

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 23 AA 39**
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 October 19, 2023, 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 and the process for appeal (“Notice”). In support of its decision, Department cited conduct it alleged formed the bases of Disqualification(s) Based on Criminal Conduct, Other Conduct and False Statements or Omissions and/or Failure to Cooperate in the Application Process.

In a letter also dated October 19, 2023, Applicant appealed the disqualification decision to the Police Board by filing a written request seeking to 1) specify why the Department of Police (hereinafter referred to as “Department”) erred in the factual determinations underlying the disqualification decision *and/or* 2) bring to the Board’s attention additional facts directly related to the reason(s) for the disqualification decision, pursuant to Section 2-84-035(b) of the Municipal Code of Chicago (“Appeal”). Department filed a Response November 6, 2023. No Reply was filed.

Police Board Appeals Officer Laura Parry reviewed the Notice, Appeal, and Response.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Laura Parry, 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 PARTIES

According to the Notice, which included the Candidate Background Investigation Summary dated October 11, 2023 (hereinafter “Background Investigation Report”), Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reason(s):

Basis #1

IV-B. Disqualification Based on Criminal Conduct, as cited by Department:

7. Other Criminal Conduct

b. Conduct Indicating Dishonesty

1. "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 therefore looks for information that shows that the applicant has a reputation or propensity for truthfulness, is believable and has a personal history free from deceit or fraud.

2. Any conduct demonstrating a reputation or propensity for dishonesty may be grounds for disqualification. Conduct demonstrating a propensity for dishonesty includes but is not limited to conduct that would constitute theft; embezzlement; forgery; false impersonation; identity theft; bribery; eavesdropping; computer crimes; fraud; money laundering; deceptive practices; or perjury.” (Background Investigation Report, p. 1-2)

Department cited the following conduct, in summary:

February 24, 2001 arrest for forgery – making and selling fake identifications (“IDs”) in Greendale, Wisconsin.

January 29, 2009 arrest for Make/Issue/Use False Vehicle Inspection Certificate and Fraud Use Vehicle Plates Emblem Decal in Honolulu, Hawaii.

(Background Investigation Report, p. 1-2)

Basis #2

IV-B. Disqualification Based on Criminal Conduct, as cited by Department:

7. Other Criminal Conduct

b. Conduct Indicating Violent Tendencies

“Police officers are required to act reasonably and professionally at all times and to maintain control over their emotions in the exercise of their duty. These qualities are vital to a police officer’s ability to protect the public and its trust in the police. Applicants who have demonstrated a propensity for violence do not meet those requirements. Therefore, any conduct demonstrating a propensity for violence will be grounds for disqualification. Conduct demonstrating a propensity for violence includes but is not limited to, conduct which would constitute murder; kidnapping; sex offenses; assault; battery; aggravated battery; offenses against property; robbery; domestic violence; stalking; disorderly conduct; and mob action. As noted above, an applicant who has engaged in any act falling within the scope of this section that constitutes a felony will be found unsuitable for employment. An applicant who has engaged in any act falling within the scope of this section that constitutes a misdemeanor within the last three (3) years (from the date of PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment.” (Background Investigation Report, p. 2)

Department cited the following conduct, in summary:

Department asserted Applicant “demonstrated violent tendencies twice, indicating a propensity for violence” (Background Investigation Report, p. 3).

On or about September 22, 2022, alleged harassment of a United States Postal Service (“USPS”) mail carrier. Citing the case report, Investigator wrote that the responding officer (“R/O”) reviewed a video that appeared to be a verbal argument between the carrier and Applicant in which Applicant was heard confronting the carrier regarding packages that were scanned as delivered but were not received at Applicant’s apartment. R/O reported Applicant was angry at the start and the carrier “responds in kind.” After Applicant stated he would “fuck” the carrier up, the carrier responded something to the effect, “sure you would...”. In the carrier’s statement to the police, it was said, Applicant:

“... came up to me harassed me over packages that were not delivered to him. He told me to suck his dick and told me he would fuck me up. I felt threatened and concerned and he said to meet him after work and he called me a faggot multiple times. He claims that I stole his packages he said he has proof not sure why he thinks this. We started leaving him notices to pick up at the post office so there would be no issues. I didn’t give him

permission to harass me. I can identify him if needed. I'm willing to prosecute." (Background Investigation Report, p. 3)

R/O indicated it was his observation that although the carrier said he felt threatened his response in the video "indicated otherwise." The carrier picked Applicant out of a line-up.

December 8, 2002 arrest for Disorderly Conduct in Milwaukee, Wisconsin. Investigator cited the Kentech background investigation report in which Applicant was reported to have said he did not know what the arrest involved – adding that he, his brother and father were involved in a bar fight in Milwaukee, brought to the station, but never charged.

(Background Investigation Report, p. 3)

Basis #3

IV-B. Disqualification Based on Criminal Conduct, as cited by Department:

7. Other Criminal Conduct

e. Conduct Affecting Government Functions

"Police officers are required to respect the functions of other public service employees and their ability to do so is vital to the Chicago Police Department's mission to protect the public and its trust in the police. Therefore, any conduct adversely affecting government functions will be grounds for disqualification. Conduct adversely affecting government functions includes but is not limited to conduct which would constitute treason, interference with public officers, interference with penal institutions, interference with judicial procedure and official misconduct. As noted above, an applicant who has engaged in any act falling within the scope of this section that constitutes a felony will be found unsuitable for employment. An applicant who has engaged in any act falling within the scope of this section that constitutes a misdemeanor within the last three (3) years (from the date of PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment."

(Background Investigation Report, p. 3-4)

Department cited the following conduct, in summary:

The conduct as described in the September 2022 incident with the USPS mail carrier in Basis #2 above. (Background Investigation Report, p. 4-5).

Basis #4

IV-H. Disqualification Based on Other Conduct, as cited by Department:

1. "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.”

2. ...
3. “Any applicant who has engaged in conduct indicating discrimination or bias based on race, color, sexual orientation, gender identification, age, religion, national origin, ancestry, marital status, parental status, disability or any other protected class will be found unsuitable for employment.”

(Background Investigation Report, p. 4)

Department cited the following conduct, in summary:

The conduct as described in Basis #2 above for the September 2022 incident with the mail carrier and in which Applicant repeatedly called the carrier a “faggot” and the 2002 Disorderly Conduct incident. (Background Investigation Report, p. 5-6).

Basis #5

IV-B. Disqualification Based on False Statements or Omissions and/or Failure to Cooperate in the Application Process, as cited by Department:

1. 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 fore and the integrity of its hiring process. Therefore, applicants are expected 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 could 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.” (Background Investigation Report, p. 3)

Department cited the following conduct, in summary:

Applicant’s PHQ was submitted February 27, 2023. Applicant responded “no” on the PHQ when asked if he had ever (1) appeared in court on a criminal matter (Q #62); appeared in court for any reason (Q #63); been questioned by the police regarding a criminal investigation (Q #65); and given testimony in a criminal court as a defendant (Q #66). Department maintained Applicant was issued a criminal citation by the Honolulu Police Department for harassing a mail carrier, was arrested for Disorderly Conduct and Forgery.

Additionally, Applicant checked “no” in the written pre-polygraph questionnaire to the question, “Have you ever in your life been arrested for ANYTHING?” Department maintained Applicant was documented as being arrested and charged three times – once for Forgery, once for Disorderly Conduct and once for Harassment.

Applicant also checked “no” on the written pre-polygraph questionnaire on the section marked, “Theft & White Collar Crimes – Production, distribution, or use/possession of a false identification.” Department maintained Applicant forged and sold fake IDs and was arrested for doing so.

Applicant also completed omitted from his polygraph ever having been charged with Forgery and Disorderly Conduct. (Background Investigation Report, p. 7-8).

Applicant’s date of birth is listed as April 1985. (Background Investigation Report, p. 1)

Appeal, Response and Reply

The following is a summary.

Appeal.

Though it shows an email, address and phone number purportedly of Applicant, the

Appeal was written in a combination of third person (i.e., “[Name redacted]” and “he”) and first-person plural (i.e., “we”) and was not signed, making it unclear who actually wrote the Appeal.

Forgery arrest in 2001. From the Appeal:

“In the past, there was an incident involving [Name redacted] when he was arrested as a minor in connection with the sale of fake IDs, specifically a forgery case. It is important to note that [Name redacted], who was a minor at the time, was never formally charged or issued a ticket in relation to this incident. This occurrence took place during a period of youthful indiscretion, and since that time, [Name redacted] has taken significant steps to learn from his past mistakes and has steadfastly followed a path of personal growth and responsibility. It is essential to understand that this isolated incident does not accurately reflect [Name redacted] current character or suitability for a career in law enforcement.” (Appeal, p. 1)

Disorderly Conduct arrest in 2002. From the Appeal:

“In the interest of full transparency, we would like to address a past incident involving [Name redacted] that occurred in December of 2002. At that time, [Name redacted] was present at a restaurant bar with this family when an altercation ensued, resulting in a physical confrontation where his father was assaulted. All parties involved, including [Name redacted] and the other party, were arrested at the time of the incident. It’s important to note that the case was subsequently dismissed in court for both [Name redacted] and his father.” (Appeal, p. 1)

January 29, 2009 false vehicle inspection certificate incident. From the Appeal:

“In the interest of full transparency, we would like to address a past incident involving [Name redacted] that occurred on January 29th, 2009. On that date, [Name redacted] was driving a rental taxi, unaware that the vehicle was missing part of the graphic on the license plate. Subsequently, there was an issue regarding the issuance of a false vehicle inspection certificate. It is crucial to clarify that [Name redacted] did not have any knowledge of the missing graphic, nor did he forge any part of the license plate alter it in any way. He was operating the rental taxi in good faith, unaware of any irregularities with the vehicle.” (Appeal, p. 1)

September 2022 USPS mail carrier Harassment incident. From the Appeal:

“Furthermore, we want to address an incident that occurred in September of 2022. [Name redacted] received a ticket for harassment during this incident. It is crucial to clarify that [Name redacted] was never arrested for this incident, and he firmly believes that this ticket was issued in retaliation after he submitted multiple complaints against a USPS employee. The case was ultimately dismissed, and there was never any evidence of aggression or threats against the USPS employee. [Name redacted] was fully transparent about this incident during the hiring process, both with Kentech and Investigator Petrulis. [Name redacted] provided Investigator Petrulis with all the relevant information regarding this case, emphasizing that it was only a ticket that was dismissed.” (Appeal, p. 2)

As to conduct during the polygraph examination, the Appeal noted:

“During the polygraph testing, it is essential to note that [Name redacted] did not consciously think that he was being deceitful or trying to hide any information. He has always been forthright and honest in all aspects of the hiring process. [Name redacted] has never been convicted on any crime, and the incidents mentioned were only minor incidents that did not result in criminal charges or convictions.” (Appeal, p. 2)

The Appeal further added that “[Name redacted]” was fully transparent and cooperative during the investigation and that “he did not know that tickets would be associated with arrests since no charges were ever made.” The Appeal stated there is “no evidence to suggest that [Name redacted] exhibited any violent tendencies or actions.” It also asserted the case involving the mail carrier was “proven to be incorrect and was dismissed,” that “[Name redacted] was fully transparent on both his background and polygraph, and there is no evidence of false statements,” that “any information not brought forward during the initial background investigation was unintentional and not purposefully withheld by [Name redacted],” and that he “genuinely believed that certain details were not relevant to the process and therefore did not think to include them in his initial disclosures.” (Appeal, p. 2-3)

The Appeal went on to further request reconsideration, schedule a formal hearing in

person and that “a more in-depth review of his qualifications and character will demonstrate his suitability for the role of a Chicago police officer.” (Appeal, p. 2)

Response. In summary, Department iterated it stands on the reasons and bases set forth in the disqualification letter, and cited caselaw supporting its rights to disqualify, and that it found Applicant’s responses and refusal to divulge certain information extremely troubling and would, in and of themselves, be grounds for disqualification. (Response)

FINDINGS OF FACT

All filings were timely.

Department provided its factual basis for the decision to disqualify Applicant and remove Applicant's name from the eligibility list for which Applicant was given the opportunity to file a written appeal specifying why the Department erred in the factual determinations underlying the Department's decision *and/or* provide additional facts directly related to the bases for disqualification.

Applicant submitted his PHQ February 27, 2023.

Applicant was born in April 1985. He was almost 17 years old at the time of the forgery arrest February 24, 2001. He was almost 24 when he was ticketed by the Honolulu police for Make/Issue/Use False Vehicle Inspection Certificate and Fraud Use Vehicle Plates Emblem Decal January 29, 2009. Applicant was 37 years old when he appeared in a lineup for a criminal citation for Harassment against a mail carrier in September 2022, which occurred approximately five (5) months before Applicant submitted his PHQ.

As to the September 2022 Harassment of an USPS mail carrier, the Appeals Officer finds APPLICANT DID NOT provide sufficient additional facts and/or adequately specify why Department erred in its factual determination the conduct occurred. A criminal citation with a

specific citation number was issued, Applicant appeared for and was identified in a police lineup, AND a police officer reviewed a video recording with audio that showed Applicant started the confrontation, became angry, and threatened to “fuck” up the mail carrier. Applicant also called the carrier a “faggot” which is a commonly known as a derogatory term for a homosexual male. The fact that he never was convicted does not mean the conduct did not occur. Particularly disturbing is that this conduct occurred just five (5) months prior to Applicant’s submission of the PHQ. The encounter shows Applicant displayed conduct demonstrating a propensity for violence, conduct adversely affecting government functions in that it was conduct that interfered with a USPS mail carrier’s ability to do their government service job, and is conduct that demonstrates a lack of respect for the dignity and rights of others.

As to the February 2001 Forgery incident, the Appeals Officer finds APPLICANT DID NOT provide sufficient additional facts and/or adequately specify why Department erred in its factual determination the conduct occurred. There is no dispute that the conduct occurred. There was an arrest, and it is clear this was a criminal matter. Not only was it criminal conduct, whether or not it resulted in a conviction, it is conduct that indicates dishonesty.

As to the January 29, 2009 false vehicle inspection certificate incident, the Appeals Officer finds Applicant DID provide sufficient additional facts and/or adequately specified why Department erred in its factual determination. It is unclear whether this was a criminal citation. Applicant operated a rented taxicab and was unaware that there was anything wrong with the documentation. Although technically it appears Applicant was “using” a false vehicle inspection certificate in that he happened to be driving the vehicle, it also appears that Applicant was under an honest belief the vehicle he rented had legal documentation.

As to the Disorderly Conduct arrest in December 2022, the Appeals Officer finds

APPLICANT DID NOT provide sufficient additional facts and/or adequately specify why Department erred in its factual determination the conduct occurred. Applicant engaged in a physical altercation in a restaurant/bar. Applicant was said to have told the Kentech background interviewer that he, his brother and his father were involved in a fight. It wasn't until the time the Appeal was submitted that it was asserted Applicant's father was assaulted and it was asserted without further explanation. This is conduct demonstrating a propensity for violence and conduct demonstrating a lack of respect for the dignity and rights of others.

As to failure to disclose and omitting information as part of cooperating with the application process, the Appeals Officer finds Applicant did not provide sufficient additional facts and/or did not adequately specify why Department erred in its factual determination that Applicant engaged in the conduct. Applicant did not disclose information of any of the encounters with the police the Department raised in its bases for disqualification. It is disingenuous that the Appeal asserted "[Name redacted] was fully transparent and cooperative during the investigation and that 'he did not know that tickets would be associated with arrests since no charges were ever made'" when within the Appeal itself "arrests" were referenced as to the Forgery and Disorderly Conduct incidents AND as it relates to the mail carrier incident having been identified in a police lineup, been issued a "ticket" and noting the "case was ultimately dismissed." That Applicant may have determined certain details "were not relevant" to the process is not a defense. To assert Applicant "believed that certain details were not relevant to the process and therefore did not think to include them in his initial disclosures" undercuts any assertions made in the Appeal that Applicant was fully transparent, forthright, and honest in the hiring process. He did not and knew he did not honestly answer all the questions presented to him on the PHQ as to Q #65 (but not as to Q# 62, Q #63 and Q #66 – because it is unclear whether he appeared/testified in court)

and during the polygraph exam as outlined in the Department's description of conduct in Basis #5 herein.

By a preponderance of the evidence, **Applicant DID NOT** provide sufficient additional facts directly related to and/or did not adequately specify why the Department erred in its factual determinations as to ALL bases presented. Conduct satisfying any ONE basis is enough to justify disqualification. In this case it was all conduct except the incident for Make/Issue/Use False Vehicle Inspection Certificate and Fraud Use Vehicle Plates Emblem Decal and the answers to Q# 62, Q #63 and Q #66 on the PHQ that justified the Disqualification bases as outlined in the Notice – Disqualification(s) Based on Criminal Conduct, Other Conduct and False Statements or Omissions and/or Failure to Cooperate in the Application Process.

CONCLUSIONS OF LAW

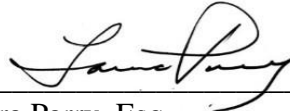
Pursuant to the Municipal Code of Chicago ("MCC") 2-84-030 the standard of review for appeals of disqualification and removal of an applicant's name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department's decision to remove the applicant from the Eligibility List was erroneous (MCC 2-84-035(c)). Therefore, according to the law and procedures, findings and recommendations are based upon whether Applicant's Appeal shows by a preponderance of the evidence that Department erred in removing Applicant's name from the Eligibility List, based upon the employment standards established by the Department.

Applicant **DID NOT** show by a preponderance of the evidence that Department erred in the exercise of its decision to remove Applicant's name from the Eligibility List for the reasons stated herein.

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,



Laura Parry, Esq.
Appeals Officer

Date: January 13, 2024

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 9 in favor (Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Ghian Foreman, and Andreas Safakas) to 0 opposed.

NOW THEREFORE, IT IS HEREBY ORDERED that the decision to remove [Name 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: Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Ghian Foreman, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF JANUARY, 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director