

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	
)	Docket No. 1807/1872
Correctional Officer)	
Anthony Marrero)	
Star # 7817)	

DECISION

This matter, Docket # 1807, is currently before the Cook County Sheriff's Merit Board on remand, as ordered on July 6, 2023, by Judge Thaddeus L. Wilson, for the purpose of the Merit Board to consider appropriate disciplinary action in light of the Circuit Court reversing the Merit Board's finding that Respondent should be terminated effective March 17, 2015 in Docket # 1807. The Court further ordered that, on Remand, The Merit Board was to consider an appropriate sanction greater than a 30 day suspension but less than termination. The Court also ordered that the Respondent was to be reinstated to his employment with all rights attendant thereto, subject to the penalty imposed by the Merit Board upon remand.

Docket No. 1872

The Respondent's other case, Docket # 1872, was previously adjudicated by the Merit Board via an order entered on June 7, 2019, which suspended the Respondent for 30 days, effective February 8, 2016. Neither party sought administrative review of that decision, and that order is final. It should also be noted that the Merit Board did not address any issues regarding backpay in this order, although the parties have stipulated that the Respondent was suspended without pay in this case from February 9, 2016 to July 9, 2019. (See Joint Stipulation of Fact filed with the Merit Board on June 24, 2022).

During the pendency of these cases, the Illinois Appellate Court issued its decision in *Coduto v County of Cook*, 2024 IL App (1st) 221837-U. In *Coduto*, the Appellate Court held that the Administrative Review Law (ARL) is the exclusive remedy for judicial review of a final administrative decision. In *Coduto*, the Appellate Court further held that the failure to seek administrative review at the appropriate time is unfortunately fatal. The same rationale applies here. The Merit Board entered its final order on June 7, 2019, and neither party sought administrative review. As such, the order of the Merit Board is final and the Respondent is precluded from seeking backpay benefits for the time period of February 9, 2016 to July 9, 2019.

Case No. 1807

Findings of Fact

The Sheriff filed a complaint on March 17, 2015. The Sheriff is requesting a termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on February 15, 2013 used excessive force against detainee [REDACTED] by giving 10 knee strikes to detainee [REDACTED] while detainee [REDACTED] was handcuffed behind his back and facing a wall. The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.20.0, and Merit Board Rules and Regulations Article X, paragraph B. Officer Anthony Marrero was appointed as a Correctional Officer at the Cook County Department of Corrections ("CCDOC") on December 2, 2002.

[REDACTED] testified he is a Jail Management Consultant at the University of Tennessee's County Technical Assistance Service. He works with sheriffs, jail leadership, county legislative bodies, county attorneys and healthcare providers regarding various components of jail operation in facilities. (R. 16) He has 41 years of experience going back to 1975 working in corrections. His C.V. was marked as Sheriff's Exhibit 1 and reviewed at the hearing. (R. 17) He was the chief of corrections or the jail administrator of the Hamilton County Jail. (R. 17-18) He was responsible for the overall operation of that facility. (R. 18) He was responsible for ensuring that the facility complied with the state standards, standards of the American Correctional Association, and the Adult Local Detention Facilities. (R. 18) As jail captain of the Hamilton County Jail, he was more directly responsible for the day-to-day operation of the facility and reviewed daily incident reports, uses of force reports and any type of reports generated throughout the facility. (R. 19) As the captain of the Hamilton County Jail, he would also conduct various investigations into use of force to ensure that they were consistent with the policy and procedure, training, and the guidance that had been given to the employees. (R. 20) Prior to his employment with the Hamilton County Sheriff's Office, he spent 22 years in the Marine Corp, a majority of which was in corrections. (R. 20, 21) As the commanding officer of the Marine Corps Brig, Quantico, Virginia, he was responsible for reviewing all incident reports, uses of force reports, disciplinary reports, incident reports, and investigations. (R. 21) His C.V. accurately depicts his training and experience including his training regarding proper use of force techniques. (R. 21, 22) He has participated in various trainings in use of force since 1975. (R. 21-22) He has conducted training as to various components of uses of force particularly as it relates to documenting uses of force, consistency with policy and procedures through various in-service kind of programs. (R. 23) He also has personally been involved in use of force situations. (R. 25) He has personally investigated approximately 10 to 15 incidents of excessive force. (R. 25-26) He has testified as an expert before the Merit Board on four occasions and he has testified as an expert on inmate classification and segregation in two other instances. (R. 27) The standards in the Marines and the state's standards in Tennessee were not different but they were both aligned with the standard of the American Correctional Association and Adult Local Detention Facility Standards. (R. 33) Mr. Hart was admitted as an expert to provide opinion testimony in this matter. (R. 52) During his investigation, he reviewed documents including OPR summary, incident reports, discipline reports, response to resistance/use of force forms, memorandums of investigation as well as video and Sheriff's Order 11.2.1.0. (R. 54) He reviewed each one of the

16 videos and compared what he saw in those videos to the reports. (R. 55) In his view of the video, the inmate had been bent over and escorted into bullpen A, initially was let go of by Officer [REDACTED] but continued to be moved into the holding cell by Officer Marrero, pushed up into the corner, restrained from behind, and basically held there by Officers [REDACTED] and Marrero. (R. 56-57) The video does not indicate the resistance or the kicking at the officers that were described by the officers in their reports. (R. 57) Therefore, it is his opinion that the multiple knee strikes were unnecessary and therefore excessive. (R. 57) The video contradicted the Respondent's report where the Respondent stated that he gave repeat commands to kneel on the bench so that they could exit the bullpen, that the detainee would not follow commands and continued to actively resist the officer's order and continued to pull away and that he used knee strikes to stop the detainee's combatting. (R. 57- 58) Expert witness [REDACTED] view of the video was that the detainee's left knee was on the bench, his right foot appeared to be stationary on the ground and did not appear to be actively resisting, attempting to pull away or combatting. (R. 58) In addition, it is his opinion that if there was an issue of a combatting inmate, other officers would have responded but the other officers in the area did not respond into that holding cell. (R. 58) The video which showed the incident was played for the hearing officer. (R. 60, 61) A CD containing the video was marked as Sheriff's Exhibit 3. (R. 61) When the detainee was put in the cell by Respondent and another officer, he did appear to be stiffening. (R. 64) In Mr. [REDACTED] opinion, the detainee would have been classified as a non-moving resister, and an appropriate response according to the Desmedt Model would be verbal commands, holding, restraining, grabbing, pushing him against the restraint, and the use of various control instruments. (R. 65-66) The fact that the detainee had previously struck an officer would be considered but in this particular instance, the detainee had been restrained from behind, physically held by two officers pressed into a corner. (R. 66-67) It is Mr. [REDACTED] opinion that 13 knee strikes made by Respondent Marrero over the period as viewed on the video of an inmate that was restrained from behind with two officers pressing him into a corner was excessive. (R. 68) The only movements made by the detainee was after approximately the 8th knee strike that he lifted his foot, but it was not a striking motion, rather lifting what appeared to be to protect himself. (R. 69, 70) During this encounter the detainee would have been a non-moving resister. (R. 70) He would not classify the detainee as a moving resister because he is not trying to get away, pushing away or trying to run or separate himself. His review is that the detainee may have possibly lifted his leg to comply with an instruction from the officer to put it on the bench. (R. 75) His opinion that the use of force by Respondent was excessive is based on the totality of the circumstances. (R. 84) [REDACTED] opinion is that the officers had the inmate restrained, there were two officers that were controlling the inmate, no other officers responded as they did not see there was an issue of a combative inmate as described by the officers. (R. 90) The officers were effectively holding the detainee in the corner, pressed him into the corner and restrained him from behind. (R. 90) Respondent Marrero could have guided the detainee into the cell at the door and shut the door. (R. 91-92) Another option they had was to take the detainee down to the ground so that they could exit the cell. (R. 92) The detainee did not move his leg until approximately seven knee strikes had been made and at no point during the video does the lifting of the detainee's leg look like any kind of kicking motion. (R. 104, 105) Sheriff's Exhibits 1, 2 and 3 were entered into evidence without objection. (R. 109, 110)

██████████ has been with the Sheriff's Department since 1995 and is currently in the Records Department. (R. 116) She became a superintendent in 2012 and on February 2013 she was assigned to Records and Receiving. (R. 117) Her responsibilities included among other things to review use of force packets, which are the narratives of incidents that occur, and videos. (R. 117) Her responsibility is to make sure the videos coincide with the reports that were generated regarding the incident. (R. 118) If she finds discrepancies, she forwards them on to OPR. (R. 118) She has been trained in the Sheriff's use of force policy. (R. 118) The purpose of forwarding is to make notification that she does not agree with the findings of the officer's report. (R. 119) She had an opportunity to review the incident that took place on February 15, 2013 involving the Respondent Marrero and detainee ██████████ and she reviewed both video and written reports. (R. 119, 120) Exhibit 4 was marked for identification, which was the incident report and disciplinary report of the detainee. (R. 120-121) Sheriff's Exhibit 5 was marked for identification, which was a part of the use of force report that she reviewed. (R. 122) If the report and the video do not match up, she generates a memorandum and forwards it to OPR. (R. 122-123) Sheriff's Exhibit 3 which was the video of the incident was shown for the hearing officer. (R. 128) The activities in the video in Exhibit 3 accurately depict the events that she reviewed back on February 20, 2013. (R. 128) During her review process, she counted the knee strikes in the video. (R. 128) She felt that the number of knee strikes were excessive based on the video and forwarded it to OPR for further review. (R. 129) Sheriff's Exhibit 6 is her memorandum to OPR regarding her review of the use of force packet. (R. 129, 130) Sheriff's Exhibits 4, 5, 6 and 7 were admitted into evidence. (R. 134, 135) She agreed with Lieutenant ██████████ finding that he did not agree with the packet as it was completed. (R. 176) She does not typically interview anyone as far as her duties. Her responsibilities are to review reports and video. (R. 177) After watching the video several times, 14 to 16 knee strikes seemed excessive to her. (R. 178)

██████████ is a Chicago Police Officer for the past 17 years. (R. 198) ██████████ does not make recommendations regarding discipline for any of the officers that he reviews use of force incidents at the Chicago Police Department. (R. 210, 211) He has not testified before the equivalent of the Sheriff's Merit Board for the Chicago Police Department. (R. 211) He has testified on approximately 7 occasions for officers before the Merit Board and one in Indiana. (R. 211) ██████████ said that the detainee was handcuffed from behind and there were other officers escorting the detainee prior to the Respondent's first physical contact with the detainee. (R. 219-210) ██████████ said that there is another officer with Respondent Marrero in the holding cell. (R. 243) ██████████ said that the video does not show the detainee resisting or kicking at the officer and that he only relied on the officer's statements that he "feels the kicks" for his opinions on this point. (R. 245) ██████████ could not visually see any specific actions that the detainee took to be combative and relied on the Respondents' statement that the detainee "attempted to kick" in opining that it "could have been a low-level kick." (R. 254-255) ██████████ did not interview the Respondent or his partner, ██████████ (R. 262) He did not interview the detainee. (R. 263) He did not interview any of the sergeants or supervisors. (R. 263) He did not interview Lt. ██████████ (R. 263) He did not interview the officer who was involved in the previous incident, Officer ██████████ or any other witnesses from that day. (R. 263) His assessment or opinion is based strictly on what he saw in the reports and the video. (R. 263) ██████████ believes that "moving" resister in the policy means "active" resister and "active" means "moving, movement to avoid physical control." (R. 265, 266) ██████████ said

that Officer [REDACTED] has totally let go of the detainee and was standing in the cell doorway. (R. 268) [REDACTED] said the video shows Respondent Marrero using his left arm to guide the detainee to the bench and at least one arm is free. (R. 268) [REDACTED] assessed that the detainee was resisting by the fact that the Respondent was holding the detainee's head and to push a cooperative subject's head into the wall would be excess force. (R. 269-270) [REDACTED] said the video does not have audio, so he is not sure what, if anything, the Respondent said to the detainee. (R. 271) [REDACTED] states that it looks like the detainee stood up on his own in the video but that it "could be very well right that he may have been pulled back up" by the Respondent, in which case, the detainee would not be considered resisting. (R. 271) [REDACTED] said that the video shows the detainee attempting to stand up and the Respondent pushing him into the corner. (R. 272) [REDACTED] said that the detainee was not resisting or pulling away at the time frames of the video shown to him but came to an assessment that a slight evasive movement at one identified time frame and a leg moving at another time frame was "active, moving resistance." (R. 279-280).

Officer [REDACTED] testified he is employed with the Cook County Sheriff's Department of Corrections and has been for six years. Prior to that he was with the Juvenile Detention Center since 1992 and was transferred to the jail in 2010. (R. 303) Officer [REDACTED] does not know how many knee strikes Respondent Marrero gave. (R. 309) He testified he did not have any interaction with Supt. [REDACTED] regarding this incident. (R. 310) Officer [REDACTED] stated that he released his grip from the detainee and states that he did so because the Respondent had said "I got it, just watch my back." (R. 318) He said he "felt" the detainee kick when they were inside the cell. (R. 323) He "perceived him to kick" and "didn't actually observe him kick." (R. 323) He stated to OPR that he did not see any kicks by the detainee. (R. 328) He perceived that the situation was under control when he backed off but saw that it was not under control when the detainee was not complying with the verbal orders to "kneel down on the bench, ... get down ... something like that. (R. 330-331) He states that he established his hold on the detainee's left side and grabbed him when he believed the detainee was resisting. (R. 332) He states that the policy allows them to strike a detainee restrained with handcuffs if his level of resistance reaches the moving resister level. (R. 333) After he was asked to identify the parts of the video, he admitted that the part where he identified to be where he observed the detainee "flailing or resisting" immediately precedes the part where he let the detainee go. He states that the detainee "was resisting the whole time." (R. 334, 335) The officer admits that he did not put in his report that the detainee was threatening him and calling him vulgar names. (R. 338) He states that he heard someone who he does not remember say "stop resisting" before they entered bullpen A. (R. 344-345) He admits that the detainee was compliant enough to be let go when he arrived at bullpen A. (R. 345)

Respondent Anthony Marrero testified has been employed by the Cook County Sheriff's Department. (R. 346) He had been with the Sheriff's Department for 14 years prior to that working in Divisions 11, 10, 4 and the Maywood Courthouse. (R. 347) Respondent had been trained in use of force by the Sheriff's Office and had taken refresher courses as well. (R. 348)

He was working on February 15, 2013 and had an interaction with detainee [REDACTED] (R. 349) Respondent he gave the detainee a number of knee strikes. (R. 353-354) Respondent has been trained on the John C. Desmedt model for use of force. (R. 360) Respondent had in-service training as well. (R. 361) Respondent did not ask for more officers during the transition to the bullpen. (R. 365, 366) Respondent told Officer [REDACTED] to go back. (R. 366) Respondent said the detainee was handcuffed behind his back at the time. (R. 367) Respondent admits that the detainee's hands were not free to move at that point. (R. 368) Respondent admits that he told Officer [REDACTED] to go ahead, that he's got things and just watch his back, although he may have used different words. (R. 368) Respondent said the video shows that he is the only one that attempted to escort the detainee into the cell and he only used one arm. (R. 369) Respondent said it was his decision to enter the cell alone and he was the only one who had physical contact with the detainee. (R. 369-370) Respondent had one hand on the detainee's head in the bullpen and was able to hold it up against the wall by himself. (R. 373, 374) Respondent stated that the detainee attempted to kick him before his first knee strike. (R. 376) Respondent states that even though the detainee was handcuffed behind his back, he was not "restrained." (R. 381) Respondent said that a takedown would have been possible as an alternative. (R. 382) Respondent states that while the detainee was in the corner at 15:28:57 of the video, the detainee was still offering resistance and that is when the detainee tried to knee him or kick him. (R. 384, 385)

Conclusion

In accordance with the Circuit Court's Remand Order of July 6, 2023, and 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, and Sheriff's Order 11.2.20.0 and Merit Board Rules and Regulations Article X, paragraph B, by using an excessive number of knee strikes to inmate [REDACTED] at a time when Brewer was handcuffed.

Backpay in Docket No. 1807

The Respondent was separated from service with the Sheriff's Department after the Merit Board's termination order dated September 27, 2019. The parties have stipulated that the Respondent was separated from service on September 28, 2019 as a result if the Merit Board's September 27, 2019 order.

The Respondent filed a timely Petition for Administrative Review in the Circuit Court of Cook County on October 31, 2019, seeking reversal of the Merit Board decision and seeking backpay and all other benefits applicable. (The Merit Board notes that the Circuit Court referenced the Respondent's Third Amended Complaint for Administrative Review filed on August 18, 2022. The Third Amended Complaint for Administrative Review also sought reversal of the Merit Board decision and backpay and benefits due the Respondent). As such, the Respondent has preserved his rights under *Coduto* with the timely filing of his Petition for Administrative Review.

The Parties have stipulated that the Respondent was not suspended without pay and was

allowed to continue working during the pendency of this case, Docket No. 1807. The parties have further stipulated that the Respondent was suspended without pay in Docket No. 1872 from February 9, 2016, to July 9, 2019. (See Joint Stipulation of Fact filed with the Merit Board on June 24, 2022). The Respondent is therefore not entitled to backpay and benefits for the period February 9, 2016, to July 9, 2019, in the present matter, Docket No. 1807.

Based upon his timely petition for Administrative Review, and pursuant to the Court's order of July 7, 2023, remanding Docket No. 1872 for determination of a appropriate penalty and backpay, the Merit Board finds that the Respondent is entitled to backpay and benefits from the date of his termination in Docket No. 1872, September 28, 2019, to the date that the Respondent is reinstated to his position in accordance with the July 7, 2023 order of the Circuit Court.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Correctional Officer Anthony Marrero be suspended for ninety (90), effective March 17, 2015. It is further ordered that the Respondent be awarded backpay and benefits from September 28, 2019, to the date of his reinstatement with the Cook County Sheriff's Department, per the Court's July 7, 2023, 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

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SHERIFF'S MERIT BOARD
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DOCKET NO. 1807 & 1872
CORRECTIONAL OFFICER
ANOTHONY MARRERO
STAR # 7817

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

Voted Yes:

John J. Dalicandro, Kimberly Pate Godden, Terrence J. Walsh, Marla M. Kaiden, Wade Ingram Sr.
and James J. Sexton

Voted No: None

Not Present: Byron Brazier and Vincent T. Winters

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 18th DAY OF JULY, 2024.

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1872**
Correctional Officer)
Anthony Marrero)
Star # 15360)

DECISION

This matter coming on to be heard pursuant to notice before James P. Nally, Board Member, on August 17, 18, and 30, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Anthony Marrero, hereinafter Respondent, was appointed a Correctional Officer on December 2, 2002. 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 8, 2016. Regardless of whether or not Merit Board Members were properly appointed

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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 8, 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 on February 8, 2016. The Sheriff is requesting a termination of the Respondent. In the complaint, the Sheriff alleges that the Respondent on June 6, 2013 used excessive force against detainee [REDACTED] by deploying OC spray at the detainee while the detainee was already restrained by other correctional officers, and by kicking the detainee twice while detainee was on the ground, and dragging the detainee while he was handcuffed and his pants were down, and restrained by other correctional officers. The Sheriff also alleged that Respondent failed to submit an incident report detailing the specifics of the use of force utilized against the detainee, including deploying OC spray, kicking the detainee twice and dragging him all handcuffed and his pants were down. The Respondent did complete a Response to Resistance/Use of Force report stating he deployed OC spray to gain control of the detainee, but failed to document he kicked the detainee, or dragged the detainee while he was handcuffed.

The complaint alleges violations of Sheriff's Order 11.2.1.0, Sheriff's Order 11.2.2.0, Gen. Order 24.9.1.0, Gen. Order 24.9.1.0, 11.2.2 0.0, and Merit Board Rules and Regulations Article X, paragraph B.

Officer Anthony Marrero was appointed as a Correctional Officer at the Cook County Department of Corrections ("CCDOC") on December 2, 2002. Tr. 477. Officer Marrero voluntarily went through Oleoresin Capsicum ("OC") training and obtained an OC Certification in April of 2011. Tr. 480. At the time of the incident, out of approximately 75 officers, there were about five (5) containers of OC spray provided for the Receiving area. Tr. 481. Detainee [REDACTED] was in the custody of the Cook County Department of Corrections beginning on June 5, 2013. Tr. 7. The incident occurred on June 6, 2013. Tr. 7, 12. [REDACTED] was convicted of a felony, around September of 2013, for throwing a chair at hospital workers, which resulted in his incarceration at the CCDOC on June 6, 2013. Tr. 25-27. CCDOC opened a new RCDC building on June 6, 2013, which is the exact day this incident occurred. Tr. 14 [REDACTED] [REDACTED] was taking medication daily for anxiety and depression at the time of the incident. Tr. 28. Officer Anthony Marrero was working in a property cage within the newly opened RCDC on June 6, 2013. Tr. 15.

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Officer [REDACTED] has been employed by the Cook County Sheriff's Police for approximately two years, and in June of 2013, at the time of the incident, she was working in the capacity of a correctional officer. Tr. 98-100. Lieutenant [REDACTED] has been employed by the Cook County Department of Corrections for approximately 23 years, and has been a lieutenant for approximately five (5) years. Tr. 125. Lieutenant [REDACTED] was assigned as the shift commander in Receiving on the date of the incident. Tr. 126. She did not observe the incident herself. *Id.*

Superintendent [REDACTED] is employed with the Cook County Department of Corrections, where she oversees the Records Department. Tr. 163. As the Superintendent of the Records Department, [REDACTED] reviews paperwork and forwards or notifies OPR for further investigation. Tr. 164.

Correctional Officer [REDACTED] has been employed with the Cook County Department of Corrections for ten (10) years. Tr. 190. Officer [REDACTED] was assigned to Receiving in June of 2013. *Id.*

[REDACTED], previously worked in the Sheriff's Office as the Acting Executive Director of the Cook County Jail in June of 2013. Tr. 216. He is currently a consultant with the Sheriff's Office. Tr. 215. As Acting Executive Director, [REDACTED] was tasked with reviewing the use of force incidents for compliance with the Sheriff's policies. Tr. 217-18.

[REDACTED] is currently employed with the Cook County Sheriff's Department as the Executive Director of the Use of Force Review Unit and has been with that unit since approximately September of 2011. Tr. 267. In 2013, [REDACTED] was a Sergeant in the unit. *Id.* The Use of Force Review Unit reviews all incidents from a training standpoint, and also works with the training academy to develop supplemental trainings. Tr. 268-69.

[REDACTED] is currently employed with the Cook County Sheriff's Office in the Use of Force Review Unit. Tr. 330. He previously worked as an investigator with OPR for approximately 2.5 years, back in 2014. In OPR, his responsibilities included investigating DOC related use of force cases, detainee reports, and grievances. Tr. 331.

[REDACTED], is a lieutenant with the Cook County Sheriff's Department, and has been with the Department since January 27, 1992. Tr. 392. [REDACTED] was the shift supervisor on June 6, 2013. Tr. 407.

[REDACTED] has been a Correctional Officer with the Cook County Department of Corrections for approximately 13 years. Tr. 452. He is also the Chief Union Steward for Teamsters Local 700 and has held that title for approximately seven (7) years. *Id.* His duties and responsibilities as Chief Union Steward involve representing officers, negotiating contracts, attending OPR interviews, arbitrations, Loudermill and grievance hearings.

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On June 6, 2013, at the time of the incident, there were multiple altercations and several combative and agitated subjects housed in the RCDC unit. Tr. 15, 165. It was a chaotic environment. *Id.* Officers attempted to secure the situation and maintain the safety of the detainees and fellow officers. Tr. 18. Detainees at that point had not been classified into specific divisions. Tr. 85.

There were several hundred detainees flowing through the RCDC facility in a day Tr. 117. Detainee [REDACTED] was acting irate while asking for his medication. Tr. 401. Officer Marrero arrived at the bullpen and observed several officers attempting to handcuff an uncompliant detainee [REDACTED] Tr. 486. The detainee was actively flailing, fighting with sworn staff and attempting to defeat handcuffing. Tr. 552. [REDACTED] was resisting, so Marrero deployed one quick burst of Oleoresin Capsicum ("OC spray"). Tr. 486. In the video made a part of this record, Officers had clearly been visibly struggling with Detainee [REDACTED] Tr. 202. Officer Marrero further observed officers ongoing, unsuccessful attempts to handcuff detainee [REDACTED] so he joined in the attempts as well by grabbing the detainee's wrist to get him to turn over to be handcuffed. Tr. 487. Detainee [REDACTED] pulled back at this point, after ignoring verbal commands, and Marrero delivered a strike to his thigh to again attempt to get him to turn over. Tr. 487, 511. The detainee was still not turned over, so Marrero delivered one more strike, and was finally able to get the detainee to turn over to be handcuffed. *Id.* Officer Marrero did not intentionally pull-down detainee [REDACTED]'s pants, nor did he witness any other officers intentionally pull-down his pants. Tr. 487. Officer Marrero took in the totality of the circumstances when deciding to intervene and determining how to respond to Detainee [REDACTED]. Tr. 489. He considered the number of incidents that occurred prior to him entering, the number of officers on duty, and the fact that there were multiple aggressive, agitated inmates that outnumbered those officers. Tr. 489.

Immediately after the incident, and after Detainee [REDACTED] was secured, Marrero was able to remove him from under the bench and better position him to stop any further aggression. Tr. 495. He also attempted to get all the other detainees out of the bullpen in order to get [REDACTED] to medical. *Id.* This is a standard operating procedure. *Id.*

Detainee [REDACTED] did not know who administered the kicks he alleges once he was taken down by an officer. Tr. 89-90. An officer then attempted to pull the detainees feet, which caused the detainees loose pants to fall to his ankles. Tr. 94. The detainee was escorted by Officer [REDACTED] to be decontaminated within five (5) minutes after the incident. Tr. 122. The involved Officers told the detainees to face the wall while this was occurring in order to keep them from getting out of control. Tr. 106. The point of having detainees face the wall is for the safety of the detainees and officers, and to prevent them from getting involved in the situation. Tr. 120, 193.

Approximately 60 seconds before this current incident with Detainee [REDACTED], Officer Marrero was involved another incident with a different detainee. Tr. 493. Officer Marrero feared there was a riot going on. Tr. 494.

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Officer Marrero had to fill out two Use of Force Reports following this incident. Tr. 497. He did not have time to fill out a Use of Force Report following the first incident as he immediately responded to the [REDACTED] incident. *Id.* While filling these out, his heart was pumping, and adrenaline was rushing due to the events that had just transpired. *Id.* Two other officers, who were the primary officers in the instances, both submitted incident reports. Tr. 583.

Officer Marrero did not indicate the foot strikes to the detainee in his Use of Force Report because, at the time, he said he was unaware that had used that tactic. Tr. 504. He later saw the video of the incident for the first time at OPR, and that is where he admitted to having issued foot strikes. Tr. 484, 505. Neither Use of Force Reports from either incident were ever returned to him by a supervisor. *Id.* None of the supervisors ever indicated his reports were deficient in any way whatsoever. Tr. 506. Marrero says he did not intentionally omit any information in any of his reports. Tr. 556.

Officer Marrero engaged in remedial retraining approximately six to seven months following this incident as required by the Department of Corrections. Tr. 19, 521. However, he said the remedial training did not teach him or fellow officers how to respond differently in this type of situation as it was instead a general group course on training. Tr. 19, 280, 306. Further, he said he was never instructed at the remedial training that OC spray nor kick strikes were prohibited. Tr. 521.

Oleoresin Capsicum spray is expressly authorized by the Sheriff's Orders. Tr. 13. Officers are authorized and trained to use OC spray when there is an active resisting detainee who is not following verbal commands. Tr. 484. OC spray can be used to prevent attacks. *Id.* Officers are also trained to administer diffused pressure strikes or direct mechanical strikes, specifically to the shoulder, thighs, buttocks, calves and arms. Tr. 484-85. OC spray is a non-lethal form of force. Tr. 324. The use of OC spray is a tool officers have to use, besides verbalization or using their hands. *Id.* If an officer feels they are in fear of receiving a battery, or in fear that that fellow officers surrounding them will receive a battery, force is appropriate. Tr. 371.

The Desmedt Model and the Sheriff's Order on Response to Resistance and Use of Force are all designed to guide responses to incidents and how officers respond to them. Tr. 575. The correct standard to evaluate use of force incidents is the totality of circumstances test. Tr. 299. The totality of the circumstances includes the mental state of the subject, the number of subjects in the area, the lighting, the environment, whether weapons are involved, multiple consecutive incidents etc. Tr. 300.

[REDACTED], who had reviewed the Use of Force Report, was not trained in OC spray deployment Tr. 244. He further did not write the Desmedt Model, which was ultimately the Use of Force Order. Tr. 246. Mr. [REDACTED] did not make his conclusion that Marrero's deployment of OC spray was unreasonable based off any specific standard. Tr. 249.

Director [REDACTED] did not take issue with Marrero's OC spray deployment and did not list that as one of the reasons for forwarding the incident to OPR. Tr. 314. The investigator with OPR

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concluded that Marrero unnecessarily used OC spray Tr. 346. The OPR investigator also did not rely on any witness statements in determining that Marrero used force. Tr. 372.

██████████, Marrero's supervisor on that day, did not take issue with anything that occurred, and did not believe there was any excessive use of force. Tr. 407. No one ever directed ██████████ to require Officer Marrero to file any additional documentation relating to the incident. Tr. 431.

Investigator ██████████ determined in his review that Officer Marrero used excessive force Tr. 582. ██████████ did not draw any conclusions on Marrero's use of force based off of any other incident reports. Tr. 360.

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, Gen. Order 24.9.1.0, or Gen. Order 24.9.1.0, 11.2.20.0. Respondent did violate Sheriff's Order 11.2.2.0 and Merit Board Rules and Regulations Article X, paragraph B, by filing an incomplete Use of Force report which did not report that the Respondent used mechanical strikes to the thigh of detainee ██████████, although the evidence shows that he did. The evidence does not show that Respondent used excessive force under the totality of the circumstances. The video evidence is particularly clear that at the time, just prior to the incident involving detainee ██████████ that another incident had occurred with another detainee in the same area. The area contained numerous detainees within the room, and the situation had become very agitated, and a melee could have broken out. Respondent in evaluating the situation was justified in using OC spray and assisting other officers in subduing ██████████, who was an active resistor. The actions of the Respondent were within the parameters of the Sheriff's orders governing conduct of employees such as the Respondent.


Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Correctional Officer Anthony Marrero be suspended for 30 days, effective February 8, 2016.

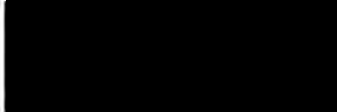
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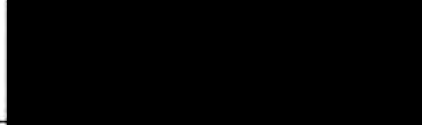
James P. Nally, Chairman



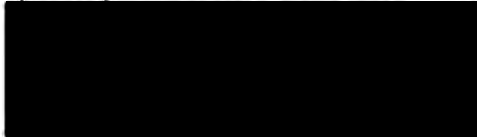
Byron Brazier, Vice-Chairman



John Dalicandro, Secretary



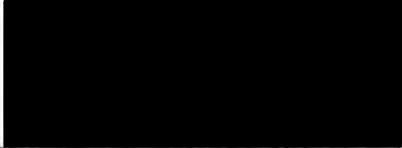
Kim R. Widup, Board Member



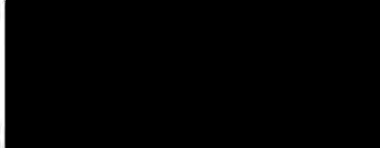
Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick M. Brady, Board Member



Kimberly Pate Godden, Board Member

Date June 7, 2019