

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1793**
Correctional Officer)
Robert McClendon)
Star # 5557)

DECISION

This matter coming on to be heard pursuant to notice before Vincent T. Winters, Board Member, on February 14, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Robert McClendon, hereinafter Respondent, was appointed a Correctional officer on March 2, 1993. 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

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staff on November 20, 2014. 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 November 20, 2014 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 November 20, 2014. The Sheriff is requesting termination.

On March 2, 1993, Respondent was appointed a Correctional Officer and on October 28, 2012 was assigned to the Receiving Classification Diagnostic Center ("RCDC") of the Cook County Department of Corrections ("CCDOC"), located at 2700 S. California Avenue, Chicago, Illinois 60608. *On January 28, 2016, Respondent suspended due to an incident that took place on January 24, 2016. (Tr. 254)*

OPR Investigator [REDACTED] was assigned to investigate this case. [REDACTED] testified that his job responsibilities are to investigate allegations of misconduct against Cook County Sheriff's Office staff and has at least 50 or more cases where the allegations were use of excessive force against detainees (R. 23). Throughout the investigation [REDACTED] gathers all reports, any videos and begins interviewing witness and usually interviews the accused; he also reviews all the general orders that may have been violated and he turns in a report with a finding of either sustained or unsustained (R. 25). [REDACTED] testified that he was present during the interview of the Respondent which took place on February 26, 2014 with the Respondent, Assistant Director [REDACTED] and Teamsters Union representative [REDACTED]. (R. 28). During the interview, when questioned stated that he may have exercised one or two strikes to gain control of the detainee (R.30). At the interview the video of the incident was playing and [REDACTED] noticed the differences regarding the amount of punches thrown at the detainee. (R. 37, 38).

Sergeant [REDACTED] testified that he has worked for the Cook County Sheriff's Department for 18 years and has been a sergeant in the Use of Force Review Unit for the past 4 years. (R. 62, 63). [REDACTED] testified that in the Use of Force Unit they review the documentation and report writing on use of force for all officers and that it must be accurate. (R. 64). [REDACTED] testified that any officers can be recommended for supplemental use of force training and in fact the Respondent attended remedial training on December 19, 2013. (R 66, 68). [REDACTED] testified that none of his staff ever told any of the participants that attending

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remedial training would be in lieu of discipline that may come. (R. 72). [REDACTED] also testified that he does not have the authority to discipline or override discipline for any officers. (R. 72).

Officer [REDACTED] testified that she is a correctional officer whose duties are mostly to maintain order and move inmates about the process and that she is currently in receiving. (R. 85, 86). [REDACTED] testified that she is the wife of the Respondent and that she recalled the incident with detainee Page. (R. 86, 87). [REDACTED] watched the video and identified the cell where the altercation took place and identified that her husband, the Respondent, on the video. (R. 89).

Sergeant [REDACTED] testified that she is a sergeant in the Cook County Sheriff's Office in the Receiving Department and that she was the Respondent's supervisor on the day of the incident and that she witnessed the interaction between he and the detainee. (R 106, 107). [REDACTED] testified that she witnessed the Respondent use force against the detainee and that she grabbed the Respondent to remove him from the area because what he was doing was not helping the situation. (R 109, 111, and 112).

Respondent [REDACTED] testified that he was familiar with the General Orders as well as the John C. Desmedt Use of Force Model (R. 163). Respondent testified that he struck the detainee multiple times and that Sgt. [REDACTED] grabbed his arm and ordered him out of the cell. (R. 171, 179, 181, 186, 187). Respondent admitted that an officer is not allowed to use excessive force if a detainee spits on him. (R. 202). The video shows that Respondent hits the detainee at least five times within a six second period. (R. 218). Respondent testified that he did not speak with any officers before he filled out his reports and that the only report, he makes of striking the detainee is "one closed hand strike to the side of the stomach." (R. 229).

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 #24.9.1.0 Reporting Incidents and Cook County Sheriff's Department Merit Board Rules and Regulations Article X, Paragraph B. There was an administrative review of this case in which the Court affirmed the Respondent's violations of the rule and orders and remanded the case to admit the collective bargaining agreement. The collective bargaining agreement requires discipline be given for cause and consider a number of issues including whether the employee was adequately warned of the consequences and the seriousness of the circumstances. Respondent testified that he knew the General Orders and that he was not allowed to use excessive force. (R 200). Respondent struck the detainee at least five times within a six second period. (R. 218). Respondent admitted that he was the only officer inside the cell that was throwing strikes or punches at the detainee. (R.

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222). Respondent admitted that he was instructed to leave the cell by Sgt. [REDACTED] and in fact [REDACTED] needed to grab the Respondent by his shirt and pull him away from the detainee. (R218, 219, 220). Even after being told to leave by his superior officer he came back into the cell. (R. 220). Respondent admitted that it is important to fill out accurate reporting. (R.223).

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Robert McClendon be terminated from the Cook County Sheriff's Office effective November 20, 2014.

1793 Robert McClendon CO
Correctional Officer

[Redacted]

James P. Nally, Chairman

[Redacted]

Byron Brazier, Vice-Chairman

[Redacted]

John Dalicandro, 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 June 21, 2019