

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 21 AA 05**
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 June 29, 2021, 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 (“Notice”).

On August 16, 2021 (and through his attorney, Frank Avila, on December 7, 2021), Applicant appealed this disqualification decision to the Police Board by filing a written request specifying why the Department of Police (“Department”) erred in the factual determinations underlying the disqualification decision and 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”). Applicant’s Appeal is deemed timely filed. No Response was filed by the Office of Public Safety Administration.

Police Board Appeals Officer Mamie Alexander has reviewed the Notice and Appeal.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Mamie Alexander, 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 filed a timely appeal as provided by Section 2-84-035(b) of the Municipal Code of Chicago, and his attorney's filing is deemed incorporated therein. No Response was filed within the time period allowed by the Police Board Rules of Procedure.

According to Department's Notice, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reason:

B. Disqualification Based on Criminal Conduct

7. Other Criminal Conduct

(c) Conduct Indicating Violent Tendencies

Police officers are required to act reasonably and professionally at all times and to maintain control of 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; disorderly conduct; and mob action. As noted above, an applicant who has engaged in any act falling within the scope of this section which constitutes a felony will be found unsuitable for employment. An applicant who has engaged in any act falling within the scope of this section which constitutes a misdemeanor within the last three (3) years (from the date of the PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment.

Applicant was disqualified by the Department based on the following statements made in his August 16, 2017, Personal History Questionnaire ("PHQ"):

1. In 2009, Applicant was involved in a physical fight with another male from his neighborhood. Witnesses called the Midlothian Police, and Applicant was arrested for battery.
2. Applicant was arrested for Domestic Battery in 2010 after his ex-girlfriend accused him of striking her and grabbing her neck.

Applicant appeals the decision, stating that Department “erred in their rejection,” and that the decision is “against the manifest weight of the evidence.” Applicant asserts that he has never been convicted of a crime, and that the allegations against him were false. Applicant also states that the two allegations that are the basis for his disqualification have been “dismissed and expunged,” and are not grounds for removal from the eligibility list.

Findings of Fact

Filings were timely.

Conduct Indicating Violent Tendencies

Department provided the factual basis for its decision to disqualify Applicant and remove his name from the eligibility list. It assessed that the physical fight with another male in 2009 and the domestic battery allegation in 2010 (both of which resulted in Applicant’s arrest), constituted conduct indicating violent tendencies and violated its hiring standards. Department articulated the standard by which the conduct was assessed by section and paragraph, and articulation of the standard gives reasonable notice as to the basis for disqualification.

Applicant denies that he committed the criminal acts alleged (namely, battery and domestic battery), and asserts that both cases were dismissed. Applicant states that he did not start or instigate the fight in 2009, and that he was arrested because he was the “only person of color” on the scene. He notes that self-defense is a “legitimate act,” under natural, federal and state law, and is not a basis for disqualification.

Applicant also asserts that the 2010 allegations of domestic battery were false. He states that his ex-girlfriend had a “number of personal problems,” and falsely accused him of striking her and grabbing her neck. Applicant states that the case was later “dropped,” and that his ex-

girlfriend apologized for “lying” and continued to contact him. He states that she admitted that the allegations were false, and as such, the incident should not be a basis for disqualification.

Applicant also stresses that Department is only aware of the allegations because he was “completely forthcoming and honest,” and disclosed everything, even though the records have been expunged.

Applicant’s Background

Applicant presents evidence regarding his background and character, noting that he has a “clean background” and has never been convicted of a crime. He is currently a full-time police officer for the City of Markham, where he has maintained an “unblemished” work record and received a “Meritorious Award” for his work with the public throughout the pandemic. Applicant states that he was born and raised in Chicago, and received a B.A. in Political Science from Governor’s State University. He also plays on the Chicago Police Department’s soccer team, and has interacted with many of its officers.

Applicant presents letters of recommendation from police officers, employers, professors, and others. He is described as professional, intelligent, well-spoken, compassionate, and motivated. Most of his references stated that Applicant would make a good police officer, as he is well-tempered, considerate, and active in the community. They also deny ever seeing him engage in violent behavior.

Applicant asserts that for all of the reasons stated above, the Department erred in its decision to disqualify him. Department did not file a Response to Applicant’s Appeal.

Conclusions of Law

Section B (7) (c) states: “Police officers are required to act reasonably and professionally at all times and to maintain control of their emotions in the exercise of their duty. These qualities

Police Board Case No. 21 AA 05
Findings and Decision

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."

Applicant related in his August 16, 2017 PHQ that in 2009, he was involved in a fight with another male that resulted in his arrest, and that in 2010, he was arrested following his ex-girlfriend's allegations that he struck her and grabbed her neck.

Section B (7) (c) further states: "an applicant who has engaged in any act falling within the scope of this section which constitutes a misdemeanor within the last three (3) years (from the date of the PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment." Based on Applicant's description of the 2009 and 2010 incidents, none of the conduct appears to constitute a felony. Department has not submitted evidence disputing the facts presented. Therefore, it must be determined whether Applicant engaged in conduct involving a misdemeanor within the last three years, or more than (1) time in his life.

Both the 2009 and 2010 incidents occurred more than 8 years prior to Applicant's PHQ, when he was between the ages of 19 and 21. Even if the incidents fall into the category of a misdemeanor, both occurred more than three years ago. Therefore, in order for Applicant to be disqualified, his conduct in both incidents must be deemed to be conduct that constitutes a misdemeanor.

Applicant asserts that his conduct in the 2009 fight was self-defense, and that the charges were later dismissed. In addition, he states that the 2010 domestic battery charges were based on false allegations, and that the case was later "dropped." Applicant stresses that in addition to being dismissed in court, the cases were later expunged by a judge, and are no longer on his record.

Section B (1) of the Standards specifically states that an applicant may be disqualified for

criminal conduct “even if the applicant was never convicted of a criminal offense,” and Section B (7) (c) states that “any conduct demonstrating a propensity for violence will be grounds for disqualification.” Therefore, Applicant’s argument that he was never convicted of a crime does not, in and of itself, bar disqualification.

However, Department failed to file a Response to the Appeal. Pursuant to Police Board Rule of Procedure VII.E, if Department elects to not file a Response, it is deemed to stand on the bases for disqualification and evidence in support thereof already of record. In his Appeal, Applicant provided additional facts directly related to the reasons for disqualification (namely, that the charges were false and the cases were ultimately dismissed and expunged). This information was not contained in Department’s Notice. Because no additional facts, evidence or arguments were submitted by Department to support its assertion that Applicant has a propensity for violence based on his 2009 and 2010 arrests, Applicant’s Appeal is undisputed.

Applicant repeatedly asserts that the 2010 domestic battery allegations were false, and Department’s Notice confirms that Applicant used the word “alleged” in his PHQ. Therefore, the facts as presented do not support disqualification based on Applicant’s 2010 arrest.

Assuming arguendo that Applicant’s conduct in the 2009 fight demonstrated a propensity for violence, the conduct was, at most, a misdemeanor that took place more than three years ago.

For the reasons stated above, Applicant has shown, by a preponderance of the evidence, that the decision to remove him from the Eligibility List was erroneous.

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**.

Respectfully submitted,

/s/ Mamie A. Alexander

Mamie Alexander
Appeals Officer

Date: February 16, 2022

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 9 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea L. Zopp) to 0 opposed.

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**.

This decision and order are entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea L. Zopp.

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

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director