

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 July 19, 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:

6. Felonies

"An applicant who has engaged in any conduct which would constitute a felony is not eligible for employment." (Background Investigation Report, p. 1)

Department cited the following conduct, in summary:

Arrest - Unlawful Use of a Weapon (September 6, 1998). Applicant disclosed the arrest on his Personal History Questionnaire ("PHQ") and during the polygraph exam pre-test admissions. A firearm was found in Applicant's backpack in his high school. Investigator reported the case and arrest reports were unavailable because the records were expunged. (Background Investigation Report, p. 2-3)

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:

There were seven (7) listed incidents of conduct cited for this disqualification basis.

Battery. There were five (5) incidents in which Applicant was listed as "suspect," "offender," and/or was arrested for Battery charges, three (3) of which were Domestic-Simple, one (1) Simple and one (1) Make Physical Contact.

Three (3) Battery - Domestic - Simple.

Arrest/"Suspect" - June 29, 2014. Background Investigator noted that a review of the case report revealed Applicant engaged in a verbal altercation with the mother of his child over visitation rights, grabbed the woman by the face and began choking her. It was reported the woman's brother, also listed as a victim, "attempted to intervene" but Applicant began to hit him about the face and body with his fist. (Background Investigation Report, p. 3)

"Suspect" - June 20, 2018. The case report was reviewed by Background Investigator who summarized the narrative that Applicant struck his ex-girlfriend in the head with a gallon of milk while she was sat in a vehicle. (Background Investigation Report, p. 2-3)

"Suspect" - July 23, 2022. A case report was reviewed and summarized by the Background Investigator that reported Applicant's child told the mother that during the visit with Applicant the child was grabbed around the neck, slapped about his face and punched in the chest as a form of discipline. The incident resulted in a state child services investigation. (Background Investigation Report, p. 2)

One (1) Battery - Simple.

Arrest/"Offender" - May 15, 2001. A case report summarized by Background Investigator stated that Applicant pushed a schoolteacher after Applicant refused to leave her "division room." Applicant was arrested, processed, and given a court date. (Background Investigation Report, p. 3)

One (1) Battery - Make Physical Contact

Arrest - March 6, 2009. Background Investigator reported that Applicant said Applicant engaged in an altercation with his friend's girlfriend who attempted to kick Applicant's car. In the pre-polygraph questionnaire Applicant stated that after the girl kicked his car, Applicant jumped out of the car and the girl fell. Investigator noted that the arrest and case reports were not available because the records were expunged. (Background Investigation Report, p. 3)

Assault - Simple.

"Suspect" - (October 16, 2000). Background Investigator reported that only the Detective Case Supplementary Report was available in which it was noted that the alleged victim's guardian reported the incident. It was administratively closed because the guardian did not want to prosecute. Both alleged victim and Applicant were said to be 16 years old at the time. (Background Investigation Report, p. 3)

Criminal Sexual Abuse.

Arrest - (January 6, 1998). Background Investigator noted that due to the remoteness of the incident the original case report was purged from Department's Records Division, save for the alleged victim's name. (Background Investigation Report, p. 3-4)

Basis #3

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

7. Other Criminal Conduct

d. Conduct Involving the Unlawful Use of Weapons

"Police officers are generally required to possess and occasionally use weapons in the exercise of their duties. An applicant's prior unlawful use of a weapon demonstrates his or her inability to handle weapons judiciously, a vital requirement necessary to protect the public and its trust in the police. Therefore, any conduct involving the unlawful use of weapons will be grounds for disqualification. Conduct involving the unlawful use of weapons includes but is not limited to, conduct which would constitute the knowing sale, manufacture, purchase, possession, carrying or use of any prohibited weapon, ammunition, enhancements, or projectiles; the discharge of any weapon in a prohibited manner; or gunrunning. 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. 4)

Department cited the following conduct, in summary:

Applicant admitted in his PHQ, pre-polygraph exam questionnaire and during the background home interview that he had been arrested for Unlawful Use of a Weapon as detailed in Basis #1 above. (Background Investigation Report, p. 4)

Basis #4

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

7. Other Criminal Conduct

f. Conduct Concerning Sexual Misconduct

"Preventing officer-involved sexual misconduct and related abuses of power is of the utmost importance to the Chicago Police Department and is necessary to ensure public trust in the police and maintain a safe, healthy, and productive work environment. Accordingly, any 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. Any applicant found by a former employer, education institution, or governmental agency, to have committed an act of sexual harassment or misconduct may be found unsuitable for employment, depending on the nature of the incident(s) and the severity of the conduct. Any applicant previously disciplined for, or resigned in lieu of discipline, an act of sexual harassment or misconduct may be found unsuitable for employment, depending on the nature of the incident(s) and the severity of the conduct." (Background Investigation Report, p. 5)

Department cited the following conduct, in summary:

The alleged January 6, 1998 Criminal Sexual Abuse conduct described in Basis #1 above.

Basis #5

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 employments, 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." (Background Investigation Report, p. 5)

Department cited the following conduct, in summary:

Arrest/"Suspect" - Violate Order of Protection (August 23, 2014). Applicant was alleged to have violated the Order of Protection by asking a third party to speak to the mother of his child regarding visitation. (Background Investigation Report, p. 5-6)

PHQ was submitted July 20, 2021. Applicant's date of birth is January 14, 1984.

(Background Investigation Report, p. 1)

Appeal, Response and Reply

The following is a summary.

Appeal.

Applicant asked why he was being condemned for telling the truth and posited to the Police Board: "Members of the Board I ask all of you was I supposed to lie?" Additionally, Applicant stated he believes in Due Process which he termed "a requirement that legal matters be resolved according to established rules and principles, and that individuals be treated fairly." He further stated, "Given this fact I asked the members of the Board am I being treated fairly?"

(Appeal)

Applicant asserted he worked for County of DuPage for nearly six (6) years, having

passed a background check as extensively as the Department and was given clearance to access the courthouse and jail, saying that should be taken into consideration that shows he is trustworthy. He also noted that his FOID card is in good standing and he was issued a PERC Card.¹ (Appeal)

Arrest - September 6, 1998 Unlawful Use of Firearm arrest, Applicant stated he took responsibility for "holding a firearm at another kid and learned my lesson, and served my penalty" and that he was 13-years-old at the time. In his Reply he stated that he was holding the gun for someone else. Applicant also supplied a letter of reference from a retired juvenile court probation officer who stated he was Applicant's probation officer for the year probation Applicant served. It was stated Applicant completed his community service, attended school regularly, faced his responsibilities and cooperated fully. The retired probation officer reported he reunited with Applicant several years ago and they have remained in contact since, and that Applicant seeks him out for advice. The individual described himself as Applicant's mentor, advisor and friend and provided a phone number for further questions. (Appeal and Exhibits, Bravo letter of support).

Three (3) Domestic Battery Incidents. Arrest/"Suspect" (June 29, 2014; June 20, 2018) and Arrest - Violate Protection Order (August 23, 2014). Applicant explained these were unfounded and part of a custody battle and failed attempts by the mother of his child to prevent him from seeing the child. Applicant attached court Orders with findings of "NOT GUILTY" for the Battery case and "NO PROBABLE CAUSE" and no prosecution for the alleged violation of the Protective Order (Appeal and Exhibits). Applicant's girlfriend of five (5) years stated she

¹ Appeals Officer notes Permanent Employee Registration Card (PERC) are issued by Illinois Department of Financial and Professional Regulation ("IDFPR") and is needed for many security professions and requires passing certain background checks.

was with Applicant on June 20, 2018, and that the incident in which the mother alleged Applicant hit her in the head with a gallon of milk while she sat in the vehicle did not happen (Appeal Exhibits, [Name redacted] letter of support). Applicant also provided an Order dated September 6, 2022, vacating another Emergency Order of Protection entered July 25, 2022, and extended August 15, 2022. Applicant stated the child services investigation concluded the allegations were unfounded. (Appeal and Exhibits).

Applicant submitted documentation from State of Illinois showing he completed semi-automatic revolver training; a Firearm Owner Identification card ("FOID") which appeared to be issued in 2023; and a certificate of license registration as a Stationary Engineer (engines, boilers, steam-generated apparatus) from the City's Department of Buildings. (Appeal Exhibits)

Applicant complained that the Department "sat on [his] file for two years," and further noted that as of January 14, 2024, he will no longer be eligible because he would have turned 40 years old.

Applicant submitted nine (9) letters in support of his application. All spoke to Applicant's general character in the capacities in which they've known him be it personal or professional. Only one (1) of the letters had personal knowledge of any of the incidents (June 20, 2018) as previously noted herein, and one (1) addressed personal knowledge of his probation for the Unlawful Use of Weapon incident, as previously noted herein.

(Appeal and Exhibits)

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. (Response)

Reply. Applicant noted Department's Response added nothing more and asked for an expedited proceeding because he was turning 40 on January 14, 2024. He added that the in the

Unlawful Use of Firearm conduct, he was holding the gun for someone else. He also included a 10th (tenth) letter of support.

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 July 20, 2021. His 40th birthday was January 14, 2024.

As to Disqualifications Based on Criminal Conduct - Felonies and Unlawful Use of Weapons, 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 Applicant had a handgun in his backpack and pointed it at another student when Applicant was 13 years old. Within the definitions of the hiring standards that action qualifies as "... possession, carrying or use of any prohibited weapon." Under Illinois law, unlawful possession of a firearm by a juvenile in the form of a handgun is a felony (720 ILCS 5/23-3.1). According to the hiring standards disqualification under "Felonies," an "applicant who has engaged in any conduct which would constitute a felony **is not eligible for employment**" (emphasis added). Additionally, the standards require that an applicant who has committed an act that falls within the scope of Conduct Involving the Unlawful Use of Weapons that constitutes a felony **will be found unsuitable for employment** (emphasis added). For felonies, there are no exceptions that are dependent upon the age at which the conduct occurred.

It also does not provide exceptions for subsequent weapons training.

As to the alleged Domestic Battery and Violation of Protective Order incidents, the Appeals Officer finds Applicant DID provide sufficient additional facts and/or adequately specified why Department erred in its factual determination. Applicant provided a credible account supported by court Orders and a witness statement that the Appeals Officer found more persuasive than a summation of a case report with no further investigation by the Background Investigator. There were no convictions and these bases for disqualification came solely from case reports of alleged victim's statements with whom Applicant was engaged in a custody battle for his child and for which Applicant and a witness for one incident denied.

As to the alleged Criminal Sexual Abuse Arrest - (January 6, 1998), the Appeals Officer finds Applicant DID provide sufficient additional facts and/or adequately specified why Department erred in its factual determination. It is unclear what conduct occurred. There were no details offered. Applicant would have been 13 years old.

As to the alleged Assault - Simple - "Suspect" (October 16, 2000), the Appeals Officer finds Applicant DID provide sufficient additional facts and/or adequately specified why Department erred in its factual determination. It is unclear what conduct occurred. No details were offered. Applicant would have been 15 years old at the time (even though Investigator listed him as 16 years old).

As to the arrest for Battery - Simple (May 15, 2001), 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. It was not disputed that Applicant pushed a schoolteacher. Applicant would have been 16 years old at the time.

As to the arrest for Battery - Make Physical Contact (March 6, 2009), 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. It was not disputed that Applicant had an altercation with an individual who kicked or attempted to kick Applicant's car. Applicant did not directly deny making contact with the individual, but rather explained that he "jumped out of the car and the girl fell." More likely than not he or his car door as he "jumped out" made contact with the individual that caused her to fall.

Based on the findings above as to the May 15, 2001, and March 6, 2009 incidents above, the Appeals Officer finds APPLICANT DID NOT provide sufficient additional facts and/or adequately specify why Department erred in its factual determination that conduct that qualifies as Conduct Indicating Violent Tendencies occurred more than one (1) time in Applicant's life. The hiring standards provide that an applicant who has engaged in any act falling within the scope of Conduct Indicating Violent Tendencies **more than one (1) time in his life, will be found unsuitable for employment** (emphasis added). No exception for age or remoteness in time is provided when more than one incident has occurred.

Letters of support do not negate the conduct. Being truthful is expected during the application process whether the truthful information is beneficial or prejudicial to the applicant. Applicants are not "condemned" for being truthful, they are disqualified if disqualifying conduct occurred.

By a preponderance of the evidence, except as to Bases #4 and #5 herein, **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.

CONCLUSIONS OF LAW

Pursuant to the Municipal Code of Chicago ("MCC") 2-84-030 the standard of review for

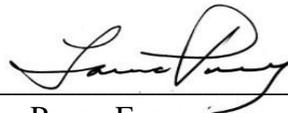
appeals of disqualification and removal of an applicant's name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department's decision to remove the applicant from the Eligibility List was erroneous (MCC 2-84-035(c)). Therefore, according to the law and procedures, 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 15, 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