

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 2242**
CORRECTIONAL OFFICER)
HERMAN N. GREEN)
STAR # 15503)

DECISION

This matter came to be heard pursuant to notice before Dr. Byron Brazier, Board Member, on June 6, 2023, and on June 13, 2023, the Merit Board conducted hearings before Commissioner Byron T. Brazier. Both parties were represented by counsel and had a full and fair opportunity to present evidence. The Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Herman Green, (Respondent) was appointed a Correctional Officer on October 6, 2003. That on November 12, 2014, respondent was assigned to RTC of the Cook County Sheriff's Department and on February 13, 2020, he was assigned to RTC-Male Intake. 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 referred to as the 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 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.

Background

The Sheriff (Petitioner) filed a Complaint on June 17, 2021. The Petitioner is seeking termination of Respondent. Petitioner alleged that Respondent was involved in a use of force incident with a detainee by grabbing him by the throat, pushing the detainee to the floor, and after securing the detainee in the bullpen, continued to further engage and taunt the detainee.

After the case was continued from time to time, and discovery completed, it was called for a formal hearing on June 6, 2023. At the hearing, the 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. Documents were introduced by Petitioner and Respondent and received into evidence.

Issues Presented:

The Respondent was charged with violations of the Rules and Regulations of the Cook County Department of Corrections, more specifically, that Respondent, Herman Green, did violate **COOK COUNTY DEPARTMENT OF CORRECTIONS CUSTODY MANUAL POLICY 101¹** and in particular, 101.5.5 (ab and as).

Findings of Fact

For the allegation of excessive force, Sgt. [REDACTED] corroborated Respondent's testimony, stating that, "[t]here was a brief moment where [Respondent's] hand went around the subject's

neck, but I transitioned the officer's hand off the neck into another area." (Tr. 27:13-18) Sgt. [REDACTED] further stated that Respondent did not squeeze the detainee's neck, the detainee was never deprived of air, and Respondent's hand was on the detainee's neck for less than two seconds. (Tr. 27:19-22, 28:24-29:10, 31:15-17) Explaining that during a physical struggle, an officer cannot control exactly what happens when somebody is fighting and flailing, Sgt. [REDACTED] noted that in his opinion, Respondent's use of force "wasn't excessive." (Tr. 28:2-7, 31:8-32:9)

According to Respondent's testimony, after the detainee had been secured in the holding cell, Respondent ran up to the holding cell, kicked the gate, and told [REDACTED], "Man, stop spitting on me. How would you like it if I spit at you?" (Tr. 188:2-9; JX 17 – Cam 7 Video at 10:23:40-10:23:48) Respondent testified that he also made a motion as if he were going to spit at [REDACTED] but did not actually spit at [REDACTED]. (Tr. 188:9-11) Respondent explained that he kicked the gate "so that [REDACTED] would back up," and that Correctional Officers regularly bang on gates or doors to make detainees move. (Tr. 188:18-189:5) Respondent also stated that he was attempting to "de-escalate the situation to try to get [REDACTED] to realize, stop spitting, why are you doing this?" (Tr. 188:19-21)

Officer [REDACTED] testified that she had a clear view of the side of Respondent's face, and that she did not see him spit at Detainee [REDACTED]. (Tr. 162:20-163:17) She further testified that if she had observed Respondent spit on [REDACTED], she would have included it in her incident report. (Tr. 165:20-166:4) However, she confirmed that she never observed Respondent spit on Detainee [REDACTED] or use any other force against him once he was confined to holding cell B. (Tr. 166:5-14).

Finally, on February 22, 2020, [REDACTED] filed a written Complaint Register in which he alleged that "heard [Respondent] calling a man homophobic name." (JX 8 at 29) [REDACTED] claimed that he confronted Respondent, who called him a "faggot" and told him he "was going to hell."

(JX 8 at 30) [REDACTED] then stated that he argued back and forth with Respondent until he was placed in a holding cell. He also stated that “long story short, I admit I did spit at [Respondent] but not on him [and] he walked up to me and spit directly in my face. (JX 8 at 30) [REDACTED] also complained that “now [Respondent] has a[n] aggravated assault charge against me” and that Officer [REDACTED] also used homophobic language towards him. (JX 8 at 31). Office of Professional Review [“OPR”] Senior Investigator [REDACTED] was assigned to investigate the allegations made by Lt. [REDACTED] and [REDACTED]. As part of his investigation, [REDACTED] reviewed the Complaint Registers submitted by Lt. [REDACTED] and [REDACTED]; the written reports submitted by Respondent, Sgt. [REDACTED], and other officers; and the video surveillance footage of the February 13 Incident (identified herein as the Cam 11 Video and Cam Video 7, respectively). (Tr. 66:20-67:10; JX 6 at 15)

Following his investigation, [REDACTED] concluded there was no evidence to support [REDACTED] allegations that Respondent used homophobic slurs or hit him in the lip. (Tr. 127:24-128:13) He also did not make any finding that Respondent used excessive force during his interactions with [REDACTED]. (Tr. 77:12-78:1).

In contrast, [REDACTED] concluded that Respondent engaged in “conduct unbecoming” a Correctional Officer because he “spit on detainee [REDACTED].” (Tr. 68:12-15) He also concluded that because Respondent did not report that he spit on [REDACTED], Respondent failed to properly document the incident and made false statements when he denied spitting on [REDACTED]. (Tr. 68:16-69:2)

According to [REDACTED], he concluded that Respondent spat on [REDACTED] because the surveillance video was “very clear” and showed Respondent spitting. (Tr. 88:1-3, 89:21-24, 90:24-91:5) However, on cross-examination, [REDACTED] admitted that “none of the video is

detailed.” (Tr. 95:10-96:7) He also admitted that the video does not actually show any spit coming from Respondent. (Tr. 93:7-11) Instead, the video was recorded from a camera mounted on the ceiling behind Respondent, so it only showed Respondent’s “actions and reactions,” not his face or mouth. (Tr. 93:19-95:1).

However, it is clear from the video that Respondent Green does not just approach the gate in a normal fashion that one would in this situation. He leads with his face; he actually sticks his face out toward the detainee as Respondent Green is doing the spitting motion. (R. 96) Respondent Green jerks his body forward and backward particularly his face as he gets up to the detainee. (R. 98). The detainee responds by moving back from the door of the cell.

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, by a preponderance of the evidence, that Respondent, Herman Green did violate COOK COUNTY SHERIFF’S OFFICE POLICE DEPARTMENT LAW ENFORCEMENT SERVICES MANUAL POLICY 101² and in particular, 101.5.5 (ab and as). That the respondent made every motion to spit on detainee but no spital can be seen on the video tape. It is also clear that Respondent intentionally agitated the detainee without cause demonstrating his lack of professionalism as a correctional officer.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Herman Green be suspended for 120 days m the Cook County Sheriff’s Office effective June 17, 2021

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
TERRENCE J. WALSH, Board Member
MARLA M. KAIDEN, Board Member
WADE INGRAM SR., Board Member
JAMES J. SEXTON, Board Member



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ROBERT F. HOGAN, Hearing Officer

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SHERIFF'S MERIT BOARD
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Chicago, IL 60602

DOCKET NO. 2242
CORRECTIONAL OFFICER
HERMAN N. GREEN
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This Decision is adopted and entered by a majority of the Members of the Merit Board:

Voted Yes:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Kimberly Pate Godden, Terrence J. Walsh,
Marla M. Kaiden, Wade Ingram Sr. and James J. Sexton

Voted No: None

Not Present: None

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 12th DAY OF OCTOBER, 2023.