

**STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD**

Sheriff of Cook County

vs.

**DAVID EVANS III
Employee # [REDACTED]
Star #15822**

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) **Docket No. 1996**
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DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on September 4, 2018; September 21, 2018; November 5, 2018; and November 28, 2018, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

DAVID EVANS III, hereinafter "Respondent", was appointed a Correctional officer on June 13, 2005. 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. Commisnioners 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 February 22, 2017. 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

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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 commencing 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 22, 2017 and an amended complaint on January 23, 2018. The Sheriff is requesting termination of employment.

On June 13, 2005, David Evans III (hereinafter referred to as "Respondent") was appointed as a Correctional Officer with the Cook County Sheriff's Department (Tr. at 266). On December 16, 2015, Respondent was assigned to Cermak hospital – Division 3 West. (Tr. 268) Maximum and minimum security Detainees were housed in Division 3 West. (Tr. 268)

On or about December 16, 2017, the Office of Professional Review (hereinafter referred to as "OPR") received two complaint registers regarding an incident involving [REDACTED] (hereinafter referred to as "Detainee [REDACTED]") and Respondent. (Tr. at 119)

OPR Investigator [REDACTED] (hereinafter referred to as "Investigator [REDACTED]") was assigned to investigate the reports and reviewed incident reports, videos and use of force reports. (Tr. 120) Investigator [REDACTED] also reviewed medical records, witness statements and general orders. (Tr. 120) Investigator [REDACTED] interviewed Correctional Officer [REDACTED] (hereinafter referred to as "Officer [REDACTED]") and Lt. [REDACTED] (hereinafter referred to as "Lt. [REDACTED]"). (Tr. 120) Investigator [REDACTED] was unable to interview Respondent after multiple attempts to serve him notice to appear were unsuccessful. (R. 124) Investigator [REDACTED] testified that he saw nothing that supported Respondent's statements that he feared great bodily harm due to the fact that the Detainee [REDACTED] was attempting to use the wheelchair armrest as a weapon in anything that he reviewed. (Tr. 144) Investigator [REDACTED] also testified that when Respondent struck Detainee [REDACTED] with the metal wheelchair arm it could have caused great bodily harm or possibly death and that this was a use of force on Detainee [REDACTED] that was unjustified. (Tr. 151-152)

Mr. [REDACTED] (hereinafter after referred to as "Detainee [REDACTED]") testified that on December 2015 he was housed in the Cook County Department of Corrections. (R. 389) On December 16, 2015, at around 2:30 a.m., he was waiting for his medication and he was knocking on the window with his armrest trying to get the correctional officer's attention because he was being refused his medication. (R. 390) Detainee [REDACTED] testified that after the "white shirt" showed up the Respondent and the "white shirt" came into the room and Respondent picked up the first armrest, the "white shirt" began to film, Respondent attempted to take the second armrest off the

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wheelchair, and Detainee [REDACTED] explained to him that it was complicated because it gets stuck. (Tr. 393) Detainee [REDACTED] stated he tried to assist Respondent in taking the armrest off the wheelchair. (Tr. 395-396) While attempting to remove the wheelchair armrest, Detainee [REDACTED] told Respondent "Let me do it. I can take it off." (Tr. 396) Respondent yanked the arm off and Detainee [REDACTED] fell on the floor. (Tr. 396) Detainee [REDACTED] testified that once he hit the ground, Respondent approached him with the wheelchair armrest and hit him in the forehead at least three to four times. (Tr. 397) Detainee [REDACTED] testified that he needed medical attention and went to Stroger Hospital after the incident for contusions on his forehead and his face. (Tr. 399)

Correctional Officer [REDACTED] (hereinafter referred to as "Officer [REDACTED]") testified that he has been employed with the Cook County Sheriff's Department for approximately four years. (Tr. 19-20) Officer [REDACTED] stated that he was working on December 16, 2015 at Cermak hospital. (Tr. 20) He recalls coming into contact with Detainee [REDACTED] for a couple of months at that point. (Tr. 20- 21) Officer [REDACTED] testified that Detainee [REDACTED] was in a wheelchair and seeking his medication for that night and that Detainee [REDACTED] was agitated with the delay in getting his medication. (Tr. 21) Officer [REDACTED] testified that Detainee [REDACTED] removed the armrest off his wheelchair and began hitting the glass window and threw it at one point continuing to bang on the window breaking the glass. (Tr. 21- 22) Lt. [REDACTED] was called to the location in less than 10 minutes. (Tr. 22- 23) Lt. [REDACTED] ordered Respondent to go into the cell to retrieve the wheelchair armrest that was used to break the glass. (Tr. 23) Officer [REDACTED] testified that he never actually entered the room and stayed by the doorway. (Tr. 23) Officer [REDACTED] testified that Respondent went into the room, picked-up the first armchair off one of the beds. (Tr. 24) He observed that Detainee [REDACTED] was still sitting in the wheelchair with the second armrest attached. (Tr. 24) Officer [REDACTED] testified that while Respondent was trying to remove the second armrest, Detainee [REDACTED] attempted to hit Respondent with his left hand. (Tr. 25-26) Officer [REDACTED] observed Detainee [REDACTED] swing once with his left arm towards Respondent's ribs and lower lower body. (Tr. 26) Officer [REDACTED] also observed Detainee [REDACTED] swing up with his right hand but he did not believe that he connected with that attempt. (Tr. 26) Officer [REDACTED] observed Respondent swing his right hand, with the armchair rest still in his hand, at Detainee [REDACTED] and make contact. (Tr. 26) Officer [REDACTED] testified that he saw Respondent strike Detainee [REDACTED] on the head with the hand that he was holding the wheelchair armrest. (Tr. 47) He observed Detainee [REDACTED] fall out of his wheelchair and became fully compliant at that point. (Tr. 27) Officer [REDACTED] testified that Detainee [REDACTED] was taken for medical attention immediately to the emergency room. (Tr. 27)

Lieutenant [REDACTED] (hereinafter referred to as "Lt. [REDACTED]") testified that he has been employed with the Cook County Sheriff's Office in Division 10 for 12 years. (Tr. 52) He has been a lieutenant since 2014. (Tr. 53) He was working the midnight shift on December 16, 2015. (Tr. 53-54) He was working in Division 10 at Cermak hospital with Respondent and Sgt. [REDACTED] who are under his command. (Tr. 54) He also understood that Officer [REDACTED] was present. (Tr. 54) He received a phone call from Respondent saying that Detainee [REDACTED] had broken the window in the group room in the cell. (Tr. 55) He testified that Detainee [REDACTED] was about 6 feet tall and 275 lbs. (Tr. 111) Lt. [REDACTED] learned that Detainee [REDACTED] was upset over a medication issue so he went to the scene and brought a camera, (the video which was admitted into evidence as Sheriff's Exhibit No. 1) (Tr. 56) Lt. [REDACTED] testified that

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he ordered Respondent to open the door and told him to have Detainee [REDACTED] back away from the door in his wheelchair which he did. (Tr. 57) He gave Respondent orders to secure the wheelchair arm which Detainee [REDACTED] used to break the glass. (Tr. 58) Lt. [REDACTED] testified that he observed Respondent attempt to remove the second wheelchair armrest from the wheelchair where Detainee [REDACTED] was still sitting. (Tr. 59) He testified that Detainee [REDACTED] was sort of blocking Respondent's efforts and jabbing him with his hand to stop him from removing the wheelchair arm and made contact with Respondent's arm and possibly his hands. (Tr. 60) At that point Respondent struck Detainee [REDACTED] with the wheelchair arm on his forehead. (R. 61) Lt. [REDACTED] states that he heard a loud crack or thump when Respondent did this and that Detainee [REDACTED] had fallen out of the wheelchair at that point. (Tr. 62) Lt. [REDACTED] states that he stepped in between Respondent and Detainee [REDACTED] and he took Detainee [REDACTED] out of the room to get medical attention. (Tr. 62-63) Lt. [REDACTED] observed the video of the incident and identified each of the officers and the Detainee, as well as himself. (Tr. 68)

Correctional Officer David Evans III testified that he has been a Correctional Officer since 2005 and has been on administrative leave without pay since February 2016. (Tr. 266 and 268) Maximum and minimum security detainees are housed in Division 3 West at Cermak hospital. (Tr. 268) Respondent testified that he observed Detainee [REDACTED] striking the window in the group holding cell with a wheelchair armrest to the extent that it cracked the window. (Tr. 269) Detainee [REDACTED] was in the community room with 4-5 other detainees at the time of the incident. (Tr. 269) Detainee [REDACTED] had used a 16 to 20 inch long metal wheelchair armrest to crack the security glass. (Tr. 275) Respondent testified that Detainee [REDACTED] threatened to "bust Respondent's fucking skull open," if Respondent came into the room. (Tr. 283) Respondent testified that he was ordered by Lt. [REDACTED] to go into the room with Detainee [REDACTED] and to retrieve the wheelchair armrest off the bed; he was also ordered by [REDACTED] to try to retrieve the second wheelchair armrest off from the Detainee [REDACTED]'s wheelchair. (Tr. 277-278) Respondent testified that while he was trying to retrieve the wheelchair arm off the chair, Detainee [REDACTED] blocked him from doing so and then punched Respondent on the left side, in the lower stomach/rib area. (Tr. 281-282) Respondent testified that he made a "defensive reflective strike" to Detainee [REDACTED]'s head, stating, "It was just that fast. It was just, I reflexed. Once he punched me, it was a reflex." (Tr. 282) Respondent testified that although it was a reflex action on his part, "I knew that I struck him in his head with my fist, because I felt my hand." (Tr. 283) Respondent confirmed that "with 100 percent certainty he did not strike [REDACTED] with the wheelchair armrest, but with his hand which was wrapped around the wheelchair arm." (Tr. 283) Respondent also testified that he would have been justified in intentionally striking [REDACTED] under Sheriff's Policy, if it had been intentional, which it was not. (Tr. 311)

Dr. [REDACTED] (hereinafter referred to as "Dr. [REDACTED]") testified that he is employed as the Medical Director and Oncologist at Franciscan Network in Munster, Indiana. (Tr. 220) He has been an oncologist for 14 years. (Tr. 220) Dr. [REDACTED] was certified as an expert in the field of oncology. (Tr. 221-224) Dr. [REDACTED] testified that he was Respondent's treating physician during Respondent's cancer treatment from 2015 onward into 2017. (Tr. 227) He testified that [REDACTED], and that he treated Respondent with chemotherapy for a six-month period in 2016. (Tr. 228- 229) [REDACTED]

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testified that Respondent suffered from a number of side effects during chemotherapy, including fatigue, neuropathy, nausea, and memory issues. (Tr. 230)

Mrs. [REDACTED] (hereinafter referred to as Mrs. [REDACTED]) testified that Respondent is her son, and that on approximately April 2016 through April 2017 he was largely under her care at her house in [REDACTED] while he was in chemotherapy treatment for cancer. (Tr. 258) She testified that he was "just out of it" in April 2016, and she had to feed him, bathe him, and had him staying at her house during his treatment. (Tr. 259)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions, when viewed in accordance with the totality of the circumstances, support the conclusion that Respondent's actions were reasonable and necessary to perform a lawful task and not in violation of COOK COUNTY SHERIFF DEPARTMENT'S ORDER 11.2.1.0 – RESPONSE TO RESISTANCE/ USE OF FORCE POLICY; COOK COUNTY SHERIFF DEPARTMENT'S ORDER 11.2.2.0 – RESPONSE TO RESISTANCE/ USE OF FORCE DUTIES, NOTIFICATIONS AND REPORTING PROCEDURES; COOK COUNTY DEPARTMENT OF CORRECTIONS GENERAL ORDER 24.9.1.0 – REPORTING INCIDENTS; COOK COUNTY SHERIFF DEPARTMENT'S ORDER 11.2.20.1 – CONDUCT POLICY; and COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is an incident in which Respondent, David Evans III, a corrections officer, was assigned to Tier 3 – West at Cermak Hospital at approximately 2:30 A.M on December 16, 2015. On that date, Detainee [REDACTED] was being housed in a community group cell with 4-5 other detainees. At that time, Respondent reported to Lieutenant [REDACTED] that Detainee [REDACTED] had broken the glass window in the community room cell with the armrest from Detainee [REDACTED]'s wheelchair. Upon his arrival Lieutenant [REDACTED] ordered Respondent to enter the community room to retrieve the metal wheelchair arm rest that was now on an unoccupied bed. Officer [REDACTED] was instructed to hold the entrance door and Lieutenant [REDACTED] entered the threshold of the room to video record the events. The video admitted into evidence and presented at trial showed that a large security glass window had been visibly cracked. Inside the room were several other detainees that quickly move to the wall out of sight of the camera. Detainee [REDACTED] is observed in the center of the room facing towards the door while seated unrestrained in a wheelchair with one armrest still attached. Detainee [REDACTED] appeared to be of a large physical build. Respondent is observed to pick-up the wheelchair armrest from the unoccupied bed behind Detainee [REDACTED]. Respondent walks back to Detainee [REDACTED] and stands to Detainee [REDACTED]'s left side and bends over and across Detainee [REDACTED] to remove the wheelchair's right armrest. As Respondent reaches over, Detainee [REDACTED] makes a sudden aggressive move with both hands and appears to strike Respondent's torso and hands. Respondent is observed to immediately retreat while striking Detainee [REDACTED]'s head once with his right hand in one simultaneous motion. Detainee [REDACTED] falls to his left and onto the floor and against another bed. The video is inconclusive if the injury to Detainee [REDACTED]'s forehead is a result of being struck with the wheelchair arm rest, falling onto the

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floor or falling against an adjacent bed frame. The encounter between Detainee [REDACTED] and Respondent lasted six (6) seconds.

In addition, OPR Investigator [REDACTED] testified that OPR's attempts to serve Respondent notice to appear were unsuccessful. Lastly, Detainee [REDACTED]'s testimony was inconsistent with video evidence and witness testimony admitted at trial. Specifically, Detainee [REDACTED] testified that Respondent struck him with the wheelchair armrest 3-4 times while he was on the floor. This assertion was not supported by the video evidence or eyewitness testimony.

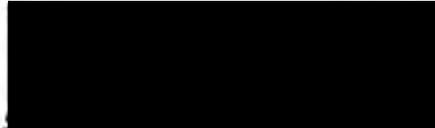
Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, David Evans III, be reinstated to the Cook County Sheriff's Office effective February 22, 2017.

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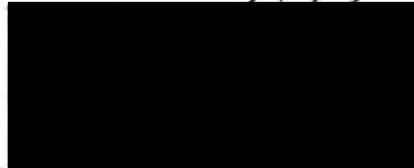
James P. Nally, Chairman



Byron Brazier, Vice-Chairman



John Dalicandro, Secretary



Kim R. Widup, Board Member



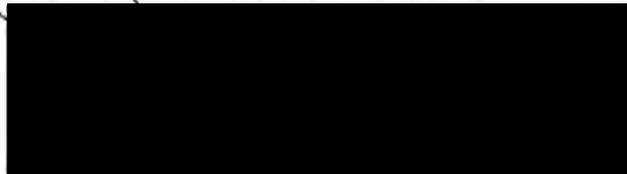
Vincent T. Winters, Board Member



Juan D. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date March 1, 2019