

**STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD**

Sheriff of Cook County

vs.

FRANCISCO YARENA
Employee # [REDACTED]
Star # 11451

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Docket No. 2139

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on April 16, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

FRANCISCO YARENA, hereinafter "Respondent", was appointed a correctional officer on April 10, 2000. On December 4, 2016, Respondent was appointed a Deputy Sheriff. Respondent's position as a Deputy Sheriff 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.*

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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 October 31, 2018. 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 commencing the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

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Findings of Fact

The Sheriff filed a complaint on October 31, 2018. In the complaint, the Sheriff alleges that on July 17, 2017, the Respondent, while off duty, was arrested by Burbank Police and charged with Driving Under the Influence of Alcohol and Negligent Driving. In doing so, it is alleged that Respondent's actions violated the Rules and Regulations and General Orders of the Cook County Sheriff's Office and the Cook County Court Services Department. The Sheriff is requesting termination of employment.

On April 10, 2000, FRANCISCO YARENA (hereinafter referred to as "Respondent") was appointed as a correctional officer with the Cook County Sheriff's Department. On December 4, 2016, Respondent was appointed a Deputy Sheriff. On January 17, 2017, the Respondent was assigned to the Courtroom Services Division, George M. Leighton Criminal Courts Building, located at 2650 South California, Chicago, Illinois 60623.

On or about July 17, 2017, the Office of Professional Review (hereinafter referred to as "OPR") received a complaint, by way of a Burbank Police Department Arrest Report indicating that the Respondent had been arrested (Tr. 37 thru 38).

Investigator [REDACTED] (hereinafter referred to as "Investigator [REDACTED]") testified that he has been with the Office of Professional Review for approximately six years at the time of the hearing and prior to that he was a physical scientist for the FBI. (R. 36) His responsibilities are to investigate any complaint or allegation assigned to him against any employee of the Cook County Sheriff's Office. (R. 37) Complaint registers are filed and randomly assigned by the Director. (R. 37) He obtains documents and interviews witnesses as part of his investigation. (R. 37) He recalls reviewing the Respondent's arrest report and incident report submitted to him by

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Investigator [REDACTED]. (R. 37, 38) The Complaint originally in this case came through the Burbank Police arrest report. (R. 38) Investigator presented Sheriff's Exhibit 1 from his investigation which he reviewed along with Sheriff's Exhibit 2. (R. 39) Investigator [REDACTED] also presented Sheriff's Exhibit 3 which contained court documents regarding Respondent's court dates for the incident. (R. 39, 40) Investigator [REDACTED] testified that the Respondent pled guilty to Driving Under the Influence and was sentenced to conditional discharge. (R. 40, 41) As part of his sentence, Respondent was ordered to do drug and alcohol evaluation, perform 240 hours of community service and other conditions for his discharge. (R. 41) Respondent had to have a breathalyzer installed in his vehicle. (R. 41) Respondent's administrative rights were provided to the Respondent prior to his interview. (R. 42, 43) The Respondent signed all the documents and had no questions and stated he understood them all. (R. 43) The interview was memorialized in a summary and provided to the Respondent. (R. 44) The interview was played for the hearing officer which was marked as Sheriff's Exhibit 8. (R. 44) Investigator [REDACTED] made sustained findings regarding violations of the conduct policy and the Merit Board Rules and Regulations, Article X. (R. 45) Investigator [REDACTED] highlighted that the conduct was unbecoming of an off duty officer and that the conduct reflected negatively on the Sheriff's Office. (R. 45, 46) Respondent's conduct was also criminal in nature. Investigator [REDACTED] presented Sheriff's Exhibit 7 which was entered into evidence for mitigation/ aggravation only, not as substantive evidence. (R. 57)

Police Officer [REDACTED] (hereinafter referred to as "Officer [REDACTED]") testified that he works for the Burbank Police Department and has been there for six years at the time of the hearing. (R. 6) He was working at the Burbank Police Department in July 2017 on the 2:00 to

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10:00 shift and he had occasion to respond to a traffic accident call involving the Respondent who he identified in the hearing room. (R. 7) He testified that he had prior contact and prior calls with Respondent through his police department. (R. 7) He personally has had approximately five calls to the Respondent's apartment. (R. 8) The call was for a hit and run on July 17, 2017 at 5730 W. 87th Street in Burbank at 2:40 pm in the afternoon. (R. 8) Upon arriving he observed a Black Toyota where the Respondent was in the driver's seat and there was an accident on 87th Street. (R. 9) He investigated the scene and began talking with the Respondent who did not respond immediately but was just mumbling and he could not understand him because he had incoherent speech. (R. 9) Witnesses approached him saying they had seen the accident, specifically one witness by the name of [REDACTED]. (R. 10) The witness told Officer [REDACTED] that he saw the car driven by the Respondent going westbound on 87th Street enter a small strip mall, make a sharp right turn into the strip mall and then hit two parked cars and then saw the same car exit the strip mall and go west on 87th Street. (R. 10) Officer [REDACTED] approached the Respondent and asked him what happened and talked to Respondent about hitting the cars. (R. 10) Officer [REDACTED] contacted the emergency medical personnel, as there was an injury to either leg or knee of the Respondent. (R. 11) He also observed that the Respondent's eyes were bloodshot and could smell a strong odor of alcohol on his breath. (R. 11) The Respondent was moving very slow and was mumbling like he was trying to speak but he could not be understood. (R. 11) Respondent admitted to drinking a Sprite and vodka at the time. (R. 11) Officer [REDACTED] has experience in processing DUIs and does them regularly. (R. 12) It was Officer [REDACTED]'s opinion that the Respondent was impaired at that moment, enough that Respondent should not be operating a vehicle. (R. 12) As Respondent tried getting out of his car, he fell over to his side and

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Officer [REDACTED] and the paramedics caught him before he fell over. (R. 12, 13) For his safety they were not able to do a field sobriety test. (R. 13) Respondent was transported to Christ Hospital and Officer [REDACTED] again observed Respondent trying to talk and he was unable to communicate. (R. 13, 14) Respondent fell asleep several times while Officer [REDACTED] was attempting to read him his warnings regarding the DUI processing and Officer [REDACTED] was unable to communicate with Respondent. (R. 14) Officer [REDACTED] requested that the Respondent submit to a blood or urine test to measure alcohol and Respondent refused. (R. 15) Respondent was then placed in custody for a DUI arrest. (R. 15) Officer [REDACTED] presented Sheriff's Exhibit 1, which is his police report, which was admitted into evidence. (R. 21)

Director [REDACTED] (hereinafter referred to as "Director [REDACTED]") testified that he was with the Office of Professional Review in July 2017 and at that time he was still an inspector. (R. 24) Director [REDACTED] was with the Sheriff's Office for 28 years and his duties as an inspector was to go out and de-deputize officers that were involved in ongoing investigations. (R. 25) During the process, they retrieve their star, identification, etc. (R. 25) There are various reasons for de-deputization, such as allegations of drinking, excessive force, failure to follow rules. (R. 26) Director [REDACTED] was assigned to de-deputize the Respondent on July 20, 2017 for his arrest of Driving Under the Influence and the circumstances that surrounded it. (R. 27) Director [REDACTED] presented Sheriff's Exhibit 2, which is the Offense Incident Report documenting the reasons that Director [REDACTED] was at the residence of the Respondent on the day in question. (R. 29) He testified that Respondent was home and in front of the house when he approached. (R. 30) At that time Respondent appeared incoherent and had the smell of alcohol on him. (R. 30) Respondent had slurred speech and Director [REDACTED] noticed that it was hard for Respondent to maintain his balance

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when Respondent went into his apartment. (R. 30) This incident with Respondent was approximately 2 to 3 days after his DUI arrest. (R. 30) At this time, Director [REDACTED] also took the Respondent's weapons because he felt it was the safest thing for Respondent based on Respondent's condition. (R. 32) He testified that Respondent was not just an officer but a friend and he thought it was the best thing for him. (R. 32) Director [REDACTED] testified that he felt that since Respondent had consumed alcohol and was going through personal and emotional problems it was the safest thing to do. (R. 32) He testified that the Respondent voluntarily surrendered his weapon. (R. 32)

Francisco Yarena (hereinafter after referred to as "Respondent") testified that he has worked for the Sheriff's Office for 19 years in corrections and then Court Services. (R. 59) Respondent admitted to drinking on the day in question. (R. 60) Respondent admitted to turning into the parking lot and sideswiping a vehicle. (R. 61) Respondent admits to hitting another vehicle coming off 87th Street. (R. 61) He admits hitting another car on 87th Street. (R. 62) Respondent admits that he was arrested for Driving Under the Influence. (R. 63) He testified that he pled guilty to the Driving Under the Influence and was sentenced to conditional discharge. (R. 63) He said his license is still suspended. (R. 64) He admits to everything he said in his OPR interview admitting to all of his crimes. (R. 64) Respondent admits to starting drinking on the day in question at around 10:00 a.m. drinking vodka and soda. (R. 71) He admits he was going to get something to eat which was about an 8 minutes to walk, instead he chose to drive. (R. 71) Respondent admits to not remembering hitting a third car. (R. 71) Respondent admits to all of his previous interactions with the Burbank Police Department. (R. 72) He admits to having been drinking the day that Director [REDACTED] came out to de-deputize him. (R. 73) He admits this was just

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two or three days after he had just been arrested for DUI. (R. 73) He admits that the Burbank Police Department had been out to house for well-being checks. (R. 73) He is unable to drive a vehicle until his license is not suspended. (R. 74, 75) He admits that some of the calls to his house from the Burbank Police were not just wellness checks, but that in one instance he had a female that he dated called the police after she had been drinking. (R. 78, 79)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions did violate:

1. COOK COUNTY COURT SERVICES DEPARTMENT POLICY MANUAL 321 - CONDUCT(effective June 1, 2017); and
2. COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is a proceeding arising from a Burbank Police Department notification of employee arrest to the Cook County Sheriff's Department on July 17, 2017. On July 17, 2017, Respondent FRANCISCO YARENA, was arrested and charged with driving under the influence. At that time, Officer [REDACTED] investigated a three car accident involving the Respondent and made observations that the Respondent was severely impaired because of alcohol consumption. During his investigation, Officer [REDACTED] obtained statements from Respondent admitting to the accidents and consumption of alcohol. Respondent's level of impairment/ intoxication was such that he was transported to the hospital for detoxification. Officer [REDACTED] testified that Respondent was the subject of prior calls for police services to his residence. During the process of de-deputizing the Respondent, Director [REDACTED] testified that Respondent was observed at his

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home, 3 days after his arrest for DUI, in a state of alcohol intoxication. Director [REDACTED]' level of concern for the safety and well being of Respondent, his friend, led him to persuade Respondent to surrender his firearm. At trial, Respondent admitted to the charges in the complaint and did not refute the testimony of Officer [REDACTED] or Director [REDACTED]. Respondent pled guilty to driving under the influence and was sentenced to conditional discharge. Respondent's license remains suspended.

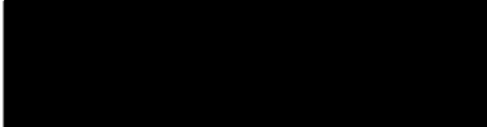
Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, FRANCISCO YARENA, be terminated from employment with the Cook County Sheriff's Department effective October 31, 2018.

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James P. Nally, Chairman



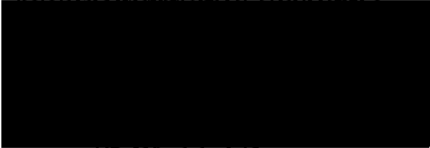
Byron Brazier, Vice-Chairman



John Dalcandro, Secretary



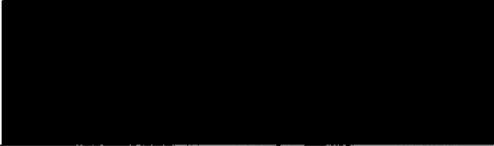
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltarres, Board Member



Patrick M. Brady, Board Member



Kimberly Pate Godden, Board Member

Date

8/5/19