

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 23 AA 31**
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 10, 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 and the process for appeal (“notice”). In support of its decision, Department cited conduct it alleged formed the bases of Disqualifications Based on Criminal Conduct and Prior Employment History.

In a letter dated September 5, 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 19, 2023. The Reply was filed November 13, 2023.

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

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 March 3, 2023 (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:

July 1, 2008. Reported as a “Domestic Dispute,” complainant alleged Applicant would not “stop trying to see her” and would not “leave her alone” after complainant ended the relationship.

July 24, 2008. Reported as a “Domestic Dispute,” Responding Officers (“R/O”(s))

observed same complainant as in the July 1, 2008 report “looking back and yelling, ‘Stop,’” to the Applicant. She complained it was the second time Applicant came to her work, following the complainant but never making any threats.

July 29, 2008. Emergency Order of Protection issued in favor of complainant in the July 1 and 24, 2008 reports against Applicant.

October 21, 2009. Applicant was arrested and charged with Reckless Driving, Front/Side Windshield Obstruction (both were Stricken with Leave to reinstate) and an amended charge of Disorderly Conduct (which terminated with completion of Supervision) after Applicant allegedly cut off another motorist twice almost striking the other vehicle, and intentionally “slammed” on the brakes in an attempt to cause a collision.

October 18, 2012. Battery-Simple was reported to R/O’s after Applicant allegedly struck the alleged victim about the face with a fist while on the sidewalk in Chicago. It was reported that on February 22, 2023 Applicant stated, “‘He attacked me while I was riding my bicycle home from work. I called the police.’ In addition, ‘He left the scene, but when the police and ambulance arrived, he came back. I wanted a report but the officers wouldn’t give me one. Said something to the effect of it being a civil matter even though I had cuts on my neck.’” During testimony in a Human Resources Board hearing Applicant was reported to have said that he was riding his bicycle, had words with the alleged victim whose car swerved into the bike lane and parked, and that the alleged victim then followed Applicant to the red light and proceeded to jump on Applicant’s bike and hit Applicant, and that the police spoke to both parties.

Background Investigator reported searching Service Calls and discovered Event #1229213865 that “verified” Applicant called the police, “Dup... Male driving white VW Golf was parked in the bike lane Indiana plate. Caller says he told him he should not be parked in the bike lane and

the male battered him.”

June 18, 2017. It was reported Applicant, who was an off-duty Chicago Probationary Police Officer, stated that Applicant fired a warning shot toward the ground during a traffic altercation (a violation of the Department’s Rules and Regulations and Use of Force policy), and that after he fired the shot the other party got into a vehicle and sped off. Applicant then got back into his vehicle and followed the truck which was traveling at a high rate of speed. One witness reported seeing two men yelling at each other, one with raised hands, one with a handgun and heard one shot. Another witness reported seeing two vehicles stopped in the middle of the street, saw one person exit a vehicle and then saw the Applicant exit his vehicle with a pistol, and heard him announce that he was a police officer. Applicant was relieved of his police powers on August 11, 2017 after investigations of the incident by county sheriff’s police and the Department’s Internal Affairs. Applicant subsequently resigned during an active investigation on August 25, 2017 after a meeting on August 21, 2017 with IPRA (Independent Police Review Authority). (Background Investigation Report, p. 2-4)

Basis #2

IV-B. Disqualification Based on Criminal Conduct, in relevant part as cited by Department

7. Other Criminal Conduct

d. Conduct Involving the Unlawful Use of Weapons

"Police officers are generally required to possess and occasionally use weapons in the exercise of their duties. An applicant’s prior unlawful use of a weapon demonstrates his or her inability to handle weapons judiciously, a vital requirement necessary to protect the public and its trust in the police. Therefore, any conduct involving the unlawful use of weapons will be grounds for disqualification. Conduct involving unlawful use of weapons includes but is not limited to, conduct which would constitute the knowing sale, manufacture, purchase, possession carrying or use of any prohibited weapon, ammunition, enhancements, or projectiles; the discharge of any weapon in a prohibited manner; or gunrunning. As noted above, an applicant who has engaged in any act falling within the scope of this sections 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 the PHQ submission), or more than one (1) time in his or her life, will be found unsuitable

for employment.” (Background Investigation Report, p. 4)

Department cited the following conduct, in summary:

The June 18, 2017 conduct alleged in Basis #1 above that preceded Applicant’s resignation from Department during an active internal investigation for discharge of a weapon and vehicle chase in an off-duty traffic altercation. (Background Investigation Report, p. 4-5)

Basis #3

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

...

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, excessive 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. 5)

Department cited the following conduct, in summary:

The June 18, 2017 conduct alleged in Bases #1-2 above that preceded Applicant’s resignation from Department during an active internal investigation for discharge of a weapon and vehicle chase in an off-duty traffic altercation.

Applicant also admitted in the polygraph exam that he stole sweaters from his former retail employer worth no more than \$300. (Background Investigation Report, p. 5-6)

Appeal, Response and Reply

The following is a summary.

Appeal. July 1, 2008 Domestic Incident. Applicant explained he was stopped by the police after he was invited inside the alleged victim’s home (someone who he explained he was

breaking up with) and who asked him to walk her to work to continue discussing the relationship. When they arrived at her work, Applicant explained, they began arguing and the alleged victim hit/struck Applicant, after which Applicant said he told her he didn't want to continue the relationship and walked back to his car. He further explained he was then pulled over by the police and asked what had happened, to which Applicant replied that he and the alleged victim were breaking up and that she'd accused Applicant of taking her phone which he said he had not. Applicant explained he wanted to press charges against the alleged victim, but the police told him he'd have to file a civil suit. Applicant said he had no further problems with the alleged victim until weeks later and he went on to making new friends at college (he noted he is the first of his family to attend college).

July 24, 2008 Domestic Dispute. Applicant explained his cousin suggested Applicant and the ex-girlfriend/alleged victim in the July 1, 2008 incident meet to discuss being friends because the two had many mutual friends and they would be seeing each other socially among these friends. Applicant explained he went to meet the ex with Applicant's cousin and that when they reached the park, the ex asked Applicant to take a walk with her without the cousin. Applicant said that once they reached the area near the main road away from the park, the alleged victim "all of a sudden began to run away yelling, 'stop, get away,' which confused me because of how odd it was until I looked over and saw a police squad car stop and make a U-turn." Applicant reported that the police stopped Applicant and he recounted what had happened. Applicant said the police told him it didn't look good for Applicant because it looked like he was following the alleged victim. The police told the alleged victim to leave, looked at Applicant's identification and then told Applicant to leave (which he did with his cousin). Applicant reported that he stopped attending family and friend functions when he was made

aware the ex would be attending, and that occasionally she would show up at an event and that Applicant would leave. Applicant said that after one family event where the ex showed up and Applicant left, the ex called him from “a private phone number” and asked why Applicant would not be around her. Applicant explained that he told her he didn’t trust her. Applicant said that the next day the ex petitioned for an Emergency Order of Protection, ex parte. Applicant said he provided evidence to the court that contradicted the ex and the judge denied the Order and vacated the Emergency Order. Applicant provided what he described as text messages from the ex which were meant to convince Applicant to stay in the relationship. The messages appear to be taken from a social media account and were not authenticated other than by Applicant asserting the ex had sent them to him. (Appeal Exhibits). Applicant is married to someone else and has never had a domestic call in the nine years they’ve been together. (Appeal)

October 21, 2009 Reckless Driving, Front/Side Windshield Obstruction and amended charge of Disorderly Conduct. Applicant explained he was driving approximately 20 miles per hour above the speed limit, someone reported him and the police pulled him over, but Applicant does not consider that to be reckless driving. Applicant explained that he always showed up for his court dates, even though they were continued for the complaining witness to show. Applicant felt his court-appointed attorney had little interest in his case, recommended Applicant plead guilty and move on, so Applicant hired his own attorney who recommended Applicant plead guilty to a lesser charge of Disorderly Conduct in order to not have to keep going back to court and missing days of school. Applicant did so and served 30 hours of community service at his church. Applicant argued he never should have been arrested for speeding, that he never tried to cut the other driver off or slam on his brakes. Applicant stated that the police told him that he was just a kid and the other “established adult” driver’s testimony held more weight.

Applicant noted he had not been pulled over or received a citation since 2011.

October 18, 2012 Simple Battery allegation for the bike lane incident. Applicant explained he approached a vehicle that stopped in front of him while he was on his bike and that was blocking the bike lane. He said he told the driver that he couldn't park there and then Applicant went around the car while the driver yelled profanities at Applicant and threatened to kill Applicant. Applicant said he "dismounted" his bike at the stop light and saw the individual from the car "running" at him, which he didn't think any of until he was knocked over and was being punched in the head repeatedly. Applicant said he tried to push the person away and stop him from hitting but that the person lifted Applicant up and threw him on the ground and then went into a restaurant. Applicant said he tried to ask bystanders for help but no one would help, he then called 911 and an ambulance was dispatched to check him for injuries. The police arrived, the individual Applicant said attacked him came out of the restaurant and Applicant pointed him out to the police who then questioned the individual. The individual claimed Applicant attacked him. Applicant told the police that was false and that his bike was damaged from the individual stepping on it and that Applicant had visible cuts and bruising. The photo provided by Applicant showed what may have been a cut on his neck (Appeal Exhibits). Applicant said the police told him to go somewhere to press charges, but that Applicant didn't remember where, and then after talking to his employer who was an attorney, Applicant took the attorney's advice and "let it go" because Applicant was applying for federal government employment and it might've look bad on his application if he was involved in pending litigation. Applicant said the responding officers made accusatory comments to Applicant about hitting the individual with Applicant's bike lock (which was attached to the bike) and that they should arrest both of them to which Applicant said he was fine with that and telling the officers Applicant had injuries but the other individual did

not. Applicant stated the other individual lied on the police report that he was the victim and that the individual had a history of being arrested for battery in Chicago. Applicant did not indicate how he was aware of the individual's arrest record. Applicant argued he should not be penalized for being a victim and that he attached photos of his injuries taken the night after the incident.

(Appeal)

June 18, 2017 incident involving discharge of weapon. Applicant explained that a vehicle two or three vehicles behind Applicant's vehicle was "laying on their car horn" as Applicant waited to make a left turn in the left turn lane. After making the turn, Applicant said that he and another vehicle pulled over to the side and a black pickup truck with dark tinted windows drove past, honking at all the vehicles and driving at a high rate of speed. After the pickup passed, Applicant and the other motorists continued on the road to the next traffic signal at which they stopped and the black pickup truck was directly in front of Applicant's vehicle. When the light turned green they moved forward but the black pickup truck slammed on its brakes. Applicant "had plenty of distance but swerved left just in case, stopped and proceeded forward again. A moment later, the truck drove forward and slammed on their brakes a second time. Only this time, the driver stopped and exited their vehicle." Applicant said that the other driver was yelling "incoherently." Applicant then got out of his vehicle, told the other driver to get back in his vehicle and leave. Applicant said, "I attempted to deescalate the situation to no success and the man asked what I was going to do about it. I responded that I wasn't going to do anything, that I was a Chicago Police officer and suggested he get back in his truck and leave." Applicant said the other driver then approached Applicant "aggressively" and made "threats" to Applicant and the people around them. Applicant did not indicate what words were spoken. Applicant said that as the man continued to approach, Applicant stepped back and to the side in

an attempt to keep distance. “When left with no alternative, I retrieved my service weapon that I carried off-duty and concealed.” When the other driver did not stop approaching, Applicant warned him to stop and get back, and “fired a warning shot into the ground instead of shooting the individual” because Applicant said he was concerned for the other driver’s safety and his own. That is when the other driver stopped, raised his hand(s) and walked backwards, returned to his truck and drove off. Applicant explained that he drove to a county sheriff’s vehicle that had their lights activated and explained that he had fired his weapon after an altercation.

Applicant said that he circled the neighborhood to try to get the other vehicle’s license plate but did not find it, and then drove to the sheriffs. The sheriffs took his service weapon, advised Applicant to call his FOP (Fraternal Order of Police) representative and conducted an investigation. On advice from his rep, Applicant went to the hospital where Internal Affairs met him with his rep. Applicant explained he did not exit his vehicle with his weapon drawn, that his weapon was at his side in a holster that displayed his police star. Applicant stated that he did not follow the other driver by “matching his speed,” but “simply drove away from the scene, not exceeding the speed limit.” In support, Applicant attached the sheriff’s incident report. The incident report states that one witness saw “...one person exited from one vehicle and another person exited from the other vehicle with a pistol. [Redacted] also stated that the person with a pistol said he was a police officer.” The report notes that Applicant’s statements were recorded.

It states, in part:

“...[Name redacted] stated that the truck cut him off once so he drove around the truck. [Name redacted] stated that the second time the truck cut him off completely so he couldn’t go around the truck... [Name redacted] stated that the male looked intoxicated... [Name redacted] stated he announced his department but the male started approaching at him so he walked around to keep distance. [Name redacted] stated that at one point the male came at him aggressively that’s when he pulled out his pistol and shot a warning shot towards the ground. [Name redacted] stated that after the shot fired, the male got in his vehicle and sped off northbound on Potter Rd. [Name redacted] stated that he also

got back in his vehicle and followed the truck...”

(Appeal Exhibits, CR#17-181139)

As to stealing sweaters worth no more than \$300 from a former retail employer, Applicant explained he felt guilty about it and ended up donating them.

Additionally, Applicant noted that he is employed as a municipal police officer as of January 12, 2023 and helped rescue someone from a burning vehicle, winning a Life Saving Award and resulting in a letter acknowledging his efforts and has letters of reference from former supervisors from the Gilberts Police Department, Niles Police Department and City of Chicago Police Department (CPD now retired) and CPD Chaplain (Appeal Exhibits). He cites his volunteer work in the community, helping others when no one else would and that he is a first-generation US citizen committed to helping his community as things to consider.

Response. In summary, Department iterated it stands on the reasons and bases set forth in the disqualification letter, and cited caselaw supporting its rights to disqualify. (Response)

Reply. In summary, Applicant noted that Department did not challenge the information presented in Applicant’s appeal. Applicant argues that police officers cannot commit Unlawful Use of a Weapon under 720 ILCS 5/24-2 and it “especially cannot be committed by civilians during instances of self-defense when no other option for escape is feasible or possible, which I fall into either or both categories,” citing *Hammond v. People*, 199 Ill. 173, 182 (1902) and *People v McGraw*, 13 Ill.2d 249, 256 (1958). Applicant also argued caselaw cited by Department (*Apostolov v. Johnson*, 2018 IL App (1st) 173084 and *Johnson v. O’Connor*, 2018 IL App (1st) 171930) involved conduct different than that in Applicant’s history.

Applicant also argued that Department was already aware of conduct prior to 2016 when he was hired the first time, and that the only new incident was the discharge of weapon in 2017.

(Reply)

Findings of Fact

All filings were timely.

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 the conduct related to incidents involving the ex-girlfriend and alleged domestic disputes, no interviews beyond the initial incident reports and Emergency Order of Protection were reported. Applicant provided what he avers are text messages from the ex-girlfriend, but there's no real authentication for those messages. Nonetheless, given the totality of the evidence and explanation by Applicant the allegations are remote in time, within an isolated and brief time period and appear to be simply allegations.

Applicant did engage in the conduct related to October 21, 2009 as it relates to his driving 20 miles over the speed limit and to which he pleaded guilty to an amended charge of Disorderly Conduct.

Given the totality of the evidence, Applicant did not engage in the conduct related to the 2012 bike lane altercation with a motor vehicle driver. While it was not prudent to approach the motor vehicle driver to point out the error of his parking, the Investigator found the Service Call record that supports Applicant's version of the events that it was he who called the police. There

were no arrests. There are no further accounts of the event.

Applicant did engage in the conduct described in the June 18, 2017 discharge of weapon incident. Applicant's statements to the R/O's were recorded. A witness reported seeing Applicant exit his vehicle WITH a pistol. Applicant stated he exited his vehicle. Witnesses stated Applicant engaged in an altercation. Everyone agrees Applicant discharged his weapon. Applicant chose to exit his vehicle. Applicant chose to engage in a verbal altercation, even AFTER he thought the other driver was intoxicated. Applicant chose to announce he was a police officer, even though he was off duty. Instead of getting back into his vehicle and driving away, Applicant chose to discharge his weapon on a public street with bystanders present and with no indication the other individual had anything that could be used as a deadly weapon or that the individual moved to strike Applicant or anyone else. Instead of seeing through the Internal Affairs investigation to clear his name, Applicant chose to resign.

Applicant did engage in the conduct of stealing from a former employer. It is undisputed.

By a preponderance of the evidence, **Applicant DID NOT** provide sufficient additional facts directly related to and/or did not adequately specify why the Department erred in its factual determinations as to all bases presented. Conduct satisfying any one basis is enough to justify disqualification.

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.

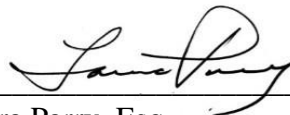
Applicant's assertion that caselaw cited by Department does not relate to his particular case is unpersuasive. The Department's caselaw appears to have been cited to support the general proposition that Department has the right to remove an applicant from the eligibility list if disqualifying conduct is found. The law cited by Applicant implying that someone who is a police officer cannot be found to have used a weapon unlawfully (720 ILCS 5/24-2) is not correct. There are exceptions under certain circumstances, but it does not give blanket immunity to peace officers. Additionally, Applicant's caselaw to "stand your ground" is unpersuasive as to the discharge of his weapon, especially when Applicant CHOSE to exit his own vehicle, engage the other driver and there was no indication the other driver attempted to strike anyone or had any sort of weapon.

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 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 **affirmed**.

Respectfully submitted,



Laura Parry, Esq.
Appeals Officer

Date: December 16, 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 9 in favor (Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Ghian Foreman, and Andreas Safakas) to 0 opposed.

NOW THEREFORE, IT IS HEREBY ORDERED that the decision to [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, Michael Eaddy, Ghian Foreman, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF JANUARY, 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director