

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 23 AA 11**
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 February 16, 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”) citing the results of a background investigation summary/report dated February 17, 2022, along with the reason(s) for the disqualification decision (“Notice”).

Applicant filed an Appeal dated April 17, 2023, appealing the disqualification decision to the Police Board by 1) filing a written request specifying why the Department of Police (hereinafter referred to as “Department”) erred in the factual determinations underlying the disqualification decision *and/or* 2) bringing 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”). Response was filed May 11, 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

The Appeal, Response and Reply were timely filed and as permitted by Section 2-84-035(b) of the Municipal Code of Chicago.

According to the Notice and Response, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reason(s):

Basis

IV-B. Disqualification Based on Criminal Conduct

...

7.c. 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." (Background Investigation Report, p. 1-2)

Department cited the following conduct, in summary:

Applicant was listed as the "suspect" in an Assault allegedly occurring in November 2021, according to Background Investigator's review of the case report. It was reported that a store security officer related to the responding officers that while the security officer was escorting Applicant's then girlfriend to the girlfriend's mother's vehicle, Applicant stepped out of his vehicle and attempted to talk to the girlfriend. The security guard reported stopping Applicant from interacting with the girlfriend by telling him to leave the property, to which Applicant allegedly said, "If you want to handle this right now let's go." The security guard reported that he "created space" out of a fear of battery and again told Applicant to leave or the police would be called. It was reported Applicant returned to his vehicle, drove to the mother's parked vehicle in an "attempt" to strike the mother and security guard with the vehicle before leaving the scene. The girlfriend was said to have been inside her mother's vehicle as a witness

to the exchange. Background Investigator interviewed the mother who explained that Applicant's girlfriend, her daughter, came to her that day and told her that Applicant had been physically abusive three times, including being kicked. The mother explained that when she arrived to pick her daughter up, her passenger noticed that Applicant's vehicle was parked in the lot. (There was not statement from the passenger). The mother explained that she drove up, got out of her own vehicle and asked Applicant why he was there, to which, she said, Applicant stated he was there to talk to her daughter, and to which she responded by telling Applicant not to talk to her anymore. The mother reported that as she went to get in her car, Applicant pulled his car alongside and blocked her door so she couldn't get in, the security guard then asked Applicant to leave. After the mother entered her vehicle, Applicant got out of his vehicle, stepped to her door and shouted, "If you want to handle this now, let['s] go." The mother stated that when she showed Applicant on her phone that she was calling the police he left.

Background Investigator interviewed the girlfriend, reporting that she sounded "extremely shaken and crying throughout the interview." According to the girlfriend, she did not initially tell anyone during the background investigation about the times Applicant kicked or struck her because she didn't want to "mess up his chances" of becoming a police officer. She related that he once kicked her with his foot and she fell out of the bed when they were "play fighting" after Applicant "became angry for real." Another time Applicant became angry and "drove off with" her after she was "teasing" him that she took all his holiday gifts back because he didn't deserve them. She said she'd repeatedly asked him to drive her back home, but he didn't, so she jumped out of the car at a red light. She then decided to get back into the car when he said he'd drive her home, but instead he pulled over and parked the car and they argued more about the gifts. She reported he struck her in the chest and then quickly apologized. They stopped dated approximately two weeks later because the girlfriend stated he had "anger issues."

She reported that's when the incident in the parking lot occurred, and that she saw him try to block her mother's car so she couldn't drive off.

Background Investigator also interviewed the security guard. The guard stated that the girlfriend, who works at the store, asked the guard to escort her to her mother's vehicle. The guard reported he observed a verbal altercation between Applicant and the mother. The guard reported Applicant "was a little irate and wouldn't leave," and that that he observed Applicant use his vehicle to block the mother from entering hers. The guard reported he then asked Applicant to leave the premises or the police would be called.

Finally, Background Investigator interviewed Applicant about the incident. Applicant was said to have reported he and the girlfriend argued days prior to the incident; that he always picked her up from work; but on that night the mother came up to his car and started yelling, "What do you want and why are you here?" He reported the security guard walked up and got in between them and, "g[ot] in [his] face" telling Applicant to leave. Applicant said that after he and the mother "finished talking" he left. Applicant denied assaulting or threatening the mother or the girlfriend and is no longer involved with her.

(Background Investigation Report, p. 2-4)

Appeal, Response and Reply

APPEAL

In summary, Applicant, through his attorney, explained his background and offered what would be categorized as "character reference" statements. Applicant references the standard of review as "applicant shall have the burden of showing, by a preponderance of the evidence, that the Department's decision to remove the. Applicant from the eligibility list was erroneous," citing *Police Board Rule of Procedure, Article VII*, dated February 19, 2021. The Appeal described standards of review for reviewing state courts. Applicant further referenced

Administrative Hearing Procedures Human Resources Board¹ in arguing a review of evidence.

Applicant argued that one incident “cannot demonstrate a *propensity* for violence,” and Department needed to prove a predisposition to violence and that violence is a natural tendency for Applicant. There was no citation to rule or law. Applicant argued that even if the allegations were true it was “nothing more than a bad night” and not a propensity for violence.

Applicant argued the alleged victim gave contradictory statements. Applicant supplied the original and supplemental case reports and noted that Applicant was not named as “offender,” but rather as “suspect,” which is different because a suspect is “someone alleged to have committed a crime.” Applicant noted he was never arrested, and Background Investigator did not inquire as to why he was not. Applicant argued the Board “can use its common sense and reason that the allegations were not credible, or that they were inconsequential... falling far from establishing... violent tendencies.” Applicant noted that there was a verbal dispute and that saying “If you want to handle this right now let’s go” is vague and not criminal. Applicant pointed out that he never attempted to strike the girlfriend with his vehicle, and that she was already seated in her mother’s vehicle. Applicant argued that the girlfriend was first interviewed 18 days after the incident during the background investigation and did not mention the incident, but rather said Applicant was “very loving, protective,” and that “they have not had any domestic incidents.” She was also said to have noted that Applicant did not have anger issues and had not committed any criminal acts.

Applicant argued that statements reportedly given to Background Investigator should not be considered because it appeared they were phone communications and lacked foundation (i.e., there’s no information on how the investigator was able to identify who he talked, when and where). If they are considered, Applicant argued it should be given little weight. He argued that

¹ At Exhibit A in Appeal, not included in this Recommendation

the Illinois Appellate Court reversed an agency's decision to terminate an employee because the outcome of the hearing directly depended on the credibility of a witness' hearsay testimony (citing *Kimble v. Illinois State Board of Education*, 2014 IL App (1) No. 1-12-346). Applicant argued hearsay evidence is not reliable, and was the sole basis for Applicant's disqualification.

Applicant also argued this Board has reversed disqualifications in prior cases with similar facts. Applicant cited 21 AA 05, summarizing that the applicant in that case was alleged to have gotten into a fight in which police were called and then another time was arrested for Domestic Battery after an ex accused him of striking her and grabbing her neck, and that the Board held the conduct did not rise to the level of "propensity" and was at most a misdemeanor that occurred more than three years prior. Applicant cited 22 AA 01, summarizing the Board found no violent tendencies in a case where the applicant was alleged to have committed four acts of violence with no arrests, charges filed or convictions. Finally, Applicant cited 22 AA 02, summarizing that in its decision to uphold the disqualification that the Board opined if "Applicant threatened her one time, Applicant's conduct may have been written off as a family misunderstanding that should not be used as a basis for disqualification." Decision p. 8." Applicant argued that in the Applicant's case there is only one incident and that he was never arrested, corroborated by victim's lack of mentioning the incident to Investigator 18 days later.

Applicant also argued that he passed the Polygraph Examination and "confirmed that [the girlfriend's] allegations were false." He argued that if applicants can be disqualified based on Polygraph Exam results, then Department must also rely upon Polygraph Exam results that indicate "no significant response," as in this case to Applicant's denial of whether he had engaged in criminal behavior. (Appeal, p. 8).

Applicant argued, generally, that Department is not following hiring principles set out by the Office of Inspector General and Consent Decree, and how its "application process has failed

the Black community.” (Appeal, p. 9, citing to *Chicago Tribune* newspaper articles dated May 4, 2018, August 24, 2020 and September 27, 2021).

(Appeal and Exhibits)

RESPONSE

Department filed its Response on May 11, 2023, in summary, iterated the conduct and basis set forth in its disqualification letter. (Response)

FINDINGS OF FACT

Filings were timely. Department provided the factual basis for its 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 disqualification.

Basis IV-B. Disqualification Based on Criminal Conduct - 7.c. Conduct Indicating Violent Tendencies.

Basis #1 Findings Summary: By a preponderance of evidence, **Applicant DID** provide additional facts sufficient for all conduct cited directly related to and/or specify why the Department erred in the factual determinations underlying the disqualification decision as to **Basis IV.B. Disqualification Based on Criminal Conduct – 7.c. Conduct Indicating Violent Tendencies.**

No physical contact was made in the parking lot. The verbal altercation was started by the mother. The preponderance of the evidence does not support a finding that Applicant attempted to strike anyone in the parking lot with his vehicle, nor that he prevented the mother from getting into her vehicle. We know this because the mother said she got into her vehicle and continued to interact with him by showing him her phone, and the girlfriend said he blocked them from leaving. There was no specific threat to harm anyone. Both the security guard and the mother

said Applicant made a very general declaration, “If you want to handle this now, let’s go.” The security guard said Applicant said it to him, while the mother said Applicant said it to her, which contradict each other and supports that it was not a direct threat to anyone, but rather a general declaration. During the background interview, the security guard was reported to have said Applicant was “a little” irate. Applicant did not leave the parking lot when first asked, but he did upon the second request and after he was told the police would be called. As to the other allegations of purported violence, while Applicant did not specifically deny using his foot to push the girlfriend out of the bed and onto the floor, the girlfriend also said they had been “play fighting” which seems to indicate she was voluntarily engaged in physical back and forth. Lastly the incident in the vehicle seemed to indicate the girlfriend provoked Applicant and that he immediately apologized for hitting her in the chest, which may indicate more of a reaction to being provoked than a violent attack. Applicant asserted generally that some of the accounts in statements in the reports were exaggerated, and some did not occur. As noted in Applicant’s argument, the results of a Polygraph Exam can also be exculpatory. There was no allegation that Applicant “failed” the Polygraph Examination or that the questions asked or answered triggered a “significant response” (which may be a sign of not being truthful), and at least one question asked whether Applicant had engaged in criminal conduct, to which he responded in the negative. Given the totality of the circumstances and considering some of the contradictions in the statements attributed to the girlfriend in interviews, it does not appear Applicant engaged in conduct contemplated by the language in the disqualification basis.

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 Department's employment standards.

Applicant's assertion that Administrative Hearing Procedures Human Resources Board applies to the hearings before this Board is without basis. Additionally, the portion of his argument regarding standards of review refer to reviewing courts. These proceedings are governed by Rules of Procedure Appeals by Applicants to the Chicago Police Department, established pursuant to §2-84-035 of the Municipal Code of Chicago ("MCC").

Applicant's argument that one incident cannot demonstrate a "propensity" for violence is directly contrary to the Illinois Appellate Court's findings in *O'Connor*. (*Johnson v. O'Connor*, 115 NE3d 1062 (2018)). In that case Department appealed the Human Resources Board decision to reverse a disqualification and return the applicant's name to the eligibility list. The conduct in that disqualification was also based on Conduct Indicating Violent Tendencies. In *O'Connor* the Court noted that the plain language of the disqualification standard, as with all statutory construction, must be given its ordinary meaning, and where the language is clear and unambiguous the courts cannot read into it exceptions, limitations or conditions that were not expressed by the drafter. The Court opined that when the Department's decision to disqualify the applicant was reversed by the Human Resources Board, the reversal was based on a finding as a matter of law that one instance of domestic battery alone did not show a propensity for violence sufficient to warrant disqualification, and thereby prohibited the Department from exercising its lawful discretion. (*O'Connor* at 1067). In Applicant's case at hand the plain language of the basis for disqualification was articulated – "**any** conduct demonstrating a propensity for violence **will** be grounds for disqualification" (emphasis added). This language is

even more definitive than the language in the *O'Connor* case which read “**any** conduct demonstrating a propensity for violence **may** be grounds for disqualification” (*Id.*) (emphasis added). In accordance with the *O'Connor* ruling, no finding is made in this case that, as a matter of law, a single instance of conduct cannot establish “propensity.”

Applicant cited no law to support the position that the Board must follow past rulings in deciding this matter. Quite to the contrary, The Illinois Appellate Court in *MJ Ontario, Inc., v. Daley* made clear that different conclusions can reasonably be reached in separate instances (“... we do not address the point at any length, but note only that a similar argument (for comparison of disciplinary cases) was rejected by our supreme court (Launius, 151 Ill.2d at 440-42, 177 Ill. Dec. 407, 603 N.E.2d 477)”). (*MJ Ontario, Inc. v. Daley*, 861 NE2d 1161, 1171). The Illinois Supreme Court in the *Launius* case cited 2 F. Cooper, State Law 762 (1965), noting “... administrative actions ‘in which the epithet capricious may properly be applied are those where an agency has given different treatment to two respondents in **identical** circumstances.’” (*Launius v. Board of Fire and Police Com'rs of City of Des Plaines*, 603 N.E.2d 477, 487 (1992)). (Emphasis added). A ruling articulated in one specific case with its own particular facts and circumstances and in its own time in history, does not dictate how future cases, even if similar, will be determined, unless and until that directive is set out by rule, law or a reviewing court directive. Thus, the rulings in prior cases cited by Applicant do not determine the ruling in this matter. Circumstances here are not identical to those in the prior cases Applicant cited.

The Appeals Officer declines to consider or comment on any arguments made as to hiring principles set out by the Office of Inspector General and Consent Decree as it is outside of the scope of the appeal as set forth by this forum’s procedures and the Municipal Code.

General background information and character references did not directly relate to the conduct alleged as the basis for disqualification and were not considered by the Appeals Officer.

Applicant's argument as to the inadmissibility of hearsay evidence (i.e., the Background Investigator's interviews) is not persuasive. It is well settled that hearsay evidence may be admissible in administrative proceedings, leaving the weight of the evidence to be determined. Unless precluded by statute or rules, evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. (Administrative Procedures Act, 5 ILCS 100/10-40 (a)). In *Miles v. Hous. Auth. Of Cook Cnty.*, 39 N.E.3d 156 (2015) the Illinois Appellate Court mirrored considerations of federal administrative procedures as set forth in a case that assessed the reliability of statements made by unnamed individuals (*Kurdi v Du Page County Housing Authority*, 514 N.E.2d 802 (1987)). The Court opined that when deciding whether hearsay statements are reliable the following should be considered: (1) declarant's bias; (2) whether the statement is sworn, signed, anonymous, oral or unsworn; (3) whether the statement is contradicted by other evidence; (4) declarant's availability and whether declarant is subject to subpoena; (5) credibility of declarant or witness to the hearsay; and (6) whether the hearsay is corroborated. (*Miles* at 165, citing *Kurdi v. Du Page County Housing Authority*, 514 NE2d 802, 806 (1987)). The Appeals Officer in this case finds that given the totality of the circumstances and in applying the standards for reliability recognized by Illinois courts, the hearsay evidence presented in the Background Investigator's report is reasonable to rely upon as to firsthand observations by the declarants. This evidence was considered and weighed. The statements were made by named individuals who were present in the parking lot to a responding officer and then again to the Background Investigator in follow up interviews with explanations of why there may have been discrepancies. Statements made about conduct during "playfighting" in bed and "teasing" about no holiday gifts in the vehicle were not dispositive or persuasive and were somewhat contradictory. After considering and weighing the statements in light of the whole record, the Appeals Officer finds that what was contained within the

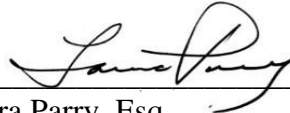
statements was not enough to establish disqualifying conduct.

In accordance with applicable procedures for this appeal, Applicant **DID** show by a preponderance of the evidence for the basis presented 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 **reversed**, and Applicant's name be returned to the eligibility list.

Respectfully submitted,



Laura Parry, Esq.
Appeals Officer

Date: July 13, 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 8 in favor (Ghian Foreman, Paula Wolff, Steven Block, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Jorge Montes, and Andreas Safakas) to 1 opposed (Aja Carr-Favors).

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 **reversed**, and he is **reinstated to the eligibility list**.

This decision and order are entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Steven Block, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Jorge Montes, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JULY, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director