

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)	
[NAME REDACTED],)	No. 22 AA 16
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 14, 2022, 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 which referenced OPSA Special Order No. 21-01/Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer (“Notice”).

Applicant appealed the disqualification decision to the Police Board in an undated letter by 1) filing a written request specifying why the Department of Police (hereinafter referred to as “Department”) 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”). Department filed its Response January 22, 2023.

Police Board Appeals Officer Laura Parry has reviewed the Notice and Appeal.

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

Applicant filed a timely appeal as provided by Section 2-84-035(b) of the Municipal Code of Chicago. Although the appeal letter is undated, it is presumed timely filed as it was accepted without objection and without notation to the contrary.

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 (Two Counts),

IV-D. Disqualification Based on Prior Employment History

2. "... [A]n applicant who has been discharged or disciplined for offenses which include any act of dishonesty... may be found unsuitable for employment."
(Notice (attached Report p.1))

Department cited the following conduct, in summary:

Count 1: "Conduct Policy 11.2.20.1, 29: failure to disclose or misrepresenting facts, or the making of any false or misleading statement on any application, examination, form or other official document report or form, or during any work-related investigation."

Applicant was observed by a police officer driving erratically in a vehicle with a cage, front and rear mounted lights, dash-mounted radar and radio console. It was registered to Applicant at his home address as a passenger vehicle. When approached by the officers at his home, the responding officer ("R/O") was quoted as having reported that Applicant said, "Don't worry mom, I got a badge, I can do what I want," and "I work for a special unit in the Cook County Sheriff's Department." It was also reported that he told the officer he had the vehicle so "anything off duty, he could assist." The background investigator reported that three on-duty police officers witnessed Applicant make the statements, but that Applicant denied making those statements.

Count 2: "CCDOC Policy 100: Conduct 100.5.5 – failure to disclose facts or misrepresenting facts, or making any false or misleading statement: 2. during the course of any

work-related investigation.”

An inmate in Applicant’s charge as a law enforcement officer took Applicant’s handcuffs and during the same shift Applicant’s partner left the key in a cell/tier door which another inmate then took. Applicant retrieved both items from the inmates. Applicant’s partner resigned in lieu of termination. Applicant did not receive any discipline. The termination was administratively closed because the case was not resolved within 18 months of the incident as required by the collective bargaining agreement. It was reported that a lieutenant at the facility opined Applicant would have been disciplined but not likely terminated. The background investigator reported Applicant explained he did not know the handcuffs and key were missing until the inmate gave them back, but video showed Applicant “looking down at his belt and key rings, making key turning motions with his hand with no key in his hand.” Another officer was also reported to have said in an interview that Applicant told the other officer that the key was missing, which prompted that officer to “actively” search for the key.

(Notice (attached Report p. 2-3, 11-13))

Basis #2 (Eleven Counts),

IV-D. Disqualification Based on Prior Employment History

2. "... [A]n applicant who has been discharged or disciplined for offenses which include... failure to follow regulations[...] may be found unsuitable for employment.”

Department cited the following conduct, in summary:

Applicant’s disciplinary record with a law enforcement agency showed four (4) **verbal reprimands** – three for refusal to work mandatory overtime (September 2020, November 2020, March 2021) and one for placing four detainees in the wrong cell/tier (November 2017); three (3) **written reprimands** – one for an unknown date and unknown infraction, another for the incident where findings were sustained by the law enforcement agency for an infraction of owning/operating the vehicle Applicant registered as a passenger vehicle that had front- and rear-

mounted lights, dash-mounted radar and radio console (April 2017), and the third for absence/late call (August 2017); and three (3) **suspensions** ranging from one to five days for absence/late call. “**Termination Administratively Closed, No Discipline issued**” was listed as the 11th count (it is presumed this is the conduct described in Basis #1 above in which inmates took possession of Applicant’s handcuffs and partner’s cell/tier key, which Applicant later retrieved but allegedly did not report and misrepresented when he knew the handcuffs and key were missing) (December 2016).

(Notice (attached Report p. 3, 11-13))

Basis #3 (Three Counts)

IV-D. Disqualification Based on Prior Employment History

3. "... [A]n applicant who, during previous employment, has engaged in any conduct that would have violated the Chicago[] Police Department's Rules and Regulations had the applicant been a Chicago Police Department employee, may be found unsuitable for employment.”

Count 1: Rules and Regulations of the Chicago Police Department V. Rules of Conduct. “Rule 1 – Violation of any law or ordinance. 625 ILCS 5/12-215 Sec 12-215: (a) the use of oscillating, rotating or flashing lights, whether lighted or unlighted, is prohibited except on: 1. Law enforcement vehicles of state, Federal or local authorities.”

Department cited the following conduct, in summary:

Applicant owned a “fully equipped” squad car with a prisoner cage, front- and rear-mounted lights, radar unit and radio console in April 2017, during the time he was employed with a law enforcement agency.

Count 2: Rules and Regulations of the Chicago Police Department V. Rules of Conduct. “Rule 3 – Any failure to promote the Department’s efforts to implement its Policy or accomplish its goals. This rule prohibits any omission or failure to act by any member of the department, whether on or off duty... or fail to report to the Department any and all known violations of same...”

Department cited the following conduct, in summary:

Applicant's handcuffs were taken by a detainee and during the same shift his partner left the key in the tier door which was also taken by a detainee. Applicant failed to immediately report both incidents and institute lockdown procedures. Applicant only reporting the incidents after the equipment was recovered later in the shift. This alleged to have occurred December 2016.

**Count 3: Rules and Regulations of the Chicago Police Department
V. Rules of Conduct.**

"Rule 14 – Making a false report, written or oral.

Conduct Policy 11.2.20.1, 29: failure to disclose or misrepresenting facts, or the making of any false or misleading statement on any application, examination, form or other official document report or form, or during any work-related investigation"

Department cited the following conduct, in summary:

Applicant denied making the statements: "Don't worry mom, I got a badge, I can do what I want," and "I work for a special unit in the Cook County Sheriff's Department," and that he had the vehicle with prisoner cage, front- and rear-mounted lights, radar unit and radio console so that if he [saw] anything off duty, he could assist.

"CCDOC Policy 100: Conduct Policy 100.5.5: failure to disclose facts or misrepresenting facts, or making of any false or misleading statement: 2. During the course of any work-related investigation."

Department cited the following conduct, in summary:

Applicant, as a law enforcement officer, denied knowing the handcuffs and key described in Count 2 above was taken until after they were later recovered, though video showed him looking down at his key ring and turning his wrist with no key in hand and enlisting the help of another officer to locate the missing equipment, according to the second officer. According to the background investigator Applicant explained to the investigator that Applicant was the only officer who could have recovered the equipment because of the respect he had from the detainees even though just prior to the handcuffs being taken, the detainee also took the pen from

Applicant's shirt pocket and rubbed Applicant's head.

The background investigator also reported that Applicant reported to the investigator that though Applicant was not vaccinated (presumably against CoVid-19), Applicant would get vaccinated "upon being notified of the FINAL POWER" and that via an email Applicant reported that there was no mandate from the law enforcement agency where Applicant was employed that current employees had to be vaccinated, only new hires. The background investigator then contacted the agency who reported that there was a mandate, but that the agency had not yet begun issuing discipline and that no exemptions had thus far been approved.

The background investigator also noted that Applicant answered, "NO" on the Personal History Questionnaire ("PHQ") to Question 45 which asks, "Have you been the recipient of any complaints or disciplinary action while employed as a law enforcement officer?" Applicant also failed to list written reprimands (Question 46) and oral reprimands (Question 47) he'd received while employed by a law enforcement agency other than those for refusing to work mandatory overtime.

(Notice (attached Report p. 3-5, 11-13))

Basis #4

V. Polygraph Examination

"... Admissions made during a polygraph examination or an indication of deception, related to the department's employment standards along with other factors, may be used as a basis for disqualification."

Department cited the following conduct, in summary:

Applicant's polygraph examination results in March 2022 showed "inconclusive" results from inquiries as to his involvement in "serious crimes," and "significant responses" from inquiries as to his involvement in the "drugs" and "gangs" categories.

(Notice (attached Report p. 6, 10))

Appeal, Response and Reply

Appeal, in summary:

As to the conduct cited related to owning/operating the vehicle with prisoner cage, front- and rear-mounted lights, dash-mounted radar, and radio console registered as a passenger vehicle, Applicant explained he purchased it for a parttime security job he no longer has. He explained that when the officer arrived at his home and explained they were there because erratic driving of what appeared to be a police vehicle, Applicant tried to answer as best he could to four people who were asking him questions at the same time, including two officers and his mother. Applicant surmised that the officers “got confused and mixed up [his] answers and/or misunderstood [his] answers without asking for confirmation and/or clarification as at no point did [he] verbally tell [his] mother, ‘Don’t worry mom, I got a badge, I can do what I want.’” He wrote that he explained to the officers that he worked for a unit within the county law enforcement, but the vehicle was not for his employment there, but rather for a security side job. (Appeal, p. 1). Applicant argued it wouldn’t make sense for him to claim to be able to do what he wanted because the officers might have had body cam or other devices that could have recorded his statements. Applicant explained that after Applicant talked to the sergeant “privately,” the sergeant told him and the officers in front of Applicant’s mother that Applicant had done nothing wrong and was free to go about his business. Applicant wrote that he’d never been given any report and his Freedom of Information/FOIA request for any video or body cam footage resulted in a response that none existed. Applicant wrote that out of respect for his “fellow brothers in blue,” he did not want to call them “liars” and that perhaps in the commotion “commentary was lost in translation and misunderstood.” Applicant reported he sold the vehicle shortly thereafter. (Appeal, p. 2-3).

As to the incident with the handcuffs and key, Applicant explained he put the handcuffs

on a radio antenna attached to his belt to avoid turning his back to a group of eight detainees, and that later in the shift, in a separate incident, his partner “mistakenly left a key in the door of a secured room.” Applicant explained that when it was noticed the key was missing he confronted the detainee who returned the key and the handcuffs that Applicant said he did not know were missing until the handcuffs were returned. Applicant explained that upon their return he held the key and handcuffs up to alert security that he’d recovered them and then Applicant alerted his sergeant. Applicant stated that he explained what happened and asked if he should write up a report but was told no report was needed because the items had been recovered, and that as a “young and fairly new officer” he did not question whether what his sergeant told him was correct. Applicant explained later in the week the inmates demanded payback for returning the handcuffs and key which was observed by others, an investigation into the incident was opened and Applicant stated that the sergeant lied and said Applicant did not report the incident to him. Applicant stated that Applicant obtained legal counsel and that after the video surveillance footage was requested the matter was dropped and the sergeant was subsequently promoted (Applicant posited the sergeant was “politically connected”). (Appeal, p. 2)

As to his disciplinary record, Applicant wrote that he was never suspended during his employment and that he has filed two grievances with the sheriff’s department because his discipline record falsely shows he was. (Appeal p. 2, Appeal attachments “Grievance Forms” both filed December 5, 2022).

As regards absences/late calls, Applicant explained that he had purchased a residence 90 minutes from where he needed to report for duty, but that he also had not been late to work since 2018. As regards refusal for mandatory overtime, Applicant explained that he’d already worked overtime in those weeks and that his mother and brother contracted CoVid and both required his assistance (as well as their two pets) because he was the only one in the house who wasn’t ill.

Applicant explained that he has received the first of two CoVid vaccination shots December 10, 2022 (Appeal p.3, Appeal attachment Vaccination Card) since he started the application process. He also provided a copy of an email said to have been sent in October 2021 indicating that it had not started enforcement of discipline for those not in compliance because there had been a positive trend in the number of employees being vaccinated. (Appeal p. 3, Appeal attachment email from CCSO.PolicyOfficeIssuance@ccsheriff.org).

As to his polygraph exam responses, Applicant asserts that he was not deceitful and answered as honestly and accurately as he could, and that he would be willing to retake the polygraph exam at his own expense. He stated that he has never “been involved in any crime let alone a serious crime,” never stolen anything, never been involved in gangs and admitted to the three times he used marijuana/cannabis in or before 2008.

In closing, Applicant admitted that he’d made mistakes he wished he could change but can’t, that he is a better person today and because of his past because he’s learned discipline and respect. Applicant asserted become a Department officer has been his dream, it’s a privilege, and he would be proud to serve, noting that he has been a model officer for more than six years without incident, and asks this Board to reverse the decision to remove his name from the eligibility list.

In its Response, Department iterated the bases and counts alleged along with caselaw¹ in support of its rights to disqualify on those bases. It argued that had Applicant been employed with Department at the time of the conduct at least three of the rule violations, each in and of themselves would have been sufficient to support disqualification.

Findings of Fact

¹ *Apostolov v. Johnson*, 2018 IL App (1st) 173084, ¶¶ 24, 31 and *Johnson v. O’Connor*, 2018 IL App (1st) 171930, ¶¶ 16-17, 20.

Filings were timely.

Department provided the factual basis for its decision to disqualify Applicant and remove Applicant's name from the eligibility list on several counts.

Applicant owned and operated a vehicle registered as a passenger vehicle with a prisoner cage, front- and rear-mounted lights, dash-mounted radar, and radio console. This was during the time of his employment with a law enforcement agency (sheriff's department) and a parttime security firm. Three on-duty police officers were reported to have witnessed Applicant make the statements alleged during his encounter with law enforcement at his home regarding the vehicle at issue. At least two of the statements appear to be direct quotes. Applicant continues to maintain that he did not make those statements and has indicated that in response to a FOIA request to produce the footage of the encounter was notified that none exist.

A detainee/inmate took Applicant's handcuffs from him while Applicant was on duty as a law enforcement officer. Just prior to that, the same detainee/inmate took the pen out of Applicant's shirt pocket and rubbed Applicant on the head. During the same shift Applicant's partner left a key in a cell/tier door. Applicant did not immediately report either of these incidents despite being aware of both. Applicant also did not make a written report. Applicant represented that he did not realize the handcuffs were missing until they were returned, but video footage shows him looking down at his belt and key rings, making key turning motions with his hand with no key in his hand. Additionally, another officer reported that Applicant told that officer the key was missing. This indicates that Applicant misrepresented when he became aware that the handcuffs and key were missing.

Applicant's disciplinary record with the law enforcement agency (sheriff's department) has 11 notations, 10 of which resulted in discipline. Of those 10, one is for an unknown incident and date. Effectively, there were 9 incidents leading to discipline ranging from verbal and written

reprimands to suspensions. Applicant denies any suspension, however, he did not produce anything to controvert the record provided by the sheriff's department. Applicant provided copies of two grievances he filed on December 5, 2022 with no further status.

Applicant has received one CoVid vaccination shot as of December 2022. Though discipline was not issued by the sheriff's department, there was a vaccination and exemption filing policy in place for all employees during the time of Applicant's employment and this application. Despite this, Applicant told the background investigator that his employment did not require vaccination.

Basis #1 IV.D.2. "...[A]n applicant who has been discharged or disciplined for offenses which include any act of dishonesty... may be found unsuitable for employment."

Count 1. Discipline from the sheriff's department was for policy violation of "failure to disclose or misrepresenting facts, or the making of any false or misleading statement on any application, examination, form or other official document report or form, or during any work-related investigation" as it related to Applicant's statements during the vehicular incident.

Count 2. There was no discipline issued in this matter regarding the December 2016 incident regarding the handcuffs and key and therefore Applicant was not disciplined for any act of dishonesty as it relates to this incident to support the factual basis to sustain Count 2.

Thus there is one count that stands for the disqualification on Basis #1.

Basis #2 IV.D.2. "[A]n applicant who has been discharged or disciplined for offenses which include... failure to follow regulations[...] may be found unsuitable for employment."

Applicant was disciplined for offenses which include failure to follow regulations for conduct involving absenteeism/late call; refusal for mandatory overtime; placing four detainees in the wrong cell; and his conduct regarding the vehicular incident. These form the factual basis for disqualification on Basis #2.

Basis #3 IV.D.3. "...[A]n applicant who, during previous employment, has engaged in any conduct that would have violated the Chicago[] Police Department's Rules and Regulations had the applicant been a Chicago Police Department employee, may be found unsuitable for employment."

Count 1. Applicant's owning/operating a vehicle registered as a passenger vehicle that had a prisoner cage, front- and rear-mounted lights, radar unit and radio console during the time he was employed at the sheriff's office is a violation of Department's Rules of Conduct, Rule 1: "Violation of any law or ordinance" in that state law prohibits the use of oscillating, rotating or flashing lights whether lighted or unlighted" except on official law enforcement vehicles.

Count 2. Applicant failed to immediately report the loss of his handcuffs as well as failed to report his partner's loss of a cell/tier key as soon as he became aware, and failure to initiate lockdown procedures after discovering same, that provides the factual basis to support a violation of Department's Rules of Conduct, Rule 3: "Any failure to promote the Department's efforts to implement its Policy or accomplish its goals. This rule prohibits omission or failure to act by an member of the department, whether on or off duty... or fail to report to the Department any and all known violations of same..."

Count 3. Applicant was disciplined for denying the statements he made as reported by three officers in the encounter they had with Applicant regarding his vehicle. Applicant misrepresented the events regarding when he discovered missing handcuffs and tier/cell key while on duty as a law enforcement officer. During this application process Applicant falsely reported that there was no mandate for vaccination of current employees of the sheriff's department when there was indeed a mandate, and what he reported on his PHQ as to discipline he had received. These factual bases support what would be a violation of Department's Rules of Conduct, Rule 14: "Making a false report, written or oral."

Basis #4 V. “Admissions made during a polygraph examination or an indication of deception, related to the department’s employment standards along with other factors, may be used as a basis for disqualification.” Applicant’s general “significant” and “inconclusive” responses were noted by the Department for general categories, but nothing more specific was noted. Applicant explained his responses. There was not a factual basis to support a disqualification for Basis #4.

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, 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.

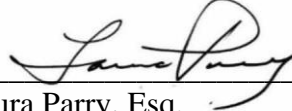
Even though Applicant did show by a preponderance of the evidence that Department erred as to Basis #4 V. Polygraph Examination, Applicant DID NOT show by a preponderance of the evidence that Department erred in the exercise of its decision to remove Applicant's name from the Eligibility List for Bases #1-3, IV. D. 2. and 3. Disqualification Based on Prior Employment. In failing to defeat all the bases set forth by the Department for disqualification, Department’s decision to remove Applicant’s name from the eligibility list was within its discretion.

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, Esq.
Appeals Officer

Date: April 17, 2023

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 7 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, and Jorge Montes) 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: Ghian Foreman, Paula Wolff, Steven A. Block, Mareilé B. Cusack, Nanette Doorley, Michael Eaddy, and Jorge Montes.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF APRIL, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director