

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 24 AA 28**
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 April 3, 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 10, 2024 Completed 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, Violent Tendencies, Conduct Concerning Sexual Misconduct and Other Conduct. (Collectively, “Notice”)

In a letter dated May 12, 2024, Applicant sought to appeal the disqualification decision to the Police Board (“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 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 June 26, 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."

...

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; 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."

f.) Conduct Concerning Sexual Misconduct

"Preventing officer-involved sexual misconduct and related abuse of power is of the utmost importance to the Chicago Police Department and is necessary to ensure public trust in the police and maintain a safe, healthy, and productive working environment. Accordingly, any applicant who has been convicted of or who has engaged in conduct constituting a [] misdemeanor sex offense may be found unsuitable, depending on the nature of the incident and the severity of the conduct. Any applicant found by a former employer, educational institution or governmental agency, to have committed an act of sexual harassment [or misconduct may be found unsuitable for employment, depending on the] nature of the incident(s) and severity of the conduct. Any applicant previously disciplined for, or resigned in lieu of discipline, an act of sexual harassment or misconduct may be found unsuitable for employment, depending on the nature of the incident(s) and the severity of conduct."

(Background Investigation Report, p. 1-3)

Department cited the alleged following conduct, in summary:

Conduct Related to Drug Usage
Marijuana Usage

PHQ at Q69: 2010-2013, to the best of Applicant's knowledge two-to-three times per week during high school. 2013-2017, to the best of Applicant's knowledge four-to-five times per week during college and possibly one time in 2018 with the last time being August 2019.

2023 Pre-polygraph admissions questionnaire (November 15, 2023): first usage was sophomore year of high school in 2010 or 2011 and last used August 2019.

2023 Post-polygraph disclosures, it was reported Applicant said that he was trying to think of how many times he smoked marijuana and was unsure, information which was volunteered without the examiner asking. Applicant volunteered he was sure of the times of other drug uses that he reported.

2018 post-polygraph interview from a previous polygraph exam conducted on January 6, 2018, Applicant was reported to have disclosed the number of times he used marijuana as “more than 500.”

Cocaine Usage

PHQ at Q71: Five times total – twice by smoking a marijuana “blunt” (cigarette) laced with cocaine and thrice through his nostrils, last reported use was in 2016 at a bar.

2023 pre-polygraph questionnaire: it was reported Applicant said he used cocaine in 2016.

2018 post-polygraph interview: it was reported Applicant said he used cocaine twice, last time in June 2016 with co-workers.

Prescription Drugs Not Prescribed to Applicant

Adderall

PHQ at Q83: three times in 2014.

2023 pre-polygraph questionnaire: used in March 2014.

Xanax

PHQ at Q83: once in 2016.

2023 pre-polygraph questionnaire: used [once] in April 2016.

(Background Investigation Report, p. 2)

Conduct Related to Violent Tendencies

2023 pre-polygraph questionnaire: it was reported Applicant said he kicks his dog when the walks don’t go well or the dog refuses to walk.

(Background Investigation Report, p. 3)

Conduct Related to Sexual Misconduct

2023 pre-polygraph questionnaire: it was reported Applicant met with online sex workers

twice in 2014 or 2015, paying one USD\$130 and USD\$60, respectively in exchange for sex. Department cited 720 ILCS 5/11-14.1(A) Solicitation of a Sexual Act.

(Background Investigation Report, p. 4)

Basis #2

IV-H. Disqualification Based on Other Conduct

1. "Police officers are required to show respect for authority, uphold the law, and defend the dignity and rights of the public. Therefore, any applicant who has engaged in conduct that exhibits a pattern of repeated abuse of authority; lack of respect for authority or law; lack of respect for the dignity and rights of others; or a combination of traits disclosed during the pre-employment investigation what 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 for employment."

...

4. "Any applicant who has engaged in conduct affecting public health, safety and decency, including but not limited to disorderly conduct, illegal gambling, child endangerment or other offenses may be found unsuitable for employment."

(Background Investigation Report, p. 5, 6)

Department cited the following conduct, in summary:

PHQ at Q61, Q62, Q63 and Q67: it was reported Applicant wrote that he pleaded guilty to driving without a driver's license, completed eight (8) hours of community service, the case was then dismissed, and his driving record is "clean." The circumstances were described as having been stopped in the vehicle he was driving for a broken taillight in August 2016. At the time he did not have his driver's license, nor did he have insurance, but that he did have about USD\$20 in marijuana and a pipe to smoke it found in the vehicle. He was reportedly handcuffed and processed. He was fined USD\$150 for possession of cannabis and USD\$50 for possession of cannabis paraphernalia. Documentation from a suburban jurisdiction verified the fines and upon contacting the local authority, investigator reported the suburban police department could not find any records on the incident and that if it were a municipal citation, the records would have been disposed of per Illinois State records retention policies.

2023 pre-polygraph questionnaire: it was reported Applicant engaged in vandalism when he stated that he had [graffitied] a garage with a friend, but that it was not gang related. No date was reported.

Department also cited the drug usage, solicitation of a sex worker and “animal abuse” described in Basis #1 above.

(Background Investigation Report, p. 4-7)

Applicant was born in June 1995. The Personal History Questionnaire (“PHQ”) was submitted May 3, 2023. (Background Investigation Report, p. 1)

Appeal and Response

The following is a summary.

Appeal. Applicant opened with his assertion that his disqualification was unjust and unfounded, and that he appreciated the opportunity to provide more details via the Appeal.

Applicant contended that the Disqualification Letter references omissions made during the 2018 polygraph exam, but that he never received a letter of disqualification specific to the 2018 exam and that it was more than seven (7) years ago, and that it incorrectly implied that the omissions occurred with the five-year timeframe specified for disqualifications. He argued that discrepancies in statements made during the polygraph exam “can be attributed to the passage of time and my improved attention to detail as I have matured and reflected on my past experiences.”

Drug Usage and Municipal Citations. Applicant noted that the marijuana possession citations were municipal violations and not state crimes, having researched Illinois cannabis and paraphernalia laws. He specifically noted the Investigator reported that there were no records regarding the violations with the law enforcement agency precisely because they were municipal violations. Applicant noted that it has been eight (8) years from his last use of “illicit” drugs

including cocaine and prescription drugs not prescribed to him, and six (6) years since his 2018 polygraph test. Applicant argued his last use of marijuana was August 2019, more than five years from his PHQ submission.

Driving Without a License. Applicant asserted it was an isolated incident in his earlier years, that he complied with court-ordered community service and has a valid driver's license.

Vandalism, Solicitation and Violent Tendencies. Applicant emphasized that the garage graffiti was a "youthful indiscretion" and not gang related. While he acknowledged the seriousness of the incidents in the Notice, Applicant added that he is committed to personal growth and positive lifestyle changes since ceasing drug usage, including clean and healthy living, education and professional development, serving the community and adherence to a strict code of conduct that he argued is aligned with the principles and responsibilities of a law enforcement officer.

Applicant explained his personal transformation began in January 2020 when he enlisted in the United States Marine Corp ("USMC") and the code of conduct he learned and to which he adhered. He added that he has demonstrated responsibility and dependability, having been chosen to train others, being adaptable, and learning the value of teamwork and selflessness. He has volunteered at community fundraising events. After four (4) years of active duty he is now in the Reserves and is a spouse and father of two. He described having "addressed underlying anger issues stemming from [his] childhood" through active participation in marriage counseling and that he has "implemented strategies to manage and channel my emotions constructively." Applicant described himself as a devoted pet owner to a Labrador mix who he and his wife "prioritized and cared for with utmost love and attention, including enrolling in pet care lessons and covering over \$5000 in medical expenses when [Name redacted] fell ill." Applicant stated he also used counseling as a way to become a better role model, finding ways to better communicate

and effectively manage his emotions.

Applicant closed with respectfully requesting reconsideration of the decision to remove his name from the eligibility list and thanking the Board for its time and consideration, adding his assertions that his past conduct, while regrettable, does not define his character or potential to serve as a dedicated and responsible law enforcement officer.

(Appeal)

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. Department also noted that Applicant admitted the conduct. Department summarized:

“The Applicant’s problematic history does not appear to be an isolated lack of judgment. Instead these incidents present as a series of misjudgments involving personal decisions which were separate, and exhibited in extremely divergent situations. The applicant’s admitted, indulgence with multiple illegal substances, and his frequent abuse of his dog is quite concerning and shows that his assertions of personal growth since ‘those occurrences’ are doubtful at best. The candidate’s history has demonstrated that the referenced candidate 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.’ The applicant’s history is extremely troubling [and] serves as grounds for disqualification.”

(Response)

FINDINGS OF FACT

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.

Applicant was credible in his assertions as to the facts.

Conduct Related to Drug Usage

Applicant was almost 28 years old when he submitted the PHQ. The date of last use of marijuana was August 2019, less than four (4) years from the date of PHQ submission and when Applicant was 24 years old. The date of last use of prescription drugs not prescribed was April 2016 and cocaine was June 2016, approximately seven (7) years from the date of PHQ submission, when Applicant was 21 years old.

Illinois made the sale of marijuana legal to those 21 years of age and older effective January 1, 2020. At some times of use, Applicant illegally used marijuana because he was under the age of 21. HOWEVER, the Standards reference the illegal use of drugs "other than" marijuana as disqualifying conduct involving illegal use of drugs. **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations as it relates to marijuana and Disqualification Based on Criminal Conduct -- Conduct Involving Drugs for the particular section cited. Therefore, while the Appeals Officer finds it was not disqualifying conduct as it relates to Disqualification Based on Criminal Conduct -- Conduct Involving drugs specifically, it may be considered in the aggregate of conduct described when considering Disqualification Based on Other Conduct.

The use of illegal drugs other than marijuana in the form of Applicant's use of cocaine and prescription drugs not prescribed to him (a total of nine times in his lifetime) was not within five years from the date of PHQ submission, and **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations that it fell within the five year prohibition and/or Department's implication that it was more than minimal experimentation. Therefore, while the Appeals Officer finds it was not disqualifying conduct as it relates to Disqualification Based on Criminal Conduct -- Conduct Involving drugs specifically, it may be considered in the aggregate of conduct described when

considering Disqualification Based on Other Conduct.

Conduct Related to Violent Tendencies

Mistreating animals is serious conduct addressed by law. However, other than Applicant stating that he had "kicked" his dog when walks did not go well, there was no indication of what he meant as far as force and how often it had occurred or how long ago. There were no other incidents of conduct striking or threatening humans or other living creatures. Applicant enrolled in pet care lessons to better care for his pet. He took care of him as he fell ill. Applicant admitted to "underlying anger issues" stemming from childhood for which he took the initiative to address with professional counseling and developed strategies to manage and channel his emotions. In considering the totality of the circumstances, the Appeals Officer finds **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations as to disqualifications based on violent tendencies, but the conduct may still be considered in the aggregate of conduct described for Disqualification Based on Other Conduct.

Conduct Related to Sexual Misconduct

Applicant exchanged money for sex twice in 2014 or 2015 after meeting the individuals online. Department cited 720 ILCS 5/11-14.1(A) Solicitation of a Sexual Act. The conduct would have been two misdemeanor offenses under that law. An applicant engaging in conduct constituting a misdemeanor sex offense may be found unsuitable for employment, but the nature and severity of the incident must be considered when making that decision. At the time of the conduct Applicant was somewhere between 18 and 21 years old (depending upon the month it occurred). There were no arrests, convictions or police reports with further detail. Department made no mention of whether it considered nature or severity of the incident, which might include Applicant's age at the time, the circumstances then and since, the length of time that has lapsed or

the number of times it happened. In considering the totality of the circumstances, the Appeals Officer finds **Applicant DID** provide sufficient additional facts directly related to and/or did adequately specify why the Department erred in its factual determinations as to disqualifications based on criminal sexual offenses because it did not indicate whether it considered the nature and severity other than Applicant's disclosing some form of the conduct occurred, but the conduct may still be considered in the aggregate of conduct described for Disqualification Based on Other Conduct.

Conduct Related to Vandalism

Applicant admitted that in high school he spray-painted non-gang-related graffiti on a garage with a friend one time, although it is unclear how old Applicant was at the time.

Conduct Related to Driving Without a License and Possession of Marijuana in Vehicle

Applicant drove a vehicle without a license one time in August 2016. It is unclear whether he did not have a valid driver's license with him, or that he did not have a driver's license altogether. During the same incident Applicant was given a municipal citation for possession of marijuana and paraphernalia in the vehicle for which he paid fines. Applicant was 21 years old at the time.

Findings as Other Conduct

Applicant enlisted in the USMC when he was 23 years old. He is now 29 years old, married and in the USMC Reserves after four (4) years of active duty.

It is the Appeals Officer's finding that after considering and weighing all the various incidents of conduct described and even after considering the totality of circumstances including when conduct occurred, age of Applicant at the time, length of time since the conduct, nature and severity of the conduct and corrective measure taken where such consideration is appropriate under the Standards, that **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 aggregate of conduct that exhibits a combination of traits disclosed during the pre-employment

investigation what 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, and conduct affecting public health, safety and decency.

By a preponderance of the evidence and based upon the totality of circumstances, **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 Other Conduct.

CONCLUSIONS OF LAW

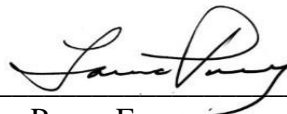
Pursuant to the Municipal Code of Chicago (“MCC”) 2-84-030 the standard of review for appeals of disqualification and removal of an applicant’s name from the Eligibility List is that Applicant shall show by a preponderance of evidence that Department’s decision to remove the applicant from the Eligibility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

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: September 11, 2024

POLICE BOARD FINDINGS AND DECISION

The members of the Police Board of the City of Chicago have reviewed the Appeals Officer’s findings, conclusions, and recommendations.

The Police Board, by a vote of 6 in favor (Kyle Cooper, Paula Wolff, Claudia Badillo, Nanette Doorley, Kathryn Liss, and Andreas Safakas) to 3 opposed (Steven Block, Mareilé Cusack, and Justin Terry), does not adopt the Appeals Officer’s findings, conclusions, and recommendation. Based on the amount of time that has passed since the above-described conduct occurred, taken together with the Applicant’s service in the United States Marine Corps since that time (which OPSA did not address in its Response and to which it did not give sufficient weight), the Board finds that the Applicant has met the burden of showing, by a preponderance of the evidence, that the decision to remove him from the Eligibility List was erroneous.

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 **reversed** and he is **reinstated to the eligibility list**.

This decision and order are entered by a majority of the members of the Police Board: Kyle Cooper, Paula Wolff, Claudia Badillo, Nanette Doorley, Kathryn Liss, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 17th DAY OF OCTOBER 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director