

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1886
Deputy Sheriff)	
Theodore Merriweather)	
Star # 11144)	

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on September 8 and October 6, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Theodore Merriweather, hereinafter Respondent, was appointed a Deputy Sheriff on June 16, 2003. Respondent's position as a Deputy Sheriff 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

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on March 25, 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 on July 26, 2017 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 March 25, 2016. The Sheriff is requesting a 75 suspension.

On June 16, 2003, Respondent was appointed a Deputy Sheriff. On September 2, 2003, Respondent was assigned to George Leighton Criminal Court Building 2650 South California Ave. Chicago, Illinois 60608.

Sgt. [REDACTED] is with the Use of Force Unit with the Cook County Sheriff's Office and has been there two years. (R. 30-31) He has been with the Sheriff's Department since 1995. (R. 31) He has specific use of force training and has been certified. (R. 33) In 2015, the John Desmet Use of Force Model was being used by the Sheriff's Office. (R. 33-34) He was assigned to investigate the incident on February 9, 2015 involving Deputy Sheriff Merriweather. (R. 35) As part of the investigation, he reviewed the video which was marked as Joint Exhibit 4A and admitted into evidence. (R. 37) Sgt. [REDACTED] identified Respondent Deputy Merriweather on the video and at the hearing. (R. 38) At approximately 12:45:45 of the video it shows that Respondent Merriweather controlled the subject's head and brought him to the ground. (R. 39) After investigating the matter and reviewing the video he referred the matter to OPR. (R. 40) He noted that Officer Merriweather documented the tactic he used as an "escort hold." (R. 40) The detainee reported injuries to his teeth. (R. 58)

Investigator [REDACTED] has been with OPR since 2013. (R. 70) This matter began after a grievance from detainee [REDACTED]. (R. 73) He reviewed all the documents and statements and the video pertaining to this incident. (R. 73-74) Exhibit 4 is the video and was entered into evidence and reviewed during the hearing. (R. 77) During his investigations he compares the conduct and tactics used in comparison with the use of force model. (R. 84) Investigator [REDACTED] found it problematic that Respondent Merriweather escalated the situation by pushing the detainee's head into the wall causing the detainee to push off the wall. (R. 84) Putting an arm around the detainee's neck is against Department policy. (R. 84) Officers can only use a choke hold when their lives are in danger. (R. 84-85) The investigator had concerns regarding the report authored by Respondent Merriweather where he reports that he had the detainee by the shoulders and took the detainee down to the ground by his arms, which he believes is not consistent with the video. (R. 86) Investigator [REDACTED] interviewed Respondent Merriweather and

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had him sign all the requisite notifications and forms. (R. 89, 90, 91) Respondent Merriweather was given an opportunity to change or edit the summary of his report as well as look at all documents during the interview. (R. 91) When reviewing the video Investigator [REDACTED] indicates that detainee [REDACTED] grabs the wall in response to his face being pushed into the wall. (R. 159) Investigator [REDACTED] concludes that Respondent Merriweather tells detainee [REDACTED] to put his hands on the wall however does not give him enough time to put his hands on the wall without pushing his face into the wall at the same time. (R. 160)

The Respondent Theodore Merriweather has been a deputy sheriff for 13 years always working in the Criminal Courts Building. (R. 215) Respondent Merriweather states that he put his hand on the back of the detainee's head. (R. 223) At 12:45 of the video, Respondent Merriweather says detainee [REDACTED] is still in line with the other inmates and he is talking. (R. 262) The Respondent says that in the video it shows that the detainee was walking toward the holding cell and it was Respondent Merriweather who said something to the detainee that made him stop and start the altercation. (R. 263) Respondent Merriweather thought he was threatened but he did not call for backup or notify any of the other officers in the surrounding area. (R. 267) He states that at 12:45:12 of the video detainee's hands are on the wall. (R. 269) He states his right hand is on the back of the detainee's neck and his left hand is on his left shoulder. (R. 269) He states that he has a firm grip with his right hand on the neck of the detainee and his face is right up against the wall. (R. 271) Respondent Merriweather states that at 12:45:17 both of the detainee's hands are on the wall. (R. 272). (R. 273) Respondent states that his right hand is on the neck of the detainee. (R. 274) He states that the detainee is pushing his head into the Respondent's hands, so the Respondent pushes back the detainee's head towards the wall. (R. 274) The Respondent agrees that at 12:45:33 he does not need assistance from other officers and does not ask for backup. (R. 275) Respondent agrees that the left side of the face of the detainee is against the wall. (R. 275) Respondent does not ask Officer [REDACTED], who can be seen in the video, to assist him (R. 276) Respondent testifies that his arm is around the upper chest of the detainee. (R. 277) Respondent continues to testify that his right arm is not around the neck of the detainee. (R. 278) Respondent admits that he was familiar and trained with the Sheriff's use of force policy. (R. 278) He understands that choke holds are a restricted act. (R. 279) Respondent denies that he escalated the situation opposed to deescalating. (R. 279) Criminal charges were brought against the detainee in this incident. Respondent says that he did not put in the details that the detainee threatened him in his criminal complaint. (R. 282) Respondent admits he did not appear in court for the criminal charges against detainee [REDACTED]. The detainee pled guilty to charges in the incident (R. 285-286) Respondent admits that he did not mark the box containing imminent threat or battery by the detainee. (R. 288). Respondent said he was not aware of the detainee's criminal history at the time of this incident. (R.289) Officer Merriweather contests that the video shows that he is pushing the detainee's head against the wall. (R. 271) Respondent states that the detainee's head did not hit the wall. (R. 102)

Deputy [REDACTED] testified that he heard yelling and screaming coming from the lock up area and that he went over from behind his desk to investigate. (R. 296) [REDACTED] says that he witnessed the incident. [REDACTED] did not report that Respondent Merriweather had his right forearm around the chest of detainee. (R. 324) Upon reviewing the video again at the

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hearing, [REDACTED] again testifies that the arm of Deputy Merriweather was not around the neck of the detainee. (R. 326)

Sergeant [REDACTED] has been with the Cook County Sheriff's Office since 2006 and is currently a Sergeant and the lock up supervisor in the Skokie Courthouse. (R. 330) He is responsible to supervise all duties of the lock up, maintaining safe and secure area for the deputies that work underneath him and provide guidance for all the deputies in their job performance. (R. 330) At the time of this incident in February 2015, he was assigned to 26th & California Criminal Courts Building where he was a supervisor. (R. 331) [REDACTED] identified himself on the video at 12:44:57. (R. 333) [REDACTED] says that even when he is busy with paperwork he keeps his head on a swivel and looks up to see what is going on. (R. 336) [REDACTED] did hear a scuffle that there was something going on in the area where the incident with the inmate and Respondent Merriweather took place. (R. 340) He agrees that the video at 12:45:53 shows that he is standing and looking down the hallway and that something has drawn to his attention. (R. 341) [REDACTED] states that at 12:46:27 on the video he stands up and believes he was about to make a call to the lieutenant because he had knew something had "gone down." (R. 341-342) He believed there "probably" was a use of force. (R. 342) He called Lt. [REDACTED] after the incident and said that they had a use of force situation in the lock up. (R. 343) [REDACTED] told OPR that he was not directly present when the use of force incident occurred regarding this case. (R. 350) [REDACTED] said that Officer [REDACTED] testified that he heard something and got up and went over to the incident. (R. 354) He states that the reason he stayed behind was because there was a detainee in the room handcuffed to the bench. (R. 354) [REDACTED] stated that there were two incidents going on while he continued to do his paperwork and stood to make a phone call in a different room even though he had a phone at his desk. (R. 358-359) Respondent said that there was a heated discussion going on between the detainee and Respondent Merriweather and he left the room. (R. 359)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that Respondent did not violate Sheriff's Department Rules and Regulations, General Order 11.2.1.0, 11.2.2.0 11.2.20.0, 24.9.1.0, 11.2.20.1 or Sheriff's Merit Board Rules and Regulations Article X Paragraph B.

This is an incident in which Respondent, a Sheriff's Deputy, was involved with an altercation with an inmate. The evidence shows that the Sheriff's Deputy was aware of and followed the Use of Force rules and regulations he had been trained on, and that the force used by the Respondent in this case was not excessive force for the situation. The Respondent filed the proper reporting paperwork in regard to the incident.

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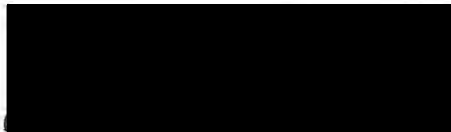
Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Theodore Merriweather be found not to have violated any of the Rules and Regulations or General Orders of the Sheriff's Department or the Cook County Sheriff's Merit Board effective March 25, 2016.

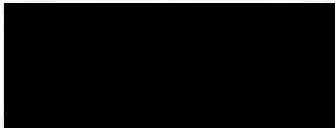
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James P. Nally, Chairman



Byron Brazier, Vice-Chairman



John D'Alfonso, Secretary



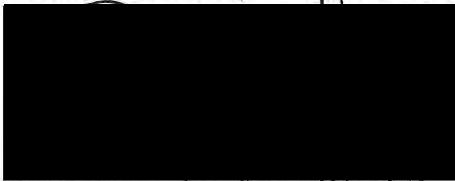
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date 12/21/18