

**BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO**

**IN THE MATTER OF THE APPEAL BY** )  
[NAME REDACTED], ) **No. 21 AA 03**  
**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 May 25, 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 July 23, 2021, Applicant appealed this disqualification decision to the Police Board by 1) filing a written request specifying why the Office of Public Safety Administration (“OPSA”) erred in the factual determinations underlying the disqualification decision, and/or 2) 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 August 13, 2021, the Office of Public Safety Administration filed with the Police Board a copy of the Notice and its response to Applicant’s Appeal (“Response”). On or about September 28, 2021, Applicant filed an undated and untitled document with the Police Board that replied to the Response (“Reply”). Police Board Appeals Officer Laura Parry has reviewed the Notice, Appeal, Response, and Reply.

## **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 the Parties**

Applicant filed a timely appeal as provided by Section 2-84-035(b) of the Municipal Code of Chicago. The Response and the Reply were 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 reason:

“B. Disqualification Based on Criminal Conduct  
2. Other Criminal Conduct

....  
(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 these 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.”

The Office of Public Safety Administration cited the following conduct, in summary:

An Emergency Order of Protection was entered against Applicant and in favor of his then-wife on March 30, 2018, for alleged conduct by the Applicant on or about March 28, 2018.

The Order was continued on April 20, May 11, and June 6 and 27, 2018. The underlying

Police Board Case No. 21 AA 03  
Findings and Decision

conduct allegations were that the day prior to a divorce proceeding court date, Applicant text messaged his then-wife all day and insisted on seeing her. She agreed to see him, he came to her home, asked why she wanted the divorce and told her to drop the case and work on their relationship. When she declined because he's "abusive and aggressive," Applicant became angry and tried to "get physically intimate," kissing her, telling her she was still his wife, that he wanted to have a baby with her, and pulled her neck towards him forcefully for several minutes. An affidavit in support of the petition for the Emergency Protection Order was filed. The Investigator assigned to the background investigation for this Applicant (hereinafter referred to as "Investigator") indicated that after several attempts, she reached the petitioner in August 2018 and was told petitioner's attorney advised petitioner's then-wife not to comment on the relationship or the contents of her affidavit in support of the Emergency Order of Protection due to the divorce case. Investigator related that Investigator was told the Order of Protection was dismissed because petitioner could not produce the evidence the judge requested and did not show up for any of the four court appearances, which she said was because her attorney was representing her. She also indicated she had help writing the affidavit and could not comment on the details of her relationship with Applicant [due to the divorce proceedings]. She indicated Applicant was not verbally or physically abusive but that he has a temper when he thinks he's right and has the potential [for abuse]. She indicated that she thought she should receive spousal support and Applicant didn't want to pay her. (Candidate Background Investigation Update, 23 August 2018).

Appeal, Response and Reply

In summary, Applicant appeals the disqualification because OPSA erred "in the factual determination underlying disqualification. The department failed to prove by a preponderance of

the evidence that applicant demonstrated a propensity for violence or criminal conduct.”

Applicant points to the following:

That the police report [for the alleged incident on/about March 28, 2018] stated the Applicant was not there; that his then-wife refused to sign the complaint; and that the reporting officer observed no physical injuries.

That the affidavit in support of the Emergency Order of Protection stated that Applicant contacted his then-wife via “Facebook Message” when he had her cell number and email address for contact. Applicant stated that there was no evidence and alleged his then-wife made a fraudulent page to create messages to herself.

That the Investigator Summary indicated Investigator spoke with Applicant’s then-wife who said Applicant was not verbally or physically abusive and that she had help writing the affidavit.

The Office of Public Safety Administration’s Response indicates the appeal was reviewed and that OPSA relies upon the facts and evidence in the file from the background investigation and the application of its hiring standards as they relate to violent tendencies, in its decision to disqualify and OPSA’s right to do so, citing *Apostolov v. Johnson*, 2018 IL App (1<sup>st</sup>) 173084; ¶¶ 24, 31 and *Johnson v. O’Connor*, 2018 IL App (1<sup>st</sup>) 171930, ¶¶ 16-17, 20.

Applicant’s Reply, in essence, argues that OPSA erred and did not prove its case for disqualification by a preponderance of the evidence. Applicant asserts the facts in his case are different from those in *Apostolov* and *O’Connor* because the applicants in those cases admitted being at the scene and to “some sort” of conduct.

### **Findings of Fact**

Filings were timely.

The Office of Public Safety Administration provided the factual basis for its decision to disqualify Applicant and remove his name from the eligibility list. It assessed that the facts regarding the March 2018 domestic violence complaint showed conduct indicating violent tendencies, which it determined was a violation of its hiring standards. The Office of Public Safety Administration articulated the standard by which the conduct was assessed by section and paragraph, albeit without reference to the specific document containing those provisions; articulation of the standard gives reasonable notice as to the basis for disqualification.

Applicant did not directly deny the conduct that formed the basis for the disqualification. He did not supply additional facts that showed he was not there prior to the police arriving, and he did not deny or supply additional facts to show he did not contact or touching his then-wife on or about March 28, 2018, as outlined in the conduct that led to the decision to remove his name from the Eligibility List.

As to the points presented by Applicant referencing the police report from the March 28, 2018, incident, Applicant wrote that the police reported that Applicant was not there. The actual language from the police report reads that after the officers arrived, "... [Applicant] was no longer at the apartment." The report indicates that Applicant was not there while the police were there – not that Applicant had not been there at all. Applicant is correct in that the report states his then-wife did not sign the complaint, but he excludes in his argument the reason given to the officer. The report states that the complainant signed a complaint refusal for domestic battery noting that she told officers she did not want Applicant to lose his job. Applicant correctly points out that the officer noted that he did not observe any physical injuries to the complainant.

The fact that the officer did not observe a physical injury does not mean the conduct did not occur. It means the officer did not observe an injury. Applicant's reference to the report did not supply additional facts; it offered argument that OPSA erred in the factual determination underlying disqualification and that OPSA failed to prove by a preponderance of the evidence that applicant demonstrated a propensity for violence or criminal conduct.

Referencing the affidavit in support of the petition for Emergency Order of Protection, Applicant presents unsupported conjecture that it is possible his then-wife created a false Facebook page and sent messages to herself. Even if taken as true, this does not show Applicant did not engage in the conduct that led to the disqualification. There is also no indication whether the complainant was ever named as an offender for a false-statements charge at any point after the report or affidavit. The fact that Applicant had his then-wife's email and cell phone number does not mean that he did not contact her by some other means. No additional facts regarding the affidavit were supplied, but rather the first point offered conjecture and is not a fact and the second point offered argument that OPSA erred in the factual determination underlying disqualification and that OPSA failed to prove by a preponderance of the evidence that applicant demonstrated a propensity for violence or criminal conduct.

As to the Investigation Summary, Applicant points out that his then-wife told the Investigator that Applicant was not verbally or physically abusive. The full reading of the sentence reads: "She also mentioned he was not verbally or physically abusive but he has a temper when he thinks he's right and has the potential." This statement does not show that the conduct in March 2018 did not occur. Whether complainant had help writing the affidavit in support of the petition for Emergency Order of Protection does not make the underlying complaint less credible. Applicant's reference to the Investigation Summary did not supply

additional facts, but rather it offered argument that OPSA erred in the factual determination underlying disqualification and that OPSA failed to prove by a preponderance of the evidence that applicant demonstrated a propensity for violence or criminal conduct.

### **Conclusions of Law**

As to Applicant's argument as to the *Apostolov* (misstated as Apolovosto by Applicant) and *O'Connor* cases, it appears those cases were cited by OPSA to support the proposition that when there is evidence in the file to support disqualification under its hiring standards, OPSA has the right to do so. The cases were decided prior to the passage of new provisions under MCC 2-84-35 et seq. on November 26, 2019. Applicant made no argument that the cited cases did not stand for the proposition articulated by OPSA in its Response. Applicant's arguments that the facts in this appeal are different from *Apostolov* and *O'Connor* (i.e., Applicant here did not admit to any conduct) are not persuasive. Most notably in this appeal Applicant never denied he engaged in the conduct that formed the basis for the disqualification. Not even once. It appeared Applicant painstakingly avoided admitting or denying the conduct throughout the entirety of the Appeal and Reply. Any omitted facts, evidence and arguments are deemed waived ((Police Board City of Chicago Rules of Procedure 18 February 2021 VII. B) promulgated pursuant to MCC 2-84-035(g)). Therefore, Applicant waived the denial of the conduct.

Applicant's argument that OPSA did not prove its case for disqualification by a preponderance of evidence on appeal is not the standard of review for appeal. Pursuant to the Municipal Code of Chicago ("MCC") 2-84-035 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 OPSA's decision to remove the applicant from

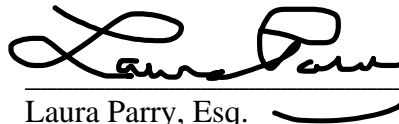
the Eligibility List was erroneous (MCC 2-84-035(c)). Therefore, findings and recommendations are based upon whether Applicant's appeal shows by a preponderance of the evidence that OPSA erred in removing his name from the Eligibility List.

Even if any of what Applicant supplied in his appeal could be construed as a denial, in considering and weighing what was presented, Applicant did not show by a preponderance of the evidence that OPSA erred in the exercise of its decision to remove him from the Eligibility List.

### **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 black ink, appearing to read "Laura Parry", written over a horizontal line.

Laura Parry, Esq.  
Appeals Officer

Date: October 4, 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 21<sup>st</sup> DAY OF OCTOBER, 2021.

Attested by:

/s/ GHIAN FOREMAN  
President

/s/ MAX A. CAPRONI  
Executive Director