

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 22 AA 05**
APPLICANT FOR THE POSITION OF)
PROBATIONARY POLICE OFFICER,) **(Applicant No. [redacted])**
CITY OF CHICAGO.)

FINDINGS AND DECISION

[Name redacted] (hereinafter referred to interchangeably as “Applicant” and/or “Candidate”) applied for a probationary police officer position with the City of Chicago. In a letter dated October 21, 2022, 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 (“Eligibility List”) due to the results of a background investigation, along with the reason(s) for the disqualification decision (“Notice”).

On October 21, 2022, Applicant appealed the above-referenced 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.

The Chicago Police Department did not file a response, and accordingly, there was no reply filed by the Applicant.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Brian Porter, 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

Applicant filed a timely appeal as provided by Section 2-84-035(b) of the Municipal Code of Chicago. The Chicago Police Department did not file a response, and accordingly, there

was no reply filed by the Applicant.

Chicago Police Department's Disqualification Decision

According to the Notice, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following seven (7) reasons under the Bureau of Organization Development's ("BOOD") Special Order No. 18-01 as follows:

Basis #1:

Section II ¶ C. Disqualification based on Policy

We seek to hire qualified applicants who share our mission and values. Information showing that an applicant has engaged in criminal conduct; has exhibited behavior demonstrating a disregard for standards of conduct; has shown disrespect for authority, the law and its institutions; has engaged in discriminatory or biased behavior; or has engaged in conduct demonstrating a propensity for dishonesty or untruthfulness evidences that the applicant does not share our values and is not fit to serve as a police officer.

Specifically, on August 11, 2021, background Investigator Penelope J. Trahanas of the Human Resources Division of the Chicago Office of Public Safety Administration prepared a Candidate Background Investigation Summary. Said report indicates that during the course of the investigation, Applicant had a propensity to be either less than truthful through factual omissions, denials, and falsehoods.

In his appeal, Applicant responded in pertinent part as follows:

"Not 1 time I was dishonest, denied, nor falsely depict my actions. You all asking me questions about incidents that happened 10 years ago when I was a teenager. I'm 30 yrs old, I answered everythin [sic] to the best of my ability."

In his appeal, Applicant responds that at no time was he dishonest, and that he was being asked "questions about incidents that happened 10 years ago when he was a teenager" and that he is 30 years old now and answered everything to the best of his ability.

Basis #2:

Section IV ¶ B.1. Disqualification based on Criminal Conduct

One purpose of the pre-employment investigation is to determine whether the applicant has engaged in criminal conduct. This is important because the police hold a unique position of public trust and are tasked with protecting the public and enforcing the law. Even more than other City employees, Chicago Police Department officers are specifically tasked with and sworn to uphold the law. Therefore, an applicant will be disqualified from consideration for a police officer position if there is evidence that the applicant has engaged in criminal conduct, even if the applicant was never convicted of any criminal offense. Applicants with a history of criminal conduct that falls within the Department's disqualification standards are deemed unable to protect the public and its trust in the police. It is the conduct itself, not the fact that the applicant was convicted, that makes the applicant unsuitable for employment.

Specifically, Investigator Trahanas found that Applicant was a suspect in an aggravated battery incident which occurred on February 16, 2012 (when said Applicant was 19 years-old), but failed to mention said incident in two polygraphs and his Personal History Questionnaire (PHQ), and claimed he had no knowledge of said incident in both his Kentech interview, and in his interview directly with Investigator Trahanas.

Investigator Trahanas further found that Candidate was a suspect in a disorderly conduct incident which occurred on November 10, 2010 (when said Applicant was 18 years-old), but failed to mention said incident in two polygraphs and his PHQ, and claimed he had no knowledge of said incident in both his Kentech interview, and in his interview directly with Investigator Trahanas.

The Investigator found that the Applicant was listed as an offender in a Dekalb, Illinois police report for aggravated battery and mob action on October 16, 2012 (when said Applicant was 20 years-old), but said Applicant provided six (6) different versions of the events of said occurrence in his two polygraphs, PHQ, Kentech interview, and direct interview with said Investigator Trahanas, none of which matched the underlying police report.

Finally, Investigator Trahanas found that Candidate was listed as an offender in a domestic

disturbance on October 16, 2016 (when said Candidate was 24 years-old), but failed to mention said incident in two polygraphs and his PHQ, and claimed he had no knowledge of said incident in his Kentech interview.

In his appeal, Applicant responded in pertinent part as follows:

02/16/2012 suspect of aggravated battery: *“again happened 10 years ago. If I admitted it in polygraph, it obviously slipped my mind during Kentech. I have nothing to hide”*

11/14/2010 suspect of disorderly conduct: *“I don’t remember anything in regards to disorderly conduct”*

10/16/2012 offender of aggravated battery and mob action: *“the agg batt police report I read in which you provided was a lie. ... police lie just like everybody else ... I wasn’t convicted of neither of the charges listed. I entered a plea with no conviction which was court supervision. I even went and got my arrest record expunged. Just because someone is arrested don’t make them guilty. Whatever happened to INNOCENT UNTIL PROVEN GUILTY ... “*

10/16/2016 offender of domestic disturbance: Applicant failed to address this finding under this Basis #2 in his appeal.

Basis #3:

Section IV ¶ B.7(a)(2) Disqualification based on Conduct Involving Drugs

An applicant who misrepresents his or her history of drug use during any stage of the employment process will be found unsuitable for employment.

Specifically, Investigator Trahanas found that Applicant provided the following information during the investigative process: in Applicant’s 2020 polygraph, he stated he smoked marijuana 7-10 times from August - November 2011. However, in his 2021 polygraph, the Candidate stated that in 2010, he smoked marijuana 2-3 times a week for 3-5 months; that he once purchased 3.5 grams of marijuana for \$50.00; and that he would smoke and “match” marijuana with friends. If others didn’t have any marijuana, they would pay him \$5.00 to smoke from his stash, and he would do the same if he didn’t have any marijuana. Yet according to Investigator

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Trahanas, the Candidate only stated that he experimented with marijuana in his PHQ, and in his Kentech interview he stated that he used marijuana 2-3 times in college, and represented that he never purchased marijuana.

In his appeal, Applicant responded in pertinent part as follows:

“Everything regarding marijuana was approximate. Again over 10 yrs, I smoked weed roughly for 3-5 months give or take, probably twice maybe once a week. This is irrelevant because CPD take people that test positive for it in the beginning of the process. I haven’t smoked in over 10 yrs.”

Basis #4:

Section IV ¶ B.7(a)(3) Disqualification based on Conduct Involving Drugs

An applicant who has sold, distributed or manufactured any illegal drug at any time will be found unsuitable for employment.

Specifically, Investigator Trahanas found that during the investigative process, Applicant stated in his 2021 polygraph, that in 2010, he once purchased 3.5 grams of marijuana for \$50.00; and that he would smoke and “match” marijuana with friends. If others didn’t have any marijuana, they would pay him \$5.00 to smoke from his stash, and he would do the same if he didn’t have any marijuana.

In his appeal, Candidate responded by adopting his reply to Basis #3 which is stated above.

Basis #5:

Section IV ¶ B.7(b)(1) Disqualification based on Conduct Indicating Dishonesty

Credibility, honesty and veracity are extremely important characteristics for a police officer to possess on and off duty. Honesty is required to ensure the integrity of police operations and investigations and to protect the public and maintain its trust in the police. The pre-employment investigation looks for information that shows the applicant has a reputation for truthfulness, is believable and has a personal history free from deceit or fraud.

Specifically, Investigator Trahanas found that during the investigative process, Applicant repeatedly failed to mention reports in which he was a suspect, or asserted that he must have been

confused with his identical twin brother, [name redacted]; that Applicant misrepresented facts surrounding a paintball arrest for aggravated battery and mob action on October 16, 2012, by relaying six (6) different versions of events on two polygraphs, his PHQ, his Kentech interview, and his direct interview with Investigator Trahanas herself; that Applicant was rejected twice by the Cook County Sheriffs' Department for employment as a result of the aforementioned deception; and that he (Applicant) misrepresented the extent of his marijuana use and purchase and selling on two polygraphs, his PHQ, and in his Kentech interview.

In his appeal, Applicant responded in pertinent part as follows:

"I was never no suspect to anything else, and yes I do have a twin brother (identical). People and jobs, insurance companies, etc. always confuse us. No reason to lie, AGAIN that police report is one sided. We told them our side of the story and they failed to mention that."

Basis #6:

Section IV ¶ H.1 Disqualification based on Other Conduct

Police officers are required to show respect for authority, uphold the law, and defend the dignity and rights of the public. Therefore, any applicant who 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, will be found unsuitable for employment.

Specifically, Investigator Trahanas asserts that Applicant told her directly during her interview with said Candidate "I don't know what the holdup is about. I work for the Department of Justice. I have more security clearance than you do. I can walk past the President with a gun if I want to."

Investigator Trahanas further avers that Applicant called her directly and describes said telephone discussion as follows: [Applicant] "was irate, yelling and stated the examiner was

pressing him on some of his answers and ruined his mood. Candidate was concerned that because his mood was ruined he may have failed the polygraph and wanted to know how to appeal the polygraph”.

Finally, according to Investigator Trahanas, in reference to Applicant’s aforementioned paintball arrest for aggravated battery and mob action on October 16, 2012, Applicant relayed to her (Trahanas) that “the victim identified who actually shot the paintballs, which was not him but the ‘District Attorney wasn’t trying to hear it’ and everyone was charged and Candidate took a plea for battery. Candidate implied the District Attorney knowingly and illegally charged him, an innocent person, with a crime, knowing the Candidate did not commit the crime”.

In his appeal, Applicant responded in pertinent part as follows:

“I said what I said because Trahanas told me that I don’t have what it take to work for CPD and that I’m not qualified. So I had to let her know what I have, if she going to report that she need to say what she said as well”.

Basis #7:

Section IV ¶ I.1 Disqualification based on False Statements or Omissions and/or Failure to Cooperate in the Application Process

Honesty and credibility are vital characteristics for a police officer to possess in order to ensure the integrity of police operations and investigations and to protect the public and maintain its trust in the police. Honest and complete answers to background questions asked of applicants during the application process, as well as full cooperation with the application process, are thus extremely important to the maintenance of the Chicago Police Department’s force and the integrity of its hiring process. Therefore, applicants are required to cooperate with the City of Chicago and the Chicago Police Department in all matters relating to the processing of their applications for the position of Police Officer. Any applicant who fails to cooperate with the City of Chicago and its Police Department in processing his or her application for the position of Police Officer shall be disqualified. Prohibited conduct within this category includes, but is not limited to: failure to provide any required information; failure to respond to requests for information in a timely manner; failure to respond to requests for interviews in a timely manner; failure to fully disclose all known information requested, whether it is beneficial or prejudicial to the applicant; making false or misleading statements in connection with any part of the application process; failing to include any material or relevant information requested by the City of

Chicago or the Chicago Police Department; or failing to appear for scheduled appointments or processing sessions as directed.

According to Investigator Trahanas, Candidate had numerous omissions and false statements regarding police contact, in which he was either arrested or named as a suspect. Trahanas further reports that Applicant “no showed” (10) times for his Pre POWER [Peace Officer Wellness Evaluation Report] exam. Candidate failed to call or make any notification. Candidate stated he was unable to participate in the Pre-Power exam due to an injury. During the time frame of the ‘no-shows’, candidate participated in and passed the POWER exam for Cook County Sheriffs”. Investigator Trahanas also attaches a report which itemizes 23 distinct events in which Applicant is either named as a suspect or complainant in disorderly conduct, loud parties, driving and/or parking infractions, fights, and/or destruction of property. However, the events which were not considered as a basis for Applicant’s disqualification, but were included in the aforementioned 23 itemized matters will not be analyzed here, as they were ancillary to Applicant’s name being removed as an eligible candidate to join the Chicago Police Department.

In his appeal, Applicant responded in pertinent part as follows:

“I was never named as a suspect in nothing other than what I was arrested for. I had “no showed” to my pre power exam because I had to get ACL surgery and I explained that. It took 2 plus years to fully heal”.

“Never was a suspect of disordly [sic] conduct”

Applicant also addressed several of the extraneous matters which were listed in Investigator Trahanas’ attached report, but those events which did not serve as a basis for as his disqualification will not be analyzed here.

Applicant’ Appeal

Due to the number of bases provided by Investigator Trahanas for the disqualification of Applicant’, said Applicant’s appeal is incorporated into the body of this analysis above for

continuity in following each charge and challenge.

Findings of Fact

In the instant appeal, neither party provides any supplementary documentation of the matters discussed above, such as police reports, witness statements, Court Orders, or copies of other legal dispositions. Thus the independent finder of fact is left to discern what is more likely true than not by weighing Investigator Trahanas' written report against Applicant's written responses in the form of his appeal. In performing this balance between the parties' positions, the weight overwhelmingly favors the Chicago Police Department's disqualification.

In response to CPD's Basis #1, Applicant does not provide rebuttal evidence nor does he truly dispute the CPD's assertion, but rather relies upon a self-serving general statement that he can't be expected to remember events from his teenage years which is 10 years in the past. However, in reality, Applicant was at the age of majority in each incident cited by CPD.

Similarly, in response to CPD's Basis #2, Applicant asserts that witnesses lied, and that the police lied. He further admits that he pled guilty to mob action, but maintains that he was innocent and was never convicted. Applicant either fails to acknowledge or fails to understand what a guilty plea entails.

In challenging CPD'S Basis #3 and Basis #4, Applicant again relies upon the self-serving general statement that he can't be expected to remember events from his teenage years which is 10 years in the past. Further, Applicant does not deny that in 2010, when he would have been 18 years-old, he purchased 3.5 grams of cannabis for \$50.00 and let his friends pay him \$5.00 each to smoke. Moreover, instead of rebutting or explaining the truthfulness of his representations about marijuana, Applicant instead avers that said issue is irrelevant because he hasn't smoked in over 10 years. While this may be true, CPD'S Basis #3 and Basis #4 were not based upon marijuana

consumption, but rather whether Applicant had been truthful about his use, and whether he had ever engaged in the selling of any drug, including marijuana.

In response to CPD's Basis #5, which encompasses among other things, Applicant's October 16, 2012, arrest for mob action resulting from being with a group who were shooting paintball guns on public streets, and which Applicant entered a guilty plea to, Applicant merely implied that he may have been mistaken for his identical twin brother, and that the police were one sided.

In response to CPD's Basis #6, Applicant neither rebuts nor denies his conduct, but rather 'doubles down' on his contempt for the process by admitting he made the cited statements, and explaining that he "had to let her (Investigator Trahanas) know what I have", in a retort to the statements she made which he didn't like.

Finally, in response to CPD's Basis #7, Applicant gives a completely inadequate explanation for being a "no call" "no show" on ten (10) occasions to sit for his pre-POWER exam. Applicant asserts that he was healing from ACL (knee repair) surgery, and there is no reason to doubt this is true. However, there was no credible explanation provided by Applicant as to why he could not contact CPD and notify them in advance on any of the ten (10) aforementioned occasions that he would not be available to appear for his pre-POWER exam.

Applicant is a married father who is currently employed as a corrections officer for the Chicago Metropolitan Correctional Center (MCC) of the Federal Bureau of Prisons, and the finder of fact is not aware of any adverse information concerning his employment. Thus, all indications are that Applicant is a productive and positive member of the Chicago community. However, the City of Chicago's Police Department has the both the right and responsibility to require elevated standards of honesty, cooperation, and respect for authority from the individuals it hires, and based

upon the evidence presented in Applicant appeal, he has failed to meet those standards.

Conclusions of Law

Applicant failed to meet his burden of proof of showing by a preponderance of the evidence that his removal from the Eligibility List was in error, and failed to show a preponderance of the evidence that said removal was not in compliance with a disqualification under the Bureau of Organization Development Special Order No. 18-01 on the following bases:

1. Section II ¶ C. Disqualification based on Policy;
2. Section IV ¶ B.1. Disqualification based on Criminal Conduct;
3. Section IV ¶ B.7(a)(2) Disqualification based on Conduct Involving Drugs;
4. Section IV ¶ B.7(a)(3) Disqualification based on Conduct Involving Drugs;
5. Section IV ¶ B.7(b)(1) Disqualification based on Conduct Indicating Dishonesty;
6. Section IV ¶ H.1 Disqualification based on Other Conduct;
7. Section IV ¶ I.1 Disqualification based on False Statements or Omissions and/or Failure to Cooperate in the Application Process.

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/ Brian R. Porter

Brian R. Porter / Appeals Officer

Date: 01/09/2023

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 7 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, and Jorge Montes) 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, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, and Jorge Montes.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF JANUARY, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director