

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1775**
Steven Cruz)
Correctional Officer)

Corrected Decision

I. Relevant Facts and Procedural History

This matter is currently before the Cook County Sheriff's Merit Board on remand, as ordered by Cook County Circuit Court Judge Demacopoulos on July 23, 2020. This case has a long procedural history, and this Board assumes the parties' familiarity with the facts and history of this case, and includes only an abbreviated summary of those facts here.

Respondent Steven Cruz was a correctional officer with the Cook County Department of Corrections ("CCDOC"), employed by the Cook County Sheriff's Office ("CCSO"). On July 13, 2014, Respondent was assigned to the Receiving Classification Diagnostic Center ("RCDC" or "Receiving") in Division V at the Cook County Jail. At approximately 16:09 hours, Respondent was involved in an altercation with a detainee, [REDACTED]. A videotape recording from the RCDC shows Respondent approaching detainee [REDACTED] standing in front of him and pushing detainee [REDACTED] with both hands to the detainee's chest. Detainee [REDACTED] then attempted to walk around Respondent, and the Respondent again pushed detainee [REDACTED] in the chest using both hands. At this point, the videotape shows another Correctional Officer, [REDACTED] walking up behind detainee [REDACTED] and holding him in a headlock using [REDACTED]'s right arm. Respondent then takes out his OC spray, approaches the detainee, and immediately deploys the spray directly into detainee [REDACTED]'s face and eyes. The videotape shows that detainee [REDACTED] was being compliant *prior* to the deployment of OC spray.

The Cook County Sheriff's Merit Board issued its original decision on this matter on May 2, 2016, terminating the Respondent and setting forth in detail the rules, regulations, and violations that were charged in the complaint, as well as a detailed exposition of the evidence through witness testimony and documents admitted into evidence. The findings of the Merit Board's May 2, 2016 decision were appealed and this case was ultimately remanded by the Illinois Court of Appeals on January 22, 2019, and in turn, by the District Court on June 24, 2019.

The Cook County Sheriff's Merit Board issued a remand order on September 12, 2019. This order was appealed to the District Court of Cook County, and Cook County Circuit Court Judge Demacopoulos remanded the case back to the Merit Board—with instructions—on July 23, 2020. Specifically, the Court ordered the Merit Board to consider the five factors set forth in the Appellate Court record, and in so considering to determine whether or not termination was the appropriate sanction for Respondent. The Merit Board considers each of the factors identified by the Appellate Court below.

II. The Five Factors Identified By the Appellate Court

Concerning the five factors identified by the First District Court of Appeals, the Merit Board finds as follows:

- A. *The videotape recording timer makes clear that the entire incident took 23 seconds. As Officer Cruz testified, he had no time to "pause and think" during those 23 seconds.*

Pursuant to the CCSO's General Order 11.2.1.0 (Response to Resistance/Use of Force Policy), "[o]fficers shall only use an amount of force reasonable and necessary based on the totality of the circumstances to . . . control a subject, or protect the officer or others from injury . . ." General Order 11.2.1.0, Section II). Officers are only permitted to use OC spray under the strictures of the CCSO's General Order 11.2.4.0. OC spray may be deployed when a "subject has signaled his intention to actively resist the officer's efforts to take lawful control of the subject or when the officer must defend against physical attack to himself or another." General Order 11.2.4.0, Section VI.B.2. "OC spray shall only be used as a control and compliance measure and shall never be used for any unauthorized, unlawful purpose, or for punishment." General Order 11.2.4.0, Section VI.B.6.

In the instant case, the video recording shows that Officer [REDACTED] had complete control of detainee [REDACTED] prior to Respondent deploying his OC spray. Respondent has argued that he did not have time to "pause and think" prior to using the OC spray. This argument is not supported by the video evidence. The video shows that Officer [REDACTED] was holding detainee [REDACTED] and that detainee [REDACTED] was not moving. Further, Officer [REDACTED] was able to set his water bottle down while Mr. [REDACTED] remained compliant. It is counter-intuitive that Officer [REDACTED] had the time to set down his drink, but that Respondent did not have sufficient time to properly assess the situation.

Further, correctional officers are trained to assess dangerous situations and react quickly. There is nothing in the record to establish that this was a unique or unexpected event. To the contrary, Respondent testified that officers had to use force "every day practically" in the receiving area at the Cook County Jail. Given the totality of the circumstances, Respondent had sufficient time to "pause and think" prior to deploying the OC spray.

- B. *This incident occurred in January 2012 and Officer Cruz continued to work for the CCDOC with no mention of the incident until March 2014, when he was first questioned about it. Although, as we have found, this delay does not bar the Sheriff from disciplining Officer Cruz on the basis of laches, the fact that the incident was not even investigated for over two years undermines any assumption that it was serious enough to constitute "cause" for termination.*

The Merit Board is dismayed as to why the Sheriff waited two years before bringing formal charges against the Respondent. Given the allegations in this case, the Board would have expected the Sheriff's Office to act with greater urgency. However, as set forth in Section II.D below, Respondent filed false reports that did not contain accurate accounts of the incident. It is unclear from the record whether or not these false reports had any effect on the timing of the investigation.

Regardless, the Merit Board does not have any control over the Sheriff's decision to investigate or charge an employee. Instead, the Board can only review the case and the facts before it. The Merit Board's role is to determine whether or not the plead infraction is cause for termination. We believe that in this case it was. The Respondent used excessive force against a detainee, and he should not be returned to a position to harm others. Had the Sheriff acted with diligence and brought these charges soon after the incident, the

decision would remain the same. The fact that two years elapsed before the charges do not mitigate Respondent's actions.

- C. *Officer Cruz was attacked by a prisoner in May 2010, resulting in his suffering severe injuries, spending several days in intensive care, later being diagnosed with [REDACTED], and given a recommendation of no inmate contact. Even if this history does not excuse Officer Cruz's improper use of OC spray to subdue a prisoner, it certainly could mitigate the incident.*

Respondent testified that he suffered from [REDACTED] after an incident in May 2010 with another detainee. However, Respondent failed to offer any medical evidence that he in fact suffered from [REDACTED], was under the care of a medical professional, or that [REDACTED] affected him during the incident. Respondent could have provided such information in his own defense but chose not to do so. The Merit Board has no valid evidence before it to decide whether (or how) Respondent's [REDACTED] may have mitigated his behavior on January 13, 2012.

- D. *Although the Sheriff's complaint alleged that Officer Cruz had filed false reports, there was no finding by the Board that this allegation was supported by any evidence. The evidence in this case showed that the Respondent completed a Use of Force Report, an Incident Report and an Inmate Disciplinary Report.*

The Merit Board finds that Respondent filed false reports because his reports did not accurately reflect the incident that occurred on January 13, 2012. In the narrative of all three reports, Respondent failed to document that he pushed detainee [REDACTED] twice, using with both hands, or that Respondent immediately deployed OC spray to detainee [REDACTED]'s face and eyes without warning, while detainee [REDACTED] was being held from behind by Officer [REDACTED] in a headlock. Respondent's report does not accurately reflect the incident as captured by the video tape.

On March 10, 2014, Respondent falsely reported to investigators from the OPR that on January 13, 2012, he told detainee [REDACTED] to "stop resisting" a couple of times, and to "stop resisting or [detainee [REDACTED] was going to be sprayed with OC." Respondent falsely reported that on January 13, 2012, detainee [REDACTED] continued to fight against Officer [REDACTED]'s hold and Respondent deployed OC spray at that time. Respondent falsely reported to investigators from the OPR that on January 13, 2012, detainee [REDACTED] continued to resist and tried to escape Officer [REDACTED]'s hold, and that Respondent told detainee [REDACTED] to stop resisting or he would be sprayed. Each of these statements are contradicted by the videotape.

- E. *Officer Cruz had no disciplinary history and no other record of having used force during the approximately nine years he worked at the CCDOC.*

Respondent's lack of previous discipline, while admirable, does not mitigate his actions in this case. Respondent used excessive force against a detainee who was complying, and in doing so deployed OC spray on both the detainee and a fellow correctional officer. This alone is grounds for termination.

III. Full Consideration of the Appropriate Sanctions

The Merit Board has carefully considered the evidence presented in this case, as well as the rulings of the Appellate and District Court in this matter. The Merit Board finds that despite the possible mitigation identified by the Appellate Court in the five factors set forth above, termination is an appropriate sanction for Respondent's actions.

Order

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds, by a preponderance of the evidence, that Correctional Officer Steven Cruz violated Sheriff's Orders 11.2.1.0 and 11.2 .20, General Orders 24.9.1.0 and 9.21, and Article X Paragraph B of the Merit Board Rules and Regulations, and that termination is warranted effective August 4, 2014. Officer Cruz's continued employment is detrimental to the CCDOC based on his actions in this case.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIM R. WIDUP, Board Member
JUAN L. BALTIERRES, Board Member
KIMBERLY PATE GODDEN, Board Member
ELENI P. SIANIS, Board Member



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

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Kim R. Widup, Juan L. Baltierres, Kimberly Pate Godden and Eleni P. Sianis.

Not Present:

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 OCTOBER, 2020.