

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.) **Docket No. 2006**
)
Anthony Owens)
Correctional Officer)

DECISION

This matter coming on to be heard pursuant to notice before John 'Jay' Dalicandro, Board Member, on May 3, 2021. Board finds as follows:

Jurisdiction:

Anthony Owens, hereinafter referred to as the Respondent of Ofc. Owens, was appointed a Correctional Officer on April 8, 2013. Respondent's position as a Correctional Officer involves duties and responsibilities to the public. The Board has jurisdiction over the subject matter of this case in accordance with 55 ILCS 5/3-7001. Each member of the Cook County Sheriff's Merit Board ("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.

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. Commissioners 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.")).

Background:

Ofc. Owens has worked at the Cook County Department of Corrections ("DOC") since April 8, 2013. Tr. 85. The DOC is controlled by the Cook County Sheriff's Office ("Employer" or "Sheriff"). Ofc. Owens has been assigned to various divisions during his employment. He is currently assigned to Receiving and has been assigned there for three years. Tr. 85. Prior to Receiving, Ofc. Owens was assigned to Division 11, which was his first assignment with the DOC.

Complaint:

In a complaint dated 3/3/2017 and an amended complaint dated January 25, 2018, Petitioner sought termination of Respondent, alleging that Respondent did violate certain General Orders and that such action is in violation of Rules and Regulations of the Department of Corrections and the Cook County Sheriff's Merit Board. (Complaints attached)

The Sheriff alleged that Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff's Office and the Cook County Department of Corrections, specifically:

SHERIFF'S ORDER 11.2.1.0 (effective date: September 19, 2011)
RESPONSE TO RESISTANCE/USE OF FORCE POLICY

SHERIFF'S ORDER 11.2.2.0 (effective date: September 19, 2011)
RESPONSE TO RESISTANCE/USE OF FORCE DUTIES, NOTIFICATIONS AND REPORTING PROCEDURES,

GENERAL ORDER 24.9.1.0 (effective date: July 11, 2011)
REPORTING INCIDENTS,

SHERIFF'S ORDER 11.2.20.0 (effective: Jan. 25, 2013)
RULES OF CONDUCT,

SHERIFF'S ORDER 11.2.20.1 (effective: March 12, 2015)
CONDUCT POLICY,

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:
Article X, Paragraph B

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. After the completion of discovery, and certain continuances at the request of the parties, it was called for a formal hearing on May 3, 2021. At the hearing, court reporter being present, all witnesses sworn under oath, testimony was taken from witnesses called by the Sheriff as well as testimony from the Respondent and witnesses called on his behalf. Documents were introduced by Petitioner and Respondent and received into evidence. The Petitioner and Respondent made closing arguments addressing the issues in the hearing.

Issues Presented:

Whether the actions of the Respondent violated any of the General orders and rules and regulations set forth above and what if any discipline is appropriate if a violation occurred.

Findings of Fact:

An evidentiary hearing was held on May 3, 2021.

Parties agreed that the Board should take judicial notice of the matters 1868 [REDACTED], 1869 [REDACTED], and 1871 [REDACTED] and jointly submitted the transcripts of the previous hearings as exhibits, which were admitted in evidence. Parties agreed that the witnesses who testified in the previous hearings in the [REDACTED] et al. matter would testify consistently if they were called to testify in this matter and adopted the trial transcripts.

The joint exhibits admitted in evidence are as follows:

- 1 Sheriff's Order 11.2.1.0 effective September 19, 2011
- 2 Sheriff's Order 11.2.2.0 effective September 19, 2011
- 3 General Order 24.9.1.0 effective July 11, 2011
- 4 Sheriff's Order 11.2.20.0 effective January 25, 2013
- 5 Sheriff's Order 11.2.20.1 effective Marcy 12, 2015
- 6 Merit Board Rules and Regulations Article X
- 7 Trial Transcript in Merit Board Dockets 1868, 1869, 1871, Vol I
- 8 Trial Transcript in Merit Board Dockets 1868, 1869, 1871, Vol II
- 9 Trial Transcript in Merit Board Dockets 1868, 1869, 1871, Vol III
- 10 Trial Transcript in Merit Board Dockets 1868, 1869, 1871, Vol IV
- 11 Decision in Merit Board Docket 1868 [REDACTED] on remand
- 12 Decision in Merit Board Docket 1869 [REDACTED]
- 13 Decision in Merit Board Docket 1871 [REDACTED]
- 15 Photograph of Cermak basement area marked by Owens during 1868/1869/1871 trial
- 16 Photograph of Cermak basement area marked by Owens during 1868/1869/1871 trial
- 17 Cermak Admissions Logbook 5/26-27/2014
- 18 Photograph of Cermak basement area marked by [REDACTED] during 1868/1869/1871 trial

Ofc. Owens was assigned to his regular 3 p.m. to 11 a.m. shift in Division 11 on the night of May 26, 2014. Tr. 86. On this evening, he picked up an overtime shift in Division 11. Tr. 86-87. However, because the Division 11 officer assigned to Cermak Hospital was late, a supervisor sent Ofc. Owens to Cermak to cover his shift until the late-arriving officer arrived. Tr. 87-88.

Ofc. Owens was assigned to watch or "sit on" two detainees who had been in an earlier fight with each other in Division 11. Tr. 87. The two detainees were already in the Cermak waiting room. Tr. 88. This was the first time in Ofc. Owens' career that he had been assigned to "sit on" two detainees who had been in a fight. Tr. 88-89. In fact, this was the first assignment that had ever taken Ofc. Owens to the Cermak waiting room or Cermak Hospital in general. Tr. 89. The only time he had been to Cermak was during a walk-through while still in the academy. Tr. 89.

Ofc. Owens arrived at Cermak around 11:15 or 11:20 p.m. Tr. 88. To the best of his knowledge, he was the only Division 11 officer present at Cermak. Tr. 95. Upon arrival at Cermak, Ofc. Owens relieved the officer who had been watching the two Division 11 detainees. Tr. 88. The officer pointed out the two Division 11 detainees to Ofc. Owens and then left. Tr. 89. Ofc. Owens observed approximately 12 other detainees present in the Cermak waiting room (hereinafter "Cermak"). Tr. 89-90. He testified that officers and detainees were entering and leaving while he was there. Tr. 90, Joint Ex. 17. Ofc. Owens testified that the two Division 11 detainees were secured with handcuffs and sitting on Cermak benches. Tr. 90. Ofc. Owens sat in a chair with his back to the wall. Tr. 91, Joint Ex. 15. One of his assigned detainees was to his right, seated on a bench that ran along the wall. His other assigned detainee was seated along the first row of benches.

At one point, Ofc. Owens noticed [REDACTED] due to [REDACTED]'s shouting and the shouting of other officers. Tr. 93. [REDACTED] was standing in the aisle between the second and third benches when Ofc. Owens first observed him. Tr. 93-94, Joint Ex. 16. Ofc. Owens testified that [REDACTED] was approximately 8-12 feet from him. Tr. 94. Ofc. Owens does not recall seeing any injuries to [REDACTED]'s face at that time. Tr. 94-95.

When Ofc. Owens first noticed [REDACTED], he also saw 3-4 officers within approximately arm's length of [REDACTED]. Tr. 95, 98. He also recalls seeing a sergeant, who he later identified as Sgt. [REDACTED]. Tr. 95. [REDACTED] was approximately six feet to Owens' left. Tr. 95-96, Joint Ex. 15.

At this time, Detainee [REDACTED] was angry and verbally threatening officers. Tr. 97. Ofc. Owens recalls hearing [REDACTED] claim that he knew "MMA" (mixed martial arts). Tr. 97. Owens heard him threaten to break officers' arms, knock them out, and wake them up by (urinating) on them. Tr. 97. [REDACTED] also threatened to "poke" (or stab) [REDACTED] (Tr. 97-98, See Joint Ex. 10, Tr. 500.) Ofc. Owens recalled the officers yelling but does not recall anything specific. Tr. 97.

Similarly, Ofc. Owens never saw an officer strike [REDACTED]. Tr. 101. However, after [REDACTED] made the "bluffing" movement, Ofc. Owens saw the officers start the takedown of [REDACTED]. Tr. 101-102. Ofc. Owens testified that, at this point, the room was in a frenzy and Ofc. Owens had to get back up and individually order each of his detainees to sit down. Tr. 102.

Ofc. Owens approached [REDACTED] and offered to report what he saw. Tr. 107. On this evening, he was unaware that [REDACTED] had struck [REDACTED]. Tr. 108. He believes that he said "I saw what happened. Do you need me to write a report?" Tr. 107. He testified that it's possible that he said, "I saw everything." Tr. 107. He believed he witnessed a use of force when the officers brought [REDACTED] up from the floor and could write a witness statement to that effect. Tr. 107-08. He also believed that, from what he observed, that [REDACTED] should've been written up for verbal threats towards the officers. Tr. 108. In response, [REDACTED] stated something to the effect of, "you're fine. We got this. It's under control." Tr. 108. Ofc. Owens considered this a direct order from the highest-ranking officer on the scene and the highest-ranking officer at Cermak on this particular shift. Tr. 108-09

Ofc. Owens spoke with the FBI investigators on two occasions, once at his house and once at the DOC. Tr. 112. This was his first time ever speaking to FBI agents. Tr. 112. The agents did not tell him that he was the subject of an investigation. Tr. 112. Ofc. Owens cooperated with the agents and answered the questions he was asked. Tr. 112. He did not have an attorney present and believes the agents took his statement by hand. Tr. 113, 35. Following the two interviews, the FBI generated a summary of his statement. Tr. 113, Sh. Ex. 5. The FBI never showed this document to Ofc. Owens, nor did he see it until his OPR interview almost two years later. Tr. 114. The FBI submitted the document approximately 9 days after the second interview. Sh. Ex. 5. Ofc. Owens testified that it's possible he told the investigators that he didn't witness any "use of force." Tr. 114-15, Sh. Ex. 5. Ofc. Owens testified that he may have used

the wrong terminology and meant that he didn't witness an "excessive use of force." Tr. 115-16. However, regardless of the terminology used, Ofc. Owens described the events he witnessed related to the [REDACTED] incident and did so in a manner consistent with his testimony at hearing and in the [REDACTED] (et. al) Merit Board Proceedings. Tr. 116, (Joint Ex. 9, Tr. 228-278.)

On June 7, 2016, OPR issued its "Final Disposition Form," where Command Channel Review determined and recommended a penalty of "180-day suspension." Resp. Ex. 5. This followed the Review Board finding sustained misconduct for (1) failure to submit a "Use Of Force" witness statement and (2) failure to report excessive force. Resp. Ex. 5.

Order: Respondent in this case failed to complete a witness statement for a use of force and he failed to intervene during the use of force incident. The statement by the Respondent Owens that a sergeant ordered him not to file a statement was not a reason for him to not file the report. Even with his lack of experience he could have went to a different Supervisor and discussed this incident.

It should be noted that the Board took into consideration that it was Ofc. Owens' first time at Cermak. He clearly had no experience of the situation at that facility, and this is a mitigating circumstance.

The Merit Board finds that the respondent did violate the General Orders and Policies of the Cook County Sheriff's Department, and the Rules and Regulations of the Cook County Sheriff's Merit Board and that the Respondent should be given 180-day suspension which on June 7, 2016, OPR issued in its "Final Disposition Form," where Command Channel Review determined and recommended a penalty of "180-day suspension. Effective March 3, 2017.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
ELENI P. SIANIS, Board Member



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COOK COUNTY
SHERIFF'S MERIT BOARD
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Anthony Owens
Correctional Officer
Docket No. 2006

This Decision is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Vincent T. Winters and Kimberly Pate Godden.

Not Present: Byron Brazier and Eleni P. Sianis.

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY OF JULY, 2021.