

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

Sheriff of Cook County

vs.

**Michael Mendez
Employee # [REDACTED]
Star # 681**

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Docket No. 1931

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on December 10 2018; December 11, 2018; December 18, 2018; January 16, 2019; January 28, 2019; January 29, 2019; February 6, 2019; February 8, 2019; February 20, 2019; March 8, 2019; March 18, 2019; March 19, 2019; and March 21, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

MICHAEL MENDEZ, hereinafter "Respondent", was appointed a correctional officer on February 14, 1995. On July 8, 2002, Respondent was promoted to Sheriff's police officer. Respondent's position as a Sheriff's 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

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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 September 16, 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 commencing the instant action, was properly filed, and will be accepted as the

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controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on September 16, 2016 and an amended complaint on January 23, 2018. In the complaint, the Sheriff alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility, did not meet with his Supervisor, Sergeant [REDACTED], that there was no I-Pass transponder or Mi-Fi puck usage by Respondent on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 9, 2015, Respondent provided false statements to Investigator [REDACTED]. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. The Sheriff is requesting termination of employment.

On February 14, 1995, MICHAEL MENDEZ (hereinafter referred to as "Respondent") was appointed as a correctional officer with the Cook County Sheriff's Department. On July 8, 2002, Respondent was promoted to police officer. On January 8, 2012, Respondent was assigned to the Central Warrants Unit. On December 25, 2014, Respondent was assigned to work in the Central Warrants - Fugitive Apprehension Unit – North Team. (Tr. 950, 951).

On or about February 2015, the Office of Professional Review (hereinafter referred to as "OPR") received a complaint regarding an anonymous letter alleging that members of the fugitive apprehension unit did not come into work on Christmas Day (December 25, 2014), used their covert vehicle for personal use and left work early every day (Tr. 27 thru 29).

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Lt. [REDACTED] (hereinafter referred to as "Lt. [REDACTED]") was assigned to Internal Affairs as an investigator in 2014. (Tr. 25) He recalls being assigned to investigate an anonymous complaint in February or March of 2014. (Tr. 27). The anonymous letter that was given to him by Inspector [REDACTED] regarding this particular investigation was entered into evidence as Sheriff's Exhibit 1. (Tr. 28) The individual named in Sheriff's Exhibit 1 were Sgt. [REDACTED] and the allegation was that he and the Respondent who worked with him did not come to work on Christmas Day and they were told to use their covert cars for personal reasons and left work early every day. (Tr. 28, 29) After receiving the anonymous letter, he began by investigating who was working on that day. He called the timekeepers and asked for time sheets for December 25, 2014. (Tr. 29, 30) The timekeeper's time sheets for December 25, 2014 were entered as Sheriff's Exhibit No. 2. (Tr. 30) He spoke with Deputy Chief [REDACTED] who oversaw the Fugitive Apprehension Unit and requested that he collect memorandums from the officers for their activities on that day which included all the members of the Unit, not just the Respondents. (Tr. 33) Lt. [REDACTED] testified that there was no activity regarding Respondent's gas card, tollway transponder, computer usage, radio usage. (Tr. 41) A memorandum detailing his activities for December 25, 2014 was submitted to Chief [REDACTED] was entered as Sheriff Exhibit No. 6. (Tr. 44) Respondent stated that he met with Investigator [REDACTED] and [REDACTED] [REDACTED] in the Bridgeview area and went to his vehicle and worked his case files and organized his files for the following week. (Tr. 44) Respondent stated that he did not speak with his supervisor that day. (Tr. 79) Sheriff's Exhibit 15 was marked for identification which is a summarization of the interview with Respondent. (Tr. 68)

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Chief [REDACTED] (hereinafter after referred to as “Chief [REDACTED]”) testified that on that he had been retired for two years at the time of the hearing. (Tr. 10) From 1977 until the time of his retirement, he was a Cook County Sheriff’s Police Officer. (Tr. 11) At the end of his career he worked in the Fugitives Unit where he had responsibilities to try and bring back any of the people who had escaped from home electronic monitoring. (Tr. 11, 12) He supervised respondent. (Tr. 14-15) They all had the responsibility to investigate and retrieve fugitives or persons that had warrants out. (Tr. 16) He is not certain as to whether the officers needed to report a 10-8 when they went on duty and off duty. (Tr. 22) He testified that Christmas, Fourth of July and Thanksgiving were dangerous days to be inside a family home trying to apprehend someone. (Tr. 35) He states that officers were told not to make lock ups on Christmas Day if possible. (R. 36) The reason for this policy was that family would be around, it would be a very highly emotional situation considering the holidays, alcohol consumption. (Tr. 37) The Respondent did not report directly to him but to Sgt. [REDACTED]. (Tr. 40) He believed that the officers also carried paper files in their trunks upwards up to 300 files and that they would work on the paperwork when they were not actively searching for fugitives. (Tr. 52) He believes that the official policy of the Sheriff’s Office is to work and attempt to apprehend fugitives on every day and it was only his unofficial policy regarding not working on Christmas Day in terms of going into people’s homes. (Tr. 60, 61) It was his unwritten policy that an officer could do surveillance on his own. (Tr. 64) He would give lee way for officers who lived far away and let them remain on duty while they were driving home and not be officially quote “off duty” until they left Cook County. (Tr. 93, 94) It is his understanding that there was never a time when the officers did not have any work that they could be doing whether it be file review, updating or

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searching for criminals. (Tr. 107, 108) Chief ██████ testified that the North team, the entire time that I was with them, or as their boss anyway, before I took over from ██████, I didn't worry about them. They had so much activity, you know, so many arrests that they doubled and tripled the arrests of the South team. They basically were workaholics. (Tr. 17)

Inspector ██████ (hereinafter after referred to as "Inspector ██████") testified that he has been with the Cook County Sheriff's Office for 26 years. (Tr. 622) His duties are to conduct administrative investigations of alleged wrongdoing by Sheriff's employees. (Tr. 634) Upon being assigned to this investigation to looked at everything that was already gathered, all the evidence, all the interviews that were conducted, and determine if any further investigation was warranted. (Tr. 625) He relied on all of the Sheriff's exhibits including the memorandums by the Respondents, the vehicle information from the gas card, I-Pass, Mi-Fi [internet access] puck and computers. (R. 631-633) Inspector ██████ testified that he did not interview Respondent's supervisors, Commander ██████ nor Sgt. ██████, regarding orders to Respondent not to make arrests on Christmas Day. (Tr. 687 thru 689) Inspector ██████ testified that he did not know if the Respondent was to report to a Cook County facility each day for work because he did not interview Respondent's supervisors, Commander ██████ or Commander ██████. (Tr. 711, 755-756) (Tr. 747) Inspector ██████ testified that he did not try to subpoena Respondent's cell phone tower records. (Tr. 744)

██████████ (hereinafter after referred to as "Mr. ██████") testified that he has been with the Cook County Sheriff's Office since 1995 where he spent 7 years in corrections, 3 years in patrol, a year at the Academy and the remainder in the Sheriff's IT Department since approximately 2005. (Tr. 828) His responsibilities have included everything from delivering

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computers to data base work up until his current role which is Director of all Information Security. (Tr. 828) One of the contract vendors is Verizon that does both telephones and something called the Mi-Fi puck which is a small device the size of a hockey puck which allows for connectivity to other devices and the internet for computers. (R. 830) The Mi-Fi puck has a specialized identification number that is given to each employee that utilizes them. (Tr. 831, 832) He testified that there was no data usage by Respondent for December 25, 2014. (Tr. 833) When the Mi-Fi pucks are set up it is not supposed to be used for personal devices, only Sheriff's devices. (Tr. 834) He was asked to check on email activity as well as Mi-Fi puck activity and he learned that there was no ongoing email from any of these accounts. (Tr. 837)

██████████ (hereinafter after referred to as "Commander ██████████") testified that he has been with the Cook County Sheriff's Office since September 2012. (Tr. 947) He has been a police officer for 20 years as a Patrolman, Tact Officer, Special Operations Officer, Sergeant, Gun Team, Patrol Sergeant and worked in the Police Academy. (Tr. 947) He has been on assignments and teams that have looked for people with warrants out on them. (Tr. 948) With the Sheriff's Office, he worked in the Central Warrant Division which had three sections including Child Support, Electronic Monitoring fugitives and Sheriff's Police fugitives. (Tr. 948) He was a supervisor over the fugitive unit in December 2014 and still holds that position today. (Tr. 949) In December 2014, all of the Respondents were members of the Fugitive Unit on the North Team. (Tr. 950, 951) At any given time in 2014, there were 44,000 warrants in Cook County so each officer probably was holding over 200 cases. (Tr. 953) Commander ██████████ testified that his policy was for officers to hit multiple houses on Christmas morning for low level warrants because that would not be good for the Sheriff's department. He testified that by of low level

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warrants he meant probation violations, violation of supervision, narcotics and traffic arrest warrants.

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 did not violate:

1. COOK COUNTY SHERIFF'S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: PER-03-01-A (Effective Date: March 1, 2003) PAYROLL AND TIMEKEEPING MANUAL;
2. COOK COUNTY SHERIFF'S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: ROC-00-01-A (Effective Date: April 3, 2001) RULES AND REGULATIONS;
3. SHERIFF'S ORDER 11.2.20.0 (Effective Date: January 25, 2013) RULES OF CONDUCT;
4. SHERIFF'S ORDER 11.2.20.1 (Effective Date: March 12, 2015) CONDUCT POLICY;
5. COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is a proceeding arising from an anonymous letter that was received by the Central Warrants - Fugitive Apprehension Unit alleging that members of the Fugitive Apprehension Unit 1) did not report to work on Christmas Day; 2) were allowed to use their covert cars for personal use, and 3) left work early every day. Respondent, MICHAEL MENDEZ, is one of several police officers assigned to the Fugitive Apprehension - North Unit. An investigation was

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conducted by the Office of Professional Review and a formal complaint filed by the Sheriff on September 16, 2016. The Sheriff's complaint alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility on December 25, 2014. That Respondent did not meet with his Supervisor, Sergeant [REDACTED] on December 25, 2014. That Respondent had no I-Pass transponder, cell phone, computer or Mi-Fi puck usage on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 23, 2015, Respondent provided false statements to Investigator [REDACTED]. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. A heavily contested and vigorously litigated 13 day trial was conducted and this decision is rendered by the Board.

A key defense by the Respondent was that the duties of a Fugitive Apprehension Officer are substantially different than those of a Correctional Officer, Deputy Sheriff or Sheriff's Police Officer. The position of Fugitive Apprehension Officer requires that the Respondent have much more discretion in the performance of those duties. This is not to say that the Respondent is free from accountability. In fact, Chief [REDACTED] testified that the Respondent's unit had so much activity, so many arrests that they doubled and tripled the arrests of the South team, going on to describe members of the Fugitive Apprehension North Unit as workaholics. Additionally, there was no testimony presented indicating that Respondent had a pattern of not reporting for work or leaving work early as alleged in the anonymous letter. Respondent's verbal and written statements reported that he worked on his files in the presence of Investigators [REDACTED] and

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██████████ for the entire day on December 25, 2014. Respondent's immediate supervisor at that time, Sergeant ██████████, has since retired and did not appear at trial to testify. In light of the Respondent's discretion in performing his daily duties and the testimony presented of an unofficial order from Respondent's immediate chain of command to lay low on this specific holiday, the Sheriff's evidence that Respondent had no gas card charges, no I-Pass/ radio and/or computer usage for the day in question was relevant, but not persuasive, that no work was performed by the Respondent on December 25, 2014.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, MICHAEL MENDEZ, be reinstated to the Cook County Sheriff's Department effective September 16, 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

July 19, 2019