

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)	
[NAME REDACTED],)	No. 23 AA 29
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 July 16, 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 (“Notice”) and the process for appeal. In support of its decision, Department cited conduct it alleged formed the bases of Disqualifications Based on Criminal Conduct, Prior Employment History, and False Statements or Omissions and/or Failure to Cooperate in the Application Process.

In a letter dated July 20, 2023, Applicant appealed the disqualification decision to the Police Board 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 a Response October 4, 2023. No Reply was filed.

Police Board Appeals Officer Laura Parry has 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 the Parties

According to the Notice, which includes the Candidate Background Investigation Summary dated December 7, 2022 (hereinafter “Background Investigation Report”), 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, in relevant part as cited by Department

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 over 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; 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. An applicant who has engaged in any act falling within the scope of this section that constitutes a misdemeanor within the last three (3) years (from the date of PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment." (Background Investigation Report, p. 1-2)

Department cited the following conduct, in summary:

December 11, 2021. While on duty as a county correctional officer, Applicant used excessive force via handcuffs and brass knuckles against an inmate for which an internal investigation found sufficient evidence for and sustained seven department policy violations: (1) excessive force against an inmate; (2) failure to de-escalate use of force against an inmate; (3)

jeopardizing safety of an inmate; (4) jeopardizing safety of the department of corrections; (5) submitting inaccurate official Incident and Use of Force Report; (6) misuse of department equipment; and (7) conduct unbecoming a department employee.”

Basis #2

IV-D. Disqualification Based on Prior Employment History, in relevant part as cited by Department:

1. "Police officers are required to work well with others, public officials, and members of the public, as well as maintain a professional work ethic. Further, a police officer’s ability and willingness to obey orders is critical to the proper functioning and administration of the Chicago Police Department, which in turn is vital to the Chicago Police Department’s ability to protect the public. A steady employment history is an indication that, among other things, an applicant has the ability to work well with others; follow workplace rules; perform his or her work to acceptable standards; and come to work on time and on a regular basis.”

2. “A poor employment history will result in disqualification for the position of Police Officer. An applicant who has been discharged or disciplined for offenses which include any act of dishonesty, incompetence, insubordination, absenteeism, tardiness or failure to follow regulations will be found unsuitable for employment.”

3. "Further, 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. In addition, an applicant with a history of sporadic employment, evidenced by frequent changes in employment of short duration, may be found unsuitable for employment."

(Background Investigation Report, p. 2)

Department cited the following conduct, in summary:

Following the December 11, 2021 incident in Basis #1 above the following notations were made in Applicant's employment history with the county corrections department:

OPR2021-0300 OPR Investigation: 12/14/2021 Article U Transfer; 12/15/2021 De-deputized; 07/13/2022 Termination; and 10/23/2022 Loudermill Results - Allowed to work

In addition, Applicant received disciplinary action in the form of a reprimand for undescribed conduct on January 14, 2021.

(Background Investigation Report, p. 2-3)

Basis #3

IV-I. Disqualification Based on False Statements or Omissions and/or Failure to Cooperate in the Application Process, in relevant part as cited by Department:

1. "Honesty and credibility are vital characteristics for a police officer to possess in order to ensure the integrity of police operations and investigations and to protect the public and maintain its trust in the police. Honest and complete answers to background questions asked of applicant[s] during the application process, as well as full cooperation with the application process, are thus extremely important to the maintenance of the Chicago Police Department's force and the integrity of its hiring process. Therefore, applicants are required to cooperate with the City of Chicago and the Chicago Police Department in all matters relating to the processing of their applications for the position of Police Officer. Any applicant who fails to cooperate with the City of Chicago and its Police Department in processing his or her application for the position of Police Officer shall be disqualified. Prohibited conduct within this category includes, but is not limited to: failure to provide any required information; failure to respond to requests for information in a timely manner; failure to respond to requests for interviews in a timely manner; failure to fully disclose all known information requested, whether it is beneficial or prejudicial to the applicant; making false or misleading statements in connection with any part of the application process; failing to include any material or relevant information requested by the City of Chicago or the Chicago Police Department; or failing to appear for scheduled appointments or processing sessions as directed."

2. "Once employed, any employee who is found to have engaged in any conduct prohibited in the paragraph above will be subject to discipline, up to and including discharge."

(Background Investigation Report, p. 4)

Department cited the following conduct, in summary:

Applicant failed to disclose his disciplinary and sustained case investigation history with the county correctional department in the Personal History Questionnaire ("PHQ") or during background investigation interviews or polygraph exam. (Background Investigation Report, p. 4)

Appeal, Response and Reply

The following is a summary.

Appeal. Applicant argued that there was false information about his being terminated from the county correction department. Allegations were brought against him by the OPR ("Office of Professional Review") but were not proven before the county's merit board.

Applicant provided paystubs, time entries and certifications for the department during various

relevant time periods, and a copy of current identification. Applicant provided a letter from his current supervisor who did not know why Applicant was transferred to his current department in November 2021, but indicated while under his supervision there has been no discipline, that the supervisor regards Applicant as a benefit, eager and quick to learn, completes tasks completely and correctly, is a supportive team player and has organizational and attention-to-detail skills, sometimes taking on extra work in the civil process and evictions unit.

(Appeal)

Response. In summary, Department iterated it stands on the reasons and bases set forth in the disqualification letter. (Response)

Findings of Fact

The Appeal was timely filed (July 20, 2023). The Response was UNTIMELY filed October 4, 2023 (approximately one month past the due date of September 4, 2023) and therefore was not considered by the Appeals Officer.

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.

Applicant did not engage in criminal conduct on December 11, 2021. While the allegations were sustained, when the case came before the county department's merit board, it was not proven. While there may be other evidence to show conduct occurred absent a conviction or an admission (which is prima facie evidence), nothing beyond the OPR's sustained allegations were presented.

Applicant was the subject of a county department investigation. Whether or not the allegations were ultimately proven before the county department's merit board, Applicant failed to disclose the investigation. However, Department did not indicate whether Applicant had ever been asked to disclose those types of investigations.

Applicant was reprimanded in January 2021. While it is true that Applicant failed to disclose this discipline, there is no evidence of what conduct was at issue and whether it was any of the disqualifying conduct listed within Disqualification Based on Prior Employment outlined in Basis #2 above. Additionally, Department does not indicate if/where on the PHQ, or if/when during the interview or polygraph exam Applicant was asked to disclose this.

Based on the totality of circumstances, it is unclear what conduct occurred that led to Applicant's reprimand in January 2021 and what transpired that led to the seven sustained allegations by the OPR that ultimately failed to be proven before the merit board for alleged December 11, 2021, conduct. This Appeals Officer finds it is too vague to be of much substance in determining that there was disqualifying conduct.

Under Disqualification Standards IV.B.2 and 3, a conviction or admission is prima facie evidence of criminal conduct, and that an arrest record "merely indicates an allegation of criminal conduct and must be investigated further in order to be the basis for disqualification..." (Pre-employment Disqualification Standards for Applicants for the Position of Police Officer, Special Order No. 21-01 ("Disqualification Standards") at IV.B.3). The Appeals Officer finds the OPR allegations to be akin to an arrest record requiring more investigation which did not occur here.

By a preponderance of the evidence, **Applicant DID** provide sufficient additional facts directly related to and did adequately specify why the Department erred in its factual

determinations.

Conclusions of Law

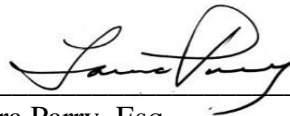
Pursuant to the Municipal Code of Chicago (“MCC”) 2-84-030 the standard of review for appeals of disqualification and removal of an applicant’s name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department’s decision to remove the applicant from the Eligibility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

Applicant **DID** 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 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: December 04, 2023

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 recommendations.

The Police Board, by a vote of 7 in favor (Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, and Andreas Safakas) to 0 opposed, does not adopt the Appeals Officer's findings, conclusions, and recommendation, and finds that the Applicant has not met the burden of showing, by a preponderance of the evidence, that the decision to remove him from the Eligibility List was erroneous. The Board finds that the Cook County Sheriff's Office of Professional Review's sustained allegations that the Applicant used excessive force via handcuffs and brass knuckles against an inmate are sufficient to establish "conduct demonstrating a propensity for violence" and constitute grounds for disqualification.

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: Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 22nd DAY OF FEBRUARY, 2024.

Attested by:

/s/ GHIAN FOREMAN

President

/s/ MAX A. CAPRONI

Executive Director