

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)	
[NAME REDACTED],)	No. 21 AA 06
APPLICANT FOR THE POSITION OF)	
PROBATIONARY POLICE OFFICER,)	(Applicant No. [redacted])
CITY OF CHICAGO.)	

FINDINGS AND DECISION

[Name redacted] (hereinafter referred to as “Applicant”) applied for a probationary police officer position with the City of Chicago. In a letter dated June 21, 2021, the Office of Public Safety Administration gave Applicant written notice of its decision to remove Applicant from the list of eligible applicants for this position (the “Eligibility List”) due to the results of a background investigation, along with the reasons for the disqualification decision (“Notice”).

On August 20, 2021, Applicant appealed this disqualification decision to the Police Board by filing a written request specifying why the Department of Police erred in the factual determinations underlying the disqualification decision and bringing to the Board’s attention additional facts directly related to the reasons for the disqualification decision, pursuant to section 2-84-035(b) of the Municipal Code of Chicago (“Appeal”).

On September 1, 2021, the Police Board received a copy of the Notice and the Office of Public Safety Administration’s response to Applicant’s Appeal (“Response”). On October 1, 2021, Applicant filed with the Police Board a reply to the Response (“Reply”). Police Board Appeals Officer Kyle Cooper has reviewed the Notice, Appeal, Response, and Reply.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Cooper, as a result of a review of the above material, submits the following findings of fact, conclusions of law and recommendation to the Police Board.

Filings by the Parties

On August 20, 2021, Applicant filed a timely appeal as provided by section 2-84-035(b) of the Municipal Code of Chicago. The Response and the Reply were filed within the time period allowed by the Police Board Rules of Procedure.

According to the Notice, which expressly relies on and references a background investigation, Applicant was removed from the Eligibility List for two reasons: (1) criminal conduct involving drugs; and (2) other conduct. Regarding criminal conduct involving drugs, the Notice states that Applicant was removed from the Eligibility List because the background investigation revealed that he admitted on his polygraph test that, in 2008, he purchased an ounce of marijuana for \$120 and sold it to a friend for \$80. (Notice at pg. 2.) Regarding other conduct, the Notice states that during the background investigation, Applicant admitted the following: (1) that two of his friends, both of whom were members of the Two-Six street gang, robbed transgender patrons at a bar at some unspecified date and time and showed Applicant a purse they stole from the robbery; (2) that Applicant was present when some of his friends “beat up” an individual who belonged to a different gang than his friends; (3) that in 2005, Applicant was caught by police graffitiing a building near his residence; (4) that in 2015 or 2016, he purchased a likely stolen skateboard from a friend for \$40; and (5) that he took a stapler, hole puncher, paper, gloves and Clorox wipes while working at a health center from 2013-16. (*Id.* at pgs. 2-3.)

In his Appeal, Applicant claims that the Office of Public Safety Administration wrongfully removed him from the Eligibility List for two main reasons. First, Applicant claims

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that the admissions cited in the Notice regarding the robbery and assault / battery concerned only the bad behavior of other individuals. (Appeal at pgs. 1-2.) Second, Applicant claims that the other listed infractions in the Notice do not warrant disqualification because; (1) they occurred years ago; and/or (2) were “trivial.” (*Id.* at pg. 3.) Additionally, Applicant argues that he is the type of candidate the Chicago Police Department should be seeking to hire because he has no criminal history, no gang affiliations, is bilingual and, if hired, would reflect the diversity of the community in which he would serve as a police officer. (*Id.* at pgs. 1-2.) Finally, in support of his appeal, Applicant references statements in his background investigation file that describe him as having an excellent demeanor and possessing the ability to diffuse tense situations involving difficult personalities. (*Id.* at pg. 2.)

In its Response, the Office of Public Safety Administration stands on the bases for disqualification outlined in the Notice. (Resp. at pg. 1.) Additionally, the Office of Public Safety Administration broadly contends that the evidence in Applicant’s file supports its decision to remove Applicant from the Eligibility List. (*Id.*) The Office of Public Safety Administration also cites two cases in support of its decision to remove Applicant from the Eligibility List, namely *Apostolov v. Johnson*, 2018 IL App (1st) 173084, §§ 24, 31 and *Johnson v. O’Connor*, 2018 IL App (1st) 171930, §§ 16-17, 20. These cases stand for the proposition that the Chicago Police Department has the authority to implement and rely upon a set of standards that outline the bases on which an applicant may be removed from the Eligibility List. (*Id.*)

In his Reply, Applicant does not dispute the legal holdings of *Apostolov* and *Johnson*. (Reply at pg. 1.) Instead, Applicant argues that his case is factually distinguishable from those cases. (*Id.*) Specifically, Applicant, citing a section from the Chicago Police Department’s website on “Background Investigation for Prospective Applicants,” argues that his prior drug use

should not subject him to disqualification because: (1) it occurred 13 years ago; and (2) despite his admission during his polygraph exam, he did not “sell” the ounce of marijuana to his friend. Rather, Applicant maintains that his friend was just paying him back for their mutual purchase of the drug. (*Id.* at pgs. 1-2.)

Findings of Fact

Applicant’s PHQ

On November 11, 2017, Applicant dated, printed and signed a written notice that informed him that “unsatisfactory results at any point in the selection process will result in disqualification from further consideration and removal from the eligibility list.” (Appeal at Ex. A, pg. 59.)

On November 23, 2017, Applicant submitted his Personal History Questionnaire (“PHQ”). (*Id.* at pg. 41.) In his PHQ, Applicant admitted to the following regarding his drug use: (1) that he used marijuana five times; (2) that he last used marijuana in 2008; and (3) that he used cocaine one time in 2008. (*Id.* at pg. 55.) Applicant answered “no” in response to question 84 on the PHQ, which asked if he ever “possessed, sold or manufactured any drug, narcotic, controlled substance or any other illegal substances.” (*Id.* at pg. 57.)

Applicant’s Interview with Background Investigator Graf

On June 18, 2018, investigator Bernard Graf (“Investigator Graf”) of KENTECH Consulting, Inc. conducted an in-person, home interview of Applicant on behalf of the Chicago Police Department. (*Id.* at pg. 19.) During the interview, Investigator Graf asked Applicant whether he ever used illegal drugs. (*Id.*) In response to this question, Applicant admitted, for the first time, the following regarding his marijuana use: (1) that he smoked marijuana seven to eight times from 2002 to 2008; and (2) that one time he purchased marijuana for personal use from an

unknown individual. (*Id.*) Regarding this purchase, Applicant told Investigator Graf that it was a “small amount of marijuana that was purchased.” Applicant’s answer regarding his cocaine use was similar to the answer he gave in his PHQ, namely that he used it once in 2008. (*Id.*)

During the home interview, Investigator Graf also asked Applicant whether he had ever been affiliated with any gang, any gang members and/or whether he had any knowledge of any gang members in his neighborhood. (*Id.*) In response to these questions, Applicant stated that he has never been affiliated with any gang or with any gang members and that he has no knowledge of any gang members in his neighborhood. (*Id.*)

At the conclusion of the interview, Applicant signed and dated his PHQ and affirmed that the information contained therein was accurate and correct. (*Id.*)

Applicant’s Polygraph Examination

On July 26, 2018, as part of the application process, Applicant underwent a polygraph examination. (*Id.* at pg. 62.) Prior to entering the polygraph room, Applicant filled out a law enforcement pre-employment questionnaire. (*Id.*) In the questionnaire, Applicant disclosed, some of which for the first time, the following:

- (1) that in 2008, he purchased an ounce of marijuana for \$120 and sold it to a friend for \$80;
- (2) that he was friends with members of the Two-Six gang in high school, including [name redacted] a/k/a “[name redacted]” and [name redacted] (last name unknown) a/k/a “[name redacted]”;
- (3) that [name redacted] and [name redacted] robbed transgender patrons at a bar named La Cueva at some unspecified date and time and showed Applicant a purse they stole from the robbery;
- (4) that in 2006, he was present when some of his other friends in the Two-Six gang, namely [name redacted] and [name redacted], “beat up” an individual who belonged to a rival gang and that he drove [name redacted] and [name redacted] away from this incident in a vehicle they all had been riding in;

- (5) that in 2005, he was caught by police graffitizing a building near his residence;
- (6) that in 2015 or 2016, he purchased a likely stolen skateboard from a friend for \$40; and
- (7) that he took a stapler, hole puncher, paper, gloves and Clorox wipes at various points while working at Lawndale Christian Health Center from 2013-16.

(*Id.* at pgs. 62-3.)

In addition to the above, during the examination, Applicant revealed for the first time that he smoked marijuana approximately two, three or even four times per week from 2002-04. (*Id.* at pg. 72.)

Disqualification Decision and Appeal

Due to the results of a background investigation, on June 21, 2021, the Office of Public Safety Administration sent Applicant written notice of its decision to remove him from the Eligibility List. (*See* Notice.) This appeal followed.

Conclusions of Law

Standard of Review

Pursuant to section 2-84-035(c) of the Municipal Code of Chicago, an applicant challenging the decision to remove him or her from the Eligibility List has the burden of showing, by a preponderance of the evidence, that the decision was erroneous.

Disqualification Based on Criminal Conduct Involving Drugs

Special Order 18-01 (the “Special Order”) contains the “Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer.” (*See* Special Order 18-01.) Under section IV(B)(7)(a) of the Special Order, the Chicago Police Department may

disqualify an applicant from consideration for a police officer position if there is evidence that the applicant engaged in criminal conduct involving drugs. (*Id.* at pg. 3.) However, recognizing that otherwise qualified candidates, may have engaged in limited drug use at some time in their past, the Special Order sets forth standards for determining whether prior drug use makes an applicant unsuitable for employment as a Chicago police officer. (*Id.*) For instance, section IV(B)(7)(a)(2) of the Special Order provides that “An applicant who misrepresents his or her history of drug use during any stage of the employment process will be found unsuitable for employment.” (*Id.*)

Here, there is support in the record to find that Applicant misrepresented his history of drug use during the selection process. Specifically, the record reveals that Applicant gave three different answers during three separate parts of the selection process regarding his marijuana use. For example, in his PHQ, Applicant stated that he used marijuana five times in his life. (Appeal at Ex. A, pg. 55.) During his home interview, however, Applicant stated that he smoked marijuana seven to eight times from 2002-8. (*Id.* at pgs. 19-20.) In his polygraph exam, Applicant gave yet another answer and admitted to smoking marijuana approximately two, three or even four times *per week* from 2002-04. (*Id.* at pgs. 5, 72.) Additionally, during the selection process, Applicant gave differing accounts as to the amount of marijuana he purchased in 2008. For example, after not disclosing the purchase in his PHQ, Applicant admitted during his interview with Investigator Graf that, in 2008, he purchased a “small amount” of marijuana from an unknown individual. (*Id.* at pgs. 19-20.) During his polygraph exam, however, Applicant admitted that he actually purchased an ounce of marijuana during the 2008 transaction, hardly a “small amount.” (*Id.* at pg. 72.) Finally, Applicant answered “no” in response to a question on his PHQ asking if he ever “possessed, sold or manufactured any drug, narcotic, controlled

substance or any other illegal substances.” (*Id.* at pg. 57.) Given that Applicant admitted to purchasing marijuana in his polygraph exam, this answer clearly misrepresents his history of drug use. Thus, because there is evidence in the record to suggest that Applicant misrepresented his history of drug use during the selection process, the decision to remove him from the Eligibility List on this basis was not erroneous.

Furthermore, it was also not erroneous to remove Applicant from the Eligibility List based on criminal conduct involving drugs because he admitted, on one occasion, to selling marijuana. Section IV(B)(7)(a)(3) of the Special Order provides that “An applicant who has sold, distributed or manufactured any illegal drug *at any time* will be found unsuitable for employment.” (Special Order 18-01 at pg. 4) (emphasis added.) During his polygraph exam, Applicant admitted that he purchased an ounce of marijuana for \$120 and subsequently sold it to his friend for \$80. (Appeal at Ex. A, pgs. 62-3.) While Applicant now tries to distance himself from this admission in his Appeal and Reply by redefining the transaction as a combined purchase with a friend, he acknowledges that he alone made the initial purchase and subsequently received money in exchange for providing his friend with some of the marijuana. That is the textbook definition of a sale, which is the exchange of a commodity for money. Moreover, the fact that the sale occurred years ago does not save Applicant, as Section IV(B)(7)(a)(3) of the Special Order provides that an Applicant who has sold any illegal drug “at any time” will be found unsuitable for employment as a Chicago police officer. (*See* Special Order 18-01 at pg. 4.) Accordingly, because there is support in the record to find that Applicant sold marijuana on at least one occasion, the decision to remove him from the Eligibility List on this basis was not erroneous.

Disqualification Based on Other Conduct

Under section IV(H) of the Special Order, the Chicago Police Department may remove an applicant from the Eligibility List if the applicant has “engaged in conduct that exhibits a pattern of repeated abuse of authority; lack of respect for authority or law; lack of respect for the dignity and rights of others; or a combination of traits disclosed during the pre-employment investigation that would not by themselves lead to a finding that an applicant is unsuitable for employment, but when taken as a whole, exhibit that the applicant is not suited for employment as a police officer” (Special Order 18-01 at pgs. 8-9.)

In support of its decision to remove Applicant from the Eligibility List based on other conduct, the Office of Public Safety Administration cites five incidents Applicant admitted to during the selection process: (1) that two of his friends, both of whom were members of the Two-Six street gang, robbed transgender patrons at a bar named La Cueva at some unspecified date and time and showed Applicant a purse they stole from the robbery; (2) that Applicant was present when some of his friends “beat up” an individual who belonged to a different gang than his friends; (3) that in 2005, Applicant was caught by police graffitiing a building near his residence; (4) that in 2015 or 2016, he purchased a likely stolen skateboard from a friend for \$40; and (5) that he took a stapler, hole puncher, paper, gloves and Clorox wipes at various points in time while working at a health center from 2013-16. (Appeal at Ex. A, pgs. 3-4.)

While all of these incidents are troubling, they are inconsequential in gauging Applicant’s fitness to serve as a police officer. As Applicant correctly notes in his Appeal, the first two incidents involve only other people’s bad behavior. (*Id.*) The isolated graffiti incident occurred more than 15 years ago. (*Id.* at pg. 62.) Applicant was not certain that the skateboard was stolen at the time he made the purchase. (*Id.*) Finally, Applicant is correct in noting that occasionally

removing low-cost items such as paper and alcohol wipes from a workplace setting does not necessarily bear on an applicant's ability to serve as a police officer. This is especially the case here, as the investigative report describes Applicant as honest, having an excellent demeanor and possessing the ability to navigate difficult personalities and diffuse situations. (*Id.* at pgs. 22–5.) Put another way, the “other conduct” cited by the Office of Public Safety Administration in support of its decision to remove Applicant from the Eligibility List does not demonstrate or establish that Applicant “engaged in conduct that exhibits a pattern of repeated abuse of authority; lack of respect for authority or law; lack of respect for the dignity and rights of others.” Accordingly, the evidence in the record suggests that the Office of Public Safety Administration erred in removing Applicant from the Eligibility List based on other conduct.

However, because there is sufficient evidence in the record to establish that Applicant misrepresented his history of drug use during the selection process and that he sold marijuana, Applicant has not met his burden of showing, by a preponderance of the evidence, that the decision to remove him from the Eligibility List was erroneous.

Recommendation

Based on my findings and conclusions set forth above, I recommend that the decision to remove Applicant from the list of eligible applicants for the position of probationary police officer be **affirmed**.

Respectfully submitted,

/s/ Kyle A. Cooper

Kyle A. Cooper
Appeals Officer

Date: October 14, 2021

POLICE BOARD DECISION

The members of the Police Board of the City of Chicago have reviewed the Appeals Officer's findings, conclusions, and recommendations.

The Police Board hereby adopts the Appeals Officer's findings, conclusions, and recommendation by a vote of 5 in favor (Ghian Foreman, Nanette Doorley, Michael Eaddy, Steve Flores, and Andrea L. Zopp) to 0 opposed.

NOW THEREFORE, IT IS HEREBY ORDERED that the decision to remove [name redacted], Applicant No. [redacted], from the list of eligible applicants for the position of probationary police officer is **affirmed**.

This decision and order are entered by a majority of the members of the Police Board:
Ghian Foreman, Nanette Doorley, Michael Eaddy, Steve Flores, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21ST DAY OF OCTOBER, 2021.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director