

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 22 AA 14**
APPLICANT FOR THE POSITION OF)
PROBATIONARY POLICE OFFICER,) **(Candidate 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 14, 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 December 10, 2022, Applicant appealed this disqualification decision to the Police Board by filing a written request by specifying why the Department of Police (“Department”) erred in the factual determinations underlying the disqualification decision and 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”).

On December 19, 2022, the Office of Public Safety Administration filed with the Police Board a copy of the Notice and its response to Applicant’s Appeal (“Response”). Applicant did not file a Reply. Police Board Appeals Officer Mamie Alexander has reviewed the Notice, Appeal, and Response.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Mamie Alexander, 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 Response was filed within the time period allowed by the Police Board Rules of Procedure.

According to Department’s Notice, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reasons:

B. Disqualification Based on Criminal Conduct

1. One purpose of 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 applicant was convicted, that makes the applicant unsuitable for employment.
2. There are various types of proof which indicate criminal conduct, including a record of conviction or an admission that indicates the applicant engaged in criminal activities. A record of conviction or an admission will be *prima facie* evidence that the applicant engaged in criminal conduct.

7. Other Criminal Conduct

a) Conduct Involving Drugs

The City of Chicago has an obligation to maintain a safe, healthy and

productive work environment for its employees. An employee under the influence of drugs or alcohol while at work can be a serious safety risk to himself or herself, to other employees, and in certain instances, to the general public. The abuse of drugs or alcohol also has a negative impact on the productivity and health of City employees. In order to maintain a safe and healthy work environment, the City of Chicago has established a zero tolerance policy regarding the unlawful use of drugs for its employees. This policy also prohibits the illegal sale, delivery, receipt, possession or use of any controlled substance. Further, any applicant who has illegally sold, delivered, received, possessed or used any controlled substance (under state or federal law and regardless of geographical location) has, if falling into any of the five categories listed below, demonstrated that they present a safety risk to themselves and others. The City defines an illegal drug as any drug that is not legally obtainable in the United States, any drug used in a manner or for a purpose other than prescribed, or any prescription drug that was sold, delivered, received, possessed or used by or to a person to whom it was not prescribed.

While the Chicago Police Department does not condone prior unlawful drug use by its applicants, we recognize that some otherwise qualified candidates may have engaged in limited drug use at some time in their past. The following standards set forth the criteria for determining whether prior drug use makes an applicant unsuitable for employment. These standards balance the Chicago Police Department's need to maintain a drug-free environment and foster the public integrity needed to enforce applicable drug laws with the understanding that people sometimes have made mistakes that are not indicative of future performance or current abilities.

- (3) An applicant who has sold, distributed or manufactured any illegal drug at any time will be found unsuitable for employment.
- (4) An applicant who has used any illegal drug, other than marijuana, within the last five (5) years (from the date of PHQ submission), or has engaged in more than minimal experimentation at any point in his or her life will be found to be unsuitable for employment. When determining that drug use constituted more than minimal experimentation, all relevant factors, such as frequency of use, length of time since the last use, and the age of the applicant when he or she last used any illegal drug, will be evaluated. Exceptions to this standard may be made on an individual basis for the un-prescribed use of prescription drugs, provided that such use was only medicinal, isolated, and infrequent.

Applicant was disqualified by Department based on the following statements made in his September 26, 2022 polygraph examination report:

1. In 2019, Applicant packaged three (3) bags of cocaine and sold them.
2. Between 2015 and 2017 Applicant separated and packaged marijuana into dime bags and sold it to his classmates about ten times.
3. In 2019, Applicant drove his friend to Indiana to buy marijuana about five times.

Appeal and Response

Applicant appeals the decision, stating, in summary, that the dates he provided were wrong, and he never bought or sold drugs. Department's Response states that the appeal was reviewed, and Department relies upon the facts and evidence relating to the disqualification contained in Applicant's file. Department maintains that the pre-employment disqualification standards under which Applicant's disqualification decision was based upon are clear (namely, disqualification based on Criminal Conduct, and Disqualification based on Criminal Conduct Involving Drugs). Department also states that the evidence in Applicant's file supports its decision to disqualify Applicant from hiring, and the Department is within its right to do so, citing *Apostolov v. Johnson*, 2018 IL App (1st) 173084; ¶¶ 24, 31 and *Johnson v. O'Connor*, 2018 IL App (1st) 171930, ¶¶ 16-17, 20.

Findings of Fact

Filings were timely.

Department provided the factual basis for its decision to disqualify Applicant and remove his name from the eligibility list. It assessed that the statements given in Applicant's polygraph examination report on September 26, 2022 constituted an admission that he engaged in criminal

conduct involving drugs. Department articulated the standard by which the conduct was assessed by section and paragraph, and articulation of the standard gives reasonable notice as to the basis for disqualification.

Criminal Conduct Involving Drugs

Applicant stated in his polygraph examination report that he packaged and sold cocaine three times in 2019, and that he packaged and sold marijuana about ten times in 2016 while he was in high school. Applicant also stated that in 2019, he drove his friend to Indiana to buy marijuana about five times.

In his Appeal, Applicant states that he was trying to remember the dates and has come to the realization that he packaged the bags of cocaine in 2017, not 2019. In addition, he asserts that he did not sell the cocaine, but “gave it to someone for free.”

Applicant also states that he never drove a friend to Indiana to buy marijuana. Instead, he was with a friend who bought marijuana across the street from her house, and these incidents took place in 2016 when he was still in high school.

Applicant's Background

Applicant declares that he has learned from the mistakes he made in the past, and will use them to become a better person. He explains that he now has a 6-month-old daughter and wants her to have a better future. Applicant states that since watching Law and Order, it has been his dream to become a police officer. He believes that no one is perfect, and people can change. Applicant says that he has been sober for a couple of years now, and is not the person he used to be.

Applicant provides the names of two police officers who are role models that push him to stay focused. Applicant states that he believes in second chances, and that the Chicago Police Department needs an honest person who has made mistakes in the past to teach others how to make a difference.

Conclusions of Law

Criminal Conduct Involving Drugs

Section IV. of the Bureau of Support Services Special Order contains the Pre-Employment Investigation Standards for Applicants to the Position of Police Officer (“Standards”) that are applicable to this Appeal.

As stated above, Section B (7)(a) states: “any applicant who has illegally sold, delivered, received, possessed, or used any controlled substance (under state or federal law and regardless of geographical location) has, if falling into any of the five categories below, demonstrated that they present a safety risk to themselves and others. The City defines an illegal drug as any drug that is not legally obtainable in the United States, any drug used in a manner or for a purpose other than prescribed, or any prescription drug that was sold, delivered, received, possessed, or used by or to a person to whom it was not prescribed.”

Section B (7)(a)(3) specifically states: “An applicant who has sold, distributed or manufactured any illegal drug at any time will be found unsuitable for employment.”

Department asserts that in Applicant’s polygraph examination report, Applicant admitted that in 2019, he packaged and sold three bags of cocaine. Section B (2) of The Standards states that “...an admission will be *prima facie* evidence that the applicant engaged in criminal conduct.”

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Although Applicant now claims that after his polygraph he came to the “realization” that he packaged the bags of cocaine in 2017 instead of 2019 and “gave it to someone for free,” these changes do not make his actions legal. Based on his modified responses, Applicant appears to believe that there is a 5-year limit on his conduct, and that he would be disqualified only for **selling** drugs.

However, assuming arguendo that Applicant legitimately got the dates wrong, Section B (7)(a)(3) states that an applicant who has sold, **distributed**, or manufactured any illegal drug **at any time** will be found unsuitable for employment. (emphasis added). Therefore, Applicant’s acts of packaging and giving away cocaine would make him unsuitable for employment.

In addition to disqualification based on the cocaine distribution, Applicant could also be found unsuitable for employment under section B (2) based on his admission that he “separated and packaged marijuana into dime bags and sold it” to his classmates about ten times in 2016. Marijuana was illegal at the time, and Applicant sold dime bags to his classmates who, presumably, were minors. These actions constituted criminal conduct and could be a basis for disqualification. Applicant’s Appeal does not address his marijuana sales, other than to state that he was in high school at the time.

Last, Applicant stated in his polygraph examination that he drove his friend across state lines from Illinois to Indiana to buy marijuana about five times in 2019. Upon information and belief, it was illegal to buy marijuana in Indiana at that time, particularly when crossing state lines with the specific intent to do so.

In his Appeal, Applicant changed his account, claiming that he never drove his friend to Indiana, and never bought marijuana. Instead, he states that he was with his friend, and she

bought marijuana across the street from where she lives. It is unclear whether Applicant's friend lived in Indiana or Illinois. It is also unclear whether Applicant bought or used the marijuana with his friend.

However, regardless of what transpired between Applicant, his friend and the marijuana, Applicant does not deny that he separated and packaged dime bags of marijuana and sold them to his classmates at least ten times. In addition, although the facts changed during his Appeal, Applicant either packaged and sold or packaged and distributed cocaine.

No additional facts, evidence or arguments submitted in Applicant's Appeal support his contention that Department erred in disqualifying Applicant based on his criminal conduct involving drugs.

Applicant has failed to show, 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/ Mamie A. Alexander

Mamie Alexander
Appeals Officer

Date: April 10, 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] 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 20th DAY OF APRIL, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director