

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **NO. 23 AA 16**
APPLICANT FOR THE POSITION OF)
PROBATIONARY POLICE OFFICER,) **(Applicant no. [redacted])**
CITY OF CHICAGO.)

FINDINGS AND DECISION

[Name redacted] a (hereinafter referred to as “Applicant”) applied for a probationary police officer position with the City of Chicago. In a letter dated March 2, 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 30, 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 21, 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 criminal conduct, such as destroying property and stealing, and for engaging in sexual misconduct, namely sexual assault. (Notice, pp. 2-3.)

In his Appeal, while Applicant admits to and expresses regret for destroying property and stealing. However, he denies the sexual assault allegations and presents his version of the incident. (Appeal.)

In its Response, the Department states that, in addition to relying on the facts and evidence cited in the Notice, it was justified in removing Applicant from the Eligibility List because he, in his Appeal, again admits to property destruction and theft. Additionally, the Department directs the Board's attention to Applicant's polygraph examination where, when asked whether his ex-girlfriend was asleep when he had sex with her, he responded by saying "I don't know, I can't speak for her," and "I don't think I cared." (Response.)

Findings of Relevant Facts

Biographical Information

Applicant is a 32-year-old male who lives in Cicero, Illinois. Prior to applying to become a Chicago Police Officer, Applicant served in the military. (Notice, p. 4.) There is no other biographical information in the record.

Destruction of Property and Theft

During his polygraph examination, Applicant admitted to the following: (1) in 2015, he slashed the tires on three bicycles with a knife after leaving a bar in Champaign, IL; and (2) in 2017, he stole a glass cup or utility knife from a supermarket in France. (*Id.*, p. 3.) In both instances, Applicant stated that he had been drinking alcohol before the incidents occurred. (*Id.*; Appeal, p. 2.) In his Appeal, Applicant takes responsibility for both events, and states that he has taken deliberate steps to “massively cut down on drinking.” (Appeal, p. 2.)

Sexual Assault

Victim Interview

As part of the investigation process, an investigator from KENTECH consulting interviewed [Name redacted], Applicant’s former girlfriend. (Notice, pp. 3-4.)

During the interview, Roubel disclosed that she had a prior relationship with the candidate and alleged that he sexually assaulted her in January 2019. (*Id.*) [Name redacted] explained that she met Applicant during their time in the US Army reserves, and that they dated from 2015 to 2016. (*Id.*) According to [Name redacted], she agreed to accompany Applicant to their annual military ball, which took place in a western suburb of Chicago. (*Id.*) [Name redacted] clarified that she explicitly informed Applicant that their attendance was solely for the purpose of participating in the military ball and not for a “social outing.” (*Id.*)

During the event, [Name redacted] consumed excessive amounts of alcohol and proceeded to the room that Applicant had reserved for them with the intention of going to sleep. (*Id.*) [Name redacted] asserted that Applicant joined her in bed and expressed his desire to engage in sexual

activity. (*Id.*) Despite her clear refusal, [Name redacted] recalled that Applicant proceeded to sexually assault her. (*Id.*) The following morning, [Name redacted] departed and conveyed to Applicant that he had raped her, insisting that he cease any communication with her. (*Id.*) At that time, [Name redacted] chose not to report the incident to the police. (*Id.*)

Several months later, [Name redacted] decided to report the incident through her military chain of command. (*Id.*) She explained that during that period, she experienced feelings of depression, anger, and confusion, which prevented her from explicitly identifying the candidate as the perpetrator. (*Id.*) Regrettably, [Name redacted] expressed dissatisfaction with the limited investigative measures taken regarding the rape allegation and subsequently focused on moving forward with her life. (*Id.*)

Based on her experience, [Name redacted] firmly conveyed to the investigator that Applicant should be disqualified from assuming a position as a Chicago Police Officer. (*Id.*)

Applicant Polygraph

Applicant was questioned about the incident during a polygraph exam to which he admitted to many of the allegations and provided the following account: In January 2019, Applicant and [Name redacted] attended a military ball in Robbins, IL where they both consumed excessive amounts of alcohol during the event. (*Id.*) The following morning, while still intoxicated, Applicant claimed to have found himself and [Name redacted] unclothed in a hotel bed. (*Id.*) He acknowledged that, in that state, he engaged in sexual intercourse with [Name redacted]. (*Id.*) When asked if [Name redacted] was asleep during the incident, Applicant responded during the polygraph that he “couldn’t speak for her,” but indicated he did not believe it “mattered to him at the time.” (*Id.*) Regardless of her state of consciousness, Applicant expressed his belief during the polygraph that [Name redacted] was still under the influence of alcohol at the time of the sexual intercourse. (*Id.*)

Applicant Appeal

In his appeal, Applicant elaborates on the answer he gave during his polygraph examination and claims that the following occurred: that after the military ball ended, he offered to go to a vehicle that was parked outside of where him and [Name redacted] were staying to grab her bags. (Appeal, p. 1.) Apparently, upon coming back with her belongings, Applicant found her in bed, still wearing his clothes. (*Id.*) After waking her up to inform her of the items he had brought, Applicant's memory becomes fuzzy, as he purportedly fell asleep shortly thereafter. (*Id.*) When he woke up the next morning, he noticed that she was lying naked in bed. (*Id.*) Still feeling groggy and intoxicated, Applicant gently nudged [Name redacted] awake to explore the possibility of intimacy. (*Id.*) Applicant claims that while [Name redacted] initially responded positively with her body movements, after a few seconds, she told him to "stop" to which he claims he promptly did. (*Id.*) Following this interaction, Applicant maintains that they both got ready for the day, and he then dropped her off at the airport. (*Id.*) Hours later, through a text message, [Name redacted] accused Applicant of rape. Because he claims he was surprised by this allegation, Applicant subsequently blocked [Name redacted] number.

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 Criminal Conduct

The relevant Special Order (the "Special Order") contains the "Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer." Section IV (B) (1) of

the Special Order governs disqualification based on criminal conduct and states that "...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."

The Department's decision to remove Applicant from the Eligibility List based on criminal conduct stems from two incidents, namely: (1) the 2015 incident where he destroyed property by slashing the tires on three bicycles with a knife after leaving a bar in Champaign, IL; and (2) the 2017 incident where he stole a glass cup or utility knife from a supermarket in France. (*Id.*, p. 3.) While applicant was never charged or convicted for this conduct, Applicant has admitted to the above activity, which is criminal in nature. Moreover, there are no mitigating circumstances that would serve to excuse this conduct, as Applicant admits that he was drunk at the time of both incidents, suggesting that if Applicant were to become a Chicago police officer, the Department would rightfully fear that Applicant could engage in criminal wrongdoing if and when Applicant drinks alcohol. Accordingly, the Department did not err when it decided to remove the Applicant from the Eligibility List based on this conduct.

Disqualification Based on Other Criminal Conduct – Sexual Misconduct

Section IV(B)(7)(f) of the Special Order states that "[a]ny applicant, who has been convicted of or who has engaged in conduct constituting a misdemeanor sex offense may be found unsuitable, depending on the nature of the incident and the severity of the conduct." The Department's decision to remove Applicant from the Eligibility List based on sexual misconduct stems from a disturbing event where Applicant's ex-girlfriend credibly claimed that Applicant sexually assaulted her following a military ball. Applicant's ex-girlfriend was so traumatized by the incident that she became depressed angry and confused. While Applicant denies some of the details surrounding the incident, during his polygraph examination, he admitted to engaging in

intercourse with his ex-girlfriend even though he was not sure whether she was awake or asleep. Applicant further stated during his polygraph examination that at the time of the incident “it did not matter to him” whether his ex-girlfriend was conscious during this sexual encounter. While Applicant, in his appeal, tries to put a different light on the encounter, the evidence in the record suggests that his ex-girlfriend’s story is credible, that she should be believed and, in her words, Applicant should never become a Chicago police officer. Accordingly, based on the evidence in the record, the Department did not err when it removed Applicant from the Eligibility List based on this incident, and its decision to remove Applicant from the Eligibility List should be **affirmed**.

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/ 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-

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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 **affirmed**.

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