

**COOK COUNTY SHERIFF'S MERIT BOARD**

**Sheriff of Cook County**                    )  
  )  
**vs.**    )  
  )  
**Brian Gallagher**                            )  
**Deputy Sheriff**                             )

**Docket # 1841**

**DECISION**

THIS MATTER COMING ON to be heard before Merit Board Member John J. Dalicandro pursuant to notice, the Cook County Sheriff's Merit Board finds as follows

**Jurisdiction**

The Respondent, Brian Gallagher, hereinafter "Respondent". Respondent's position as a Cook County Deputy Sheriff involves duties and responsibilities to the public; and  
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; and  
The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and  
The Respondent was personally served with a copy of the Complaint and Notice of Hearing and did appear before the Board to contest the charges contained in the complaint; and  
The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

**Background**

By complaint dated October 16, 2015. Sheriff Thomas J. Dart, sought the termination of Brian Gallagher, the Respondent. The Sheriff is seeking termination from the Cook County Sheriff's Office for the alleged violations of the Rules and Regulations of the General Orders of the Cook County Sheriff's Department.

In support, thereof, the Sheriff states as follows:

1. That on April 19, 1995, the Respondent was appointed a Deputy Sheriff.
2. That as of 2005, Respondent was assigned to the George N. Leighton Criminal Court Building, located at 2650 South California Avenue, Chicago, Illinois 60608.
3. That Respondent was absent from scheduled work shifts and the absences were unauthorized for at least six (6) occurrences between August 31, 2012 and October 30, 2014, in violation of Sheriff's Order 11.4.1.1 as set forth below:
  - a. That Respondent's first occurrence of unauthorized absences occurred on August 31, 2012, consisting of eight (8) hours of No Vacation Time ("NVT").
  - b. That Respondent's second occurrence of unauthorized absences occurred on September 10, 2012, consisting of eight (8) hours of NVT.

- c. That Respondent's third occurrence of unauthorized absences occurred on January 28, 2013, consisting of eight (8) hours of No Sick Time ("NST").
- d. That Respondent's fourth occurrence of unauthorized absences occurred on June 7, 2013, consisting of two (2) hours of NST.
- e. That Respondent's fifth occurrence of unauthorized absences occurred on August 18, 19, 20 and 21, 2014, consisting of thirty-two (32) hours of NST.
- f. That Respondent's sixth occurrence of unauthorized absences occurred on October 29 and 30, 2014, consisting of sixteen (16) hours of NST.
- g. That Respondent continued to incur unauthorized absences and was absent from scheduled work shifts a total of two (2) additional occurrences, as set forth below:
  - a. That Respondent was absent NVT on December 3 and 4, 2014 (16 hours).
  - b. That Respondent was absent NST on December 8, 2014 (8 hours).
4. That on September 14, 2012, Respondent attended a counseling session after his first occurrence of unauthorized absences, which occurred on August 31, 2012. At this counseling session, Respondent was counseled on Sheriff's Order 11.4.1.1, Unauthorized Absence Policy, as well as the steps in the levels of progressive discipline and available leave options.
5. That on September 25, 2012, Respondent received an Unauthorized Absence Disciplinary Action Form ("DAF"), SPR12-2130, recommending a written reprimand for the unauthorized absence that occurred on September 10, 2012.
6. That on March 22, 2013, Respondent's grievance #12-U-086 related to SPR12-2130 for the unauthorized absence that occurred on September 10, 2012 was denied after a 3<sup>rd</sup> Step Grievance hearing.
7. That on February 13, 2013, Respondent received an Unauthorized Absence DAF, SPR13-0350, recommending a 1-day suspension for the unauthorized absence that occurred on January 28, 2013.
8. That on March 22, 2013, Respondent's grievance #13-U-042 related to SPR13-0350 for the unauthorized absence that occurred on January 28, 2013 was denied after a 3<sup>rd</sup> Step Grievance hearing.
9. That on April 2, 2014, Respondent received an Unauthorized Absence DAF, SPR13-1357, recommending a 3-day suspension for the unauthorized absence that occurred on June 7, 2013.
10. That on May 21, 2014, Respondent's grievance #14-U-049 related to SPR13-1357 for the unauthorized absence that occurred on June 7, 2013 was denied after a 3<sup>rd</sup> Step Grievance hearing.
11. That on September 10, 2014, Respondent received an Unauthorized Absence DAF, SPR14-2108, recommending a 5-day suspension for the unauthorized absences that occurred on August 18, 19, 20 and 21, 2014.
12. That on January 14, 2015, Respondent's grievance #14-DI-14910-NYLB related to SPR14-2108 for the unauthorized absences that occurred on August 18, 19, 20 and 21, 2014 was denied after a 3<sup>rd</sup> Step Grievance hearing.
13. That by his actions, Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff's Court Services Department, specifically:

SHERIFF'S ORDER 11.4.1.1 (effective date July 1, 2012)

UNAUTHORIZED ABSENCE, in its entirety, including but not limited to, the following subparts:

## II. POLICY

It is the policy of the Cook County Sheriff's Office (CCSO) to prohibit CCSO employees from incurring Unauthorized Absences. Unauthorized Absences exacerbate absenteeism problems and strain the operations and employees of the CCSO. CCSO

employees receive benefit time and have a variety of leave options available to cover the need for short-term and long-term absences. Therefore, even if an employee is legitimately ill or has some other reasonable excuse for being absent, the employee must obtain an appropriate Authorized Status(es) prior to or immediately after the need for the absence(s).

V. DEFINITIONS

C. Occurrence – For purposes of determining progressive discipline, an Occurrence as used in this Order is either:

1. An Unauthorized Absence that lasts from one (1) hour to one (1) single work day and where the employee returns to work the next working day; or
2. An Unauthorized Absence that lasts between two (2) and five (5) consecutive work days.

For instance, if an employee has one (1) Unauthorized Absence day and returns to work the next work day, then that will be considered one (1) Occurrence; if an employee has five (5) consecutive Unauthorized Absences in a row, that will be considered one (1) Occurrence; if an employee has thirteen (13) consecutive Unauthorized Absences, that will be considered three (3) occurrences.

VII. DISCIPLINARY PROCEDURES FOR EMPLOYEES WITH UNAUTHORIZED ABSENCE(S)

- A. Disciplinary procedure for employees without a Rolling Calendar clause in their applicable CBA will be progressive and will be in accordance with the applicable CBA.

GENERAL ORDER 3401.1 (effective date March 15, 2001)

RULES OF CONDUCT, in its entirety, including but not limited to, the following subparts:

V. RESPONSIBILITY

It is the responsibility of every member of the C.S.D. to conform to the rules of conduct.

U. Tour of Duty: Attendance, Availability and Reporting

1. Members will report for duty at the time and place required or report their inability to do so by notifying their supervisor or the appropriate office one hour prior to the beginning of their tour of duty. No member shall be absent without leave. Absent without leave shall mean either a failure to report for duty or leaving their assigned duty post during a tour of duty without being properly relieved, except when authorized by proper authority. Members shall be punctual in reporting for duty; habitual failure to report promptly shall be deemed neglect of duty. Members will be physically and mentally fit to perform their duties. They will be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties. Judicial subpoenas will constitute an order to report for duty under this section.

SHERIFF'S ORDER 11.2.20.0 (effective date January 25, 2013)

RULES OF CONDUCT, in its entirety, including but not limited to, the following subparts:

VI. RULES AND REGULATIONS FOR ALL SWORN AND CIVILIAN CCSO EMPLOYEES

- A. Compliance with Laws, Ordinances, and Regulations

2. Employees shall comply with lawful rules, Sheriff's Office written directives, verbal orders, SEAM articles, and political prohibitions issued by the proper authorities.

E. Duty functions.

CCSO employees shall:

1. Maintain sufficient competence to properly perform the duties and responsibilities of their positions. Unsatisfactory performance shall not be allowed.

b. Unsatisfactory performance may be demonstrated by:

vi. Absence without leave.

SHERIFF'S ORDER 11.2.20.1 (effective date March 12, 2015)

CONDUCT POLICY, in its entirety, including but not limited to, the following subparts:

IV. COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitutions of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with court decisions and orders of courts having jurisdiction; and comply with lawful rules, written or verbal orders, SEAM articles, policies and procedures issued by the CCSO or by any supervisor.

VI. CONDUCT WHICH MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of the CCSO. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient service. Conduct which may result in discipline includes but is not limited to the following:

A. Attendance.

b. Unexcused or unauthorized absence or tardiness on scheduled day(s) of work.

Furthermore, the Respondent's actions violated the Rules and Regulations of the County Sheriff's Merit Board, specifically:

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

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections or any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

3. violate any of the general orders, special orders, directives, or rules and regulations of the Cook County Sheriff's Office.

WHEREFORE, THOMAS J. DART, Sheriff of Cook County, maintains that the Respondent, by his conduct, has violated the Rules and Regulations of the Cook County Sheriff's Merit Board, and respectfully requests this Board to hold a hearing on the charges as set forth in the complaint, pursuant to statute, and on proof of said charges, or any part thereof, the Board shall make a finding of guilty and order the Respondent removed from the Cook County Sheriff's Office.

**Findings of Fact:** Evidentiary hearing on this matter was held on September 20, 2016. Present were Assistant State's Attorneys [REDACTED], [REDACTED] on behalf of the Sheriff and [REDACTED], Assistant General Counsel for the Sheriff of Cook County. [REDACTED] and [REDACTED] appeared on behalf of Respondent Brian Gallagher.

Three witnesses testified for the Sheriff, [REDACTED], [REDACTED] and [REDACTED]. Respondent Brian Gallagher testified.

**Direct Examination** [REDACTED] testified, she is employed at the Cook County Sheriff's Department. She is the Director of the Payroll Department. Employees are only allowed to call in for medical as well as FMLA time. They cannot call in for personal or vacation time. Non-medical time must be called in or requested 72 hours in advance based on their CBA.

In her review of Deputy Brian Gallagher's time card.

August 31, 2012, 8 hours of No Vacation Time 0.

September 10, 2012, 8 hours of No Vacation Time 0.

January 28, 2013, 8 hours of No Sick Time 0.

June 7, 2013, 2 hours of No Sick

August 18, 2014, 8 hours of No Sick Time 0.

August 21, 2014, 8 hours of No Sick Time 0.

October 29, 2014, 8 hours of No Sick Time 0.

October 30, 2014, 8 hours of No Sick Time 0.

December 3, 2014, 8 hours of No Vacation Time 0.

December 4, 2014, 8 hours of No Vacation Time 0.

December 8, 2014, 8 hours of No Sick Time 0.

Family Medical Leave Act, FMLA for an employee to qualify for FMLA, they need 1250 hours working hours. If an employee runs out of FMLA time, they can recertify once they work the 1250 hours. None of the dates above reference FMLA. He was granted FMLA September 22, 2012 to September 22, 2013 for intermittent use, five days a month and it must be used in an eight-hour block of time.

**Cross Examination** [REDACTED] testified, that Mr. Gallagher was also approved for FMLA from December 15, 2014. The records show that each year he applies for FMLA, and then he is approved for FMLA.

September 11, 2012, 8 hours of FMLA

September 17, 2012, 8 hours of FMLA- 0, these are excused absences.

June 7th, 2013, NST 2, which meant no sick time for two hours. The day before Mr. Gallagher went on an ordinary disability. It is the policy of the Sheriff's Department that before an employee can go on a disability they need to exhaust all their benefit time.

**Direct Examination** [REDACTED] testified. He is employed by the Cook County Sheriff's Office, Director of Attendance Review. He informs employees of infractions that violate the General Order of Unauthorized Absences.

There are unauthorized absences when a Cook County Sheriff's employee is absent from work and does not have the requested benefit time to support that absence. If an employee has a legitimate medical excuse, they do have options available to correct their unauthorized status. There's an administrative process available to an employee who has violated the General Order attendance policy. Mr. Gallagher was issued a Disciplinary Action Form. He was given counseling by [REDACTED] in September of 2012. Mr. Gallagher went through the grievance procedure for his unauthorized absences. It is the



responsibility of the employee to ensure that they have enough time before they end up in unauthorized status.

**Cross Examination** [REDACTED] testified that on February 24 to 28, 2014 the time card reflects a 5th Occurrence, and then the 5th Occurrence also becomes August 18 to 21, 2014. After the 6th Occurrence, "A complaint register shall be submitted to the Office of Professional Review seeking termination." The Collective Bargaining Agreement for the Illinois FOP Labor Council and the Sheriff's Office allows another step after the 3rd step for arbitration. There is not a final decision made until the case goes before an arbitrator.

**Direct Examination** [REDACTED] testified, she is employed by the Cook County Sheriff's Office, Office of Professional Review as an Investigator. She was assigned to investigate Officer Brian Gallagher. She interviewed Officer Gallagher and during his interview there was no dispute whether he was ill, the issue was he didn't have enough accrued benefit time to cover his absences.

**Cross Examination** Investigator [REDACTED] testified, that Mr. [REDACTED] was the complainant in this case. He submitted a memorandum, a signed affidavit seeking the termination of Mr. Gallagher.

**Direct Examination** Brian Gallagher the respondent testified, he is employed by the Cook County Sheriff's Department as a Deputy Sheriff. He started on April 19, 1995. He has used FMLA time since 2003. He is familiar with all the documents necessary to be completed for the use of FMLA time. In 2013 [REDACTED] and was not approved for FMLA leave until December 15, 2014. He would call in to the call center and use whatever fringe time that was available including FMLA time. His time card would be corrected to change the status of the time taken.

August 31, 2012 NVT, no vacation time. Counseling given.

September 10, 2012 NVT no vacation time may have been FMLA and not properly marked by Sheriff's Department

September 11, 2012 FMLA-A

September 17, 2012, FMLA 0.

Mr. Gallagher was authorized to use 5 days per month for FMLA time.

January 28, 2013 NST-0 no sick time

January 29, 2013 FMLA-0

January 30, 2013 FMLA-0

There are no allegations of unauthorized absences for February, March, April, and May of 2013,

June 7, 2013 NST-2/6. He was using his time before going on disability. He was disability for 10 months. He returned to work on March 4, 2014. He was unable to apply for FMLA leave at this time. He did not work the 1250 hours' requirement.

August 18, 19, 20, 21, 2014 were entered as NST no sick time. He took those days off due to his FMLA condition. He used regular vacation days for August 12 and 13, 2014.

October 29 and 30, 2014 NST no sick time. Those days were also related to his FMLA condition.

December 3 and 4, 2014 NVT, no vacation time.

December 8, 2014 NST no sick time.

Mr. Gallagher testified that these days were due to his FMLA condition. On December 5, 2014, he was granted FMLA leave time.

**Cross Examination** Brian Gallagher Respondent testified, he has worked for 21 years and he has used FMLA since 2003. He is familiar with the FMLA application process and re-certification process. In August 2012, he exceeded 5 FMLA days. He used 6 total which relates to the August 31, No Vacation Time.

September 10, 2012, NVT no vacation time, he was not approved for FMLA until September 22, 2012. August 18-21, 2014, October 29 and 30, 2014, December 3-4, 2014, and December 8, 2014. These dates he did not have FMLA approval.

He did file grievances related to his unauthorized absences. All of his grievances were denied.

**Findings of Fact:** Officer Brian Gallagher did violate the Cook County Sheriff's Rules and Regulations stated in the complaint. The evidence clearly sustains the charges filed against him. The mitigating factor in this decision is concerning his use of FMLA leave. The dispute is not whether he was ill at the time of his absences. He has taken absences that he didn't have enough accrued benefit time to cover. The fact that the grievance procedure was also followed and all of them were denied, also shows that clearly, he was giving an opportunity to contest the unexcused absences.

**Conclusions of Law:** Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Merit Board finds that the Respondent did violate the Cook County Sheriff's Department Rules and Regulations.

**Order:** Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove Brian Gallagher, respondent, from the Cook County Sheriff's Office is granted effective October 16, 2015.

[Redacted Signature]  
James P. Nally, Chairman

[Redacted Signature]  
Kim R. Widup, Board Member

[Redacted Signature]  
Vincent T. Winters, Board Member

[Redacted Signature]  
Byron T. Brazier, Board Member

[Redacted Signature]  
Patrick Brady, Board Member

[Redacted Signature]  
Jennifer E. Bae, Board Member

[Redacted Signature]  
Gray Mateo-Harris, Board Member

[Redacted Signature]  
John A. Dalicandro, Board Member

Dated: February 7, 2017

**COOK COUNTY SHERIFF'S MERIT BOARD**

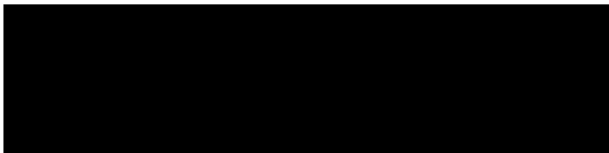
SHERIFF OF COOK COUNTY )  
 )  
vs. ) Docket No. 1841  
 )  
BRIAN GALLAGHER, )  
Deputy Sheriff )

**DISSENT ON DECISION**

I write in dissent of the decision issued by the Board regarding Respondent Brian Gallagher ("Respondent") as to the discipline issued. The Sheriff requested that Respondent be terminated for incurring an excess of six unauthorized absences in violation of Sheriff's Order 11.4.1.1 and related rules. Such absences allegedly include: August 31, 2012 (#1); September 10, 2012 (#2); January 28, 2013 (#3); June 7, 2013 (#4); August 18-21, 2014 (#5); October 29-30, 2014 (#6); December 3-4, 2014 (#7); and December 8, 2014 (# 8). However, for the following reasons, it does not appear that the Sheriff met its burden of proof in this matter:

1. The September 10, 2012 (#2) absence may have been an FMLA-covered absence given that the very next day, September 11, 2012, Respondent had an FMLA-covered absence.
2. The June 7, 2013 (#4) two-hour absence may be unsubstantiated given that Respondent went on disability starting June 8, 2013. The record does not establish why the requirement that Respondent exhaust existing benefit time resulted in a two-hour unauthorized absence on June 7<sup>th</sup> under the applicable circumstances.
3. The record is unclear as to precisely when Respondent became eligible for FMLA in early December 2014. Given that FMLA leave can be applied retroactively to the first date the employee becomes eligible for such leave, there is uncertainty as to Respondent's actual first date of FMLA eligibility in December 2014. Accordingly, it is possible that the December 3-4, 2014 (#7) and December 8, 2014 (#8) absences may have been FMLA-covered absences.

Given that the employer bears the burden of proof in this matter, I would err in favor of finding that there is no evidence of 6 unauthorized absences. Indeed, the record supports a finding of only 4 unauthorized absences. The Complaint should therefore be denied.



Gray I. Mateo-Harris, Board Member

01.12.17

Date