

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 24 AA 31**
APPLICANT FOR THE POSITION OF)
POLICE OFFICER,) **(Taleo No. [redacted])**
CITY OF CHICAGO.)

FINDINGS AND DECISION

[Name redacted] (hereinafter referred to as “Applicant”) applied for a police officer position with the City of Chicago. In a letter dated May 15, 2024, the Office of Public Safety Administration (“OPSA”) 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 (“Notice”).

On May 20, 2024, Applicant appealed this disqualification decision to the Police Board by filing a written request specifying why OPSA erred in the factual determinations underlying the disqualification decision and bringing to the Board’s attention additional facts directly related to the reason(s) for the disqualification decision, pursuant to Section 2-84-035(b) of the Municipal Code of Chicago (“Appeal”).

On June 26, 2024, OPSA filed with the Police Board a copy of the Notice and its response to Applicant’s Appeal (“Response”). Police Board Appeals Officer Mamie Alexander has reviewed the Notice, Appeal, and Response.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Mamie Alexander, as a result of a review of the above material, submits the following findings of fact, conclusions of law, and recommendation to the Police Board.

Filings by the Parties

Applicant filed a timely appeal as provided by Section 2-84-035(b) of the Municipal Code of Chicago, and the Response was filed within the time period allowed by the Police Board Rules of Procedure.

According to the Notice, Applicant was removed from the Eligibility List for the following reasons:

IV. Pre-employment Investigation Standards for Applicants to the Position of Police Officer

B. Disqualification Based on Criminal Conduct

7. Other Criminal Conduct

a) Conduct Involving Drugs

The City of Chicago has an obligation to maintain a safe, healthy and productive work environment for its employees. An employee under the influence of drugs or alcohol while at work can be a serious safety risk to himself or herself, to other employees, and in certain instances, to the general public. The abuse of drugs or alcohol also has a negative impact on the productivity and health of City employees. In order to maintain a safe and healthy work environment, the City of Chicago has established a "zero tolerance" policy regarding the unlawful use of drugs for its employees. This policy also prohibits the illegal sale, delivery, receipt, possession or use of any controlled substance. Further, any applicant who has illegally sold, delivered, received, possessed or used any controlled substance (under state or federal law and regardless of geographical location) has, if falling into any of the five categories listed below, demonstrated that they present a safety risk to themselves and others. The City defines an illegal drug as any drug that is not legally obtainable in the United States, any drug used in a manner or for a purpose other than prescribed, or any prescription drug that was sold, delivered, received, possessed or used by or to a person to whom it was not prescribed.

While the Chicago Police Department does not condone prior unlawful drug use by its applicants, we recognize that some otherwise qualified candidates may have engaged in limited drug use at some time in their past. The following standards set forth the criteria for determining whether prior drug use makes an applicant unsuitable for employment. These

standards balance the Chicago Police Department's need to maintain a drug-free environment and foster the public integrity needed to enforce applicable drug laws with the understanding that people sometimes have made mistakes that are not indicative of future performance or current abilities.

- (1) An applicant who has used any illegal drugs: (a) while employed in any law enforcement or prosecutorial position; or (b) while employed in a position that carries with it a high level of responsibility; or (c) while employed in a position involving the public trust, will be found unsuitable for employment.
- (3) An applicant who has sold, distributed, possessed or manufactured any illegal drug, other than Marijuana, at any time will be found unsuitable for employment.

The possession of controlled substances is covered under (720 ILCS 570/402) (from Ch. 56 1/2, par. 1402) Sec. 402. Except as otherwise authorized by this Act, it is unlawful for any person knowingly to possess a controlled or counterfeit substance or controlled substance analog. A violation of this Act with respect to each of the controlled substances listed herein constitutes a single and separate violation of this Act.

- (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 the 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.

H. Disqualification Based on Other Conduct

3. Any applicant who has engaged in conduct indicating discrimination or bias based on race, color, sexual orientation, gender identification, age, religion, national origin, ancestry, marital status, parental status, disability or any other protected class will be found unsuitable for employment.

Applicant was disqualified by OPSA based on criminal conduct involving drugs and

other conduct. In her Personal History Questionnaire (“PHQ”), virtual interview, and polygraph examination, Applicant admitted to using ecstasy and mushrooms within the last year. In addition, OPSA alleges that based on statements made by Applicant’s ex-girlfriend (“[Name redacted]”), Applicant has a history of exhibiting conduct which indicates a bias against African Americans.

Appeal and Response

Applicant appeals the decision, sharing that she and [Name redacted] dated for several years. Applicant says that she is surprised by [Name redacted]’s allegations of racial bias, and if they were true, she would not have listed [Name redacted] as a reference. Applicant asserts that she has been truthful and honest about everything in her past, and that she has wanted to be a police officer since she was four years old. Applicant says that she ended the relationship with [Name redacted] due to [Name redacted]’s unfaithfulness, and they did not end on good terms. She believes that [Name redacted]’s allegations were made out to spite to prevent her from joining the Chicago Police Department (“CPD”).

OPSA’s Response states that the appeal was reviewed, and OPSA relies upon the facts and evidence relating to the disqualification contained in Applicant’s file. OPSA maintains that the pre-employment disqualification standards under which Applicant’s disqualification decision were based upon are clear (namely, Disqualification Based on Other Criminal Conduct Involving Drugs and Other Conduct). OPSA states that the evidence in Applicant’s file supports its decision to disqualify Applicant from hiring, and OPSA is within its right to do so, citing *Apostolov v. Johnson*, 2018 IL App (1st) 173084; ¶¶ 24, 31 and *Johnson v. O’Connor*, 2018 IL App (1st) 171930, ¶¶ 16-17, 20.

OPSA adds that Applicant’s past actions revealed that had she been in their employ, she

would have been in violation of multiple rule violations, each of which would serve by themselves as grounds for disqualification. OPSA states that most troubling is Applicant's illicit drug use while employed in a position of trust and her perceived bias based on race. OPSA also notes that Applicant never mentioned that she was on bad terms with [Name redacted] until it was convenient for her. OPSA believes that Applicant's history has demonstrated that she would not be able to fulfill the CPD's mission to "strive to attain the highest degree of ethical behavior and professional conduct at all times."

Findings of Fact

Filings were timely.

OPSA provided the factual basis for its decision to disqualify Applicant and remove her name from the eligibility list. It determined that Applicant's criminal conduct involving drugs and other conduct were grounds for disqualification. OPSA articulated the Standards by which the conduct was assessed by section and paragraph, and articulation of the Standard gives reasonable notice as to the basis for disqualification.

Applicant is employed as a Nurse Tech at the University of Illinois Chicago Hospital, where her duties include setting up and assisting in the operating room. During her virtual interview and polygraph, Applicant admitted that she used Ecstasy in 2021 and in the summer of 2023. She also stated that she used Mushrooms (Psilocybin) in November, 2022 and September, 2023. During an interview with the R/I on March 15, 2024, Applicant stated that she used Mushrooms 3-4 times, and purchased them from an unknown person.

On her PHQ, Applicant stated that she received Ecstasy from her friends, and felt "energetic" after using it. Applicant states that she last used Ecstasy in 2023. Likewise, Applicant received Mushrooms from her friends, stating that she felt "a boost of energy"

while using it. She states that she last used Mushrooms in September, 2023.

During an interview with the Kentech Investigator, [Name redacted] disclosed that she had a very difficult relationship with Applicant. She stated that Applicant should be disqualified for her “racial attitudes towards Black people.” [Name redacted] further asserted that she does not believe Applicant would make a good police officer.

During a follow up interview with the R/I, [Name redacted] explained that there were many times when she was sitting with Applicant and her father while they were having conversations. [Name redacted] stated that Applicant’s father told stories of how he beat up homeless Black people at the airport, and Applicant used the “N” word on several occasions, which made [Name redacted] uncomfortable. [Name redacted] stated that she is not making these statements because she is bitter about the breakup, but because she is uncomfortable with the thought of Applicant being a police officer. [Name redacted] describes Applicant as “very impulsive,” and states that she is concerned about how Applicant will act when put in situations “when it comes to a Black person.”

Applicant stated that when Kentech asked for a recommendation from an ex, she listed [Name redacted] because they were together for so long. Applicant believed that if [Name redacted] was discovered during her background check, the R/I might think that she was hiding something. Applicant says that she is surprised by [Name redacted]’s allegations but admits that the relationship did not end on good terms. Applicant stated that her father is a well-respected and hardworking man who has worked with CPD for over thirty years. Applicant adds that various individuals are willing to write letters on her behalf to show the CPD that she is fit for the job, and the allegations against her are false.

Conclusions of Law

Section IV. of the Bureau of Support Services Special Order contains the Pre-Employment Investigation Standards for Applicants to the Position of Police Officer (“Standards”) that are applicable to this Appeal. Applicant was disqualified by OPSA based on criminal conduct involving drugs and other conduct. Based on the details provided in the Notice and Response, Applicant’s past conduct contains numerous grounds for disqualification based on OPSA’s Standards and CPD’s Rules and Regulations.

Disqualification Based on Other Criminal Conduct Involving Drugs

Section B(7)(a)(1) of the Standards states: “An applicant who has used any illegal drugs: (a) while employed in any law enforcement or prosecutorial position; or (b) while employed in a position that carries with it a high level of responsibility; or (c) while employed in a position involving the public trust, **will be** found unsuitable for employment.” (Emphasis added). Applicant freely disclosed illicit drug use while employed as a Nurse Tech, which carries with it a high level of responsibility **and** involves public trust.

Furthermore, Section B(7)(a)(3) states: “An applicant who has sold, distributed, possessed or manufactured any illegal drug, other than Marijuana, at any time will be found unsuitable for employment,” and Section B(7)(a)(6) states: “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 admitted to receiving and possessing Ecstasy and Mushrooms on numerous occasions as recently as September, 2023 (within six months of her background investigation). Therefore, Applicant’s criminal conduct involving drugs could be considered grounds for disqualification based on Section B(7)(a) of the Standards.

Other Conduct

Section H(3) of the Standards states: “Any applicant who has engaged in conduct indicating discrimination or bias based on race, color, sexual orientation, gender identification, age, religion, national origin, ancestry, marital status, parental status, disability or any other protected class **will** be found unsuitable for employment.” (Emphasis added). [Name redacted] alleges that she has heard Applicant using the “N” word on several occasions and believes that Applicant will be biased against “Black people.” Applicant listed [Name redacted] as a reference, and never mentioned being on bad terms with her until these allegations were made. As a result, Applicant’s conduct indicating discrimination based on race could be considered grounds for disqualification based on Section H(3) of the Standards.

Based on the above, it could be determined that Applicant’s history has demonstrated that she 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.”

No additional facts, evidence or arguments were submitted in Applicant’s Appeal that support her contention that Department erred in disqualifying Applicant based upon her criminal conduct involving drugs and other conduct. In considering and weighing the grounds for disqualification that were presented, Applicant has failed to show, by a preponderance of the evidence, that the decision to remove her from the Eligibility List was erroneous.

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,

/s/ Mamie A. Alexander

Mamie Alexander

Appeals Officer

Date: September 11, 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 9 in favor (Kyle Cooper, Paula Wolff, Claudia Badillo, 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 [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, Nanette Doorley, Kathryn Liss, Andreas Safakas, and Justin Terry.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF SEPTEMBER 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director