

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1872**
Correctional Officer)
Anthony Marrero)
Star # 15360)

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on August 17, 18, and 30, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Anthony Marrero, hereinafter Respondent, was appointed a Correctional Officer on December 2, 2002. 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. 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 on February 8, 2016. 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 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 detainee [REDACTED] by deploying OC spray at the detainee while the detainee was already restrained by other correctional officers, and by kicking the detainee twice while detainee was on the ground, and dragging the detainee while he was handcuffed and his pants were down, and restrained by other correctional officers. The Sheriff also alleged that Respondent failed to submit an incident report detailing the specifics of the use of force utilized against the detainee, including deploying OC spray, kicking the detainee twice and dragging him all handcuffed and his pants were down. The Respondent did complete a Response to Resistance/Use of Force report stating he deployed OC spray to gain control of the detainee, but failed to document he kicked the detainee, or dragged the detainee while he was handcuffed.

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, Gen. Order 24.9.1.0, 11.2.2 0.0, and Merit Board Rules and Regulations Article X, paragraph B.

Officer Anthony Marrero was appointed as a Correctional Officer at the Cook County Department of Corrections ("CCDOC") on December 2, 2002. Tr. 477. Officer Marrero voluntarily went through Oleoresin Capsicum ("OC") training and obtained an OC Certification in April of 2011. Tr. 480. At the time of the incident, out of approximately 75 officers, there were about five (5) containers of OC spray provided for the Receiving area. Tr. 481. Detainee [REDACTED] was in the custody of the Cook County Department of Corrections beginning on June 5, 2013. Tr. 7. The incident occurred on June 6, 2013. Tr. 7, 12. [REDACTED] was convicted of a felony, around September of 2013, for throwing a chair at hospital workers, which resulted in his incarceration at the CCDOC on June 6, 2013. Tr. 25-27. CCDOC opened a new RCDC building on June 6, 2013, which is the exact day this incident occurred. Tr. 14 [REDACTED] [REDACTED] was taking medication daily for anxiety and depression at the time of the incident. Tr. 28. Officer Anthony Marrero was working in a property cage within the newly opened RCDC on June 6, 2013. Tr. 15.

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Officer [REDACTED] has been employed by the Cook County Sheriff's Police for approximately two years, and in June of 2013, at the time of the incident, she was working in the capacity of a correctional officer. Tr. 98-100. Lieutenant [REDACTED] has been employed by the Cook County Department of Corrections for approximately 23 years, and has been a lieutenant for approximately five (5) years. Tr. 125. Lieutenant [REDACTED] was assigned as the shift commander in Receiving on the date of the incident. Tr. 126. She did not observe the incident herself. *Id.*

Superintendent [REDACTED] is employed with the Cook County Department of Corrections, where she oversees the Records Department. Tr. 163. As the Superintendent of the Records Department, [REDACTED] reviews paperwork and forwards or notifies OPR for further investigation. Tr. 164.

Correctional Officer [REDACTED] has been employed with the Cook County Department of Corrections for ten (10) years. Tr. 190. Officer [REDACTED] was assigned to Receiving in June of 2013. *Id.*

[REDACTED], previously worked in the Sheriff's Office as the Acting Executive Director of the Cook County Jail in June of 2013. Tr. 216. He is currently a consultant with the Sheriff's Office. Tr. 215. As Acting Executive Director, [REDACTED] was tasked with reviewing the use of force incidents for compliance with the Sheriff's policies. Tr. 217-18.

[REDACTED] is currently employed with the Cook County Sheriff's Department as the Executive Director of the Use of Force Review Unit and has been with that unit since approximately September of 2011. Tr. 267. In 2013, [REDACTED] was a Sergeant in the unit. *Id.* The Use of Force Review Unit reviews all incidents from a training standpoint, and also works with the training academy to develop supplemental trainings. Tr. 268-69.

[REDACTED] is currently employed with the Cook County Sheriff's Office in the Use of Force Review Unit. Tr. 330. He previously worked as an investigator with OPR for approximately 2.5 years, back in 2014. In OPR, his responsibilities included investigating DOC related use of force cases, detainee reports, and grievances. Tr. 331.

[REDACTED], is a lieutenant with the Cook County Sheriff's Department, and has been with the Department since January 27, 1992. Tr. 392. [REDACTED] was the shift supervisor on June 6, 2013. Tr. 407.

[REDACTED] has been a Correctional Officer with the Cook County Department of Corrections for approximately 13 years. Tr. 452. He is also the Chief Union Steward for Teamsters Local 700 and has held that title for approximately seven (7) years. *Id.* His duties and responsibilities as Chief Union Steward involve representing officers, negotiating contracts, attending OPR interviews, arbitrations, Loudermill and grievance hearings.

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On June 6, 2013, at the time of the incident, there were multiple altercations and several combative and agitated subjects housed in the RCDC unit. Tr. 15, 165. It was a chaotic environment. *Id.* Officers attempted to secure the situation and maintain the safety of the detainees and fellow officers. Tr. 18. Detainees at that point had not been classified into specific divisions. Tr. 85.

There were several hundred detainees flowing through the RCDC facility in a day Tr. 117. Detainee [REDACTED] was acting irate while asking for his medication. Tr. 401. Officer Marrero arrived at the bullpen and observed several officers attempting to handcuff an uncompliant detainee [REDACTED] Tr. 486. The detainee was actively flailing, fighting with sworn staff and attempting to defeat handcuffing. Tr. 552. [REDACTED] was resisting, so Marrero deployed one quick burst of Oleoresin Capsicum ("OC spray"). Tr. 486. In the video made a part of this record, Officers had clearly been visibly struggling with Detainee [REDACTED] Tr. 202. Officer Marrero further observed officers ongoing, unsuccessful attempts to handcuff detainee [REDACTED] so he joined in the attempts as well by grabbing the detainee's wrist to get him to turn over to be handcuffed. Tr. 487. Detainee [REDACTED] pulled back at this point, after ignoring verbal commands, and Marrero delivered a strike to his thigh to again attempt to get him to turn over. Tr. 487, 511. The detainee was still not turned over, so Marrero delivered one more strike, and was finally able to get the detainee to turn over to be handcuffed. *Id.* Officer Marrero did not intentionally pull-down detainee [REDACTED]'s pants, nor did he witness any other officers intentionally pull-down his pants. Tr. 487. Officer Marrero took in the totality of the circumstances when deciding to intervene and determining how to respond to Detainee [REDACTED]. Tr. 489. He considered the number of incidents that occurred prior to him entering, the number of officers on duty, and the fact that there were multiple aggressive, agitated inmates that outnumbered those officers. Tr. 489.

Immediately after the incident, and after Detainee [REDACTED] was secured, Marrero was able to remove him from under the bench and better position him to stop any further aggression. Tr. 495. He also attempted to get all the other detainees out of the bullpen in order to get [REDACTED] to medical. *Id.* This is a standard operating procedure. *Id.*

Detainee [REDACTED] did not know who administered the kicks he alleges once he was taken down by an officer. Tr. 89-90. An officer then attempted to pull the detainees feet, which caused the detainees loose pants to fall to his ankles. Tr. 94. The detainee was escorted by Officer [REDACTED] to be decontaminated within five (5) minutes after the incident. Tr. 122. The involved Officers told the detainees to face the wall while this was occurring in order to keep them from getting out of control. Tr. 106. The point of having detainees face the wall is for the safety of the detainees and officers, and to prevent them from getting involved in the situation. Tr. 120, 193.

Approximately 60 seconds before this current incident with Detainee [REDACTED], Officer Marrero was involved another incident with a different detainee. Tr. 493. Officer Marrero feared there was a riot going on. Tr. 494.

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Officer Marrero had to fill out two Use of Force Reports following this incident. Tr. 497. He did not have time to fill out a Use of Force Report following the first incident as he immediately responded to the [REDACTED] incident. *Id.* While filling these out, his heart was pumping, and adrenaline was rushing due to the events that had just transpired. *Id.* Two other officers, who were the primary officers in the instances, both submitted incident reports. Tr. 583.

Officer Marrero did not indicate the foot strikes to the detainee in his Use of Force Report because, at the time, he said he was unaware that had used that tactic. Tr. 504. He later saw the video of the incident for the first time at OPR, and that is where he admitted to having issued foot strikes. Tr. 484, 505. Neither Use of Force Reports from either incident were ever returned to him by a supervisor. *Id.* None of the supervisors ever indicated his reports were deficient in any way whatsoever. Tr. 506. Marrero says he did not intentionally omit any information in any of his reports. Tr. 556.

Officer Marrero engaged in remedial retraining approximately six to seven months following this incident as required by the Department of Corrections. Tr. 19, 521. However, he said the remedial training did not teach him or fellow officers how to respond differently in this type of situation as it was instead a general group course on training. Tr. 19, 280, 306. Further, he said he was never instructed at the remedial training that OC spray nor kick strikes were prohibited. Tr. 521.

Oleoresin Capsicum spray is expressly authorized by the Sheriff's Orders. Tr. 13. Officers are authorized and trained to use OC spray when there is an active resisting detainee who is not following verbal commands. Tr. 484. OC spray can be used to prevent attacks. *Id.* Officers are also trained to administer diffused pressure strikes or direct mechanical strikes, specifically to the shoulder, thighs, buttocks, calves and arms. Tr. 484-85. OC spray is a non-lethal form of force. Tr. 324. The use of OC spray is a tool officers have to use, besides verbalization or using their hands. *Id.* If an officer feels they are in fear of receiving a battery, or in fear that that fellow officers surrounding them will receive a battery, force is appropriate. Tr. 371.

The Desmedt Model and the Sheriff's Order on Response to Resistance and Use of Force are all designed to guide responses to incidents and how officers respond to them. Tr. 575. The correct standard to evaluate use of force incidents is the totality of circumstances test. Tr. 299. The totality of the circumstances includes the mental state of the subject, the number of subjects in the area, the lighting, the environment, whether weapons are involved, multiple consecutive incidents etc. Tr. 300.

[REDACTED], who had reviewed the Use of Force Report, was not trained in OC spray deployment Tr. 244. He further did not write the Desmedt Model, which was ultimately the Use of Force Order. Tr. 246. Mr. [REDACTED] did not make his conclusion that Marrero's deployment of OC spray was unreasonable based off any specific standard. Tr. 249.

Director [REDACTED] did not take issue with Marrero's OC spray deployment and did not list that as one of the reasons for forwarding the incident to OPR. Tr. 314. The investigator with OPR

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concluded that Marrero unnecessarily used OC spray Tr. 346. The OPR investigator also did not rely on any witness statements in determining that Marrero used force. Tr. 372.

██████████, Marrero's supervisor on that day, did not take issue with anything that occurred, and did not believe there was any excessive use of force. Tr. 407. No one ever directed ██████████ to require Officer Marrero to file any additional documentation relating to the incident. Tr. 431.

Investigator ██████████ determined in his review that Officer Marrero used excessive force Tr. 582. ██████████ did not draw any conclusions on Marrero's use of force based off of any other incident reports. Tr. 360.

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, Gen. Order 24.9.1.0, or Gen. Order 24.9.1.0, 11.2.20.0. Respondent did violate Sheriff's Order 11.2.2.0 and Merit Board Rules and Regulations Article X, paragraph B, by filing an incomplete Use of Force report which did not report that the Respondent used mechanical strikes to the thigh of detainee ██████████, although the evidence shows that he did. The evidence does not show that Respondent used excessive force under the totality of the circumstances. The video evidence is particularly clear that at the time, just prior to the incident involving detainee ██████████ that another incident had occurred with another detainee in the same area. The area contained numerous detainees within the room, and the situation had become very agitated, and a melee could have broken out. Respondent in evaluating the situation was justified in using OC spray and assisting other officers in subduing ██████████, who was an active resistor. 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 Officer Anthony Marrero be suspended for 30 days, effective February 8, 2016.

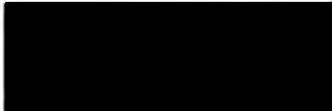
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James P. Nally, Chairman



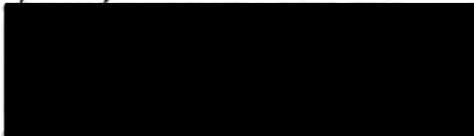
Byron Brazier, Vice-Chairman



John Dalicandro, Secretary



Kim R. Widup, Board Member



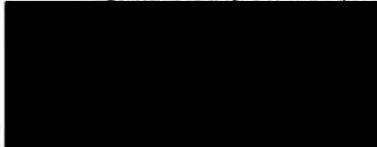
Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick M. Brady, Board Member



Kimberly Pate Godden, Board Member

Date June 7, 2019