

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1893
Correctional Officer)	
Brendan P. Kelly)	
Star # 15797)	

DECISION

This matter coming on to be heard pursuant to notice before Vincent T. Winters, Board Member, on August 14th and 15th 2018, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Brendan Kelly, hereinafter Respondent, was appointed a Correctional officer on May 31, 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. 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 April 6, 2016 and an amended complaint was filed on January 23, 2018. Regardless of whether

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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 April 6, 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 April 6, 2016 and an amended complaint on January 23, 2018. The Sheriff is requesting termination.

On May 31, 2005, Respondent was appointed a Correctional Officer. On November 24, 2015, Respondent was working as an External Operations Correctional Officer of the Cook County Department of Corrections ("CCDOC") (Tr. 206). On November 25, 2015, Respondent was relieved of his law enforcement powers ("de-deputized") by the Cook County Sheriff's Office of Professional Review ("OPR") due to an incident at his residence located at 12783 Chieftain Court, Lemont Illinois 60439.

OPR Investigator [REDACTED] was assigned to investigate this case. (Tr. 158). [REDACTED] testified that he reviewed all of the police reports, spoke to the Lemont Police Department, and interviewed the Respondent (Tr. 159, 160, 161, 163). [REDACTED] findings were that the Respondent violated General Orders Conduct Policy 11.2.20.1 based upon the criminal charges of domestic abuse, assault on a peace officer and resisting arrest (Tr. 177, 178). [REDACTED] went on to testify that Respondent Kelly stated that he did not recall any of the incident and that Respondent only identified [REDACTED] in December of 2013 (Tr. 170, 171).

Lemont police officer [REDACTED] was the first to respond to the Respondents home on November 25, 2015. He testified that he was called to the location to assist an ambulance call regarding a subject [REDACTED]. (Tr. 24). He went on to testify that when he arrived, he heard screams of help me, so he immediately ran upstairs and saw the Respondent with his hands around his wife's neck. (Tr. 27). [REDACTED] testified that the Respondent refused to comply with any instructions and so he began to strike him. (Tr. 29). [REDACTED] went on to testify that the Respondent struck him at least six times. (Tr. 31). [REDACTED], wife of the Respondent, testified that Officer [REDACTED] came into the house screaming commands at her husband but that he could not recognize or comply with any commands and that her husband was just grunting, groaning and thrashing. (Tr. 290). She went onto to testify that she repeatedly told Officer [REDACTED] to stop hitting her husband [REDACTED] (Tr. 291). [REDACTED] testified that the only noise that the Respondent made throughout the incident was grunting loudly; he did not say anything (Tr. 25, 43). The second officer on the scene, Officer [REDACTED] also testified that the Respondent only made grunting noises and that he didn't recall any other sounds that he made. (Tr. 102). Brendan Kelly testified that he did not remember anything after falling asleep on the night of the occurrence until he was

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Wherefore, based on the foregoing, it is hereby ordered that Respondent Brendan P. Kelly be reinstated to the Cook County Sheriff's Office effective April 6, 2016.

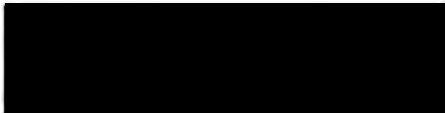
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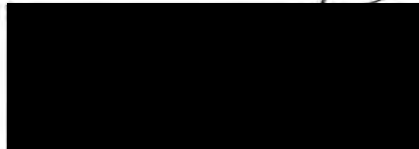
James P. Nally, Chairman



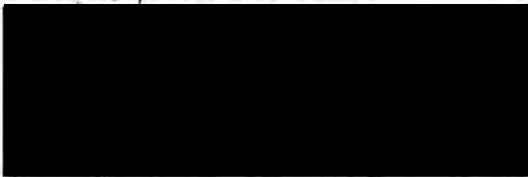
Byron Brazier, Vice-Chairman



John D'Amico, Secretary



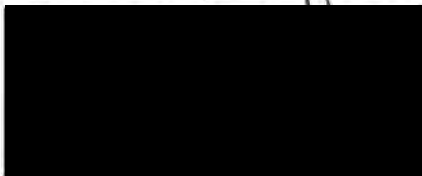
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date December 14, 2018