the Sheriff's Office General Orders. (R. 33). [REDACTED] also testified that the Respondent's report was inconsistent with the other reports of witnesses where he indicated that the detainee continued to fight and resist. (R. 35).

The Sheriff called [REDACTED], who had been with the Cook County Sheriff's Department for many years and was the Executive Director of the Use of Force Unit. (R. 56-57). [REDACTED] testified that he is responsible for the review of all use of force incidents as well as reporting of them by officers. (R. 58). [REDACTED] testified that after he reviewed the incident from December 13, 2013, involving the Respondent, he recommended that the case move forward to OPR. (R. 59). [REDACTED]'s investigation revealed a discrepancy between what the report stated and what he saw on the video; he saw that the Respondent had control over the detainee although the reports indicated that they still did not have control when additional knee strikes were made. (R. 70-74).

The Sheriff called [REDACTED] who was on leave as an investigator for the Cook County Sheriff's Office. (R. 82). [REDACTED] testified that he worked for 3 ½ years in the OPR Department and was part of the Use of Force Task Force. (R. 84). [REDACTED] testified that he found that the

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Respondent did not note in his report that he continued to strike detainee [REDACTED] with his knee once he was on the ground and under control. (R. 89). [REDACTED] found that excessive knee strikes after restraining the right arm and failing to report using excessive force were violations of the Sheriff's Order 11.2.1.0 and Merit Board Article X. (R. 96). By the 1:39 time stamp on the video, [REDACTED] found several excessive force issues including the Respondent's initial knee strike as well as his reporting as he fails to identify why those strikes were necessary. (R. 111).

Respondent testified that he was trained in the Desmedt model of use of force and that he was able to hold the detainee's right hand from underneath his body and gain control. R. (256, 271). Respondent testified that the video shows that he had control of the detainee's hand toward the back of his left hip and that his fellow officer had control of the detainee's other hand and arm. R. (272). Respondent also testified that he continued to administer knee strikes to the shoulder area of the detainee even after he had control of his hand and arm. R. (272-273).

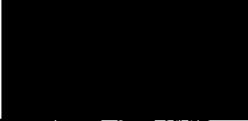
Conclusion

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; 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 David Beltran be terminated from the Cook County Sheriff's Office effective February 27, 2016.

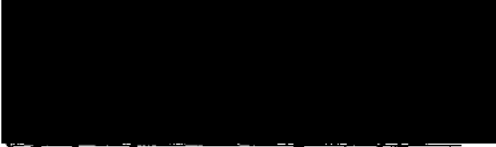
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Juan L. Baltierres, Board Member


Kimberly Pate Godden, Board Member

Date July 18, 2019