

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 24 AA 26**
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 January 17, 2024 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, specifically Conduct Involving Drugs and Dishonesty and based on False Statements or Omissions and/or Failure to Cooperate in the Application Process. (Collectively, “Notice”)

In a letter dated April 8, 2024¹, Applicant sought to appeal 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

¹ Notice was dated February 6, 2024. Appeal request was due April 6, 2024. The Appeal request, in the form of a letter, was dated April 8, 2024 which is 62 days from date of Notice. However, the 60th day (April 6) was a Saturday. The next possible date one could have delivered a letter was Monday, April 8, 2024 which is the day the Appeal was filed. Thus, the Appeals Officer considers it timely filed.

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 22, 2024. No Reply was filed.

Police Board Appeals Officer Laura Parry reviewed the Notice, Appeal, and Response and any documentary evidence submitted with each.

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:

7. Other Criminal Conduct

a.) Conduct Involving Drugs

...

(6) "An applicant who has used any illegal drug, other than marijuana, within the last five (5) years (from the date of PHQ submission), or has engaged in more than minimal experimentation at any point in his or her life may be found unsuitable for employment. When determining that drug use constituted more than minimal experimentation, all relevant factors, such as frequency of use, length of time since last use, and the age of the applicant when he or she last used any illegal drug, will be evaluated. Exceptions to this standard may be made on an individual basis for the un-prescribed use of prescription drugs, provided that such use was only medicinal, isolated and infrequent."

...

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.”

(Background Investigation Report, p. 1-3)

Department cited the alleged following conduct, in summary:

Applicant's history with marijuana and other illegal drug use from approximately 2018 to September 2023 with dates being approximate.

Marijuana -- bought and used approximately 200 times from 2018 when Applicant was in college through September 2023 disclosed on PHQ, Q#45 and in background interview and as last use August 2023 in polygraph exam.

Cocaine -- first and last use was reported to be at a party in college. Disclosed on PHQ Q#45 and in background interview. However, during the polygraph exam it was reported to have been first used in November 2021 and last used May 2022.

Ecstasy/MDMA -- one use at a party in 2020. Disclosed on PHQ, Q#45 in background interview and polygraph exam.

Psilocybin -- used four times from 2019 to the last time in September 2022. Disclosed on PHQ Q#45, polygraph exam but not in background interview.

Adderall (not prescribed to Applicant) -- used in college three times, the first time to help him study. First use was November 2021, with last use of non-prescribed Adderall September 2022. Disclosed on PHQ Q#45, in background interview and polygraph exam.

Hashish -- Use in March 2023. Disclosed in polygraph exam, but not on PHQ or in background interview.

Acid -- Used for the first time in December 2018 and last time March 2019. Disclosed in polygraph exam, but not on PHQ or in background interview.

Zoloft (not prescribed to Applicant) -- Used in September 2020. Disclosed in polygraph exam, but not on PHQ or in background interview.

(Background Investigation Report, p. 2-4)

Basis #2

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

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 applicants 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." (Background Investigation Report, p. 4)

Department cited the following conduct, in summary:

Applicant failed to disclose his use of hashish in March 2023, acid the first time in December 2018 and last in March 2019, and Zoloft without a prescription in September 2020 on his PHQ and in his December 9, 2023 background investigation interview when asked about his illegal/prescription drug use, even though he had disclosed the use of hashish, acid and Zoloft during his September 6 2023 polygraph exam. He had disclosed his use of cocaine, ecstasy/MDMA, psilocybin and unprescribed Adderall at the background interview, but not the hashish, acid and Zoloft.

(Background Investigation Report, p. 4)

Applicant was born in June 2000. The Personal History Questionnaire (“PHQ”) was submitted October 17, 2023. (Background Investigation Report, p. 1)

Appeal and Response

The following is a summary.

Appeal. Appeal was filed through Applicant’s counsel. Applicant transmitted a video as part of the Appeal packet. The transcript of the video was also supplied. Applicant opened with a summation of his background and personal history.

Applicant argued the sole reason Applicant was disqualified was for statements that Applicant made to the Ken-Tech investigator during the background interview and the polygraph examiner about drugs Applicant experimented with in college – not based on any arrest or evidence that Applicant developed a “substance abuse problem or engaged in unlawful or anti-social behavior after using drugs” – further arguing that Applicant was completely honest and that if he had not been honest Department would have “no conceivable basis to disqualify him.” Applicant argued that if this Applicant’s honesty puts an end to his ambition to be a police officer then the message is sent to those who are “not so honest” that it is better to lie about things that background investigators can’t refute, which counsel termed an unfortunate and unintended outcome.

Applicant wrote that the following “facts” are offered to the Board for consideration in this matter:

1. Applicant wrote that the Standards for disqualification based on prior illegal drug use are “discretionary rather than mandatory” – that such use within five years of the submission of the PHQ “may be found unsuitable for employment.” Applicant argued that his admissions during the process do not automatically disqualify him, but that the Standards allow for exercise

of judgment and balancing of facts unique to each applicant.

2. Applicant asserted that his life has been exemplary, citing the lack of arrests or trouble in school, work or anywhere else; steady employment; debt limited to college loans; spotless driving and parking record; that Applicant passed the Department's drug tests with hair and urine samples; that he passed Department's entrance exam and has a college degree; and is in excellent health. Applicant argued there is nothing in the way he has led his life that should cast any doubt on his ability to serve in the Department.

3. Applicant cited to three letters of support -- two from current Department police officers who are also Applicant's uncles and a third from his current employer. Applicant also cited to interviews of nine other people during his background investigation who all had positive remarks about him. Applicant further noted a faculty member that supervised Applicant when he served as a high school baseball coach (also with the last name [Name redacted]) was quoted to tell the investigator Applicant is "dependable, hardworking, and had great listening skills."

4. Applicant's counsel asserted is important to see and hear the manner in which Applicant presents himself as "sincere, smart, and well-spoke[n]..."² by viewing the video of his sworn statement provided with the appeal request.

Transcript of sworn statement

In summary of the transcript, Applicant was questioned by his attorney as to his general background and why he wants to be a Chicago police officer from page 5-18 of the transcript. From page 18 to 24 Applicant was asked and answered questions as to his background interview having been taken via videocall and that it was "short" -- lasting around two-to-two-and-a-half (2-

² The Appeals Officer did not review the video as appeal requests in these matters are limited to documentary evidence. It appears to be an attempt to circumvent the prohibition of presentation of testimony in a live or virtual hearing, and it is not a video depicting (a) specific event(s) recorded simultaneously to the event(s) that might rebut specific facts about an instance of conduct. The transcript, technically a document, was reviewed.

2½ hours), acknowledging he submitted a PHQ and was questioned during his polygraph exam prior to the background interview and then went through specifics of some of the drug use.

Cocaine use. Applicant attested that he told the background investigator that he used cocaine two times, the same thing he told the polygraph examiner, and that there was no reason for him to have told the background interviewer that it was one time after he had already told the polygraph examiner it was two times.

Adderall use (non-prescribed). Applicant explained he used it to focus on exams, further explaining he did not have the best study habits at the time, getting distracted by parties, going out and hanging out with friends. He stated that his habits got better as he progressed through college. He got the drugs from friends who had prescriptions.

Psilocybin use. Applicant stated he experimented with it more than once because he did not feel any effects the first time and wanted to feel the full effect but never felt anything so he stopped trying it.

Ecstasy/MDMA use. Applicant stated he tried it once before going to a Halloween party with his friends in college. He thought, "Why not?" because he thought college was meant for experimenting with certain things.

Marijuana use. Applicant explained he used marijuana for the first time in 2018 with his brother who suggested he try it, and that he never did illegal drugs or drank alcohol during high school. He said that he started doing it, but not too often. Then when he turned 21, he purchased it himself legally in Illinois and that is when he did more of it.

From pages 24-29, Applicant attested that he does not have a drug addiction and that "every single time I've done drugs, it was mainly just experimenting," and that is what he thought was one of the things to try when he was in college, so he did. He said that he knows it was a mistake

and that he regrets doing the drugs, not because it would interfere with a potential career in law enforcement but that he mainly regretted it because he did not at the time think of the mental and physical consequences of the drug use. He explained that going through this process has shed light on what could have happened, but those "mistakes" do not truly show who he is as a person -- that he made mistakes as everyone has and he does not think those mistakes should "hinder" him from "being a good person, a good worker, and being a good police officer." Applicant knew he would be asked about his drug use during the application process, and that people he knows told him to lie about his drug use because if it didn't come back on a drug test it couldn't be proven. He said he was raised to tell the truth, and he agreed with his mother than he doesn't want a job that he would have to lie about things to be hired. Applicant further said his father was upset when he learned of Applicant's drug use, but that his parents' support him in this process. Applicant further offered he has never been "pulled over" and that he has no record (arrest/conviction), is a "workhouse," and his employers speak highly of him -- working well with others and having great communication and listening skills.

Letters of Support.

The first letter of support offered was from his uncle who is 17 years with the Department and twice mentioned in the letter that he is currently assigned as a Recruit Training Instructor at the Chicago Police Academy. While offering no first-hand information about the drug usage, he discussed his knowledge of Applicant throughout Applicant's life and wrote that Applicant did not lie about his "mistakes" because he is a man of integrity and that everyone makes mistakes, opining Applicant would be at the top of his recruit class and that he recommends his nephew without hesitation which he would not do if he thought Applicant did not respect the job, or be a danger to himself or the community.

The second letter offered was from another uncle who is 32 years with the Department (patrol, Field Training Officer, Detective in Homicide then Robbery, promoted to Sergeant) and is currently assigned as Field Supervisor and who is also a US Marine Corps veteran. While offering no first-hand information about the drug usage, he also discussed his knowledge of Applicant throughout Applicant's life, the author's experience in the field and his knowledge of what makes a good police officer, and opined Applicant would excel in the position as he knows Applicant to be mature, hard-working, motivated, kind-hearted, caring and honest.

The final letter was from Applicant's employer since September 2023 who explained that he first knew Applicant through Applicant's brother who was previously in his employ. While offering no first-hand knowledge of Applicant's drug use, the employer described Applicant as a line shift cook who is hard working, reliable, accountable, coachable and fun to be around, dealing with pressure when they are busy and getting orders out in a timely fashion. He expressed no doubt as to Applicant's success as an officer.

College transcripts were provided showing a degree conferred on December 17, 2022.

(Appeal and Attachments)

Response. In summary, Department through its Human Resources Division Director iterated it stands on the reasons and bases set forth in the disqualification letter, and cited caselaw supporting its rights to exercise its discretion to disqualify. It considered Applicant's use of multiple illegal drugs numerous times more than minimal experimentation and pointed to the discrepancies outlined in the Background Investigation Report as to his account of the kinds of drugs and times used. Department explained Applicant's "extensive use paired with his dishonesty is extremely troubling and has demonstrated that the [Applicant] would not be able to fulfill the Chicago Police Department's mission to 'strive to attain the highest degree of ethical behavior and professional

conduct at all times." (Response)

FINDINGS OF FACT

Filings were timely. The Appeals Officer deems the Appeal Request was timely based on the following: Notice was dated February 6, 2024. Appeal request was due April 6, 2024. The Appeal request, in the form of a letter, was dated April 8, 2024, which is 62 days from date of Notice. However, the 60th day (April 6) was a Saturday. The next possible date one could have delivered a letter was Monday, April 8, 2024, which is the day the Appeal was filed. Thus, the Appeals Officer finds it is timely filed.

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.

In preparation for this Recommendation the transcript of Applicant's sworn statement was reviewed although the video was not. The Appeals Officer finds that the video is not a document, and therefore not to be considered for appeals under the applicable ordinance (see Conclusions of Law below).

The letters of support were considered only to the extent that they addressed Applicant's drug usage and reputation for honesty, which is at issue in his reporting the kinds and extent of drug usage. None of the letters had first-hand knowledge of Applicant's drug usage or the information Applicant discussed on his PHQ, in the background interview or the polygraph exam. Individual Department officer ranks and opinions as to how Department should apply its hiring standards to this Applicant were not considered, as they do not represent the official position of the Department in this Application.

College transcripts were not relevant as to the bases for disqualification; however, they

were considered for the date of matriculation which was December 17, 2022. Any illegal use of drugs by Applicant after December 17, 2022, was not done as college experimentation.

Illinois made the sale of marijuana legal to those 21 years of age and older effective January 1, 2020. Applicant was 23 years old when he last used marijuana in September 2023. His first use was in 2018 when he was 18 years old. From 2018 through his birthday in June 2021, Applicant illegally used marijuana. HOWEVER, the Standards reference the illegal use of drugs "other than" marijuana, so the marijuana usage is NOT considered in this Recommendation.

Applicant's answers were mostly credible as to his drug usage. Through the course of the application process, his drug use appears to have been completely disclosed. There were numerous incidents of different types of drug usage and no specific dates as easily ascertainable as what may have appeared on an arrest record, for instance. Additionally, Applicant under oath stated that he told the background interviewer more than what the interviewer reported, specifically as to his use of cocaine in that he used it twice, as he had told the polygraph examiner. However, he also wrote that he used cocaine one time on his PHQ, so there is a small discrepancy between what he disclosed at various stages and in his sworn statement. His assertion that the illegal use of drugs was experimentation during college is not entirely credible either, as Applicant reported his last use of an illegal drug other than marijuana was March 2023 in the form of hashish. Considering the number of different illegal uses of drugs, perhaps Applicant forgot that the use was post-college by approximately three months. While there were a couple of small discrepancies, given the number of times and different illegal uses of drugs, the Appeals Officer did not find the discrepancies material, and by a preponderance finds **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations for Disqualifications Based on Conduct Indicating Dishonesty and False

Statements or Omissions and/or Failure to Cooperate in the Application Process.

The Standards specify that an applicant who has used **any illegal drug**, other than marijuana, **within the last five (5) years (from the date of PHQ submission)**, or has engaged in more than minimal experimentation at any point in his or her life **may be found unsuitable for employment**. Applicant's last illegal use of drugs (hashish) was March 2023, within approximately seven (7) months of the PHQ submission on October 17, 2023. 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 the last illegal use of a drug other than marijuana was within five (5) years from the date of the PHQ submission.

The Standards further specify that "more than minimal experimentation" considers all relevant factors, such as frequency, length of time since last use, and age of last use. It also provides exceptions **at the discretion of the Department** for the un-prescribed use of prescription drugs if medicinal, isolated **and** infrequent. Department determined that it was more than minimal experimentation. The use numbered four times (4x) for prescription drugs not prescribed to Applicant from September 2020-to-September 2022; and additionally illegal drug use other than prescription drugs 10 times (10x) from December 2018-to-March 2023. That amounts to seven (7) different drugs, used a total 14 times (14x) from 2018 to 2023.

Cocaine – used twice (2x) once each in November 2021 and May 2022;

Ecstasy/MDMA – used once (1x) in 2020;

Psilocybin -- used four times (4x) from 2019 to September 2022;

Hashish – used once (1x) in March 2023;

Acid – used at least twice (2x) once each in December 2018 and March 2019;

Adderall (not prescribed to Applicant) -- used three times (3x) first use in November 2021, with last use September 2022;

Zoloft (not prescribed to Applicant) -- used in once (1x) in September 2020

If Department had determined that it was minimal experimentation, there would be no

disqualification based on “more than minimal experimentation.” Department highlighted it considered the use more than minimal experimentation in its Response. It had the discretion to find minimal experimentation but chose not to. Department had the discretion to determine an exception existed for Applicant’s illegal use of two different prescription drugs four times if Department determined it was medicinal, isolated and infrequent. It did not. 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’s illegal use of drugs was more than minimal experimentation or that the illegal use of prescription drugs qualified for an exception.

That Applicant may be well regarded in his community and may otherwise be an ideal Applicant is not relevant to whether Department erred in its determinations and does not provide additional facts as to Applicant’s history of illegal use of drugs.

The suggestion that Applicant could have lied about his history with illegal drug use is not persuasive. Applicants are expected to be honest and forthcoming whether or not they can be “caught” lying. Those who say otherwise discount that an officer called to testify in a matter may be questioned about their own history with drug use. Individuals who witnessed that officer engaging in the illegal use of drugs may also be placed in a position to have to disclose that knowledge. It puts that officer’s credibility at issue and the Department’s judgment in hiring him at issue. Neither should be discounted.

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 Disqualification Based on Criminal Conduct – Conduct Involving Drugs.

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)).

Under the ordinances governing the conduct of these appeals:

“Documentary review. The Board’s consideration of the appeal provided in this section is limited to review of: (1) the applicant’s request and reply; (2) the Department’s response; (3) any relevant documentary evidence submitted with such request, reply or response; and (4) the hearing officer’s findings, conclusions and recommendations. There shall not be a hearing (whether in person or by video or audio conference) on the Department’s decision to remove the applicant from the eligibility list. (MCC 2-84-035(e))

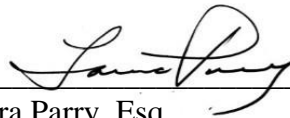
It appeared to the Appeals Officer, that the novel approach of providing a video of Applicant as he was administered an oath to tell the truth and then questioned by his counsel was done in an attempt to circumvent the limits of “documentary review” applicable to this process. If it were intended that video testimony be allowed, there would be no need for a paragraph stating “Documentary review.” Nor would the language specify that consideration of the appeal is “limited” to “relevant documentary evidence.” It is a stretch to even consider the transcript, because Applicant was placed under oath and questioned by counsel as one would do in a hearing. However, because it is “technically” a document, and without further instruction or limitation from City of Chicago Rules of Procedure, Appeals by Applicants to the Chicago Police Department, effective 18 February 2021, or a reviewing court of competent jurisdiction the transcript was considered.

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,

A handwritten signature in cursive script, appearing to read "Laura Parry", written over a horizontal line.

Laura Parry, Esq.
Appeals Officer

Date: August 8th, 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