

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED]) **No. 23 AA 45**
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 October 19, 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”) due to the results of a background investigation found in the Applicant Background Investigation Report (“Background Investigation Report”), along with the reason(s) for the disqualification decision (collectively, “Notice”).

On December 14, 2023 an email was received from Applicant seeking to appeal the disqualification decision to the Police Board by 1) filing a written request specifying why the Department of Police 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”).

On January 24, 2024, the Office of Public Safety Administration filed with the Police Board a Response to Applicant’s Appeal (“Response”). Police Board Appeals Officer Laura Parry has 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 the Parties

All filings were timely as provided by Section 2-84-035(b) of the Municipal Code of Chicago and the Police Board City of Chicago Rules of Procedure ("Police Board Rules of Procedure").

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

Basis #1

IV-B. Disqualification Based on Criminal Conduct

1. "One purpose of the 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 the 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.
3. Unlike a record of conviction or an admission, an arrest record merely indicates an allegation of criminal conduct and must be investigated further in order to be the basis for disqualification. When investigating an arrest record, the investigator must, to the extent reasonably possible, secure evidence, including but not limited to statements obtained from interviews with police officers, victims and witnesses, which will be used to determine whether the applicant engaged in disqualifying conduct.
4. In describing examples of disqualifying conduct, these Standards may refer to the Illinois Compiled Statutes. The references to the Illinois Compiled Statutes are descriptive only. Any similar federal offense, military offense or offense in any other jurisdiction may serve as a basis for disqualification.
5. The Standards are as comprehensive as possible, however as noted above, they

cannot encompass every possible scenario. Failure to enumerate an particular offense does not exclude such offense from being the basis for disqualification. Commission of any criminal or quasi-criminal act may result in disqualification from employment as a Police Officer if it is determined that the acts or omissions of the applicant make him or her unsuitable for the position of Police Officer. (Background Investigation Report, p. 1-2)

Department cited the following conduct and/or alleged conduct, in summary:

Applicant pleaded guilty on September 8, 2017 to an amended charge of misdemeanor Carry/Possession Firearm/1st for having a loaded firearm under the driver's seat when operating a motor vehicle on a suspended driver's license on March 10, 2017, and which Applicant admitted to responding officers at the time. A .45 caliber handgun containing 10 live rounds of ammunition was recovered. Applicant did not have a Firearm Owner's Identification ("FOID") or Concealed Carry License ("CCL" a/k/a "CCW"). (Background Investigation Report, p. 2)

During Pre-Polygraph Admissions, Applicant disclosed that when he was about 22 or 23 years old, he cashed a check he received from working the election polling place at one currency exchange and then took the same check and cashed it again at a second currency exchange. The check was flagged, Applicant's mother was contacted, and she made Applicant return the money.

Additionally, it was reported Applicant stated that he and his cousins looted a liquor store "during the 2020 riots" and stole multiple bottles of various liquor and wine, and then he personally resold four of the items for \$20/bottle.

It was also reported Applicant recounted taking another friend's "weed" while in college as he left his girlfriend's apartment, knowing he wouldn't see the person again and that he wouldn't "get caught."

Department Investigator concluded:

"The Applicant's background investigation revealed instances of criminal activity and dishonesty in his past, which are in direct contradiction to the standard of integrity, trustworthiness,

and ethical conduct that we uphold within our department. The Chicago Police Department places utmost importance on maintaining public trust and safety, and believe that individuals with a history of criminal behavior and dishonesty are not aligned with the core values and the responsibilities associated with the role."

(Background Investigation Report, p. 2-3).

Appeal and Response

Appeal, in summary

Applicant explained that he made a wrong decision and was unaware of the "urgent proper steps" involved in owning a gun and transporting it from college home to Chicago, and had intended to take the two-day CCL class and send his FOID application in after he received his tax return. After completing probation for the DUI and having a loaded firearm in the car without proper licensing, he applied for the FOID, took the CCL class and is currently properly licensed.

Applicant explained that as a poll worker he received the paycheck and went to cash it. Not having any job experience getting paid, he took the check and asked the teller when the deposit should go into his account, to which she told him if it didn't go through to go to another currency exchange. He said that on that advice, he went to another location and cashed it. He said that it didn't appear in his account, and he assumed it wouldn't, but it was flagged, his mother was contacted the same day and he took the money back. Applicant asserted that he was 22 and that it was an honest mistake.

Lastly, during 2020, Applicant worked as a Direct Support Professional aiding and assisting mentally disabled patients, and after getting off work he went to a friend's house when they decided to go to the local liquor store. Once there, Applicant stated they could not even go into the store because people were stealing things out of the store. Applicant stated that he never told the polygraph examiner that he and his friends were involved in the stealing, but rather that

they witnessed it and saw "them" selling the products later that day. He claimed the polygraph examiner "twisted [his] words" when she asked him about the unfortunate events during that time.

Applicant also explained he told the polygraph examiner that a mutual friend left "weed" on the counter at his girlfriend's, and with her knowledge Applicant took it. He said "[i]t wasn't anything to neither steal, use nor get caught for. I simply picked it up as if you pick up anything else and thought nothing of it."

Applicant stated that while he understood why his background may have disqualified him and that he can appreciate upholding the hiring standards, he wanted to provide a better understanding of and information regarding his background. He also stated that his past actions don't define his as a person or his character, that now 30 years old, they happened a long time ago when he was young and still learning, and that he's made very significant changes in his life such as completing school and maintaining a job. Applicant explained his desire to help youth, educate them in taking the right steps in life, especially in his own community, and protecting the people. He explained that through the Application process he gained even more respect and understanding for the job, knowing it's a major responsibility to have trust in those you work with. He explained he was completely open and honest in the application process. (Appeal).

Response, in summary

Department iterated the conduct alleged and specified in greater enumeration the individual Illinois Statutes Applicant's conduct would be in violation of, regardless of whether there was an actual conviction. It also sought to add Bases for Disqualification based on the conduct cited in the Notice AND additional conduct.

As to conduct of driving on a suspended license and having a loaded firearm under the driver's seat of a vehicle on March 10, 2017, Department argued that charges were reduced from felony to misdemeanor, but the conduct would qualify as felony crime under:

"720 ILCS: Aggravated Unlawful Use of Weapon/Loaded/no FOID" and

"625 ILCS: Driving on a Suspended License"

Department alleged additional Bases for the conduct of March 10, 2017, citing:

Disqualification Based on Criminal Conduct - Felonies (Section IV- B.6.)

"An applicant who has engaged in any conduct which would constitute a felony is not eligible for employment." (Pre-Employment Disqualification Standards for Position on Police Officer, IV.B. 6.)

Disqualification Based on Criminal Conduct -Conduct Involving the Unlawful Use of Weapons (Section IV.-B.7. d.)

In relevant part: "... any conduct involving the unlawful use of weapons will be grounds for disqualification. Conduct involving unlawful use of weapons includes but is not limited to, conduct which would constitute... possession, carrying...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... 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." (Pre-Employment Disqualification Standards for Position on Police Officer, IV.B. 7.)

Disqualification Based on Driving Record (Section IV - C.)

In relevant part: "an applicant who has... any driving-related incidents which resulted in the suspension or revocation of a driver's license on two or more occasions, will be found unsuitable for employment." (Pre-Employment Disqualification Standards for Position on Police Officer, IV.C.)

As to Disqualification Based on Driving Record, Department alleged ADDITIONAL conduct of an arrest on October 28, 2019, after serving probation due to a warrant for an outstanding traffic violation in violation of 725 ILCS Issuance of Warrant issued out of Livingston County, Illinois.

For the conduct alleged in taking "weed" from the counter at his girlfriend's apartment, and in 2020 for accepting stolen liquor and selling it, Department described the conduct as criminal under Illinois Statutes:

"720 ILCS 5/16-1 Theft"

For the conduct alleged in cashing the same check at two different currency exchanges, Department described the conduct as criminal under Illinois Statutes:

"720 ILCS 5/17-1 Deceptive Practices"

Department asserted that the evidence supports its decision to disqualify Applicant and that it was within its rights to do so, citing Illinois Appellate cases *Apostolov v. Johnson*, 2017 IL App (1st) 173408, ¶¶ 24, 31 and *Johnson v. O'Connor*, 2018 IL App (1st) 171930, ¶¶ 16-17, 20.

Additionally, Department averred that Applicant's past actions were extremely troubling, and had he been an employee of Department would have been in violation of multiple Department rules which violations would as would at least the one instance of felony serve in and of itself as a basis for disqualification.

Findings of Fact

All filings were timely filed as provided by Section 2-84-035(b) of the Municipal Code of Chicago ("MCC") and the Police Board City of Chicago Rules of Procedure ("Police Board Rules of Procedure").

Alleged Driving on a Suspended License, Loaded Firearm in Vehicle. There is no dispute that the conduct of March 10, 2017, involving Applicant driving on a suspended license and possessing a loaded firearm which he was carrying under the driver's seat of the vehicle occurred. Nor is it disputed that it was felony conduct, though convicted under an amended misdemeanor. By a preponderance of evidence, **Applicant DID NOT** provide sufficient additional facts directly related to or adequately specify why the Department erred in the factual determinations.

Alleged Theft of "weed." Applicant self-admitted that he did take "weed" from a counter in his girlfriend's apartment, with the girlfriend's knowledge, which indicates he had her permission to do so. There is no information as to whether it was intentionally or unintentionally left behind by someone else. By a preponderance of evidence, **Applicant DID** provide sufficient

additional facts directly related to and/or adequately specified why Department erred in the factual determination as to this conduct.

Alleged Stealing Liquor/Selling Stolen Liquor. Applicant disputed the polygraph examiner's take on what he told her during the pre-polygraph test. Applicant in detail recounted the 2020 events that occurred when people were looting the liquor store. The polygraph examiner reported that Applicant sold four bottles of liquor for \$20 each. This is a very specific detail, however, given the denial and recount from the person who was at the liquor store, and without direct quotes of the questions and answers given at the polygraph exam, the Hearing Officer finds Applicant's account credible. He rebutted the conduct alleged. He did not steal and sell bottles of liquor. By a preponderance of evidence, **Applicant DID** provide sufficient additional facts directly related to and/or adequately specified why Department erred in the factual determination as to this conduct.

Alleged Arrest for Outstanding Warrant. Applicant had the opportunity to file a Reply but chose not to do so. It is un rebutted that he was arrested October 28, 2019, on a warrant for outstanding traffic violations. By a preponderance of evidence, **Applicant DID NOT** provide sufficient additional facts directly related to or adequately specify why the Department erred in the factual determinations.

Findings, in summary as to the Additional Bases for Disqualification cited by Department:

Disqualification Based on Criminal Conduct, Felonies, Conduct Involving Unlawful Use of Weapon (IV. B., and IV.B. 6 and 7)

Applicant DID NOT provide sufficient additional facts directly related to or adequately specify why the Department erred in the factual determinations underlying the decision to disqualify related to the events of March 10, 2017.

Disqualification Based on Driving Record (IV. C.)

Applicant DID NOT provide sufficient additional facts directly related to or adequately specify why the Department erred in the factual determinations underlying the decision to disqualify related to the events of March 10, 2017, and October 28, 2019 because Applicant did not address this allegation in a Reply.

Conclusions of Law

Pursuant to Police Board Rules of Procedure, Department may in its Response add additional conduct, rationale and Bases for Disqualification, presumably because Applicant is afforded a Reply and there is no other formal mechanism to amend the Bases. The Notice "and the Response must contain all facts, evidence, or arguments in support of the Department's position; any omitted facts, evidence, or arguments are deemed waived." Police Board Rules of Procedure, Rule VII. E. Therefore, the Hearing Officer considered all additional bases, conduct and descriptions of statutes alleged.

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.

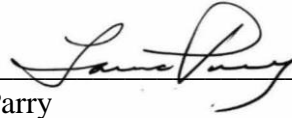
Applicant **DID NOT** show by a preponderance of the evidence for all the bases presented that Department erred in the exercise of its decision to remove Applicant's name from the Eligibility List for the reasons stated herein and any one basis will suffice to uphold a decision to

disqualify.

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,

A handwritten signature in cursive script, appearing to read "Laura Parry", is written over a horizontal line.

Laura Parry
Appeals Officer

Date: April 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 recommendation.

The Police Board hereby adopts the Appeals Officer’s findings, conclusions, and recommendation by a vote of 8 in favor (Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, 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, Ghian Foreman, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF APRIL, 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director