

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)	
[NAME REDACTED],)	NO. 23 AA 07
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 March 7, 2023, the Office of Public Safety Administration (the “Office”) gave Applicant written notice of its decision to remove him 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”).

Applicant appealed this decision to the Police Board by filing a written request specifying why the Chicago Police Department (the “Department”) 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 (the “Appeal”).

On April 20, 2023 the Department filed a response to the Appeal (the “Response”).

Appeals Officer Cooper has reviewed the Notice, Appeal and Response.

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

Applicant timely appealed his removal from the Eligibility List, as authorized by Section 2-84-035(b) of the Municipal Code of Chicago.

The Notice indicates that Applicant was removed from the Eligibility List for several reasons, including: (1) conduct involving drugs; (2) conduct involving dishonesty; (3) violent tendencies; (4) his prior employment history; and (5) other conduct. (Notice at pgs. 1-12.)

In his Appeal, Applicant challenges the Department's characterization of his drug use, denies that he was dishonest and provides further explanation about the time he hit a prisoner in the face while working as a correctional officer. (Appeal.) Applicant further states that the conduct challenged by the Department occurred several years ago and that he has continued to work in law enforcement since the events in questions with no issues. (*Id.*)

On April 20, 2023, the Department filed a response to the Appeal. In its Response, the Department states that it continues to rely on the facts and evidence cited in the Notice in support of its decision to remove Applicant from the Eligibility List. (Response.)

Findings of Relevant Facts

Biographical Information

Applicant is a thirty-two-year-old male who previously served in the United States Marine Corp. (Notice at pg. 2.)

Prior Application History and Drug Use

This is Applicant's third attempt to become a Chicago Police Officer. He was rejected in

2014 and 2015 after he failed the polygraph examination based on inconsistencies regarding his drug use. (Notice at pgs. 2-3.) According to the Notice, in 2014, Applicant first admitted to using marijuana 5 -7 times then subsequently changed his answer to 15 times and admitted to purchasing marijuana. (*Id.*) The Notice further indicates that, in 2014, Applicant admitted to using hydrocodone recreationally after having shoulder surgery and that he continued to use the drug after his prescription expired. (*Id.*)

Applicant denies changing his answer regarding his marijuana use and states that what he was trying to convey when he changed his answer in 2014 was that he used marijuana “less than 15” times. (Appeal.) Applicant further denies admitting to purchasing drugs and maintains that he never used hydrocodone recreationally following his shoulder surgery. (*Id.*)

Pamunkey Jail Incident

In June 2018, Applicant was serving as a correctional officer at Pamunkey Regional Jail when an incident involving an inmate occurred. (*Id.*) An inmate had assaulted an officer and needed to be removed from the unit. (*Id.*) Applicant responded to the call and, despite multiple verbal commands issued to the inmate, the inmate remained defiant and non-compliant. (*Id.*) Applicant tried to maintain control over the situation by attempting to physically restrain the inmate using two points of contact. (*Id.*) However, the inmate reacted aggressively, smacking away the Applicant's hands and continuing to resist commands. (*Id.*) Escalating the situation further, the inmate was then pushed against the wall where he assumed a confrontational posture. (*Id.*) In response to this perceived threat, Applicant delivered a single strike to the inmate's face. (*Id.*) This action resulted in the inmate falling to the ground, allowing for the successful application of handcuffs. (*Id.*)

Despite Applicant's belief that his actions were warranted in response to what he perceived

as an attack on him, the jail administration deemed that he had violated jail policy, specifically the policy that stipulated that strikes by officers could only be used if an inmate was actively attacking, and Applicant was officially reprimanded for his actions and given a one-day suspension. (*Id.*)

Applicant continues to work at the Pamunkey Regional Jail and has not been subject to any further reprimands. (*Id.*)

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 Prior Employment History

Special Order 21-01 (the “Special Order”) contains the “Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer.” (*See* Special Order 21-01.) The relevant sections from Special Order 21-01 state as follows:

<u>Section</u>	<u>Language</u>
Section IV (B)(7)(a)(2) - Disqualification Based on Conduct Involving Drugs	“An applicant who misrepresents his or her history of drug use during any stage of the employment process may be found unsuitable for employment”
Section IV (B)(7)(b)(1) - Disqualification Based on Conduct Involving Dishonesty	“...the pre-employment investigation therefore looks for information that shows that the applicant has a reputation or propensity for truthfulness, is believable and has a personal history free from deceit or fraud.”
Section IV (B)(7)(b)(2) - Disqualification Based on Conduct Involving Dishonesty	“...conduct demonstrating a reputation or propensity for dishonesty may be grounds for disqualification.”
Section IV (C) - Disqualification Based on Conduct Involving Violent Tendencies	“Applicants who have demonstrated a propensity for violence do not meet those requirements. Therefore, any conduct

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	demonstrating a propensity for violence will be grounds for disqualification.”
Section IV(D)(2) - Disqualification based on Prior Employment History	“... an applicant who has been discharged or disciplined for offenses which include any act of dishonesty, incompetence, insubordination ... or failure to follow”
Section IV(D)(3) - Disqualification based on Prior Employment History	“... an 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 ”
Section IV(H)(1) - Disqualification based on Other Conduct	“... any applicant that exhibits a pattern of repeated .. .lack of respect for authority or law ... 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, will be found unsuitable for employment”
Section IV(H)(4) - Disqualification based on Other Conduct	“Any applicant who has engaged in conduct affecting public health, safety and decency, including but not limited to disorderly conduct, illegal gambling, child endangerment or other offenses may be found unsuitable for employment.”

The Department’s decision to remove the Applicant from the Eligibility List based on his prior drug use and purported dishonesty primarily stems from answers Applicant gave regarding his marijuana use in polygraph examinations conducted in 2014 and 2015. Considering that these polygraph tests were carried out nearly a decade ago, and given the absence of concrete evidence in the record pertaining to the specific results of these examinations, it seems erroneous, for the Department to disqualify the Applicant based on his past marijuana use. Furthermore, Applicant

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maintains that he has never given inconsistent accounts concerning his marijuana use and states that he has never purchased the drug.

Regarding Applicant's use of hydrocodone, the record reveals that Applicant was legally prescribed the drug following shoulder surgery and there is no evidence other than a single sentence in the Notice to suggest that he ever abused the drug. Moreover, Applicant denies that he ever abused the drug or used it inappropriately. Consequently, it was erroneous for the Department to eliminate Applicant from the Eligibility List on the grounds of his prior drug use or any alleged dishonesty related to such use.

The Department also erred when it removed Applicant from the Eligibility List based on conduct involving violent tendencies and other conduct. As evident in the Notice, the primary basis for such a decision revolved around a single event in 2018 at the Pamunkey Regional Jail. This isolated incident is insufficient evidence to establish that the Applicant harbors violent tendencies, consistently disrespects authority or law, or engages in behavior endangering public health, safety and decency.

The record, however, does confirm that the Department's decision to remove Applicant from the eligibility list was not entirely unwarranted. This is based on the indisputable fact that during the 2018 jail incident, Applicant exhibited behavior that, had he been employed by the Chicago Police Department at the time, would have been a violation of the Department's rules and regulations. Specifically, it is evident that Applicant breached Rule 8, which prohibits disrespect or mistreatment of any person, whether on or off duty, and Rule 9, which forbids police officers from engaging in any unjustified verbal or physical altercation with any person while on or off duty.

Thus, because it was not erroneous for the Department to remove Applicant from the Eligibility List based on the fact that during his previous employment, he engaged in conduct that would have violated the Chicago, Police Department's Rules and Regulations, the decision to remove Applicant from the list of eligible applicants for the position of probationary police officer should be **affirmed**.

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

Appeals Officer

Date: June 12, 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 8 in favor (Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Jorge Montes, 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: Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Jorge Montes, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY OF JUNE, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director