

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 2108**
Correctional Officer)
Jermaine Brinner)
Star # 16481)

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on March 7, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Jermaine Brinner, hereinafter Respondent, was appointed a Correctional Officer on July 26, 2010. 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 on July 16, 2018. Regardless of whether or not Merit Board Members were properly appointed

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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 July 16, 2018 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 July 16, 2018. The Sheriff is requesting termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on December 16, 2016 used excessive and unnecessary force against detainee [REDACTED]. Respondent was attacked by [REDACTED] and punched in the head and face and fell to the ground where [REDACTED] continued to deliver several blows to Respondent head and face. Sheriff alleges while other officers were attempting to handcuff [REDACTED], Respondent threw kicks at [REDACTED] while he was on the floor, and that Respondent after walking away from [REDACTED] attacked [REDACTED] with punches until another officer escorted Respondent from the scene.

The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Department of Corrections Gen. Order 4.1, Department of Corrections Policy Manual Policy 101, and Merit Board Rules and Regulations Article X, paragraph B.

The Cook County Sheriff's Office hired Officer Jermaine Brinner on July 26, 2010. Tr. 107. Officer Brinner's incident with Detainee [REDACTED], occurred on December 16, 2016, in Division VI, on tier 1B. Tr. 79, 108. [REDACTED] is an Investigator with the Cook County Sheriff's Department, Internal Affairs, Office of Professional Review. Tr. 3-4. [REDACTED] has been an investigator for approximately four (4) years and has been with the Sheriff's Department for approximately 24 years. Tr. 5. In his capacity as an Investigator for the Office of Professional Review (herein "OPR"), [REDACTED] investigates cases of failure to report, failure to protect, and excessive force cases. *Id.* He is currently assigned to the excessive force/use of force unit, Squad 3. Tr. 6

[REDACTED] has been with the Cook County Sheriff's Office for approximately seven (7) years and was assigned to Division VI in December of 2016. Tr. 85-86. He is currently assigned to Division VI and, more specifically, to the Emergency Response Team. *Id.* He has no disciplinary record.

On December 16, 2016, Officer Brinner began his shift by relieving another officer. Tr. 110. Officer Brinner began his shift at approximately 10 a.m., following approximately three hours of approved FMLA time. *Id.* His partner was Officer [REDACTED]. *Id.*

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Officer Brinner began his shift shortly before the inmate medication pass. Tr. 110. To perform "med pass," the officer receives a list of names of detainees receiving medication. Id. The officer then identifies each detainee and lets them out of their cell to take their medications. Id. On this date, Detainee [REDACTED] was the first detainee to receive medication. Id. When Officer Brinner arrived at Detainee [REDACTED] cell, he observed the detainee to be agitated and aggressive because the tier was on lockdown. Tr. 111. Officer Brinner explained to the aggressive detainee that he had to take the medication first, and that he would deal with and explain the lockdown after the detainee took his medicine. Id.

Brinner unlocked the door and the detainee immediately approached Officer Brinner using foul language and stating that he was not going back in the cell. Tr. 112. The detainee immediately invaded Officer Brinner's personal space and bumped his chest against Brinner's body. Id. In response, Brinner pushed the detainee with open hands to the chest in order to create distance. Id. This push was a proper use of force, as Investigator [REDACTED] testified. Tr. 14. Detainee [REDACTED] then threw a punch hitting Brinner in the jaw and viciously attacked Officer Brinner. (Tr. 113, Sheriff Ex. 2.) Officer Brinner fought back. Id. During the fight, Officer Brinner received multiple blows to the face and head, including a blow to the temple after he briefly fell to the ground. Sheriff Ex. 2. The two fought for approximately 30-40 seconds before Officer Brinner received assistance. Id.

At some point, Officer [REDACTED] called an "all available" over the officers' radios, and Officer [REDACTED] ran towards the cell. Tr. 88. Upon entering the tier, he saw detainee [REDACTED] in a fight with Officer Brinner, and witnessed the detainee striking the officer. Id. [REDACTED] ordered the detainee to get on the ground and he did not comply. Id. He was then able to approach the detainee from behind and pull him off of Officer Brinner. Id. However, the detainee then reengaged with Brinner and continued to strike him. Id. Officer [REDACTED] deployed OC spray. Tr. 89. Before and after he deployed the OC spray, he characterized the detainee as an active resister. Tr. 90-92. Following the deployment of OC spray, the detainee continued to clutch to Officer Brinner's leg. Sheriff Ex. 2.

The video then depicts approximately five to seven officers on the tier with the detainee, attempting to put restraints on him as the detainee continued to act as an aggressive, active resister. (Tr. 16, 19, Sheriff Ex. 2.) Officer [REDACTED], who continued to yell verbal orders at Detainee [REDACTED], secured [REDACTED] right hand with a handcuff but was unable to cuff the detainee's left hand as the detainee continued to resist and was not under physical control. Tr. 90-91. While [REDACTED] was possibly rubbing his face with his free left hand and spitting as a response to the OC spray, he was actively resisting at all times relevant. Tr. 91, 102-103.

Officer Brinner does not recall much of the incident, due to [REDACTED] he received. Tr. 113. The video shows Officer Brinner receiving multiple closed-fist strikes to the face and head, including the temple-area. Sheriff Ex. 2. Officer Brinner recalls reaching to grab the detainee to stop him from hitting him, and also remembers Officer [REDACTED] entering, but he does not recall much after the initial strikes. Tr. 113. He does not even recall being hit in the side of the head, being on the ground, or that [REDACTED] deployed OC spray. Tr. 114. He further doesn't recall

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Officer [REDACTED] trying to restrain him from reengaging with Detainee [REDACTED], at which point the video shows him attempting to kick or punch the detainee. Tr. 114, Sheriff Ex. 2. No video shows any of these punches or kicks connecting with the detainee. Sheriff Ex. 2. Officer Brinner admits that the attempted actions in the video were outside his training and were wrong. Tr. 146. These actions were also very outside of his character, as the Sheriff never previously disciplined or counseled Officer Brinner for a "use of force" issue. Tr.97, 134-35, 149.

Officer [REDACTED] did not see Brinner attempt to push past Officer [REDACTED] to reengage with the detainee. Tr. 92. He further did not see any physical marks on the detainee, besides a red face from the OC spray. Tr. 93. Investigator [REDACTED] was also unable to conclude that Brinner actually struck the detainee with the attempted kicks or punches. Tr. 44. Further, none of the individuals that [REDACTED] interviewed witnessed Brinner strike the detainee with these errant kicks and punches. Id. The detainee was medically cleared following the incident. Tr. 44-45. [REDACTED] also stated to Investigator [REDACTED] that Brinner "looked out of it" during the incident. Tr. 46-47. The video shows Officer Brinner wobbly on his feet immediately after being separated from the scrum by Officer [REDACTED]. Sheriff Ex. 2. Officer [REDACTED] guided Officer Brinner towards the dispensary and two other officers escorted him to dispensary. (Sheriff Ex. 2, Tr. 94)

Brinner was so groggy that he does not remember seeing Officer [REDACTED] or the nurse in the dispensary following the incident. Tr. 116. [REDACTED] saw him for multiple minutes, while Brinner sat on a cart, waiting to be taken to Cermak Hospital. Tr. 94. [REDACTED] characterized Officer Brinner as uncharacteristically "out of it," holding his face and not answering [REDACTED]'s questions. Tr. at 94-95. This occurred approximately 10-15 minutes after the incident. Tr. 97. Following decontamination, [REDACTED] was instructed to go back to the tier to look for Brinner's teeth, which were knocked out from the punches thrown by Detainee [REDACTED]. Tr. 94-97.

Brinner was sent to Mount Sinai Hospital in an ambulance after he was at Cermak Hospital for approximately 30-40 minutes. Tr. 117. He had to stay there overnight and was diagnosed by the attending doctor with [REDACTED]. Resp. Ex. 4, Tr. 118,138. As a result of the injuries sustained in the incident, Brinner was placed on duty injury leave from December 16, 2016 until approximately October 2017. Tr. 118. However, upon assignment to the Laundry department, he aggravated his injury within days of his return and remained out until May 2018.

Around October 2017, the Sheriff assigned Investigator [REDACTED] to investigate the incident. Tr. 9. Along with reviewing the complaint register, paperwork, documentation, witness accounts and medical reports, [REDACTED] reviewed the Tier 1b Division VI video. Tr. 8-11. The Complaint Register states that Officer Brinner kicked and punched inmate [REDACTED] after staff had the inmate on the ground. (Sheriff Ex. 1, Tr. 17.) [REDACTED] testified that he sees Officer Brinner defending himself from Detainee [REDACTED], and admits that if an inmate strikes an officer, that officer is allowed to use force to defend themselves. Tr.14. [REDACTED] also concluded from the video that Brinner attempted kicks at the direction of the detainee, and that it was unnecessary but not excessive force. Tr. 21. His exact findings did not sustain a finding of excessive force. Tr. 44. [REDACTED] testified that the detainee wasn't cuffed or "prone" when Brinner attempted these

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kicks. Tr. 50-51. [REDACTED] also admitted that a [REDACTED] would be a valid explanation for the actions shown in the video. Tr. 53-54.

Investigator [REDACTED] further testified that Brinner did not fill out a use of force report, but that he had someone do it on his behalf. Tr. 33. The Investigator was unsure of the actual standard procedure when someone who was injured on duty and could not complete the report. Tr. 52. [REDACTED] could not conclude that it was a violation of the Sheriff's rules to do so, and Brinner was not charged with failing to submit any use of force reports or incident reports. Tr. 53.

Investigator [REDACTED] was unable to interview Officer Brinner because Brinner was out on IOD. Tr. 26. Brinner was sent an order to appear on October 31, 2017; however, Brinner said he did not appear due to his IOD leave, his injury and the medication he was taking. *Id.*, Tr. 122. This was the first time since the December 16, 2018 incident that OPR attempted to contact Officer Brinner. Tr. 54. On December 11, 2017 [REDACTED] was able to contact Brinner on the phone and scheduled a December 20th interview date. Tr. 30. Brinner reached out to his union steward shortly after this call and was told that, per the Collective Bargaining Agreement in effect at that time, he did not have to come in since he was out on leave. (Tr. 30, 121-22, Resp. Ex. 3.) Furthermore, he was still suffering the effects of serious head, neck and back injuries, and was on medications.. (Tr. 122, Resp. Ex. 5.) There was no future interview date set after this. Tr. 30.

Officer Brinner is a member of Teamsters Local 700. In the current Collective Bargaining Agreement between Teamsters and the CCDOC, OPR is allowed to question members on injury leave as long as the members are physically capable. Resp. Ex. 2. This was a change in the parties' CBA. However, this CBA, and thus the right of OPR, did not become effective until approximately May 2018. Under the CBA effective at the time OPR asked Officer Brinner to appear for an interview, the parties were governed by the previous CBA, which does not allow the Sheriff to order injured members to appear for investigative interviews. Resp. Ex. 3.

Investigator [REDACTED] found that Brinner violated the Sheriff's policy in using unnecessary force, failing to deescalate the situation and not cooperating with an OPR investigation, along with jeopardizing the security of the facility or staff. Tr. 40. However, Officer Brinner did offer to do a phone interview when he spoke on the phone with Weston on December 11, 2017. Tr. 82, 121-22. *Id.* At this time, Officer Brinner was injured and on medication that could potentially compromise his ability to answer OPR's questions. (Tr. 122, Resp. Ex. 5.) Officer Brinner does not have a history of being uncooperative with OPR, as he has appeared before OPR for an unrelated case. Tr. 83. Brinner returned to duty in May 2018, but OPR did not contact him at this time. *Id.*

Officer Brinner did not jeopardize the security of the facility or escalate the situation. Sheriff Ex. 2. No other officers or detainees were injured in this incident. Tr. 148. For his part, Officer Brinner suffered head and back injuries. Resp. Ex. 4. Officer Brinner's injuries sustained from detainee [REDACTED] prevented him from working for approximately 10 months.

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Officer [REDACTED] testified that he worked intermittently with Officer Brinner over their time at the DOC, including stints in Division 6 and 11, and that he was a good officer who never displayed unnecessary force or aggression. Tr. 94-97. Brinner suffered a severe head injury and loss of consciousness following the strikes to his head. (Sheriff Ex. 2, Resp. Ex. 4.) Tr. 54-55. Following this incident, Detainee [REDACTED] was charged with battery and was moved to a higher security level wing. Tr. 81.

OPR did not find that Officer Brinner committed "excessive force." (Joint Ex. 1 (Complaint), Tr. 146.) The Sheriff cites violation of the "excessive force" policy - 11.2.1.0. – as the basis for termination in this matter. (Sheriff Ex. 7, Tr. at 151.) Officer Brinner did not commit excessive force.

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 Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Department of Corrections Gen. Order 4.1, Department of Corrections Policy Manual Policy 101, and Merit Board Rules and Regulations Article X, paragraph B. The evidence does not show that Respondent used excessive force under the totality of the circumstances. The video evidence does not show any incident of excessive force by Respondent at the time the detainee [REDACTED] was an active resistor. Subsequently, the Respondent, who was by this time battered and suffered injuries inflicted by [REDACTED], may have moved towards the detainee, there was no contact with the detainee that would constitute excessive force. It should be noted that respondent Brinner testified at this time he had little if any recollection of what was occurring due to his injuries inflicted by the detainee. 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 the Merit Board finds Respondent Jermaine Brinner did not violate any of the orders, policies, or rules and regulations and shall be returned to service effective July 16, 2018.

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[Redacted]

James P. Nally, Chairman

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Byron Brazier, Vice-Chairman

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John Dalicandro, Secretary

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Kim R. Widup, Board Member

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Vincent T. Winters, Board Member

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Juan L. Balderres, Board Member

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Patrick M. Brady, Board Member

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Kimberly Pate Godden, Board Member

Date: July 2, 2019

