

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 24 AA 020**
APPLICANT FOR THE POSITION OF)
PROBATIONARY POLICE OFFICER,) **(Applicant No. [redacted])**
CITY OF CHICAGO.)

FINDINGS AND DECISION

[NAME REDACTED] (hereinafter “Applicant”) applied for a probationary police officer position with the City of Chicago. In a letter dated February 6, 2024, 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. In support of its decision, Department attached the Candidate Background Investigation Update (“Background Investigation Report”) in which Department alleged conduct that formed the bases of Disqualification(s) Based on Criminal Conduct; Prior Employment History; Other Conduct; False Statements or Omissions and/or Failure to Cooperate in the Application Process (Collectively, “Notice”).

In an email dated March 13, 2024, Applicant appealed the disqualification decision to the Police Board by filing a written request seeking to 1) specify why the Department of Police (hereinafter referred to as “Department”) erred in the factual determinations underlying the disqualification decision *and/or* 2) bring to the Police Board’s (“Board”) 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 March 31, 2024. There was no Reply.

Police Board Appeals Officer Laura Parry 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 PARTIES

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

IV-B. Disqualification Based on Criminal Conduct, as cited by Department:

1. “... an applicant may be disqualified from consideration... if there is evidence that the applicant has engaged in criminal conduct, even if the applicant was never convicted on any criminal offense.”

...

7. Other Criminal Conduct

c) Conduct Indicating Violent Tendencies.

“... Conduct demonstrating a propensity for violence includes but is not limited to, conduct which would constitute... assault, battery, domestic violence.”
(Background Investigation Report, p. 1-2)

Department cited the alleged conduct, in summary:

January 5, 2020. Domestic Battery Arrest. Applicant was arrested for Domestic Battery, which Department cited as a violation of Illinois law (720 ILCS 5/12-3.2). The case was not prosecuted. It was reported Applicant told the Background Investigator the record was expunged.

January 7, 2020. Order of Protection Respondent. Applicant was named as the respondent in a plenary Order of Protection issued January 7, 2020.

April 5, 2022. Termination for Excessive Use of Force. Applicant was terminated from his position as a Correctional Officer (“C/O”) with the Cook County Sheriff’s Office after the investigating body sustained allegations of excessive Use of Force, additionally finding that Applicant improperly reported the incident. Applicant was accused of striking a seated and handcuffed detainee in a secured holding cell per the summary provided by the Office of

Professional Responsibility (“OPR”)

(Background Investigation Report, p. 1-2)

Basis #2

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

1. “... a police officer’s ability and willingness to obey orders are critical to the proper functioning and administration of the Chicago Police Department, which in turn is vital to the Chicago [P]olice Department’s ability to protect the public.”
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 ... insubordination... 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...” (Background Investigation Report, p. 3-4)

Department alleged that the conduct below would have been in violation of one or more of the following CPD Rules and Regulations:

Rule #01: Violation of any law or ordinance.

Rule #02: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule #03: Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.

Rule #06: Disobedience of an order or directive, whether written or oral.

Rule #07: Insubordination or disrespect toward a supervisory member on or off duty.

Rule #08: Disrespect to or maltreatment of any person, while on or off duty.

Rule #09: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule #12: Failure to wear the uniform as prescribed.

(Background Investigation Report, p. 3-4).

Department cited the alleged conduct, in summary:

February 24, 2022. Suspensions for Violations of Uniform Regulations and Workplace

CoVid 19 Guidelines. There were three different Disciplinary Action Forms filed for that day.

Applicant was suspended for seven hours for ignoring a direct order from a supervisor to comply with uniform regulations, including turning his hat front-forward and removing studded earrings.

1 Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer, OPSA Special Order No. 21-01, eff. 08/01/2021 (“Disqualification Standards”) reads “may” and not “will.”

Applicant was also suspended for 10 hours for ignoring multiple direct orders from a supervisor to comply with appearance and uniform regulations, including beard maintenance, earring removal and wearing a face mask. Lastly, Applicant was suspended seven hours for not complying with CoVid-19 workplace guidelines.

April 5, 2022. Termination for Excessive Use of Force. Applicant was terminated from his position as a Correctional Officer (“C/O”) with the Cook County Sheriff’s Office after the investigating body sustained allegations of excessive Use of Force, additionally finding that Applicant improperly reported the incident. Applicant was accused of striking a seated and handcuffed detainee in a secured holding cell per the summary provided by the Office of Professional Responsibility (“OPR”)

(Background Investigation Report, p. 3-4).

Basis #3

IV-H. Disqualification Based on Other Conduct

1. “... a combination of traits disclosed 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.” (Background Investigation Report, p. 4-5).

Department cited the conduct described in Basis #2 above.

(Background Investigation Report, p.5)

IV-I. Disqualification Based on False Statements or Omissions and/or Failure to Cooperate in the Application Process

1. “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... 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.”

Department cited the following conduct and/or alleged conduct, in summary:

It was reported Applicant told the Kentech (a/k/a background interviewer) that Applicant was reprimanded for use of force with a non-compliant inmate and described the incident as having “struck” the inmate twice to separate the inmate from a female officer. Applicant was reported to have explained he was reprimanded because he did not “condense” the report of the incident as instructed by his Lieutenant. He explained that “Internal Affairs” and “his superiors also did not find he violated the Use of Force model.” However, the Sheriff’s Office records of the incidents showed the allegations of excessive use of force and failure to follow policy were sustained and the recommended remedy was termination. The investigation was reported to have included witness interviews, camera footage and interview of the Applicant.

(Background Investigation Report, p. 5-6).

The PHQ was submitted June 16, 2023.

Appeal, Response and Reply

The following is a summary.

Appeal. Applicant addressed the arrest for domestic violence, uniform regulation violations and circumstances regarding the incident of excessive use of force.

January 5, 2020. Domestic Battery Arrest. January 7, 2020. Order of Protection.

Applicant asserted that his ex-wife was “playing the system” to end their marriage, that after eight months in court fighting for his parental rights, he “won” the domestic violence case, that it was not prosecuted and was subsequently expunged. He also was granted “50/50 parental rights to be with [his] only son.” (Appeal p. 2)

February 24, 2022. Suspensions for Violations of Uniform Regulations and Workplace CoVid 19 Guidelines. Applicant explained that “they were never represented to me or brought to my attention, except the wearing jewelry one” “which wasn’t about earrings but was about my

cross.” He said that at the time he was transferred to a different division with “an atheist female Lieutenant” and that “the moment that female Lieutenant saw the cross on my neck she started attacking me verbally and on a personal level in front of other officers.” Applicant explained he reported it to “my” lieutenant and another lieutenant who worked to “bring [him] back to my division to stop all the personal attacks on me and my faith.” Applicant referenced documents attached to the Appeal email to show “the real story and what actually happened,” but those were the only documents he has because he tried to “get the rest but ‘Cook County’ didn’t want to provide the rest of them.” (Appeal p. 2)

April 5, 2022. Termination for Excessive Use of Force. Applicant argued that the “statement/reason that was given out from Cook County was taken out of context because that’s not what happened.” Applicant explained the division he was assigned to held inmates from medium to maximum security “who have mental health issues and aggressive behaviors, including but not limited to verbal threats and physical threats and attacks on male and female officers which caused some officers to be hospitalized for some time.” He explained “[w]orking in that division was not made for everybody.” He explained the day of the incident there was a lone female officer on the tier with 39 male inmates, an irate inmate approached her demanding to be moved because of gang-related conflicts. Applicant heard the “commotion” and “rushed in with another officer to help the female officer out” by trying to distract the inmate from the female officer and onto himself to de-escalate. Applicant wrote that the inmate “made killing threats” and charged Applicant “with an object in his hand.” Applicant explained he and the other C/O got the inmate to the floor, handcuffed him and brought him to be cuffed to the wall of the holding cell where the inmate threatened bodily harm to the other C/O and tried to charge the other C/O when Applicant used his own body weight and upper right thigh to “have him in a

seated position” to complete cuffing him to the wall. Applicant said the inmate tried to hit the other C/O again, so Applicant used his right elbow and arm “to control the situation more” and finish handcuffing the inmate to the wall to make it safer for the Sergeant to enter and question the inmate. Applicant notified his Lieutenant. The Sergeant entered and questioned the inmate on camera. Applicant reported that the Lieutenant viewed the video and the C/Os’ reports and said it was a “CLEAN use of force.” Applicant explained it was another two or three months later when OPR contacted him, and that “if it was a BAD use of force, they would’ve done that interview/questioning way sooner.” (Appeal p. 1)

The attachments showed that Applicant’s termination, the request and support documentation for a “full beard” Religious Exception to the facial hair policy, and the terms under which he was to maintain his facial hair under Medical and Religious Exceptions to having facial hair. It also included Applicant’s Criminal History which indicated the disposition for the domestic battery case was unable to be acquired. There was also documentation regarding a religious objection to CoVid-19 vaccinations.

(Appeal attachments)

Response. Department iterated a summation of the Bases of Disqualification and the facts presented. It further argued that it was within its right to disqualify Applicant based on *Apostolov v Johnson*, 2018 IL App (1st) 173084 and *Johnson v. O’Connor*, 2018 IL App (1st) 171830. (Response)

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.

Findings as to January 2020 Domestic Battery Arrest and Order of Protection.

For whatever reason, the case was not prosecuted. That does not mean that the conduct did not happen. There was a plenary Order of Protection – meaning there was a hearing after notice to Applicant and a judge granted the Order. However, Applicant explained a divorce was in process along with a custody battle, and there were no details given of what the alleged conduct was that led to his arrest. By a preponderance of the evidence, **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations as to this alleged conduct.

Findings as to February 2022 Suspensions for Violations of Uniform Regulations and Workplace CoVid 19 Guidelines.

While Applicant claimed an “atheist female Lieutenant” issued discipline because she disagreed with his religious beliefs, the reports specifically referenced “post” earrings and a backwards facing hat as uniform violations. There was no mention of a cross in the reports and Applicant did not explain why he was not wearing his hat correctly. Also, while there was a request for a religious exception to the CoVid-19 vaccination policy, there is no indication that there was any exception for not wearing a mask. 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 the conduct that led to discipline as it regards earrings, hat and masking.

The beard was subject to a religious exception to the uniform facial hair policy, and even though there was a requirement to keep the beard at a certain length, it is unclear whether that was

enforceable given that the religious exception support documentation indicated the religion required “full beard.” By a preponderance of the evidence, **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations as to a full beard constituting a violation of the uniform regulations.

Findings as to April 2022 Termination for Excessive Use of Force.

Applicant was terminated from his position as a Corrections Officer for the Cook County Sheriff’s Office stemming from a sustained allegation of Excessive Use of Force by the Office of Professional Responsibility based upon witness interviews, video and interview of the Applicant. Applicant attempted to explain the conduct in the Appeal, but it was not persuasive. Applicant may not have found his force was excessive, but his employer did after what appeared to be a full investigation. 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 that Applicant was terminated from his position stemming from his use of excessive force on an inmate in his care.

Findings as to False Statements/Omissions During the Background Interview.

Applicant represented to the Interviewer during this process that “Internal Affairs” and “his superiors also did not find he violated the Use of Force model.” He was terminated for Excessive Use of Force and knew that the allegation had been sustained by the Office of Professional Responsibility. At best, his representations during the background interview were incomplete and misleading. 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 that Applicant made false statements and/or omissions during this process.

CONCLUSIONS OF LAW

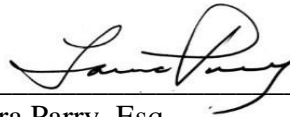
Pursuant to the Municipal Code of Chicago (“MCC”) 2-84-030 the standard of review for appeals of disqualification and removal of an applicant’s name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department’s decision to remove the applicant from the Eligibility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

Applicant **DID NOT** show by a preponderance of the evidence that Department **erred** in its decision to the remove Applicant's name from the Eligibility List for the reasons stated herein.

RECOMMENDATION

Based on the findings and conclusions set forth above, it is recommended 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: June 12th, 2024

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 8 in favor (Kyle Cooper, Paula Wolff, Steven Block, Mareilé Cusack, Nanette Doorley, Kathryn Liss, Andreas Safakas, and Justin Terry) to 0 opposed.

NOW THEREFORE, IT IS HEREBY ORDERED that the decision to remove [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, Mareilé Cusack, Nanette Doorley, Kathryn Liss, Andreas Safakas, and Justin Terry.

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

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director