

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 21 AA 01**
APPLICANT FOR THE POSITION OF)
PROBATIONARY POLICE OFFICER,) **(Applicant No. [redacted])**
CITY OF CHICAGO.)

FINDINGS AND DECISION

[Name redacted] (hereinafter referred to as “Applicant”) applied for a probationary police officer position with the City of Chicago. In a letter dated June 08, 2021, 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 (“Notice”).

On June 30, 2021, Applicant appealed this disqualification decision to the Police Board by filing a written request specifying why the Office of Public Safety Administration 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”). No Response was filed by OPSA.

Police Board Appeals Officer Mamie Alexander has reviewed the Notice and Appeal.

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. No Response was filed within the time period allowed by the Police Board Rules of Procedure.

According to the Notice, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reasons:

B. Disqualification Based on Criminal Conduct

7. Other Criminal Conduct

(a) 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 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.

(5) An applicant who has used marijuana within the last two (2) years (from the date of the PHQ submission) or has used marijuana frequently over a substantial period of time at any point in his or her life will be found unsuitable for employment. When determining that marijuana use was frequent and/or that the time period was substantial, 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 marijuana, will be evaluated.

(c) Conduct Indicating Violent Tendencies

Police officers are required to act reasonably and professionally at all times and to maintain control of 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 which constitutes a felony will be found unsuitable for employment. An applicant who has engaged in any act falling within the scope of this section which constitutes a misdemeanor within the last three (3) years (from the date of the PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment.

Applicant was disqualified by the Department based on Applicant's admission that he smoked marijuana twice in December, 2015 and was involved in a physical altercation with his then-girlfriend ("girlfriend") in October, 2015.

Applicant appeals the decision, stating that he was disqualified for "no factual reasons." Applicant asserts that he has "never been arrested or had any incidents" that should disqualify him from serving as a police officer. Applicant also states that, contrary to the investigator's report, she was able to speak with his girlfriend about the incident that took place in October, 2015.

Findings of Fact

Other Criminal Conduct-Conduct Involving Drugs

Applicant smoked marijuana on two occasions in December, 2015.

Conduct Indicating Violent Tendencies

In October, 2015, Applicant was at his girlfriend's home, where everyone in the house

had been drinking. While there, Applicant and his girlfriend got into a physical altercation, and he grabbed her hands. Applicant's girlfriend screamed at him, and her brothers, father, and a friend intervened and began fighting with Applicant. Applicant began swinging punches, one of which struck his girlfriend. The police were called, and Applicant was told to leave.

Conclusions of Law

Other Criminal Conduct-Conduct Involving Drugs

Section IV of the Bureau of Support Services Special Order 16-01 (effective November 16, 2016) contains the Pre-Employment Investigation Standards for Applicants to the Position of Police Officer ("Standards") that are applicable to this Appeal.

As stated above, Section B (7)(a) states: "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 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." At the time of Applicant's marijuana use in 2015, marijuana had not yet been legalized.

Section B (7)(a)(5), which applies specifically to marijuana states: "An applicant who has used marijuana within the last two (2) years (from the date of the PHQ submission) or has used marijuana frequently over a substantial period of time at any point in his or her life will be found unsuitable for employment."

The Office of Public Safety Administration asserts that in Applicant's Personal History

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Questionnaire (PHQ), Kentech interview, and polygraph examination, Applicant admitted that he smoked marijuana on two occasions in December, 2015. In his Appeal, Applicant states that although the investigator's report "referenced" that he used marijuana frequently, there have only been two "accounts" that he used marijuana, between January and December, 2015. Applicant does not deny that he used marijuana within two years of his PHQ. Instead, Applicant argues that he does not use marijuana frequently (which was not alleged by the investigator), and that he passed drug tests that were administered during his 2018 and 2021 applications for the same position.

Based on the answers provided during Applicant's PHQ, Kentech interview, and polygraph examination for the instant Appeal, Applicant smoked Marijuana in December, 2015, which is within two (2) years from the date of his PHQ submission on March 19, 2017.

Conduct Indicating Violent Tendencies

Section B (7)(c) states: "Police officers are required to act reasonably and professionally at all times and to maintain control of 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."

Applicant related in his August 26, 2018, polygraph that an altercation took place between himself and his girlfriend at her home in October, 2015, where "everybody in the house had been drinking." As a result of that altercation (during which Applicant grabbed his girlfriend's hands), his girlfriend's father, brother, and friend got involved, and Applicant began throwing punches to "defend himself." While swinging punches, Applicant "accidentally" punched his girlfriend. The police were called, and Applicant was told to leave. No arrests were

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made.

Section B (7)(c) further states: “an applicant who has engaged in any act falling within the scope of this section which constitutes a misdemeanor within the last three (3) years (from the date of the PHQ submission), or more than one (1) time in his or her life, will be found unsuitable for employment.” Although the investigator was unable to obtain Applicant’s girlfriend’s version of events, Applicant’s own account of the events describe conduct demonstrating a propensity for violence, including, but not limited to assault and battery. In addition, the conduct took place in October, 2015 (within 3 years from the date of his PHQ on March 19, 2017).

Although Applicant alleges that his girlfriend struck him, Applicant admits to grabbing her hands and accidentally punching her. He also admits to throwing punches at her father, brother, and friend in what he describes as an attempt to defend himself.

In his Appeal, Applicant states that the investigator “actually was able to reach” his “ex-girlfriend,” and describes the incident in October, 2015, as his ex-girlfriend “being hostile towards” him. Applicant fails to reiterate in his Appeal that she “struck him several times,” as alleged in his polygraph. He also provides no further explanation about how he “accidentally” punched her. Applicant could have provided evidence from his “ex-girlfriend” (such as a letter or affidavit) to support his self-defense argument. Instead, Applicant states that he has “no criminal history or negative marks on his record.” Section B (1) of the Standards specifically states that an applicant may be disqualified for criminal conduct “even if the applicant was never convicted of a criminal offense, ” and Section B (7)(c) states that “any conduct demonstrating a propensity for violence will be grounds for disqualification.” No additional facts, evidence, or arguments were submitted in Applicant’s Appeal that support his contention that OPSA erred in

its determination that he has a propensity for violence.

Applicant has failed to show, by a preponderance of the evidence, that the decision to remove him 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: October 12, 2021

POLICE BOARD 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 hereby adopts the Appeals Officer's findings, conclusions, and recommendation by a vote of 6 in favor (Ghian Foreman, Paula Wolff, Nanette Doorley, Michael Eaddy, Steve Flores, and Andrea L. Zopp) to 0 opposed.

NOW THEREFORE, IT IS HEREBY ORDERED that the decision to remove [name redacted], Applicant No. [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: Ghian Foreman, Paula Wolff, Nanette Doorley, Michael Eaddy, Steve Flores, and Andrea L. Zopp.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 21st DAY OF OCTOBER, 2021.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director