

**BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO**

**IN THE MATTER OF THE APPEAL BY** )  
**[NAME REDACTED],** ) **No. 21 AA 02**  
**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 May 25, 2021, the Office of Public Safety Administration (“OPSA”) 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 reasons for the disqualification decision (“Notice”).

On July 23, 2021, Applicant appealed this decision to the Police Board by filing a written request specifying why the Department of Police 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 (“Appeal”).

On August 17, 2021, the Chicago Police Board received a copy of the Notice and the Office of Public Safety Administration’s response to Applicant’s Appeal (“Response”). On September 23, 2021, Applicant filed with the Police Board a reply to the Response (“Reply”). Police Board Appeals Officer Kyle Cooper has reviewed the Notice, Appeal, Response and Reply.

**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**

On July 23, 2021, Applicant filed a timely appeal as provided by Section 2-84-035(b) of the Municipal Code of Chicago. The Response and Reply were filed within the time period allowed by the Police Board Rules of Procedure.

According to the Notice, which expressly relies on and references a background investigation, Applicant was removed from the Eligibility List for two reasons: (1) his driving record; and (2) other conduct. With regards to his driving record, the Notice states that Applicant was removed from the Eligibility List because the background investigation revealed that, from 2002 – 2018, Applicant has been issued 26 driving citations and/or warnings. (Notice at pgs. 2-3.) Seven of these citations and/or warnings were for driving too fast for the conditions or driving over the statutory speed limit. (*Id.* at pg. 3.) The Notice further states that: (1) in 2006, Applicant was issued a citation for driving with a suspended or revoked driver’s license; and (2) that in 2007, Applicant was issued a citation for illegal possession of alcohol by a minor and for driving under the influence of alcohol (“DUI”). (*Id.*) With regards to other conduct, the Notice lists eight separate incidents involving Applicant from 2001 – 2008 that led to the generation of police reports and/or the issuance of citations. (*Id.* at pgs. 3-5.) These incidents, according to the Notice, involved an alleged theft, domestic trouble, underage drinking / possession of alcohol, contributing to the delinquency of a minor, and an incident from 2001 that involved throwing / breaking glass bottles in the street. (*Id.*)

In his Appeal, Applicant claims that the Office of Public Safety Administration

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wrongfully removed him from the Eligibility List for two main reasons. First, Applicant claims that, due to a “misattribution” in the computer system, he has wrongfully been disqualified for citations and infractions that never occurred. (Appeal at pgs. 1-2.) Specifically, Applicant maintains that: (1) he has never been cited or charged with a DUI; (2) has never had his driver’s license suspended / revoked or been cited for driving with a suspended / revoked license; and (3) has never been cited for contributing to the delinquency of a minor. (*Id.* at pgs. 2-3.) Applicant also claims that he was wrongfully removed from the Eligibility List because the remaining incidents referenced in the Notice, including his driving-related infractions, are either “exaggerated,” “wrong,” or “trivial.” (*Id.* at pg. 3.) Finally, in support of his Appeal, Applicant notes that he has spent the last 12 years working in security / law enforcement and that his last unfriendly encounter with the police occurred more than a decade and a half ago. (*Id.* at pgs. 4-5.)

In its Response, the Office of Public Safety Administration acknowledges that records regarding the DUI and “breaking bottles” incidents only list the Applicant as an “involved or other” party. (Resp. at pg. 1.) Notwithstanding this acknowledgement, it maintains that the information discovered during the background investigation justified removing Applicant from the Eligibility List. (*Id.*)

In his Reply, Applicant maintains that the background investigation upon which his removal was based is replete with errors. (Reply at pg. 1.) Applicant also states that he has had a single traffic violation in the last decade and that his underage drinking citations occurred years ago. (*Id.*)

### **Findings of Fact**

#### *Applicant's PHQ*

On June 21, 2017, Applicant submitted his Personal History Questionnaire (“PHQ”). (Appeal at Ex. A, pg. 13.) In his PHQ, Applicant disclosed information regarding only one criminal incident, an incident from 2006 that resulted in him being charged with and pleading guilty to underage drinking. (*Id.* at pg. 25.) According to the PHQ, this charge was “later dropped down to attempted underage drinking.” (*Id.*) Applicant answered “no” in response to question 55 asking whether he ever had his driver’s license suspended or revoked. (*Id.* at pg. 24.) He also answered “no” in response to question 56 asking whether he had ever been charged with a DUI. (*Id.*)

#### *Applicant's Criminal History*

Despite disclosing only one criminal incident on his PHQ, the background investigation uncovered other instances of criminal behavior for which Applicant was either cited, arrested, or charged. (*Id.* at pgs. 4, 36-52, 54, 105, 107, 109, 139.) Specifically, the background investigation revealed that Applicant has been arrested and/or cited five times for illegal possession and/or consumption of alcohol by a minor.<sup>1</sup> (*Id.*) Applicant does not deny these incidents. (Appeal at pg. 4.)

It must be acknowledged, however, that Applicant is correct in noting that there appears to be errors or, as he puts it, “misattributions” in some of the records used to determine his eligibility to become a probationary police officer. (*Id.* at pgs. 1, 3.) For example, while one record from the St. Charles Police Department indicates that Applicant received a citation for

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<sup>1</sup>Records from the St. Charles Police Department reveal that Applicant was arrested and/or cited for illegal possession and/or consumption of alcohol by a minor on or about the following dates: (1) March 30, 2002; (2) June 28, 2003; (3) March 23, 2005; (4) March 7, 2006; and (5) May 2, 2007. (*Id.* at pgs. 36-52, 109, 139.)

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having a suspended / revoked driver's license as a result of a March 7, 2006, underage drinking incident, there is nothing in the police reports or court documents in the record that indicates Applicant's license was ever suspended / revoked or that he received a ticket for having a suspended license. The same is true regarding Applicant's supposed DUI, which, according to one record from the St. Charles Police Department, he was charged with as a result of a May 2, 2007, incident where he received an underage drinking ticket. (Appeal Ex. A., at pg. 140.) The police reports and court documents from this incident that are in the record do not suggest that Applicant was ever charged with a DUI. (*See id.* at pgs. 36-52, 105-9.) Furthermore, while one record from the St. Charles Police Department indicates that Applicant was charged with contributing to the delinquency of a minor as a result of a June 28, 2003, underage drinking incident, this notation is clearly erroneous as Applicant was only 16 at the time and the criminal complaint associated with the incident confirms that Applicant was only charged with illegal possession and/or consumption of alcohol by a minor. (*Id.* at pgs. 47, 139-40.)

*Other Incidents*

The background investigation did, however, reveal the following, other incidents involving Applicant that led to the generation of police reports and/or the involvement of law enforcement:

<u>Date</u>	<u>Description of Incident</u>	<u>Disposition</u>
5/7/01	Applicant and other juveniles were caught throwing and breaking glass bottles in the street ( <i>Id.</i> at pgs. 2-3.)	No arrests were made
8/6/01	A witness making a delivery to a convenience store thought he saw Applicant trying to steal candy. The witness advised an employee of the convenience store, who subsequently asked Applicant to empty his pockets. In response, Applicant told the employee to "Fuck Off." ( <i>Id.</i> )	No arrests were made.

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<u>Date</u>	<u>Description of Incident</u>	<u>Disposition</u>
5/3/02	An officer initiated a traffic stop on a vehicle in which Applicant was a passenger. While the vehicle was coming to a stop, the officer observed Applicant making furtive and suspicious movements. A search of the vehicle revealed that Applicant possessed cigarettes. Because Applicant was underage, the cigarettes were confiscated. ( <i>Id.</i> )	No arrests were made.
6/21/06	A police officer conducting a premises check in a parking garage at 4 a.m. observed Applicant and a female companion in a vehicle with “fogged up” windows. Applicant was instructed to leave the premises and warned by the officer that sexual acts in public are against the law. ( <i>Id.</i> at pgs. 7, 145-6.)	Warning issued. No arrests were made.
3/3/07	Domestic Trouble. After getting into a verbal argument with a female companion, Applicant took her cell phone. The police subsequently showed up at Applicant’s residence. When asked why he took the phone, Applicant responded that he was “mad” and that the female had recently broken his phone. ( <i>Id.</i> at pgs. 7, 147-8.)	Applicant was required to return the phone and instructed not to contact the female. No arrests were made.
3/26/08	Theft under \$300. After being rude and disrespectful to a homeowner following a house party, Applicant and another individual were suspected of stealing money from the homeowner. When questioned by police, Applicant denied taking the money. ( <i>Id.</i> at pgs. 103-4.)	No arrests were made.

Applicant does not deny that the above incidents occurred. (*Id.* at pgs. 59-63.)

*Applicant’s Driving Record*

With regard to Applicant’s driving record, the background investigation revealed that, from 2002 – 2018, Applicant has been issued over 26 driving citations / warnings. (*Id.* at pgs. 138-142.) Over 13 of these driving citations / warnings are related to Applicant driving too fast for the conditions or driving over the statutory speed limit. (*Id.* at pgs. 59-63, 68-72, 139-142.)

*Disqualification Decision and Appeal*

Due to the results of his background investigation, on May 25, 2021, the Office of Public

Safety Administration sent Applicant written notice of its decision to remove him from the Eligibility List. This appeal followed.

### **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 Driving Record*

Special Order 18-01 (the “Special Order”) contains the “Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer.” (*See* Special Order 18-01.) Under section IV(C) of the Special Order, the Chicago Police Department may disqualify an applicant from consideration for a police officer position if the Applicant has a poor driving record. (*Id.* at pg. 3.) Specifically, section IV(C)(1) of the Special Order provides that an “... applicant who has a single incident involving reckless driving or driving under the influence of alcohol or other mood altering substances within the last five (5) years (from the date of PHQ submission); more than one DUI or reckless driving incident, regardless of the date of the incident; or 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.” (*Id.*) Section IV(C)(2) of the Special Order provides exceptions to the above standard that are inapplicable to this Appeal. (*Id.*)

Here, in support of its decision to remove Applicant from the Eligibility List based on his poor driving record, the Office of Public Safety Administration references three things: (1) a

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supposed citation Applicant received on March 7, 2006, for having a suspended / revoked driver's license; (2) a supposed DUI that Applicant was charged with on May 2, 2007; and (3) the fact that, from 2002 – 2018, Applicant has been issued over 26 driving citations / warnings, seven of which were for speeding. (Appeal Ex. A., at pgs. 2-8.) The record and controlling authority, however, reveals problems with each reason cited by the Office of Public Safety Administration in support of its decision to remove Applicant from the Eligibility List based on his driving record.

*Applicant's Supposed Citation for Having a Suspended / Revoked Driver's License*

While one record from the St. Charles Police Department indicates that, on March 7, 2006, Applicant received a citation for having a suspended / revoked driver's license (*id.* at pg. 140), the actual citation and complaint issued by the St. Charles Police Department on that day shows that the only offense committed by Applicant was the "illegal [alcohol] consumption by a minor." (*Id.* at pgs. 105-9.) Moreover, and most notably, the box for "driving while license suspended/revoked" is unchecked on the citation and complaint associated with the incident. (*Id.* at pgs. 105-9.) There is also nothing in the record that shows or establishes that Applicant's license was suspended prior to the March 7, 2006, underage drinking incident. Thus, because the primary source documents do not reveal that Applicant was cited for having a suspended / revoked license and there is nothing in the record that establishes that Applicant's license was actually suspended, the background investigation erred in stating that he was cited for having a suspended / revoked license driver's license on March 7, 2006. The Office of Public Safety Administration compounded this error by relying on it in support of its decision to remove Applicant from the Eligibility List based on his driving record.



*Applicant's Supposed DUI*

The record also demonstrates that the background investigation wrongly concluded that Applicant was charged with a DUI in connection with the May 2, 2007, incident where he received an underage drinking ticket. Similar to the situation with Applicant's supposed citation for having a suspended / revoked driver's license, one record from the St. Charles Police Department indicates that Applicant was charged with a DUI on May 2, 2007. (*Id.* at pg. 140.) However, the complaint and every other primary document related to this incident reveals that Applicant was charged solely with illegal alcohol possession /consumption by a minor on May 2, 2007. (*Id.* at pgs. 36-40.) There is no mention of a DUI anywhere in these primary documents. Applicant also strongly denies that he has ever been charged with a DUI and the Office of Public Safety Administration, in its Response, acknowledges that records regarding the DUI only refer to Applicant as an "involved or other" party. (*See id.* at pg. 69; Appeal at pg. 2; Response at pg. 1.) Thus, because the primary source documents do not reveal that Applicant was ever charged with a DUI, the background investigation erred in stating that he was charged with a DUI on May 2, 2007. The Office of Public Safety Administration compounded this error by relying on it in support of its decision to remove Applicant from the Eligibility List based on his driving record.

*Applicant's Driving Infractions*

The record reveals and it is undisputed that, from 2002 – 2018, Applicant has been issued over 26 driving citations / warnings, seven of which were for speeding. (Appeal Ex. A., pgs. 2-8.) While this driving record is certainly concerning, it is not, by itself, disqualifying. As stated above, Section IV(C)(1) of the Special Order lays out the bases for disqualification based on an Applicant's driving record. (*See* Special Order at 18-01 at pg. 7.) While this section generally

states that Applicants with poor driving records are “unable to meet th[e] requirement” of being able to operate vehicles in a “careful manner protective of the public,” it goes on to specifically state what would disqualify an individual under this standard. (*Id.*) In doing so, this section explicitly references reckless driving, DUIs and the suspension / revocation of a driver’s license. (*Id.*) However, this section neither references nor addresses speeding-related violations or warnings like the kind in Applicant’s driving record. (*See* Special Order at 18-01 at pg. 7.) Given the inclusion of other driving-related offenses, the omission of speeding violations appears intentional. Accordingly, it is the view of this appeals officer that speeding violations, by themselves, cannot serve as the basis to remove an Applicant from the Eligibility List based on his driving record.

Accordingly, because the record reveals that Applicant: (1) never had his license suspended / revoked; (2) never received a ticket for having a suspended / revoked driver’s license; and (3) was never charged with a DUI, the Office of Public Safety Administration’s decision to remove Applicant from the Eligibility List based on his driving record was erroneous. Applicant’s poor driving record does not save the Office of Public Safety Administration from this error, as the applicable standards for disqualification do not provide for dismissal solely on the basis of speeding violations and/or warnings. As will be discussed more fully below, however, this error is not dispositive to the recommended outcome of Applicant’s Appeal.

#### *Disqualification Based on Other Conduct*

Under section IV(H) of the Special Order, the Chicago Police Department may remove an applicant from the Eligibility List if the applicant 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

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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 employment, but when taken as a whole, exhibit that the applicant is not suited for employment as a police officer ....” (Special Order 18-01 at pgs. 8-9.)

In support of its decision to remove Applicant from the Eligibility List based on other conduct, the Office of Public Safety Administration references, among other things, Applicant’s multiple citations / arrests for the underage possession and/or consumption of alcohol, a situation involving domestic trouble, allegations regarding an alleged theft and multiple driving infractions. (Appeal Ex. A., at pgs. 2-8.) Applicant does not deny that these incidents occurred. Moreover, the record reveals that in many of these incidents, Applicant acted with a complete lack of respect and dignity for the rights of others. For example, in the March 3, 2007, incident, which occurred when the Applicant was twenty-years-old, a female companion had to call the police on him after he took her cell phone. (*Id.* at pgs. 7, 147-8.) When asked why he took the phone, he purportedly told the officer that he was “mad” and that he essentially wanted revenge because the female purportedly broke his cell phone three weeks prior to the incident. (*Id.* at pg. 148.) The way he referred to the female in the police report also exhibited a lack of respect and dignity for others, as he referred to the female as “just a booty call.” (*Id.*) In another incident, the March 26, 2008, incident, which occurred when Applicant was twenty-one-years-old, Applicant was named as a suspect in a theft. (*Id.* at pgs. 103-4.) While the complainant never saw Applicant take the money in question and Applicant denied taking the money, the complainant told the responding officer that she suspected Applicant of the theft because he was “very rude and disrespectful to her.” (*Id.* at pg. 104.) In fact, out of the two suspects she identified, she told the officer that she suspected Applicant was the culprit because he was “being the most

disrespectful of the two.” (*Id.*)

While it is true that many of the above incidents occurred years ago, Applicant has failed to prove, by a preponderance of the evidence, that the Office of Public Safety Administration erred in removing him from the Eligibility List based on other conduct, as there is substantial support in the record for the Office to find that Applicant engaged in conduct that exhibits a pattern of repeated abuse of authority, lack of respect for authority or law, and lack of respect for the dignity and rights of others.

### **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

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Appeals Officer

Date: October 14, 2021

## **POLICE BOARD FINDINGS AND 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, by a vote of 9 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareil  B. Cusack, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea L. Zopp) to 0 opposed, does not adopt the Appeals Officer's findings, conclusions, and recommendation, and finds that the Applicant met the burden of showing, by a preponderance of the evidence, that the decision to remove him from the Eligibility List was erroneous for the following reasons.

According to the Notice it provided to Applicant, the Office of Public Safety Administration ("OPSA") removed Applicant from the Eligibility List for two reasons: (1) his driving record, and (2) other conduct that revealed a pattern of disrespect for the law and for others. But, as the Appeals Officer details, the background investigation into Applicant's driving record was flawed and shows that Applicant's driving record does not provide an adequate basis for his removal. Given these flaws and that the remaining conduct at issue—conduct that is more than a decade old—does not reveal a "pattern of repeated abuse of authority, lack of respect for authority or law, [or] lack of respect for the dignity and rights of others," the Board finds that OPSA erred by removing Applicant from the Eligibility List.

*First*, Applicant's driving record. As the Appeals Officer notes in his Conclusions, there are three driving-related circumstances under which the Chicago Police Department may disqualify an applicant from consideration for the position: 1) a single incident involving reckless driving or driving under the influence within the last five years, 2) more than one DUI or reckless driving incident, regardless of the date of the incident, and 3) any driving-related

incidents which resulted in the suspension or revocation of a driver's license on two or more occasions. Relying on the background report, OPSA found Applicant ineligible because he allegedly was cited in 2006 for driving with a revoked driver's license, he allegedly was charged with a DUI in 2007, and he was issued 26 driving citations over a 16-year period. But as Applicant claims and as the Appeals Officer describes in detail, nothing in the Record shows that Applicant's license was suspended prior to the 2006 incident. Nor does the Record show that Applicant was ever cited for driving with a suspended or revoked license. The 2007 incident is similarly faulty. The Board agrees with the Appeals Officer that "[t]he record reveals that ... the Office of Public Safety Administration's decision to remove Applicant from the Eligibility List based on his driving record was erroneous."

*Second*, Applicant's "other conduct." The Board disagrees with the Appeals Officer that the Record shows that Applicant has otherwise engaged in disqualifying conduct. Under section IV(H) of the Special Order, the Chicago Police Department may remove an applicant from the Eligibility List if the applicant has "engaged in conduct that exhibits a pattern of repeated abuse of authority; lack of respect for authority or law; [or] lack of respect for the dignity and rights of others[.]" The Appeals Officer concludes that there is "substantial support in the record" for OPSA to find that Applicant engaged in such a pattern.

The actions cited by the Appeals Officer, however, say little about Applicant's character as an adult or demonstrate traits that make Applicant unsuitable for employment. Besides Applicant's driving record, nearly every action that OPSA cites in support of its decision occurred more than a decade ago. Moreover, many of the actions (including Applicant's possession or consumption of alcohol as a minor, throwing and breaking glass bottles in the street, and an attempt to steal candy from a convenience store) likely are direct products of his

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age: these actions occurred when Applicant was fourteen years old. The remaining incidents, which occurred no later than March of 2008, consist of “a dispute with a female companion” and Applicant’s use of disrespectful language (though, admittedly, Applicant was accused of theft at one point). The Board does not condone Applicant’s behavior, but also does not believe that his behavior is disqualifying. *See, e.g., Schware v. Bd. of Bar Examiners of State of N.M.*, 353 U.S. 232, 239-40 (1957) (finding it improper for the State of New Mexico to exclude a bar applicant where there was “nothing in the record [to suggest] ... that [the applicant] ... engaged in any conduct during the past 15 years which reflects adversely on his character”); *Patterson v. City of Chicago*, No. 15-CV-4139, 2017 WL 770991, at \*4 (N.D. Ill. Feb. 28, 2017) (Evidence that consisted of allegations that had not been proven and two incidents that happened “nearly ten years ago ... [was] minimally probative.”). Applicants and officers in the Chicago Police Department are and will be held to the highest standards. But we cannot expect them to have an immaculate record at the age of 14.

Applicant has shown that the background check that the Police Department relied upon was faulty. The remaining conduct that OPSA cites, which occurred almost 15 years ago, says little about Applicant’s character today and whether Applicant—who has spent the last 12 years working in security and law enforcement—is fit to serve as a probationary police officer. Accordingly, the Board finds that Applicant has shown that the Office of Public Safety Administration’s decision to remove him from the Eligibility List was erroneous.

**NOW THEREFORE, IT IS HEREBY ORDERED** that the decision to remove [name redacted], Applicant No. [redacted], from the list of eligible applicants for the position of probationary police officer is **reversed**, and he is **reinstated to the Eligibility List**.

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This decision and order are entered by a majority of the members of the Police Board:

Ghian Foreman, Paula Wolff, Steven A. Block, Mareil  B. Cusack, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 24<sup>th</sup> DAY OF FEBRUARY, 2022.

Attested by:

/s/ GHIAN FOREMAN  
President

/s/ MAX A. CAPRONI  
Executive Director