

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **NO. 23 AA 10**
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 23, 2023, the Office of Public Safety Administration (the “Office”) gave Applicant written notice of its decision to remove him from the list of eligible applicants for this position (“Eligibility List”) due to the results of a background investigation, along with the reasons for the disqualification decision (“Notice”).

On or around April 24, 2023, Applicant appealed this decision to the Police Board by filing a written request specifying why the Chicago Police Department (the “Department”) erred in the factual determinations underlying the disqualification decision and bringing to the Police 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 (the “Appeal”).

On May 11, 2023 the Department filed a response to the Appeal (the “Response”).

Appeals Officer Cooper has reviewed the Notice, Appeal and Response.

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

Applicant timely appealed his removal from the Eligibility List, as authorized by Section 2-84-035(b) of the Municipal Code of Chicago.

The Notice indicates that Applicant was removed from the Eligibility List for two reasons: (1) conduct indicating violent tendencies; and (2) his military history. (Notice, pp. 2-5.)

In his Appeal, Applicant calls out the Department for making certain unsupported assertions and assumptions about his criminal history and for not providing certain information about his stated disqualifying conduct. (Appeal, pp. 4-8.) Applicant also denies that he has a violent history or tendencies and disputes the Department's characterization and impact of his discharge from the military. (*Id.* at pp. 8-9.)

In its Response, the Department states that, in addition to relying on the facts and evidence cited in the Notice, the Department was justified in removing the Applicant from the Eligibility List because he was dishonest about his criminal history and police contacts during the background investigation and because the Department's characterization of Applicant's separation from the military was supported by publicly available information. (Response.)

Findings of Relevant Facts

Biographical Information

Applicant is a 38-year-old African American male who was born and raised on the south side of Chicago. (Appeal at pp. 7-8.) After completing high school, Applicant attended Atterbury Job Corps in Edinburg, Indiana, where he received certification in military and law enforcement training. (*Id.*) Following his time at Job Corps, Applicant enlisted in the United States Army. Applicant was deployed to three combat zones during his eight years in the Army where he received numerous medals and commendations and was eventually promoted to the rank of sergeant. (*Id.*)

After being discharged from the military, Applicant pursued a bachelor's degree in psychology at an unnamed college and attended Kennedy King College, where he obtained a certificate in welding and automotive construction. (*Id.*)

According to the KENTECH Background Investigation Report ("Investigation Report"), in 2017, Applicant was unemployed but received compensation from the military and income from a rental property in Tennessee. (Appeal, Ex. E, p. 28.)

Interactions with Police and Criminal History

The record reveals that over the last 21 years Applicant has had numerous run-ins with the police. In some of these encounters, Applicant interacted with law enforcement because he was a victim. In other instances, however, Applicant was identified as a suspect or was found to be the perpetrator of a crime. For example, Applicant was involved in the following relevant incidents:

On October 9, 2002, when Applicant was 17, he was arrested and charged with disorderly conduct and resisting arrest. (Appeal, Ex. E, p. 22-23.) While Applicant did not disclose this arrest on his personal history questionnaire and the record does not contain the police report from this

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incident, Applicant subsequently told investigators that the incident started when he saw a group of girls from his neighborhood throwing rocks at his residence. (*Id.*) After calling the police, Applicant told investigators that he “grabbed hold of the girls so they could not get away.” (*Id.*) Apparently, some neighbors did not appreciate how Applicant was handling the situation, and they came outside and purportedly threatened him by saying that they would “get their gun if [Applicant] caused any issues.” (*Id.*) After arriving on the scene, the police informed Applicant that he was not allowed to detain anyone, and he and apparently the neighbors were arrested. (*Id.*) While Applicant told investigators that he was released and did not have to appear in Court, the record reveals that Applicant was subsequently sentenced to court ordered supervision for his involvement in this incident. (*Id.*, p. 21.) There is no information in the record, however, regarding the circumstances that led police to charge Applicant with resisting arresting.

On March 19, 2003, when Applicant was still 17, he was arrested and charged with battery. (*Id.*) There is no police report in the record that provides details regarding this incident, and Applicant did not disclose this event and was “not sure what this charge pertain[ed] to” when asked about it by investigators. (*Id.*, pp. 21-23.) The Investigation Report, however reveals that Applicant apparently received court ordered supervision for his involvement in this incident. (*Id.*, pp. 21-23.)

On May 8, 2009, a male friend of Applicant’s then-wife filed a police report, claiming that he believed Applicant keyed his vehicle and slashed his tires because Applicant and his wife were having marital issues and Applicant knew that the complainant was close friends with her. (*Id.*, pp. 34-37.) Applicant, however, was only identified as a suspect in the police report, and he was never arrested or charged in connection with this incident. In his appeal, Applicant denied any involvement in this matter. (*Appeal*, p 7.)

On August 29, 2013, Applicant was charged with first degree domestic assault (terroristic

threatening) in connection with a domestic violence incident involving his ex-wife. (Appeal, Ex. E, pp. 8-9.) In his PHQ, Applicant admitted to pushing his ex-wife to “get her out of the way” while he was purportedly attempting to leave the residence where the dispute arose. (*Id.*) The police report regarding this incident is not contained in the record. As a result of his actions, Applicant spent one night in jail. (*Id.*) His ex-wife also got an order of protection against Applicant that prevented him from having any contact with her for a period of two weeks. (*Id.*) There is nothing in the record, however, to suggest that Applicant was ever convicted of a crime in connection with this incident, and he told investigators that the judge ultimately “dropped the case against him. (*Id.*)

On May 22, 2014, Applicant’s ex-wife filed a police report claiming that she believed Applicant burgled her home and destroyed certain property. (*Id.*, pp. 38-44.) Contrary to the Department’s assertions, however, there is nothing in the record to suggest that Applicant was ever arrested or charged in connection with this incident. (*Id.*)

Finally, while the Department, in its Notice, references a June 14, 2014 arrest of Applicant for domestic assault, there is nothing in the Investigation Report corroborating the Department’s assertion. Moreover, in his appeal, Applicant disclaims any knowledge of or involvement with this incident. (Appeal, pp. 7-8.)

Discharge from Military

Sometime in 2012 or 2013, while stationed overseas, Applicant was involved in an incident with another member of his unit. (Appeal, Ex., p. 16.) Applicant told investigators that the incident started when a member of his unit threatened him. (*Id.*) Other than Applicant’s recollection of the event, however, there are no other details regarding the event in the record, as none of Applicant’s military files are contained in the record.

As a result of this incident, Applicant was sent back to the United States, arrested and disciplined under the Uniform Code of Military Justice, which resulted in him being demoted. (*Id.*)

Applicant was subsequently honorably discharged from the military. (*Id.*) While the Department does not dispute that Applicant was honorably discharged, it maintains that Applicant received a designation on his discharge papers that renders him ineligible for reenlistment unless certain waivers are granted to him. (*See* Notice; Response.) However, there is no supporting evidence in the record to substantiate the Department's characterization of Applicant's separation from the military. Moreover, in his appeal, Applicant denies that he is ineligible for re-entry into the military (*See* Response; Appeal, p. 8).

Character References

During the background investigation, the Department interviewed Applicant's ex-wives and several of his previous girlfriends and partners. (Appeal, Ex. E, p. 3-4.) None of these individuals stated that Applicant was violent or had a proclivity for violence. (*Id.*) In fact, all of them spoke very highly of Applicant. (*Id.*) For example, one interviewee, [Name redacted], stated that she has known Applicant for 15 years and cannot identify a single weakness in him. (*Id.*) Another interviewee, [Name redacted] confirmed that she has never witnessed Applicant being violent towards her or anyone else. In fact, she highlighted his exceptional skill in de-escalating situations. (*Id.*) Applicant's ability to de-escalate situations was also highlighted by [Name redacted], a soldier who served alongside Applicant in the military. (*Id.* at p. 11.)

In his appeal, Applicant includes character references from six other individuals, including religious pastors and military chaplains. All of whom commented on and praised Applicant's intelligence, selflessness and leadership abilities. (Appeal, pp. 3-4, Ex. A.)

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 Conduct Indicating Violent Tendencies

The relevant Special Order (the “Special Order”) contains the “Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer.” Section IV (B)(7)(c) of the Special Order governs disqualification based on other criminal conduct indicating violent tendencies. Specifically, Section IV (B)(7)(c) states “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.”

The Department’s decision to remove Applicant from the Eligibility List based on conduct indicating violent tendencies stems from several instances where Applicant was either arrested and charged with a criminal offense or was identified as a suspect in a criminal matter. While it is true that when applicant was 17 years old he was involved in two criminal incidents that resulted in him receiving court-ordered supervision, these incidents occurred more than twenty years ago. Moreover, while the domestic violence situation that Applicant was involved in in 2014 is disturbing, that incident did not result in Applicant ever being convicted for the charged offense. Moreover, the alleged victim in that incident, Applicant’s ex-wife, has since provided character testimony in support of Applicant, stating that she does not believe he is violent or has a tendency to engage in violent behavior. In fact, she, along with several other character witnesses, have all stated that they believe Applicant possesses the ability to de-escalate potentially violent or

dangerous situations. It should also be noted that the other instances that the Department points to in support of its decision to remove Applicant from the Eligibility List due to his purported violent tendencies are either undocumented or unsupported, such as May 8, 2009 incident or the two alleged incidents from 2014. Or there is no evidence in the record that clearly describes the alleged violent behavior Applicant purportedly engaged in, such as the incident that led to him being sent him from serving overseas.

It is clear that while Applicant may have had difficulty dealing with certain situations in his youth, as he has matured, he has learned to de-escalate and appropriately handle such situations. This is evidenced by the fact that the most recent incident for which the Department cites as the basis for his removal from the Eligibility List occurred almost a decade ago. Accordingly, because the record before this Appeals Officer does not establish that Applicant has engaged in conduct indicating violent tendencies, the Department erred when it removed Applicant from the Eligibility List for this reason.

Disqualification Based on Military History

Section IV (E) of the Special Order states that “[a]n applicant who has received a Dishonorable Discharge or a Bad Conduct Discharge from the United States Armed Forces of the National Guard or State Militia has demonstrated his or her ability to work in such a setting and therefore will be found unsuitable for employment. An applicant who has received a discharge with other characterizations may be found unsuitable for employment based on the nature of the underlying offense.”

Here, the Department does not deny that Applicant received an honorable discharge from the military. Instead, it maintains that Applicant was properly removed from the Eligibility List because his discharge paperwork indicated that he is ineligible to re-enlist in the military without

receiving a special waiver. In support of this assertion, the Department, however, has not put forth any supporting evidence other than a self-serving statement in its Response. Moreover, the record is devoid of any material or information to suggest that Applicant's discharge paperwork indicates or suggests that he would be required to seek a special waiver if he decided to re-enlist in the military. Furthermore, in his Appeal, Applicant denies that there are any restrictions that prevent him from re-enlisting in the military. Accordingly, based on the record before this Appeals Officer, there is no evidence to support the Department's justification for removing Applicant from the Eligibility List based on his military history. Therefore, the Department erred when it removed Applicant from the Eligibility List based on this ground. Had the Department put forward any such evidence, it would have been given substantial weight and the recommendation here might have been different. However, as was the case with several of the incidents cited in support of its decision to remove Applicant from the Eligibility List based on his purported violent tendencies, there was no supporting documentation in the record to support the Department's position. Thus, because it was erroneous for the Department to remove Applicant from the Eligibility List based on his military history, the decision to remove Applicant from the list of eligible applicants for the position of probationary police officer on this ground should be **reversed**.

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**.

Respectfully submitted,

/s/ Kyle A. Cooper
Appeals Officer

Date: July 12, 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 9 in favor (Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Jorge Montes, 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 **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, Aja Carr-Favors, 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