

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1905
Police Officer)	
Michael J. Gomez)	
Star # 137)	

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on December 13 and December 29, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Michael J. Gomez, hereinafter Respondent, was appointed a correctional officer on February 17, 1998 , and was promoted to Police Officer on January 17, 2000. Respondent's position as a Police 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.")).

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The original Complaint in this matter was filed with the Merit Board's administrative staff on June 21 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 June 21 2017 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 June 21, 2016. The Sheriff is seeking termination.

On February 17, 1998, Respondent was appointed a Correctional Officer. On January 17, 2000 Respondent was promoted to Police Officer.

██████████ testified that on February 9, 2013 she was acquainted with Respondent Gomez and she was working at the Atlantis gentlemen's nightclub. (R. 15, 16) She testified that Respondent would come into the club often and he would be in uniform and she identified him in the hearing room. (R. 16, 17) She was hired to perform at a bachelor party at a bar called Pick Ups and was hired to served beer and liquor to the guys that were there and do dances on the side. (R. 17) When she was working she only wearing a thong and a bra and went up to a private room where there was a curtain where the gentlemen were playing cards. (R. 18) While she was there she did perform some lap dances. (R. 19) Some of the guys went into the back area where the curtain was. (R. 20) At some point she was alone with Respondent Gomez as he got a couple of private dances. (R. 21) During the last dance that she gave to Respondent Gomez which was downstairs the Respondent got a bit intense and he was intoxicated and she had seen cocaine present. (R. 22) She testified she actually saw him ingest cocaine. (R. 23) At that point, Respondent Gomez got "handys" and was not willing to give her the money that was necessary for the dances but also did not want her to stop dancing. (R. 23) At that point she tried to leave and he forced her down and grabbed her with both hands by the back of the neck and tried to force her to give him oral sex. (R. 23) He pushed her head to his genitals which were exposed at the time and he told her to suck it or she would be in trouble. (R. 24) At that point she did perform oral sex on him and she tried to get away as fast as possible. (R. 24) After she argued with him about paying her the money she was owed Respondent Gomez stated that no one is going to believe anything she says because she is a stripper and he is a police officer. Respondent Gomez also made threats of having her arrested. (R. 25) After this occurred she ran upstairs, got her stuff and left and called 911 and they told her to go to a hospital. (R. 26) When she called 911 she informed them what happened and they told her to go to the hospital and have a rape kit performed. (R. 29)

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At the hospital she wrote down a statement of what happened and spoke with police officers. (R. 32) She spoke with someone from the Cook County Sheriff's Office and the rape kit was performed by a nurse. (R. 32) Pictures were taken of her as well. (R. 32) Besides forcing her to have oral sex, Respondent Gomez was also touching her body, her boobs, all over her. (R. 33)

Director [REDACTED] has been with the Sheriff's Office of Professional Review and in that position as director since 2013. (R. 45) He manages cases for the Court Services Division and for the Sheriff's Police. (R. 45) He was working on February 9, 2013 and he was assigned to investigate police officer Respondent Gomez. (R. 45, 46) He responded to a hospital in Munster, Indiana and spoke with a patrol sergeant who informed him that [REDACTED], the complaining victim, was in the hospital receiving treatment from the staff at which time he interviewed her. (R. 46) He said the victim was distraught and confused but was able to provide an interview statement. (R. 46, 47) He separately wrote a memo regarding the interview and he had pictures taken of the victim by the Sheriff's Police Evidence Technician. (R. 47) The victim provided him with screen shots of text messages between her and Respondent Gomez and he left with the sexual assault kit. (R. 47) He next went to the bar where the victim stated the incident occurred and met the Deputy Chief Inspector. (R. 47, 48) He then interviewed the bar owner and did a visual inspection of the downstairs and upstairs of the bar. (R. 48) He was looking specifically for where the victim said that Respondent Gomez was snorting cocaine and they were looking for residue or something that might indicate cocaine usage in the trash bins, the railings or anything they could find. (R. 49) The reported that the area had been cleaned prior to their arrival and he did not see any poker tables that were set up or folding chairs that were out in the area. (R. 50) He took the sexual assault kit back to their office for storage and made a request to the Police Department to have Respondent Gomez tested for drug use and made arrangements to interview the waitress and service staff of the Pick Ups bar. (R. 50, 51) On February 15, 2014, the Office of Professional Review interviewed Respondent Gomez along with Respondent Gomez's union representative where all of his administrative rights were provided. (R. 52) Respondent Gomez initialed and signed the statement. (R. 52) During the interview, Respondent Gomez denied that he touched the victim in any way and denied all of her allegations. (R. 54) In fact, he stated he had no physical contact with the victim at all. (R. 54) Sheriff's Exhibit 2 is the interview by OPR was admitted into evidence without objection. (R. 55) A second interview with Respondent Gomez was conducted on December 30, 2015. (R. 55) This interview was requested after a buccal swab from him getting his DNA was conducted. (R. 56) Exhibit 3 was marked as the second interview with Respondent Gomez. (R. 56) The administrative rights were provided to Respondent Gomez. (R. 57) He signed the statement. (R. 57) Exhibit 4 which is the actual statement was played at the hearing. (R. 58) Exhibit 4 was admitted into evidence. (R. 58-59) At the close of his investigation, he believed that Respondent Gomez had violated the General Orders and the Merit Board Rules. (R. 59) He also believed that his conduct violated multiple General Orders which is conduct unbecoming, visiting a strip club or engaging in the act of having a stripper perform. (R. 59) Exhibit 5 was the additional memorandum that Director [REDACTED] had

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authored which outlined additional conduct that Respondent Gomez had violated which included giving false or misleading statements to OPR. (R. 60, 61)

██████████ was the owner of the bar called Pick Ups in February 2013 which she has owned since 2011 and sold in 2015. (R. 73) She described the layout of the bar both upstairs and downstairs. (R. 73) She was in her office on the night of the party hosted by the Respondent. (R. 76) Ms. ██████████ never went upstairs during the party or to the landing area so she would not be able to see what was going on with Respondent Gomez the entire time. (R. 79) She would not be able to know if Respondent Gomez and the victim went into a private area during the party. (R. 79)

██████████ was working at the Pick Ups bar in February 2013 where she just filled in when needed. (R 80) She worked the area where the party was on that night and served some food and drinks. (R 81) Ms. ██████████ testified that there was a private area upstairs where they were playing cards. (R 83) She admits she was up and down the stairs several times to get drinks so there could have been time for someone to go in the private area in the back. (R. 88)

██████████ is employed with Local 150 Operating Engineers and he was at the party on February 9, 2013 at Picks Up Bar. (R 90) He has known Respondent for more than 32 years. (R 91) He observed an argument between the victim and Respondent Gomez. (R 93) He spoke with Respondent Gomez regarding this case and the allegations about drug usage at the party. (R 99)

██████████ is a retired Cook County Sheriff's police officer for 16 years and was a correctional officer for 8 years. (R 102) He worked with Respondent Gomez as investigators in the Evidence Technician Unit. (R 102, 103) He attended the bachelor retirement party in February 2013 (R. 105) He admits he's know and been friends with Respondent Gomez since 2007. (R. 107) He had a discussion with the Respondent regarding the allegations against him and his testimony before the Merit Board. (R. 108) He understands that Respondent Gomez is facing allegations of cocaine use and sexual abuse. (R. 108) He had two or three conversations with Respondent Gomez regarding this incident. (R. 108)

██████████ owns Ace Catering & Banquets and was present during the February 9, 2013 party organized by Respondent Gomez who he has known since high school. (R. 112) Mr. ██████████ has talked with Respondent Gomez regarding his testimony prior to the hearing. (R. 117) They spoke at least 2 or 3 times and understands the allegations he is facing. (R. 117) He admits he was not able to see what was behind some of the dividers in the upstairs room. (R. 119) Respondent Gomez called Mr. ██████████ after the incident stating that he had been charged by the victim who was working at the party and was making him "aware of it". (R. 120)

██████████ is the cousin of the Respondent Gomez. (R. 121) He attended the event on February 9, 2013. (R. 121) He admits that there was a curtained off section area of the

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loft location. (R. 124)He was not able to see what in that location. (R. 125)He witnessed an argument between the victim and Respondent Gomez at the end of the night. (R. 125) He admits he has known Respondent Gomez most of his life. (R. 127)He recalls the victim wearing a bikini top and either boy shorts or bikini bottoms. (R. 127)

He discussed this matter with Respondent Gomez who told him he needed to come and tell him what happened at the party. (R. 128) He was told to talk to the Respondent's attorney. (R. 128) He heard through a mutual friend that the allegations of drug use and sexual misconduct against his cousin. (R. 129)

██████████ was present at the event on February 9, 2013. (R. 131) He recalls the African American waitress going around asking for drinks and touching people on the shoulders. (R. 133)He witnessed the argument between Respondent and the victim. (R. 133)Mr. ██████████ admits that he has been friends with Respondent Gomez since childhood. (R. 135)He admits that they are very good friends. (R. 135)He discussed his testimony and this hearing at least on two occasions with Respondent. (R. 135)He met with the Respondent's attorney regarding his testimony. (R. 136)He believes the African American waitress had a bikini on. (R. 137) He believed that the African American waitress was there the entire time. (R. 138)

Respondent Gomez is employed with the Cook County Sheriff's Police as a patrol until and started in 2000. (R. 144) At the time of this incident he was assigned to a patrol unit in Markham. (R. 144) Respondent's job responsibility was to also perform policing activity in Ford Heights in lieu of their own municipal police force. (R. 145) He admits to frequently the Atlantis strip club for carry out food. (R. 145) He admits to having come into contact with ██████████ during his service calls to the Atlantis. (R. 146) He admits to being the person responsible for setting up the poker tournament on February 9, 2013 at the Pick Ups bar. (R. 147) Respondent denies that there was any understanding between him and the victim that she would perform any type of lap dance. (R.148-149) He admits that during the event there was a curtain set up behind him in the room where the poker was being played. (R. 150) Respondent states that the only time he came into physical contact with the victim is when she shook her hand when he arrived. (R. 153)

He admits that they had an argument towards the end of the night and they were standing very close to each other and he screamed at her. (R. 154) He admits to submitting to a DNA test as well as an urinalysis test and being interviewed by Investigator ██████████ on two occasions. (R. 157) He admits that he declined to provide answers about how his saliva could have come into contact with Ms. ██████████'s chest or breast area. (R. 158) He admits that the recording of his interview were accurate and those were his statements. (R. 158) Respondent admits that he was at the Atlantis nightclub on occasions when he was not called out there for official business. (R. 160) He admits that he would enter the strip club in his uniform. (R. 160)He admits to providing his phone number and getting the phone number of the victim at the Atlantis during one of his calls because she had a side business where she would attend poker tournaments and private parties. (R. 162) Respondent admits that the bar where he booked the event already had his own waitresses but he wanted to hire an additional "helper to serve drinks." (R. 163) Respondents admits

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that during the time the victim worked the party she had a bikini top on and tiny what are called "boy shorts". (R. 163) Respondent admits that the party happened in February and that this was her outfit during the time she worked. (R. 163) Respondent admits that the other waitress that the victim was helping out was not wearing anything "along those lines". (R. 163) Respondent admits that there was an area upstairs that had a curtain and he did not ask anybody what the area was for or to take down the curtain. (R. 164) The Respondent has no explanation for why his DNA was found on the victim's breasts. (R. 164, 165) He would not give an answer to it during his OPR interview. (R. 165) Respondent admits that he did not know [REDACTED]'s last name when he planned and executed the poker party. (R. 167) He does not believe that the curtain was there when he first arrived and that it must have been put up at some point but he was not paying attention and did not see any lap dances. (R. 171)

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 did violate Sheriff's Department Rules and Regulations, Sheriff's Order 11.2.20.0, Sheriff's Police Department General Orders ROC - 00 - 01 - A, ROC 00 - 01 - A .2 ROC 00 - 01 - A .12, ROC 00 - 01 - A .13 ROC 00 - 01 - A .16 Cook County Sheriff's Police Policy Manual sections 321.2, 321.4, 321.5, 321.5.5 and Sheriff's Merit Board Rules and Regulations Article X Paragraph B.

The Merit Board Finds that specifically the allegations that the Respondent used cocaine or committed a sexual assault or battery on [REDACTED] were not proven by a preponderance of the evidence. In particular the parties stipulated that the result of the urine test conducted on Respondent for drugs was negative. The results of the sexual assault kit on Ms. [REDACTED] were not offered into evidence. There is conflicting testimony on this issue, and not enough evidence in the record to sustain a finding that such an assault occurred. It does appear that Respondent and Ms. [REDACTED] had a heated disagreement over payment for her work at Pickups bar that night.

There is no dispute that the Respondent, a sworn police officer, organized and carried out the "party" that occurred that night. This event could do nothing but bring disrepute and damage the reputation of the Cook County Sheriff's Office, and the Respondent failed to conduct himself in a professional and ethical manner which reflects most unfavorably upon the Cook County Sheriff's Office. There is no question that the Respondent visited on more than one occasion a strip club, while in uniform and on duty, a prohibited establishment under the General Orders of the Police Department. Respondent clearly committed conduct unbecoming a member of the Department.

Most seriously, there is no question that the Respondent was evasive and lied to OPR about the events of that night. Starting with the preposterous contention by Respondent that he had organized the poker party/bachelor party for "[REDACTED]", although he did not know [REDACTED]'s last name. Respondent lied when he said he had no physical contact with Ms. [REDACTED]. The evidence shows that consensual lap dances involving Respondent and Ms. [REDACTED] took place. Further, the

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DNA evidence shows conclusively that the Respondent's DNA was found on Ms. [REDACTED]'s breast. The Respondent gave false and misleading information to OPR, and his conduct failed to conform to that required of a sworn police officer. The failure to be truthful and the utter lack of candor by the Respondent is a direct and intentional violation of his responsibilities as a member of the Cook County Sheriff's Police Department.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Police Officer Michael J. Gomez is guilty and is found to have violated the Rules and Regulations, General Orders of the Sheriff's Department, Sheriff's Police Department and the Cook County Sheriff's Merit Board, and is terminated effective June 20, 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

[Redacted]

Juan L. Baltierres, Board Member

[Redacted]

Patrick M. Brady, Board Member

[Redacted]

Kimberly Pate Godden, Board Member

Date June 5, 2019