

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
vs.)
Docket No. 1873
Correctional Sgt.)
John K. Staszak)
Star # 3105)

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on August 19 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

John K. Staszak, hereinafter Respondent, was appointed a Correctional Officer on February 17, 1998, and was promoted to Correctional Sgt. on October 7, 2012. Respondent's position as a Correctional Sgt. 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

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on February 8, 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 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 8, 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 8, 2016. The Sheriff is requesting a termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on June 6, 2013 used excessive force against an unknown detainee by pushing the detainee and banging the detainee’s head into a wall. The Sheriff further complains that the Respondent failed to submit an Incident Report and a Response to Resistance/Use of Force report or make verbal notification to a supervisor of the use of excessive force.

The Complaint also alleges that the Respondent observed a Correctional Officer used excessive force against a different detainee and failed to intervene or make proper reports, however no evidence was offered on this claim.

The complaint alleges violations of Sheriff’s Order 11.2.1.0, Sheriff’s Order 11.2.2.0, Gen. Order 24.9.1.0, Sheriff’s Order 11.2.2 0.0, Gen. Order 9.2.1, and Merit Board Rules and Regulations Article X, paragraph B.

On June 6, 2013 Respondent was detailed to a special assignment, working on the installation of computers in the new RTU building, which is where the disruption at issue in this case occurred (Tr. 96-97). On that date, Respondent heard a call over the officers’ radios for an “all-available” and so proceeded to the bullpen (Tr. 97-98). Sheriff’s Exhibit 4A is a video depicting the incident. At the beginning of the video showing the bullpen, at 2:30:32, it can be seen that there is a toilet in the upper right corner, where two walls meet. The toilet juts out from the left wall (left from the perspective of one viewing the video), and is very close to the right wall. (Sheriff’s Ex. 4A, admitted at Tr. 48). At 2:30:32, a detainee can be seen apparently urinating in the toilet. At 2:30:35, the detainee places his right hand on the left wall, slightly to the right of what appears to be a mirror, and close to the right wall. (Sheriff’s Ex. 4A, admitted at Tr. 48). At 2:31:22-23, after the disturbance has begun, the detainee by the toilet turns and places his back against the right wall. His right leg appears to be behind the toilet. It can be seen that the toilet is so close to the right wall the only way to get between it and the right wall is to be flat or almost flat against the right wall, like the detainee in the video. (Sheriff’s Ex. 4A, admitted at Tr. 48). At 2:31:31, Respondent can be seen wearing a baseball cap and a short-sleeve shirt. (Sheriff’s Ex. 4A, admitted at Tr. 48). At 2:31:44, the video shows Respondent pulling a

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detainee out of the (lower) corner. (Sheriff's Ex. 4A, admitted at Tr. 48). [REDACTED] ("[REDACTED]"), the lead Investigator on Respondent's case for the Sheriff's Office of Professional Review ("OPR") confirmed in his testimony that Respondent was not alleged to have committed any violation of the rules for either pulling the detainee out of the corner or not properly reporting it (Tr. 86).

At 2:31:55, the video shows Respondent and another officer moving a detainee out of the corner. (Sheriff's Ex. 4A, admitted at Tr. 48). [REDACTED] confirmed that nobody was referred for excessive force or for failing to write a report about that touching of a detainee (Tr. 86). At 2:32:24, the video shows that the unidentified detainee is the only detainee who is not standing against a wall, other than detainees who are doubled up one behind another. At that time, the video also shows Respondent standing on a bench. (Sheriff's Ex. 4A, admitted at Tr. 48). Respondent testified that he stood on a bench to get a better view, and that he could see that the unidentified detainee was the only detainee who still had not gone onto the wall as directed (Tr. 100). At 2:32:24-28, an officer touches the unidentified detainee and then moves from the left side of the unidentified detainee to the right side of the unidentified detainee. (Sheriff's Ex. 4A, admitted at Tr. 48). Respondent testified that he heard the officer tell the unidentified detainee to get on the wall and then, after the officer had gone over to deal with other detainees, he heard the unidentified detainee say "Get your fucking hands off of me." (Tr. 101). At 2:32:32, the video shows Respondent pushing the unidentified detainee backward toward the wall. At 2:32:33, Respondent turns the unidentified detainee around so that he is facing the right wall, in front of another detainee who is facing the right wall (the detainee who was using the toilet at the beginning of the video). It appears that the unidentified detainee's right shoulder bumps into the back of the other detainee. (Sheriff's Ex. 4A, admitted at Tr. 48). Respondent testified that when he spun the unidentified detainee around, the unidentified detainee was being verbally disrespectful to him (Tr. 120). At 2:32:34-35, Respondent moves the unidentified detainee so that he is facing the corner. At 2:32:35, the unidentified detainee has one hand on the left wall and one hand on the right wall. By comparing this portion of the video with the initial frames in which the toilet is visible, it can be seen that the unidentified detainee is probably in front of the toilet. (Sheriff's Ex. 4A, admitted at Tr. 48). At 2:32:36, Respondent has his left hand on the unidentified detainee's head, and the unidentified detainee's head moves downward slightly, possibly because Respondent is pushing on his head. (Sheriff's Ex. 4A, admitted at Tr. 48). At 2:32:38, the unidentified detainee's head comes up as Respondent switches to putting his right hand on the unidentified detainee's head, which, as Respondent testified, is his "dominant" hand (Sheriff's Ex. 4A, admitted at Tr. 48; Tr. 102). At 2:32:39, Respondent places his right hand on the unidentified detainee's head and pushes the unidentified detainee's head down. (Sheriff's Ex. 4A, admitted at Tr. 48). The unidentified detainee's lower body is blocked by the toilet and cannot move further toward the corner, so his head, when pushed, moves downward, since his head and body cannot move forward. Respondent testified that during these events, he was telling the unidentified detainee to get on the wall, but the unidentified detainee was continuing to push off the wall: "I was trying to keep him on the wall... He still was pushing off the wall... I switched to my dominant right hand and told the detainee again, Listen to the orders... he still was pushing back." (Tr. 102). The unidentified detainee continued to push off the wall, and Respondent pulled the unidentified detainee off the wall and handed the unidentified detainee off to correctional officers, and "we escorted him to a separate bullpen to avoid further incident."

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(Tr. 102). The unidentified detainee did not say anything about suffering any injuries (Tr. 103). At 2:32:47-52, the video shows Respondent handing the unidentified detainee off to correctional officers who escorted the unidentified detainee out of the bullpen. (Sheriff's Ex. 4A, admitted at Tr. 48). Respondent testified that at no time did the unidentified detainee's head strike the wall (Tr. 102), and that he was not trying to make the unidentified detainee's head hit the wall (Tr. 122). [REDACTED] ("[REDACTED]") conducted the final review of the June 6, 2013 incident for the Sheriff's Use of Force Review unit (Tr. 35). [REDACTED] testified that on reviewing the video, at 2:32:39 he saw that "an unknown officer/supervisor takes the detainee's head and bangs off the wall near the toilet," (Tr. 39), as stated in his memorandum to OPR (Sheriff Ex. 3). Former OPR Investigator [REDACTED] testified that he concluded, from his interpretation of the video, that Respondent had banged the unidentified detainee's head against the wall (Tr. 87). However, [REDACTED] acknowledged, in his testimony, that the video actually only shows that Respondent "appeared to have banged his head off the wall." (Tr. 67, emphasis added). It is not clear on video, to see if the unidentified detainee's head actually hit the wall. The General Orders of the Sheriff contain rules concerning the reporting of the use of force, and prohibiting the excessive use of force state "the use of a firm grip hold which does not result in an injury or allegation of an injury" is not a use of force that must be reported. (Sheriff's Ex. 2, pp. 1, 6). [REDACTED] explained why, in his understanding, the use of a "firm grip" does not have to be reported: "[I]t's a function of our job at times where we do have to escort people, and it is putting your hands on somebody to move them from Point A to Point B, but if it goes beyond that firm grip, which usually we say a takedown or anything that's elevated, that's when you need documentation." (Tr. 23). Respondent testified that it is a regular occurrence when dealing with disturbances "to physically put detainees on the wall." (Tr. 100). Both [REDACTED] and [REDACTED] testified that it is permissible to touch an inmate who is being only verbally aggressive (Tr. 52, 85).

The body of Respondent's witness statement states as follows:
"In Summary, Sgt. Staszak Responded to an all available Call for assistance. Upon arriving on scene, R/Sgt observed STAFF attempting to restrain a combative inmate. R/Sgt instructed other inmates present to move away from the altercation and face the wall. R/Sgt pulled two inmates, that were not directly involved, out of the corner, where the altercation was in progress. R/Sgt placed one inmate on the wall who was not complying with verbal orders until staff was able to remove him from the area. Said inmate was removed from the bullpen without further incident, and was returned to the bullpen once the incident was over." A number of witnesses testified that Respondent has a reputation for truthfulness: [REDACTED], First Assistant Executive Director in the Sheriff's Department (Tr. 124-27); [REDACTED], Assistant Executive Director in the Sheriff's Department (Tr. 127-29); [REDACTED], Superintendent in the Sheriff's Department (Tr. 130-31); [REDACTED], Correctional Lieutenant (Tr. 132-33); and [REDACTED], a Police Director in the Cook County Sheriff's Police IT unit (Tr. 134-36).

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 not violate any of the

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Sheriff's Department orders, General Orders or Merit Board Rules and Regulations. The evidence does not show that Respondent used excessive force that would require reporting of that conduct. The actions of the Respondent were within the parameters of the Sheriff's orders governing conduct of employees such as the Respondent.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Correctional Sgt. John K. Staszak be found not to have violated any of the orders or rules and regulations set forth in the Complaint, effective February 8, 2016.

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[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

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Juan L. Baltierres, Board Member

[Redacted]

Patrick M. Brady, Board Member

[Redacted]

Kimberly Pate Godden, Board Member

Date 5/24/2019