COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
VS.)	Docket No. 1871
Correctional Officer)	
Hernan Mosquera)	
Star # 16331)	

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on May 22, May 23, July 6, and September 14, 2017, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Hernan Mosquera, hereinafter Respondent, was appointed a Correctional Officer on March 16, 2009. 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.").

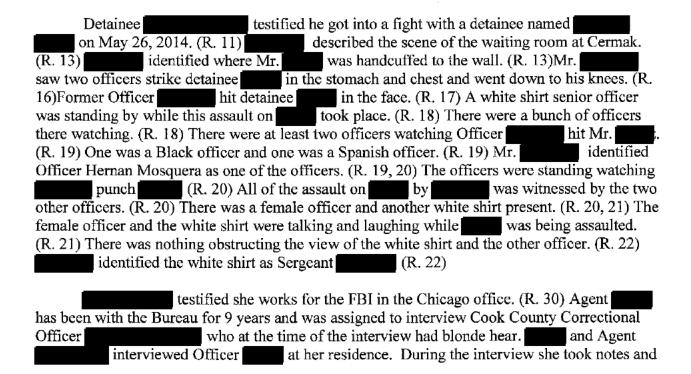
The original Complaint in this matter was filed with the Merit Board's administrative staff

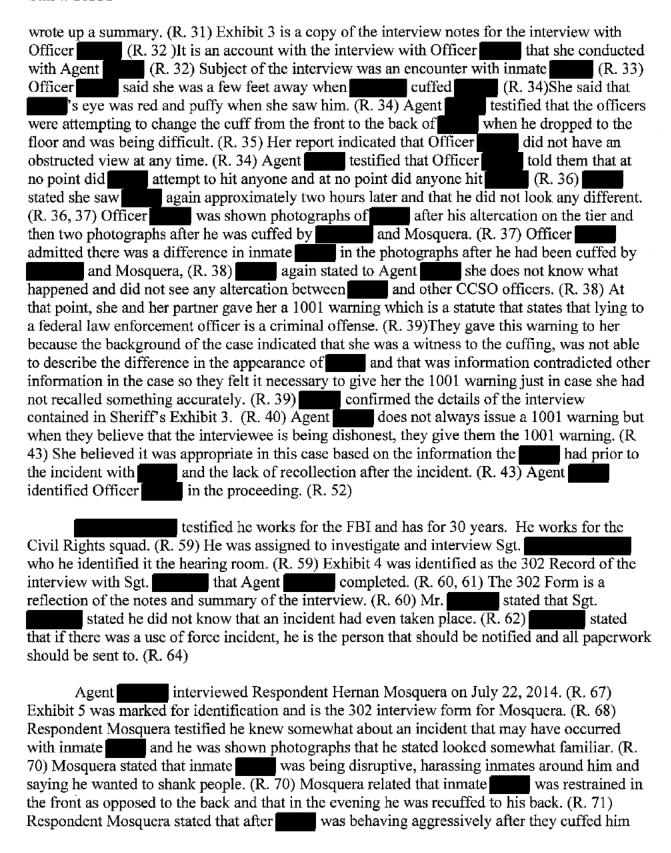
on February 3, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). 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 February 3, 2016 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

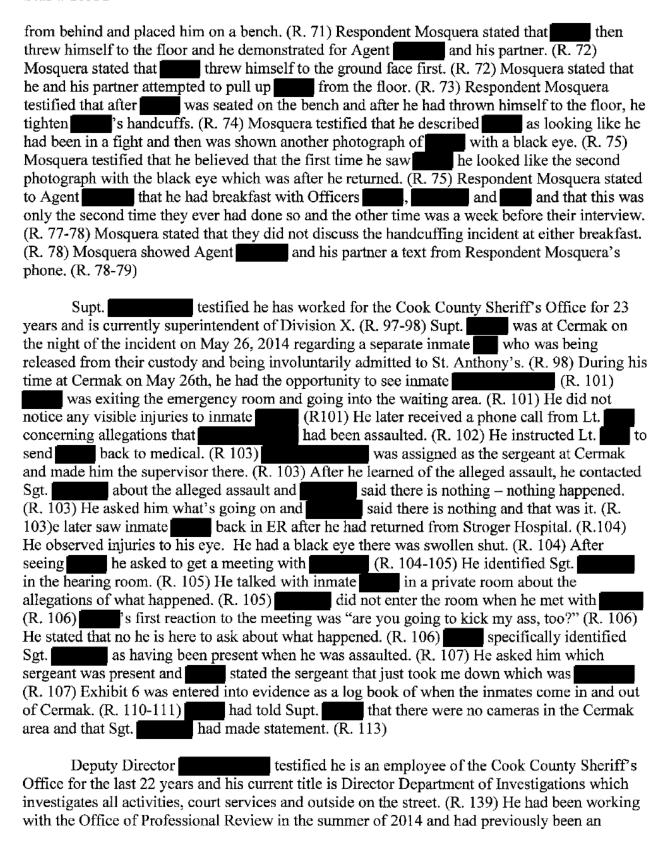
Findings of Fact

The Sheriff filed a complaint February 3, 2016. The Sheriff is requesting termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on May 27, 2014 witnessed the use of excessive force against detainee The complaint alleges that the Respondent failed to intervene, failed to immediately notify a supervisor, and failed to file proper written reports regarding the incident and provided false statements regarding the incident.

The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Sheriff's Order 11.2.20.1, Gen. Order 24.9.1.0, and Merit Board Rules and Regulations Article X, paragraph B.







investigator with OPR. (R. 140) He was assigned to interview the detainee that was alleged to have been assaulted by officers at Cermak Hospital on May 26th and 27th, (R. 140) He interviewed inmate at Stroger Hospital with his partner. (R. 141) alleged that while he was at Cermak he got into with correctional staff and ultimately he was slammed to the floor and either punched or kicked in the face and then hogtied to a bench. (R. 141) He photographed at that time which are marked as Sheriff's Exhibits 7A through 7I. (R. 141) Photographs depict injuries to his eye and to the back of detainee which looks like a foot print or a shoe print. (R. 142-143) Additional photographs show an injury that appears to be caused by a boot or a shoe. (R, 143) Additional injuries appear to be on detainee 's armpit. (R. 143) He has been involved in more than 50 investigations regarding excessive force during his time with Cook County Sheriff's Department. (R. 143) He has seen injuries and bruises in the armpit area numerous times. Injuries are typically caused from the pulling up of the arms from either a prone position or laying down position. (R. 145) This usually occurs while a detainee is handcuffed. (R. 145) Additional photos show scratch marks on detainee's arm in the bicep area. Additional scratches underneath his ear and bleeding down to the right side of his neck. (R. 146) He attempted to get the use of force packet and get statements and written responses but there were no written reports regarding this incident. (R. 146) Use of force reports are required in a situation like this. (R. 147) General Orders 11.2.1.0, 11.2.2.0 are required in this situation. (R. 147) The rules require each correctional officer staff who witnesses the use of force and to file a statement with their supervisor. (R. 147) No witness statements were completed by correctional staff regarding the use of force on detained in Cermak late in the evening of May 26, 2014 and continued into the early moments of May 27, 2014. (R. 147) He attempted to determine who was present at the incident and interviewed witnesses. (R. 147) He interviewed detained on May 29, 2014. (R.148) He provided a photo lineup of people who may have been present at the incident for to review. (R. 148) His procedural was to go through the employee data base and identify photos as close to the subject under an investigation by them to the witness. (R. 149) One of the six subjects in the photo panel was former Correctional Officer identified Correctional Officer as being involved in the incident. (R. identified Respondent Hernan Mosquera as 150) In the second lineup of photo panel, being involved in the incident. (R. 152) In the third lineup panel of photos, he identified Sgt. (R. 153) In the next panel, he identified Correctional Officer (R. 154) He identified a female officer that was inside the room at the time that he was struck. (R. 155) Each identified Officer of these identifications took less than a couple of minutes. (R. 150-155) as the one who caused the injuries. (R. 156) He identified Officer the one who was circled by in the photo panel that he conducted on May 29th. (R. 157) He has conducted over 1,500 to 2,000 criminal investigations for OPR. (R. 159) He interviewed numerous inmates and staff that were in or near the area where the assault took place. (R. 160) To prepare the photo panel for the identification process, he goes to the employee data base and tries to find photos of other employees that are as similar as possible to those of the accused. (R. 173) When he showed the photo arrays to he did not identify any of the accused officers just picked them out by the photos. (R. 194) He states that multiple officers were present in his statements specifically Exhibit K2. (R. 196) The inmates at Cook County Jail do not wear boots. (R. 197) They all wear some sort of "sandal" which is softsoled. (R. 197) Exhibit 7B through E were a boot mark. (R. 197-198) He believed the injury to

his back was that of a boot print. (R. 198) Inmates do not wear boots and officers do wear boots. (R. 198) Sergeants, lieutenants and correctional staff all wear boots. (R 199) Sheriff's Group Exhibit 7. The photos were moved into evidence. (R. 210) Those pictures were taken by investigator (R. 211) Photos of injuries to 's arms and wrists were admitted through Exhibit 8. (R. 213) Correctional Officer testified he has been with the Cook County Sheriff's Office for 4 years. (R. 229) He works the 3 – 11 shift and did on May 26, 2014. (R. 229) He worked overtime on that shift on May 26, 2014 due to staff shortage and he was present after 11:00 pm on May 26, 2014. (R. 230) He encountered a Sergeant down at Cermak when he was watching inmates who had gotten into a fight. (R. 232-233) At the hearing, Officer identified Sgt. as the person he saw at Cermak on May 26, 2014. (R. $2\overline{33}$) Officer saw inmate down in Cermak basement on May 26, 2014. (R. 235) was approximately 6-10 feet away from him and he identified him. (R. 236) Officer identified where each person was located in Sheriff's Exhibit 10. (R. 241) He then identified where the Sergeant was located and marked it with an SGT on Exhibit 10. (R. 243) His view was unobstructed as was the Sergeant's view of inmate (R. 244) He witnessed the altercation between at least 3 to 4 officers and when they took him to the ground and then hogtied him to the bench. (R. 245-247) He offered to be a witness to the Sergeant and asked him if he wanted him to write something up. (R. 252) The Sergeant told him he did not want him to write up a witness statement regarding what he saw involving the threats and the takedown. (R. 253) He knew he was talking to a Sergeant based on the chevrons on the uniforms. (R. 254) stood at the hearing and Officer identified him as the sergeant he spoke to on May 26, 2014. (R. 256) Officer viewed a use of force by officers on May 26, 2014. (R. 257) Officer testified there was a female officer present at the time of the takedown and when he saw Sergeant (R. 277) The female officer he saw on May 26, 2014 had blonde hair. (R. 278) has worked for the Cook County Sheriff's Department for 17 Sergeant vears and is currently assigned the 7-3 shift in Division 2. (R. 280) Sergeant responded to the fight that was involved in on May 26, 2014. (R. 281) He reviewed the incident report that was drafted by the officer. (R. 281) Sheriff's Exhibit 12 is the incident report regarding the fight. (R. 282) Detainee was videoed after the incident out in the hallway after he handcuffed. (R. 283) Exhibit 13 is the interview of detainee had an opportunity to again after he came back from played. (R. 284) Sergeant Cermak. (R. 297) Sergeant identified and noticed injuries that he did not have when he left the tier. (R. 287) The second incident report marked as Sheriff's Exhibit 14 was entered into evidence identifying a second incident regarding the injuries that they saw. (R. 288) again interviewed by Sergeant and Lt. regarding his additional injuries. (R. 289) to go back to the tier and send him to the hospital. (R. 290) He did not allow inmate prior to the incident in question, he stated he had no During the first interview with injuries and from Sergeant visual he did not notice any. (R. 298) Sergeant

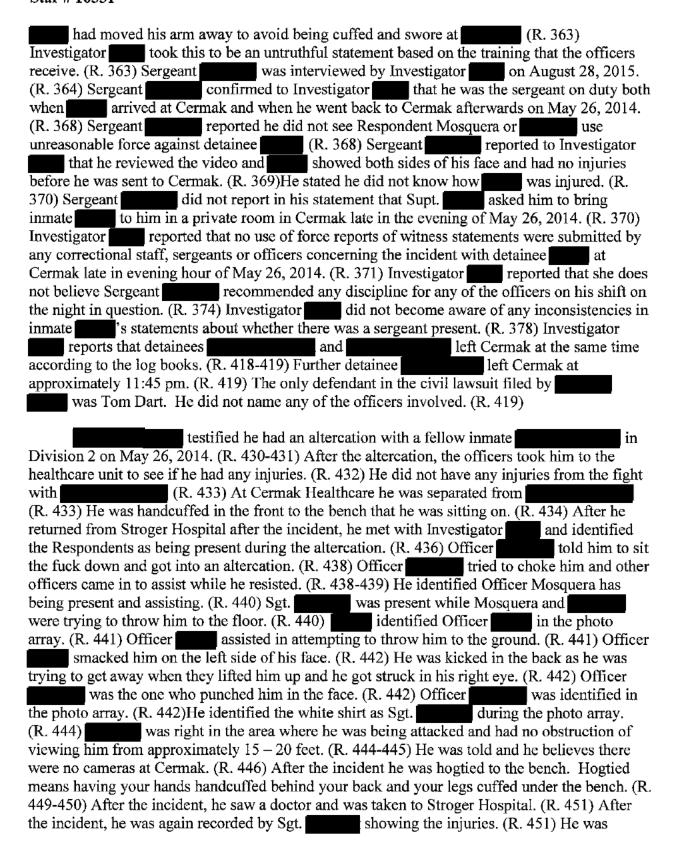
(R. 302) Sergeant testified to the movement logs that his division keeps and it tracks

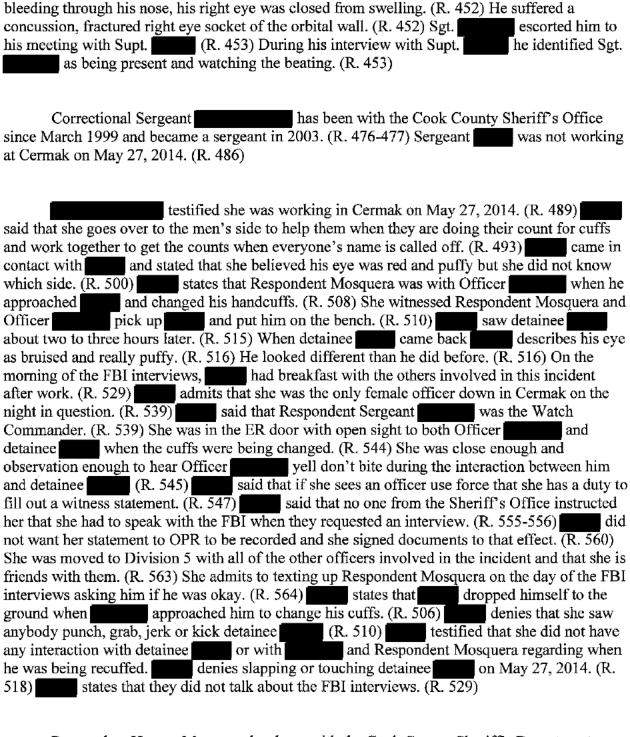
face between the first video and the second one.

noticed a difference on the right side of

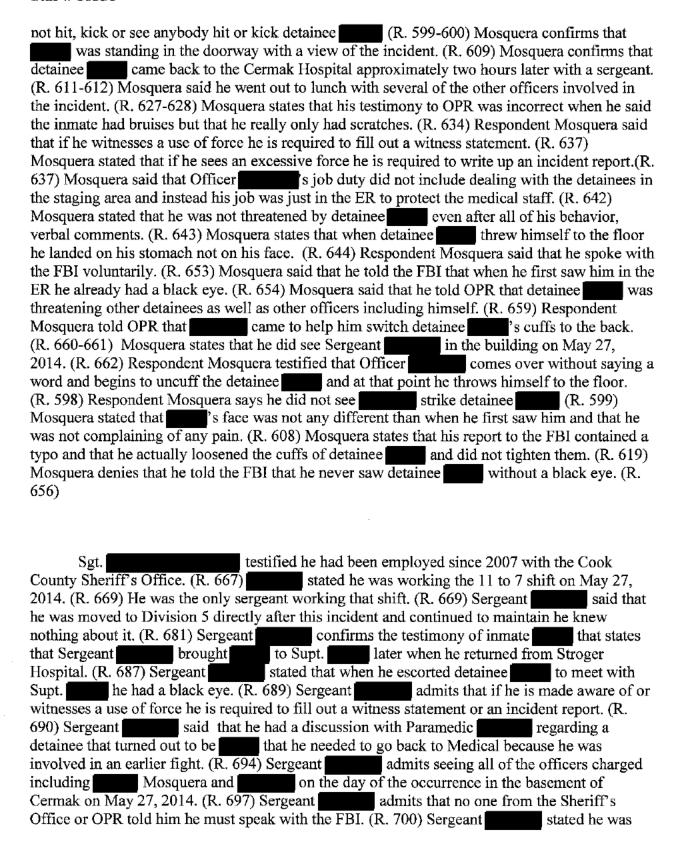
specifically the movements of detainee from the tier to Cermak back to the tier to Stroger Hospital. (R. 318-325)

Investigator works for the Office of Professional Review of the
Cook County's Sheriff's Department and has since 2013. (R. 337) She was trained through
Internal Affairs investigating training Cook County Sheriff's Office Recruit Training and the
John Reed Interviews and Interrogation Training. (R. 337) She is assigned to Squad 3 which
investigates allegations of excessive force, failure to provide medical and failure to protect for
the Department of Corrections. (R. 338) Her investigations started as an investigation into the
administrative portion of a criminal case that was against Officer . Sergeant
was the sergeant for shift 1 starting at 11:00 pm on May 26, 2014. (R. 343-344) Her
investigation revealed that he was the only sergeant assigned to Cermak during that shift. (R.
343) Investigator took a statement during her OPR investigation of in
which she said that detainee was acting like a child and threw himself to the floor. (R.
349) Investigator report of her interview with says she did not fill out any use of
force paperwork because she did not witness a use of force. (R. 350) statement to
Investigator was different than her statement to the FBI regarding her not being blocked
and being able to see (R. 351) stated in her interview with Investigator that
's eye was red and puffy when he came to Cermak. (R. 351) did not see any new
injuries on inmate when he left Cermak. (R. 351) stated to Investigator that
when came back to Cermak a second time he looked different than when he first came
there. The same eye was swollen that was puffy and red before. She did not see any scratches,
lacerations. (R. 352) identified Sergeant as being present at that time. (R. 352)
put in her statement to Investigator that she was friends with some of the other
officers involved in the incident but they never talked about the incident prior to their interviews.
She reported that the FBI was at her home and that she tried to contact one of the other officers
but only to check to see if they were ok not to discuss the incident. (R. 354) statement to
Investigator Exhibit 20, was moved into evidence. (R. 355) Sheriff's Exhibit 21 is the
statement of Hernan Mosquera. Respondent Mosquera reported to Investigator that he saw
when he came to Cermak and he saw bruises on the detainee's face and saw no other
visible injuries. (R. 358) Mosquera stated that when detainee stated 's cuffs were being moved
from the front to the back, he threw himself face first to the ground and tried to unlock his cuffs.
(R. 359) Respondent Mosquera reported he did not see a fight between detainee and CO
or see punch detainee (R. 359) Mosquera testified that he turned his
back away from detainee and Officer because he thought he had it under control
which Investigator found to be a violation if in fact it occurred. (R. 360-361) Respondent
Mosquera reported that he did not hang out with CO CO Donnis or CO That
they text once in a while but are not close. (R. 361)During his second interview, Respondent
Mosquera made a clarification stating he had breakfast with CO and and CO on the
day of the FBI interview and had breakfast with them on one other occasion and invited to
his kid's birthday party at a bowling alley. (R. 362) Respondent stated he did not discuss the
incident involving with any of the officers. (R. 362) Exhibit 21, the statement of
Respondent Mosquera was moved into evidence. (R. 363) Mosquera reported to Investigator
he heard and detained That there was commotion between them and that





Respondent Hernan Mosquera has been with the Cook County Sheriff's Department since March 2009, all DOC. (R. 575) Mosquera states he was working the 11 to 7 shift at Cermak on May 27, 2014. Mosquera states that detainee had scratches and red markings like he was in a fight when he first came to Cermak. (R. 580) Respondent Mosquera states he did



not pre	esent during the incident with detainee	(R. 679) Sergeant	says he was
never	provided any information regarding th	e incident. (R. 679) Sergea	nt denies that
Supt.	told him that a guy had been be	aten up at Cermak on May	27, 2014. (R. 699)

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 violate Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Sheriff's Order 11.2.20.1, Gen. Order 24.9.1.0, and Merit Board Rules and Regulations Article X, paragraph B.

The evidence shows that Respondent violated the orders and rules and regulations as charged. All of the evidence, including video evidence, supports the facts that the Respondent witnessed the use of excessive force against detainee failed to intervene, failed to immediately notify a supervisor, and failed to file proper written reports regarding the incident, and provided false statements regarding the incident. The actions of the Respondent were outside the parameters of the Sheriff's orders and the regulations governing conduct of employees such as the Respondent.

Order

Wherefore, based on the foregoing, it is hereby ordered that the Merit Board finds Respondent Hernan Mosquera did violate the orders and rules and regulations as charged and is separated from service effective February 3, 2016.

