

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 24 AA 24**
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 Report (“Background Investigation Report”) in which Department cited conduct it alleged formed the bases of Disqualification(s) under its Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer (“Standards”) Based on Criminal Conduct, Conduct Indicating Dishonesty and Prior Employment History (Collectively, "Notice")

In a letter dated March 16, 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 May 8, 2024. No Reply was filed.

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. One purpose of the pre-employment investigation is to determine whether the applicant has engaged in criminal conduct. This is important because the police hold a unique position of public trust and are tasked with protecting the public and enforcing the law. Even more than other City employees, Chicago Police Department officers are specifically tasked with and sworn to uphold the law. Therefore, an applicant will be disqualified from consideration for a police officer position if there is evidence that the applicant has engaged in criminal conduct, even if the applicant was never convicted of any criminal offense. Applicants with a history of criminal conduct that falls within the Department's disqualification standards are deemed unable to protect the public and its trust in the police. It is the conduct itself, not the fact that the applicant was convicted, that makes the applicant unsuitable for employment.

2. There are various types of proof which indicate criminal conduct, including a record of conviction or an admission that indicates the applicant engaged in criminal activities. A record of conviction or an admission will be prima facie evidence that the applicant engaged in criminal conduct.

3. Unlike a record of conviction or an admission, an arrest record merely indicates an allegation of criminal conduct and must be investigated further in order to be the basis for disqualification. When investigating an arrest record, the investigator must, to the extent reasonably possible secure evidence including but not limited to statements obtained from interviews with police officers, victims and witnesses, which will be used to determine whether the applicant engaged in disqualifying conduct.

4. In describing examples of disqualifying conduct, these Standards may refer to the Illinois Compiled Statutes. The references to the Illinois Compiled Statu[t]es are descriptive only. Any similar federal offense, military offense or offense in any other jurisdiction within the United States (state or local) or any foreign jurisdiction may serve as a basis for disqualification.

5. The Standards are as comprehensive as possible; however as noted above, they cannot encompass every possible scenario. Failure to enumerate any particular offense

does not exclude such offense from being the basis for disqualification. Commission of any criminal or quasi-criminal act may result in disqualification from employment as a Police Officer if it is determined that the acts or omissions of the applicant make him or her unsuitable for the position of Police Officer.

...

7. Other Criminal Conduct

...

b) Conduct Indicating Dishonesty

(1) Credibility, honesty and veracity are extremely important characteristics for a police officer to [possess] on an off duty. Honesty is required to ensure the integrity of police operations and investigations and to protect the public and maintain its trust in the police. 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.

(2) Any conduct demonstrating a reputation or propensity for dishonesty may be grounds for disqualification. Conduct demonstrating a propensity for dishonesty includes but is not limited to conduct that would constitute **theft**; embezzlement; forgery; false impersonation; identity theft; bribery; eavesdropping; computer crimes; fraud; money laundering; deceptive practice[s]; or perjury.

(3) As noted above, an applicant who has engaged in any act fa[l]ling within the scope of this section that constitutes a felony will be found unsuitable for employment. An applicant who has engaged in any act fa[l]ling 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, may be found unsuitable for employment."

(Background Investigation Report, p. 1-3)

Department cited the alleged following conduct, in summary:

September 2022 Applicant was terminated from employment for theft and violation of company policy. As a cashier, Applicant used his employee reward points card to accumulate points on his card for purchases made by customers who did not have a rewards card. He then exchanged those accumulated points for items of value. It was reported Applicant also admitted that he "took about \$40.00 of water and items" between February and September 2022.

(Background Investigation Report, p. 3)

Basis #2

IV-D. Disqualification Based on Prior Employment History

"1. Police officers are required to work well with other [officers,] 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 may result in disqualification for the position of Police Officer. An applicant who has been discharged or discredited for offenses which include any act of dishonesty[,], incompetence, insubordination, excessive absenteeism or tardiness, or failure to follow regulations may 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 [P]olice 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."

Violations of Rules and Regulations of the Chicago Police Department

V. Rules of Conduct

1. "Violation of any law or ordinance"

(720 ILCS 5/16-25)

Sec. 16-25. Retail theft.

(a) A person commits retail theft when he or she knowingly[:]

(1) Takes possession of, carries away, transfers or causes to be carried away or transferred any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise..."

(Background Investigation Report, p. 3-5)

Department cited the following conduct, in summary:

The conduct described in Basis #1 above. Of the December 5, 2023 interview of Applicant, Background Investigator reported Applicant told Investigator of the conduct and further described his actions in which Applicant would swipe his card at the end of a customer purchase, giving the customer a discount on the total amount of their purchase and adding points to Applicant's employee point card. Applicant indicated he was not aware that what he was doing was against company policy. During the polygraph exam interview administered November 27, 2023

(Background Investigation Report, p. 1) it was reported Applicant said that he had accumulated approximately USD\$100.00 in points which alerted supervisors and inquiries of Applicant as to how he accumulated so many points. It was at this polygraph exam that Applicant was said to say he took approximately USD\$40.00 in bottles of water and other items while he was working. Applicant explained these actions are what caused him to be terminated from employment.

(Background Investigation Report, p. 4)

Applicant was born in July 2002. The Personal History Questionnaire (“PHQ”) was submitted September 2023 and updated November 2023. (Background Investigation Report, p. 1)

Appeal and Response

The following is a summary.

Appeal. Applicant wrote of his dream to be a police officer and his understanding that the position is not easy, the many hours of hard work and exhaustion that “could create some emotional and physical obstacles,” and that “having virtues,” honesty, respect, courage, compassion and perseverance to give it your all are required for a candidate to be a perfect fit. Applicant explained the purpose of the Appeal he submitted was to demonstrate why he is a good fit. Applicant explained the disqualifying conduct as Applicant mistakenly scanning his own employee card instead of the card they were supposed to use when a customer did not have their own card with them but requested the discount. Applicant explained, “I didn’t use the points to my advantage, since I didn’t do it with a malicious intent,” but rather he just found it easier to type in his own phone number for the customer to get the discount and that he did not realize his “mistake” had consequences. He also described his “grabbing bottles of water throughout my shift and not paying for them” as a “mistake.” Applicant explained he made these “mistakes” without thinking through the negative consequences they might have, not only in terminating his employment but in his

quest to become a police officer. He expressed his regret, how his conduct does not reflect how he was raised, and that he has learned from his mistakes. Applicant further explained he is studying at the university level and working two jobs with his goal to become a police officer. Applicant closed with thanks to the Board for consideration, noting that he is working as hard as necessary to become a police officer and have a positive impact in his community and in his own life.

Applicant included four letters of support. One was from a fellow student and work colleague regarding Applicant's leadership, teamwork and general good character. A second was from a retired FBI Supervisory Special Agent who worked with Applicant's uncle, a local law enforcement officer in Mexico, in extraditing fugitives back to the US. When he learned Applicant aspired to law enforcement, the individual began speaking with Applicant and has gotten to know him through their conversations. He explained Applicant reminded him of himself as a young man and spoke of his own experience hiring and training young agents and generally to Applicant's good character fitness for police service. A third was from a store manager where Applicant is employed mentioning an incident in which Applicant, in his role as cashier, spotted counterfeit money being offered as payment by a customer and immediately notified his supervisors. The fourth letter was from an Assistant Professor of Spanish and Comparative Literature at Applicant's university noting Applicant's dedication to his studies as a double major in that department and in Criminal Justice, Applicant's bilingual abilities and general good character.

(Appeal and Attachments)

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)

FINDINGS OF FACT

Appeal was timely filed. Response was not. Response was filed 53 days after the Appeal.

It should have been filed within 45 days and therefore the Response was not considered.

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.

Applicant used his employee points reward card against company policy and credited his own account for purchases he did not make while he was a cashier at a store. This led to his termination. He explained he did not know it was against policy. However, Applicant did know there was a different card he was supposed to use for the purpose of giving customer a discount when they did not have their own card. Instead, he chose to swipe his employee card or typed in his own phone number. More likely than not, Applicant knew what he was doing was against company policy. Additionally, Applicant most definitely knew he was stealing bottles of water and other items while he was a cashier.

Applicant turned 22 years of age in July 2024. The conduct occurred February through September 2022, when Applicant was 19 and 20 years old.

The last occurrence of the conduct occurred within one year of the PHQ submission which is specifically within the three-year window in which Department may disqualify an Applicant for any acts of dishonesty that would constitute a misdemeanor.

None of the letters of support added facts or explained the conduct asserted. While Applicant may be well thought of by the individuals offering their support, consideration of the appeal is limited to whether Applicant specified errors in the factual determinations underlying the disqualification decision and additional facts directly related to the reason(s) for the disqualification.

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 for any of the bases cited – Disqualification Based on Criminal Conduct including Conduct Indicating Dishonesty and Prior Employment History.

Any one instance of disqualifying conduct is sufficient to support a decision to disqualify Applicant and remove his name from the eligibility list.

CONCLUSIONS OF LAW

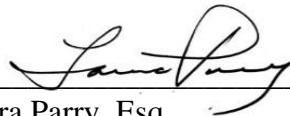
Pursuant to the Municipal Code of Chicago (“MCC”) 2-84-030 the standard of review for appeals of disqualification and removal of an applicant’s name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department’s decision to remove the applicant from the Eligibility 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 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: August 4th, 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, Claudia Badillo, Steven Block, Mareilé Cusack, Kathryn Liss, Andreas Safakas, and Justin Terry) 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: Kyle Cooper, Paula Wolff, Claudia Badillo, Steven Block, Mareilé Cusack, Kathryn Liss, Andreas Safakas, and Justin Terry.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY OF AUGUST 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director