

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1807**
Correctional Officer)
Anthony Marrero)
Star # 7817)

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, hearings occurring on November 1 and December 7, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Anthony Marrero, hereinafter Respondent, was appointed a Correctional Officer on December 2, 2002. 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

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on March 17, 2015. 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 March 17, 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 17, 2015. The Sheriff is requesting a termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on February 15, 2013 used excessive force against detainee [REDACTED] by giving 10 knee strikes to detainee [REDACTED] while detainee [REDACTED] was handcuffed behind his back and facing a wall. The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.20.0, and Merit Board Rules and Regulations Article X, paragraph B. Officer Anthony Marrero was appointed as a Correctional Officer at the Cook County Department of Corrections ("CCDOC") on December 2, 2002.

[REDACTED] testified he is a Jail Management Consultant at the University of Tennessee's County Technical Assistance Service. He works with sheriffs, jail leadership, county legislative bodies, county attorneys and healthcare providers regarding various components of jail operation in facilities. (R. 16) He has 41 years of experience going back to 1975 working in corrections. His C.V. was marked as Sheriff's Exhibit 1 and reviewed at the hearing. (R. 17) He was the chief of corrections or the jail administrator of the Hamilton County Jail. (R. 17-18) He was responsible for the overall operation of that facility. (R. 18) He was responsible for ensuring that the facility complied with the state standards, standards of the American Correctional Association, and the Adult Local Detention Facilities. (R. 18) As jail captain of the Hamilton County Jail, he was more directly responsible for the day-to-day operation of the facility and reviewed daily incident reports, uses of force reports and any type of reports generated throughout the facility. (R. 19) As the captain of the Hamilton County Jail, he would also conduct various investigations into use of force to ensure that they were consistent with the policy and procedure, training, and the guidance that had been given to the employees. (R. 20) Prior to his employment with the Hamilton County Sheriff's Office, he spent 22 years in the Marine Corp, a majority of which was in corrections. (R. 20, 21) As the commanding officer of the Marine Corps Brig, Quantico, Virginia, he was responsible for reviewing all incident reports, uses of force reports, disciplinary reports, incident reports, and investigations. (R. 21) His C.V. accurately depicts his training and experience including his training regarding proper use of force techniques. (R. 21, 22) He has participated in various trainings in use of force since 1975. (R. 21-22) He has conducted training as to various components of uses of force particularly as it relates

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to documenting uses of force, consistency with policy and procedures through various in-service kind of programs. (R. 23) He also has personally been involved in use of force situations. (R. 25) He has personally investigated approximately 10 to 15 incidents of excessive force. (R. 25-26) He has testified as an expert before the Merit Board on four occasions and he has testified as an expert on inmate classification and segregation in two other instances. (R. 27) The standards in the Marines and the state's standards in Tennessee were not different but they were both aligned with the standard of the American Correctional Association and Adult Local Detention Facility Standards. (R. 33) Mr. [REDACTED] was admitted as an expert to provide opinion testimony in this matter. (R. 52) During his investigation, he reviewed documents including OPR summary, incident reports, discipline reports, response to resistance/use of force forms, memorandums of investigation as well as video and Sheriff's Order 11.2.1.0. (R. 54) He reviewed each one of the 16 videos and compared what he saw in those videos to the reports. (R. 55) In his view of the video, the inmate had been bent over and escorted into bullpen A, initially was let go of by Officer [REDACTED] but continued to be moved into the holding cell by Officer Marrero, pushed up into the corner, restrained from behind, and basically held there by Officers [REDACTED] and Marrero. (R. 56-57) The video does not indicate the resistance or the kicking at the officers that were described by the officers in their reports. (R. 57) Therefore, it is his opinion that the multiple knee strikes were unnecessary and therefore excessive. (R. 57) The video contradicted the Respondent's report where the Respondent stated that he gave repeat commands to kneel on the bench so that they could exit the bullpen, that the detainee would not follow commands and continued to actively resist the officer's order and continued to pull away and that he used knee strikes to stop the detainee's combatting. (R. 57- 58) Expert witness [REDACTED]'s view of the video was that the detainee's left knee was on the bench, his right foot appeared to be stationary on the ground and did not appear to be actively resisting, attempting to pull away or combatting. (R. 58) In addition, it is his opinion that if there was an issue of a combatting inmate, other officers would have responded but the other officers in the area did not respond into that holding cell. (R. 58) The video which showed the incident was played for the hearing officer. (R. 60. 61) A CD containing the video was marked as Sheriff's Exhibit 3. (R. 61) When the detainee was put in the cell by Respondent and another officer, he did appear to be stiffening. (R. 64) In Mr. [REDACTED]'s opinion, the detainee would have been classified as a non-moving resister, and an appropriate response according to the Desmedt Model would be verbal commands, holding, restraining, grabbing, pushing him against the restraint, and the use of various control instruments. (R. 65-66) The fact that the detainee had previously struck an officer would be considered but in this particular instance, the detainee had been restrained from behind, physically held by two officers pressed into a corner. (R. 66-67) It is Mr. [REDACTED]'s opinion that 13 knee strikes made by Respondent Marrero over the period as viewed on the video of an inmate that was restrained from behind with two officers pressing him into a corner was excessive. (R. 68) The only movements made by the detainee was after approximately the 8th knee strike that he lifted his foot, but it was not a striking motion, rather lifting what appeared to be to protect himself. (R. 69, 70) During this encounter the detainee would have been a non-moving resister. (R. 70) He would not classify the detainee as a moving resister because he is not trying to get away, pushing away or trying to run or separate himself. His review is that the detainee may have possibly lifted his leg to comply with an instruction from the officer to put it on the bench. (R. 75) His opinion that the use of force by Respondent was excessive is based on the totality of the circumstances. (R.

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84) Mr. [REDACTED]'s opinion is that the officers had the inmate restrained, there were two officers that were controlling the inmate, no other officers responded as they did not see there was an issue of a combative inmate as described by the officers. (R. 90) The officers were effectively holding the detainee in the corner, pressed him into the corner and restrained him from behind. (R. 90) Respondent Marrero could have guided the detainee into the cell at the door and shut the door. (R. 91-92) Another option they had was to take the detainee down to the ground so that they could exit the cell. (R. 92) The detainee did not move his leg until approximately seven knee strikes had been made and at no point during the video does the lifting of the detainee's leg look like any kind of kicking motion. (R. 104, 105) Sheriff's Exhibits 1, 2 and 3 were entered into evidence without objection. (R. 109, 110)

[REDACTED] has been with the Sheriff's Department since 1995 and is currently in the Records Department. (R. 116) She became a superintendent in 2012 and on February 2013 she was assigned to Records and Receiving. (R. 117) Her responsibilities included among other things to review use of force packets, which are the narratives of incidents that occur, and videos. (R. 117) Her responsibility is to make sure the videos coincide with the reports that were generated regarding the incident. (R. 118) If she finds discrepancies, she forwards them on to OPR. (R. 118) She has been trained in the Sheriff's use of force policy. (R. 118) The purpose of forwarding is to make notification that she does not agree with the findings of the officer's report. (R. 119) She had an opportunity to review the incident that took place on February 15, 2013 involving the Respondent Marrero and detainee [REDACTED] and she reviewed both video and written reports. (R. 119, 120) Exhibit 4 was marked for identification, which was the incident report and disciplinary report of the detainee. (R. 120-121) Sheriff's Exhibit 5 was marked for identification, which was a part of the use of force report that she reviewed. (R. 122) If the report and the video do not match up, she generates a memorandum and forwards it to OPR. (R. 122-123) Sheriff's Exhibit 3 which was the video of the incident was shown for the hearing officer. (R. 128) The activities in the video in Exhibit 3 accurately depict the events that she reviewed back on February 20, 2013. (R. 128) During her review process, she counted the knee strikes in the video. (R. 128) She felt that the number of knee strikes were excessive based on the video and forwarded it to OPR for further review. (R. 129) Sheriff's Exhibit 6 is her memorandum to OPR regarding her review of the use of force packet. (R. 129, 130) Sheriff's Exhibits 4, 5, 6 and 7 were admitted into evidence. (R. 134, 135) She agreed with Lieutenant [REDACTED]' finding that he did not agree with the packet as it was completed. (R. 176) She does not typically interview anyone as far as her duties. Her responsibilities are to review reports and video. (R. 177) After watching the video several times, 14 to 16 knee strikes seemed excessive to her. (R. 178)

[REDACTED] is a Chicago Police Officer for the past 17 years. (R. 198) Mr. [REDACTED] does not make recommendations regarding discipline for any of the officers that he reviews use of force incidents at the Chicago Police Department. (R. 210, 211) He has not testified before the equivalent of the Sheriff's Merit Board for the Chicago Police Department. (R. 211) He has testified on approximately 7 occasions for officers before the Merit Board and one in Indiana. (R. 211) Mr. [REDACTED] said that the detainee was handcuffed from behind and there were other officers

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escorting the detainee prior to the Respondent's first physical contact with the detainee. (R. 219-210) Mr. [REDACTED] said that there is another officer with Respondent Marrero in the holding cell. (R. 243) Mr. [REDACTED] said that the video does not show the detainee resisting or kicking at the officer and that he only relied on the officer's statements that he "feels the kicks" for his opinions on this point. (R. 245) Mr. [REDACTED] could not visually see any specific actions that the detainee took to be combative and relied on the Respondents' statement that the detainee "attempted to kick" in opining that it "could have been a low-level kick." (R. 254-255) Mr. [REDACTED] did not interview the Respondent or his partner, [REDACTED] (R. 262) He did not interview the detainee. (R. 263) He did not interview any of the sergeants or supervisors. (R. 263) He did not interview Lt. [REDACTED] (R. 263) He did not interview the officer who was involved in the previous incident, Officer [REDACTED] or any other witnesses from that day. (R. 263) His assessment or opinion is based strictly on what he saw in the reports and the video. (R. 263) Mr. [REDACTED] believes that "moving" resister in the policy means "active" resister and "active" means "moving, movement to avoid physical control." (R. 265, 266) Mr. [REDACTED] said that Officer [REDACTED] has totally let go of the detainee and was standing in the cell doorway. (R. 268) Mr. [REDACTED] said the video shows Respondent Marrero using his left arm to guide the detainee to the bench and at least one arm is free. (R. 268) Mr. [REDACTED] assessed that the detainee was resisting by the fact that the Respondent was holding the detainee's head and to push a cooperative subject's head into the wall would be excess force. (R. 269-270) Mr. [REDACTED] said the video does not have audio, so he is not sure what, if anything, the Respondent said to the detainee. (R. 271) Mr. [REDACTED] states that it looks like the detainee stood up on his own in the video but that it "could be very well right that he may have been pulled back up" by the Respondent, in which case, the detainee would not be considered resisting. (R. 271) Mr. [REDACTED] said that the video shows the detainee attempting to stand up and the Respondent pushing him into the corner. (R. 272) Mr. [REDACTED] said that the detainee was not resisting or pulling away at the time frames of the video shown to him but came to an assessment that a slight evasive movement at one identified time frame and a leg moving at another time frame was "active, moving resistance." (R. 279-280).

Officer [REDACTED] testified he is employed with the Cook County Sheriff's Department of Corrections and has been for six years. Prior to that he was with the Juvenile Detention Center since 1992 and was transferred to the jail in 2010. (R. 303) Officer [REDACTED] does not know how many knee strikes Respondent Marrero gave. (R. 309) He testified he did not have any interaction with Supt. [REDACTED] regarding this incident. (R. 310) Officer [REDACTED] stated that he released his grip from the detainee and states that he did so because the Respondent had said "I got it, just watch my back." (R. 318) He said he "felt" the detainee kick when they were inside the cell. (R. 323) He "perceived him to kick" and "didn't actually observe him kick." (R. 323) He stated to OPR that he did not see any kicks by the detainee. (R. 328) He perceived that the situation was under control when he backed off but saw that it was not under control when the detainee was not complying with the verbal orders to "kneel down on the bench, ... get down ... something like that. (R. 330-331) He states that he established his hold on the detainee's left side and grabbed him when he believed the detainee was resisting. (R. 332) He

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states that the policy allows them to strike a detainee restrained with handcuffs if his level of resistance reaches the moving resister level. (R. 333) After he was asked to identify the parts of the video, he admitted that the part where he identified to be where he observed the detainee "flailing or resisting" immediately precedes the part where he let the detainee go. He states that the detainee "was resisting the whole time." (R. 334, 335) The officer admits that he did not put in his report that the detainee was threatening him and calling him vulgar names. (R. 338) He states that he heard someone who he does not remember say "stop resisting" before they entered bullpen A. (R. 344-345) He admits that the detainee was compliant enough to be let go when he arrived at bullpen A. (R. 345)

Respondent Anthony Marrero testified has been placed on administrative leave without pay and prior to that he was employed by the Cook County Sheriff's Department. (R. 346) He had been with the Sheriff's Department for 14 years prior to that working in Divisions 11, 10, 4 and the Maywood Courthouse. (R. 347) Respondent had been trained in use of force by the Sheriff's Office and had taken refresher courses as well. (R. 348) He was working on February 15, 2013 and had an interaction with detainee [REDACTED] (R. 349) Respondent he gave the detainee a number of knee strikes. (R. 353-354) Respondent has been trained on the John C. Desmedt model for use of force. (R. 360) Respondent had in-service training as well. (R. 361) Respondent did not ask for more officers during the transition to the bullpen. (R. 365, 366) Respondent told Officer [REDACTED] to go back. (R. 366) Respondent said the detainee was handcuffed behind his back at the time. (R. 367) Respondent admits that the detainee's hands were not free to move at that point. (R. 368) Respondent admits that he told Officer [REDACTED] to go ahead, that he's got things and just watch his back, although he may have used different words. (R. 368) Respondent said the video shows that he is the only one that attempted to escort the detainee into the cell and he only used one arm. (R. 369) Respondent said it was his decision to enter the cell alone and he was the only one who had physical contact with the detainee. (R. 369-370) Respondent had one hand on the detainee's head in the bullpen and was able to hold it up against the wall by himself. (R. 373, 374) Respondent stated that the detainee attempted to kick him before his first knee strike. (R. 376) Respondent states that even though the detainee was handcuffed behind his back, he was not "restrained." (R. 381) Respondent said that a takedown would have been possible as an alternative. (R. 382) Respondent states that while the detainee was in the corner at 15:28:57 of the video, the detainee was still offering resistance and that is when the detainee tried to knee him or kick him. (R. 384, 385)

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Conclusion

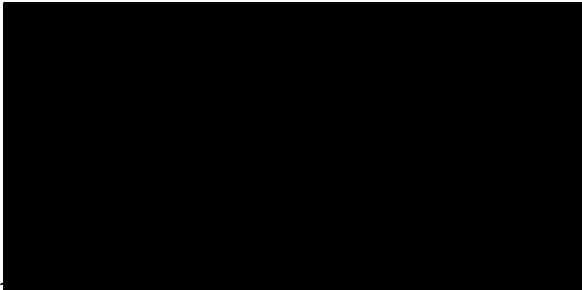
Based upon the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that the Respondent did violate Sheriff's Order 11.2.1.0, and Sheriff's Order 11.2.20.0 and Merit Board Rules and Regulations Article X, paragraph B, by using an excessive number of knee strikes to inmate [REDACTED] at a time when [REDACTED] was handcuffed. This is a close call under the totality of the circumstances keeping in mind inmate [REDACTED] had already assaulted another officer prior to being restrained and was continuing to be uncooperative and failing to follow the directions of the Respondent to be fully and passively disengaged from resisting. Certainly, the Respondent was required to make a series of split-second decisions regarding the safety of himself and others in the presence of the inmate, and to allow the Respondent to safely exit the area. While it appears that some of the knee strikes may have been necessary to fully render the inmate a nonmoving resistor, especially in light of his continued failure to obey verbal commands, at least the last few knee strikes were administered at a time when the inmate appears on the video to be not actively resisting any longer.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Correctional Officer Anthony Marrero be terminated, effective March 17, 2015.

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James P. Nally, Chairman



Kim R. Widup, Board Member


Byron Brazier, Vice Chairman


Juan L. Baltierres, Board Member


John J. Delicandro, Secretary


Kimberly Pate Godden, Board Member


Vincent T. Winters, Board Member


Monica M. Torres-Linares, Board Member

Date September 27, 2019