

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 24 AA 07**
APPLICANT FOR THE POSITION OF)
PROBATIONARY POLICE OFFICER,) **(Applicant No. [redacted])**
CITY OF CHICAGO.)

FINDINGS AND DECISION

[Name redacted] (hereinafter “Applicant”) applied for a probationary police officer position with the City of Chicago. In a letter dated December 27, 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, along with the reason(s) for the disqualification decision and the process for appeal. In support of its decision, Department attached the Candidate Background Investigation Summary (“Background Investigation Report”) in which Department cited conduct it alleged formed the bases of Disqualification(s) Based on Criminal Conduct (Collectively, “Notice”)

In a letter dated January 29, 2024, sent with attachments, Applicant appealed the disqualification decision to the Police Board by filing a written request seeking to 1) specify why the Department of Police (hereinafter referred to as “Department”) erred in the factual determinations underlying the disqualification decision *and/or* 2) bring to the Human Resources Board’s (“Board”) 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”). Department filed a Response March 13, 2024. No Reply was filed.

Police Board Appeals Officer Laura Parry 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 PARTIES

According to the Notice, 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:

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.

...

6. An applicant who has engaged in any conduct which would constitute a felony is not eligible for employment...

(3)1 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. 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.

1 It is unclear where this language appears in the hiring standards. The closest similar language is found in IV-B-7(c) Conduct Indicating Violent Tendencies (OPSA Special Order No. 21-01), however Department did not correctly cite the language there, either. The Appeals Officer did not consider this language in the analysis or Recommendation.

(Background Investigation Report, p. 1-2)

Department cited the following conduct, in summary:

May 20th, 2019, a report was filed with the police naming Applicant as a suspect in the conduct of posting on social media nude photographs of the Applicant's ex-boyfriend's girlfriend. Investigator reported speaking to Applicant about the incident on November 3, 2023, during which Applicant is said to have told the Investigator Applicant was unaware of any such police report but acknowledged that it happened when she was 19 and that it involved her first boyfriend and she was upset when she saw the photos. She was said to have told Investigator she also sent them to the alleged victim's mother.

The PHQ was submitted March 9, 2023.

(Background Investigation Report, p. 1-3)

Appeal and Response

The following is a summary.

Appeal. Applicant opened with extending her wishes that the Board is doing well and her apologies that she was involved in the conduct at issue, saying she made a mistake, is accountable for her actions, but asserts that there was a misunderstanding or oversight in evaluating the conduct and provided further information. Applicant explained that she did not post a photo on any social media, but that she sent a photo to the woman's mother after Applicant's husband showed Applicant photos of his ex on May 19, 2019. Applicant said this occurred when she was emotional from postpartum depression. Applicant explained she called the ex and expressed how she felt about the photo and asked the ex how she would feel if Applicant sent the photo to the ex's mother to which the ex replied she could care less, so Applicant sent the photo to the woman's mother. Applicant also explained the photo sent was not a nude photo but rather showed the woman "in a

crop top T-shirt with fitted mesh boy shorts." She further stated that she received a "mad" message from the ex after not returning her call, and Applicant guessed that the ex's mother was upset. Applicant stated she was young and doesn't agree with what she did five years ago. Applicant phoned the ex, sincerely apologized for the hurt she caused her and her mother. Applicant said the ex told her that she filed the police report because her mother told her to, to protect herself, and out of rage because the ex was upset that Applicant's husband had shown Applicant the photos the ex had shared with him. Applicant explained they each acknowledged their roles in the incident and moved on. Applicant attached what appeared to be screenshots of a text exchange with the ex in which Applicant apparently requested the ex send a letter explaining what happened and to which the ex declined, noting that she had spoken to the police where she filed the report and was told that because it was just a report and not a conviction and that it would not be on Applicant's record. It ended with the ex wishing Applicant "the best," and Applicant expressing gratitude.

(Appeal)

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. It asserted Applicant engaged in felonious conduct under 720 ILCS 5/5-4.5-452 Non-Consensual Dissemination of Private Sexual Images (Class 4 Felony). It asserted Applicant admitted in the background interview to posting nude photos on social media and sending them to the ex's mother.

Department added, "The applicant's history is extremely troubling [and] serves as grounds for disqualification."

(Response)

2 720 ILCS 5/5-4 describes the responsibilities of a corporation as Parties to a Crime. The Appeals Officer assumes there was a scrivener's error. The correct citation is 720 ILCS 5/11-23.5

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.

720 ILCS 5/11-23.5. Non-consensual dissemination of private sexual images. Dissemination must be non-consensual, and the image must be of an identifiable person whose intimate parts are exposed or is engaged in a sexual act. Additionally, the image needs to be obtained under circumstances a reasonable person would understand the image was to remain private or should have known the person depicted did not consent to the dissemination.

Department summarized the police report and asked Applicant about the incident. There was no further investigation reported. There is no description of what was shown in the photograph. The Investigator did not report speaking to the person who filed the report. There were no arrests.

Applicant credibly recounted the incident. The woman was clothed and there's no evidence she was engaged in a sexual act. The only dissemination was to the woman's mother, to which she consented when she told Applicant she could care less if Applicant sent it to her mother.

There was only the one incident occurring five years ago cited as the basis for disqualification.

By a preponderance of the evidence, **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations as to the bases presented.

CONCLUSIONS OF LAW

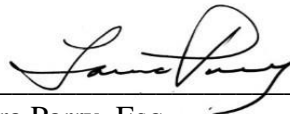
Pursuant to the Municipal Code of Chicago (“MCC”) 2-84-030 the standard of review for appeals of disqualification and removal of an applicant’s name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department’s decision to remove the applicant from the Eligibility List was erroneous (MCC 2-84-035(c)).

Applicant **DID** show by a preponderance of the evidence that Department **erred** in its decision to the 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 **REVERSED, and Applicant’s name be returned to the eligibility list.**

Respectfully submitted,



Laura Parry, Esq.
Appeals Officer

Date: May 9th, 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 5 in favor (Kyle Cooper, Paula Wolff, Steven Block, Mareilé Cusack, and Nanette Doorley) 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 she is **reinstated to the eligibility list**.

This decision and order are entered by a majority of the members of the Police Board:
Kyle Cooper, Paula Wolff, Steven Block, Mareilé Cusack, and Nanette Doorley.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF MAY 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director