COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	· · · · · · · · · · · · · · · · · · ·
-	· , , , , , , ,	
vs.).	
)	Docket No. 2108
Correctional Officer)	
Jermaine Brinner	·)	
Star # 16481)	
		•

DECISION

This matter is currently before the Cook County Sheriff's Merit Board pursuant to the Supplemental Request by Respondent for determination of Back Pay and benefits after the Merit Board ordered that the Respondent be returned to service as a Correctional Officer effective July 16, 2018.

<u>Jurisdiction</u>

Jermaine Brinner, hereinafter Respondent, was appointed a Correctional Officer on July 26, 2010. 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;.

Background and Findings of Fact

The complaint alleged violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Department of Corrections Gen. Order 4.1, Department of Corrections Policy Manual Policy 101, and Merit Board Rules and Regulations Article X, paragraph B.

Following a hearing before the Merit Board, James P. Nally presiding, the Merit Board issued its Decision on June 27, 2019, finding that Officer Brinner "did not violate any of the orders, policies, or rules and regulations alleged in the Complaint." The Merit Board further ordered that Officer Brinner be returned to service effective July 16, 2018. The Respondent was reinstated to service as a Corrections Office on July 8, 2019. The Respondent seeks Back Pay and Benefits for the period of July 16, 2018, through July 8, 2019.

The Sheriff contends that the Merit Board does not have jurisdiction to hear this matter as it lost jurisdiction after issuing its Decision. The Sheriff further claims that the remedy that was available to the Respondent for determination of Back Pay issues was to file a petition for Administrative Review, and that the time to file that petition has passed. The Sheriff also contends that the Merit Board Act does not mandate back pay when an employee is reinstated by the Merit Board.

The Sheriff lastly contends that if the Merit Board finds that the Respondent is entitled to Back Pay and benefits that the amount of Back Pay be adjusted to reflect the Respondent's earnings from other sources while he was on unpaid administrative leave.

Conclusion and Order

The Merit Board finds that the Respondent is entitled to Back Pay and benefits for the period of July 16, 2018, through July 8, 2019. See *Burton v Sheahan*, 2001 WL 563777 (N.D. Ill. May 22, 2001).

According to the briefs filed by the Parties subsequent to the Merit Board's initial Order, the amount of Back Pay due is \$30,925.40, which represents the amount of Back Pay due after mitigation of \$36,351.63 for earnings from other sources during the period of unpaid administrative leave. In addition, the Payroll Department shall calculate the appropriate pension contributions and benefit time due to the Respondent.

<u>Order</u>

Wherefore, based on the foregoing, it is hereby ordered that Respondent is to receive backpay and benefits consistent with the calculations contained in this order.

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

COOK COUNTY SHERIFF'S MERIT BOARD 69 West Washington - Suite 1100

Chicago, IL 60602

DOCKET NO. 2108 CORRECTIONAL OFFICER JERMAINE BRINNER STAR # 16481

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, Marla M. Kaiden, Wade Ingram Sr. and James J. Sexton

Voted No: None

Not Present: Terrence J. Walsh

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 14th DAY OF DECEMBER, 2023.

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
VS.)	
)	Docket No. 2108
Correctional Officer)	
Jermaine Brinner)	
Star # 16481)	

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on March 7, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

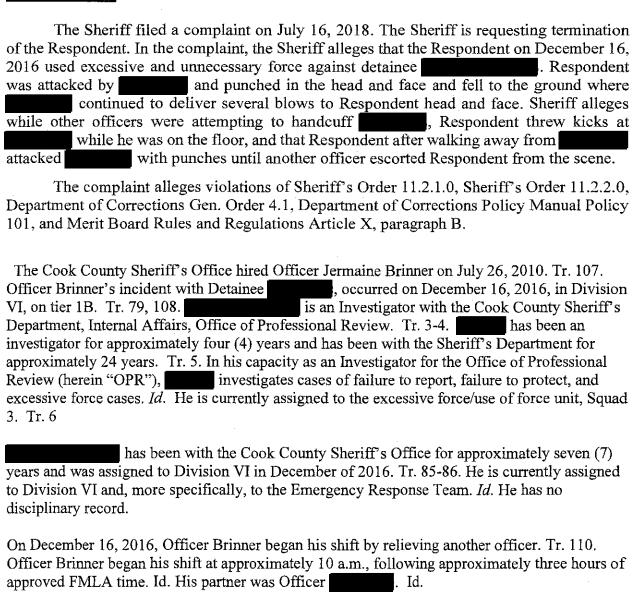
Jermaine Brinner, hereinafter Respondent, was appointed a Correctional Officer on July 26, 2010. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve 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.").

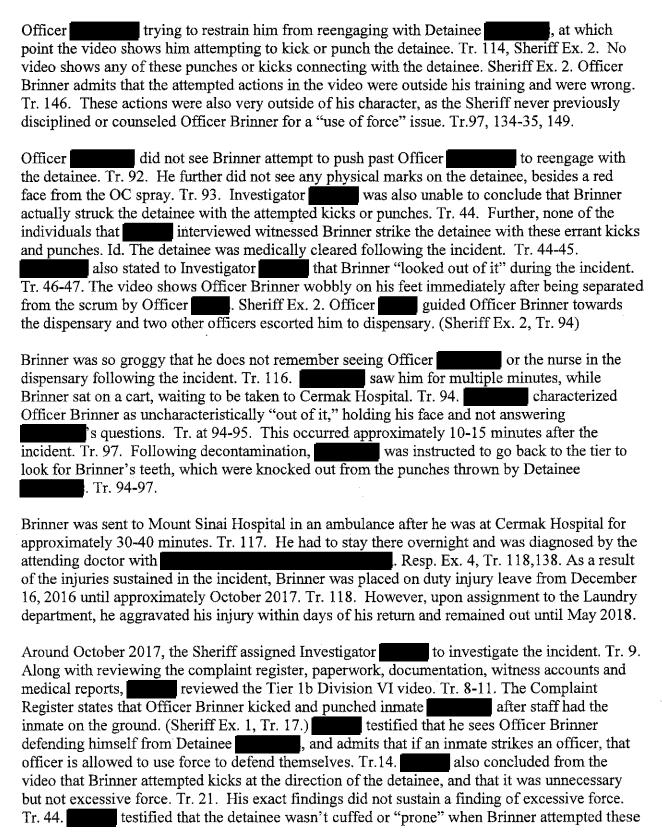
The original Complaint in this matter was filed with the Merit Board's administrative staff on July 16, 2018. Regardless of whether or not Merit Board Members were properly appointed

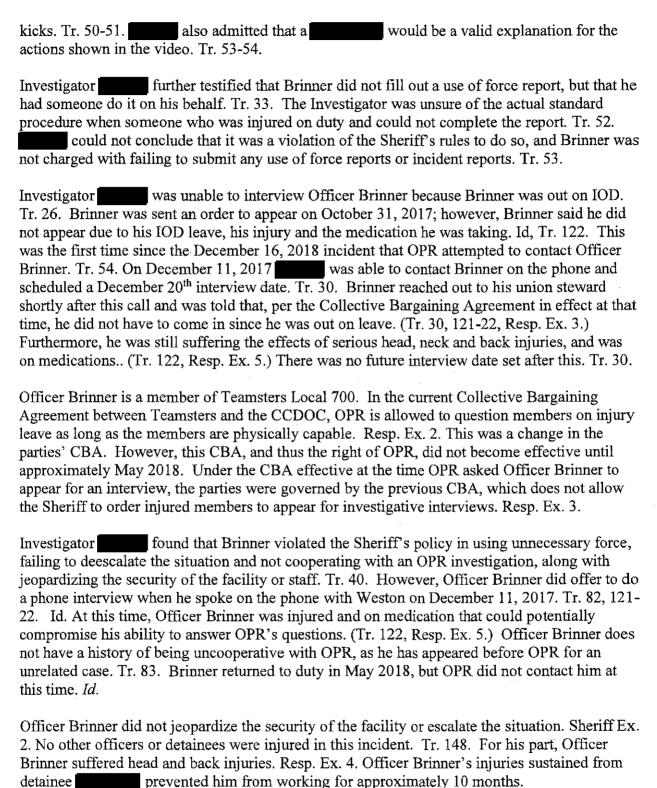
during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign 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 16, 2018 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact



Officer Brinner began his shift shortly before the inmate medication pass. Tr. 110. To perform "med pass," the officer receives a list of names of detainees receiving medication. Id. The officer then identifies each detainee and lets them out of their cell to take their medications. Id. On this date, Detainee was the first detainee to receive medication. Id. When Officer Brinner arrived at Detainee cell, he observed the detainee to be agitated and aggressive because the tier was on lockdown. Tr. 111. Officer Brinner explained to the aggressive detainee that he had to take the medication first, and that he would deal with and explain the lockdown after the detainee took his medicine. Id.
Brinner unlocked the door and the detainee immediately approached Officer Brinner using foul language and stating that he was not going back in the cell. Tr. 112. The detainee immediately invaded Officer Brinner's personal space and bumped his chest against Brinner's body. Id. In response, Brinner pushed the detainee with open hands to the chest in order to create distance. Id. This push was a proper use of force, as Investigator testified. Tr. 14. Detainee then threw a punch hitting Brinner in the jaw and viciously attacked Officer Brinner. (Tr. 113, Sheriff Ex. 2.) Officer Brinner fought back. Id. During the fight, Officer Brinner received multiple blows to the face and head, including a blow to the temple after he briefly fell to the ground. Sheriff Ex. 2. The two fought for approximately 30-40 seconds before Officer Brinner received assistance. Id.
At some point, Officer called an "all available" over the officers' radios, and Officer ran towards the cell. Tr. 88. Upon entering the tier, he saw detained in a fight with Officer Brinner, and witnessed the detainee striking the officer. Id. ordered the detainee to get on the ground and he did not comply. Id. He was then able to approach the detainee from behind and pull him off of Officer Brinner. Id. However, the detainee then reengaged with Brinner and continued to strike him. Id. Officer deployed OC spray. Tr. 89. Before and after he deployed the OC spray, he characterized the detainee as an active resister. Tr. 90-92. Following the deployment of OC spray, the detainee continued to clutch to Officer Brinner's leg. Sheriff Ex. 2.
The video then depicts approximately five to seven officers on the tier with the detainee, attempting to put restraints on him as the detainee continued to act as an aggressive, active resister. (Tr. 16, 19, Sheriff Ex. 2.) Officer who continued to yell verbal orders at Detainee secured right hand with a handcuff but was unable to cuff the detainee's left hand as the detainee continued to resist and was not under physical control. Tr. 90-91. While was possibly rubbing his face with his free left hand and spitting as a response to the OC spray, he was actively resisting at all times relevant. Tr. 91, 102-103.
Officer Brinner does not recall much of the incident, due to he received. Tr. 113. The video shows Officer Brinner receiving multiple closed-fist strikes to the face and head, including the temple-area. Sheriff Ex. 2. Officer Brinner recalls reaching to grab the detainee to stop him from hitting him, and also remembers Officer entering, but he does not recall much after the initial strikes. Tr. 113. He does not even recall being hit in the side of the head, being on the ground, or that deployed OC spray. Tr. 114. He further doesn't recall





Officer brinner over their time at the DOC, including stints in Division 6 and 11, and that he was a good officer who never displayed unnecessary force or aggression. Tr. 94-97. Brinner suffered a severe head injury and loss of consciousness following the strikes to his head. (Sheriff Ex. 2, Resp. Ex. 4.) Tr. 54-55. Following this incident, Detainee was charged with battery and was moved to a higher security level wing. Tr. 81.

OPR did not find that Officer Brinner committed "excessive force." (Joint Ex. 1 (Complaint), Tr. 146.) The Sheriff cites violation of the "excessive force" policy - 11.2.1.0. – as the basis for termination in this matter. (Sheriff Ex. 7, Tr. at 151.) Officer Brinner did not commit excessive force.

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 not violate Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Department of Corrections Gen. Order 4.1, Department of Corrections Policy Manual Policy 101, and Merit Board Rules and Regulations Article X, paragraph B. The evidence does not show that Respondent used excessive force under the totality of the circumstances. The video evidence does not show any incident of excessive force by Respondent at the time the detainee was an active resistor. Subsequently, the Respondent, who was by this time battered and suffered injuries inflicted by moved towards the detainee, there was no contact with the detainee that would constitute excessive force. It should be noted that respondent Brinner testified at this time he had little if any recollection of what was occurring due to his injuries inflicted by the detainee. The actions of the Respondent were within the parameters of the Sheriff's orders governing conduct of employees such as the Respondent.

<u>Order</u>

Wherefore, based on the foregoing, it is hereby ordered that the Merit Board finds Respondent Jermaine Brinner did not violate any of the orders, policies, or rules and regulations and shall be returned to service effective July 16, 2018.

