

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

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| IN THE MATTER OF THE APPEAL BY |) | |
| [NAME REDACTED], |) | No. 23 AA 21 |
| 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 April 26, 2023, 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”).

In a letter dated May 16, 2023, and filed with the Police Board on June 14, 2023, Applicant appealed this disqualification decision to the Police Board by filing a written request specifying why the Department of Police (“Department”) 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 July 26, 2023, the Office of Public Safety Administration filed with the Police Board a copy of the Notice and its response to Applicant’s Appeal (“Response”). Applicant did not file a Reply. 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 Department's Notice, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reasons:

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

B. Disqualification Based on Criminal Conduct

1. One purpose of the pre-employment investigation is to determine whether the applicant has engaged in criminal conduct. This is important because the police hold a unique position of public trust and are tasked with protecting the public and enforcing the law. Therefore, an applicant may be disqualified from consideration for a police officer position if there is evidence that the applicant has engaged in criminal conduct, even if the applicant was never convicted of any criminal offense. Applicants with a history of criminal conduct that falls within the Department's disqualification standards are deemed unable to protect the public and its trust in the police. It is the conduct itself, not the fact that the applicant was convicted, that makes the applicant unsuitable for employment.
2. There are various types of proof which indicate criminal conduct, including a record of conviction or an admission that indicates the applicant engaged in criminal activities. A record of conviction or an admission will be *prima facie* evidence that the applicant engaged in criminal conduct.
3. Unlike a record of conviction or an admission, an arrest record merely indicates an allegation of criminal conduct and must be investigated further in order to be the basis for disqualification. When investigating an arrest record, the investigator must, to the extent reasonably possible, secure

evidence, including but not limited to statements obtained from interviews with police officers, victims and witnesses, which will be used to determine whether the applicant engaged in disqualifying criminal conduct.

4. In describing examples of disqualifying conduct, these Standards may refer to the Illinois Compiled Statutes. The references to the Illinois Compiled Statutes are descriptive only. Any similar federal offense, military offense or offense in any other jurisdiction within the United States (state or local) or any foreign jurisdiction may serve as a basis for disqualification.

E. Disqualification Based on Military History

Police officers are required to follow workplace rules and obey orders in a high-pressure and often dangerous environment. An applicant who has received a Dishonorable Discharge or Bad Conduct Discharge from the United States Armed Forces or the National Guard or State Militia has demonstrated his or her inability to work in such a setting and therefore will be found unsuitable for employment. An applicant who has received a discharge with other characterizations may be found unsuitable for employment based on the nature of the underlying offense.

Applicant was disqualified by Department based on his discharge from the United States Army (“Army”) under Other Than Honorable (“OTH”) conditions. Applicant failed to communicate to the Army that his wife changed her residence from New York to Florida, which would have lowered the amount of his Basic Allowance for Housing (BAH). As a result, Applicant had two infractions against him-Fraud against the United States and Larceny of Government Funds.

Appeal and Response

Applicant appeals the decision, stating that his wife is a resident of New York, and he was unaware of the amount of time that she spent in Florida while he was away in basic training. He states that once he was made aware of his “mismanagement” by the Army, he paid back the difference. Applicant notes that no criminal charges were filed against him, and he did not receive a Dishonorable Discharge. Applicant presents additional information regarding his

training and work history, and highlights his current position as a Security K-9 Handler at Navy Pier. He also provides numerous letters of recommendation in support of his application.

Department's Response states that the Appeal was reviewed, and Department relies upon the facts and evidence relating to the disqualification contained in Applicant's file. Department maintains that the Pre-Employment Disqualification Standards under which Applicant's disqualification decision was based upon are clear (namely, Disqualification Based on Criminal Conduct and Disqualification Based on Military History). Department states that the evidence in Applicant's file supports its decision to disqualify Applicant from hiring, and Department 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.

Department also notes that had Applicant been in their employ, he would have been in violation of multiple rule violations, "each of which would serve by themselves as grounds for disqualification." Department states that Applicant's history has demonstrated that he 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."

Findings of Fact

Filings were timely.

Department provided the factual basis for its decision to disqualify Applicant and remove his name from the Eligibility List. Department determined that that Applicant's criminal conduct and subsequent discharge from the Army under OTH conditions were grounds for disqualification.

Department 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.

Criminal Conduct

While serving in the Army, Applicant's family received BAH while he was in Italy for basic training. The amount received was based on his wife's residency in New York, and a change of address from New York to Florida would have decreased or eliminated the BAH. Applicant was required to notify the Army of any zip code changes. Although Applicant's wife spent nearly six months in Florida with her family, Applicant failed to notify the Army that she was no longer living in New York.

Based on records Department obtained from the Army, Applicant had two infractions against him: 1. Fraud Against the United States and 2. Larceny of Government Funds. Applicant accepted a compromise agreement and was discharged under OTH conditions. He also accepted the loss of two ranks and is unable to re-enlist in the military.

In his Appeal, Applicant states that he was unaware of the amount of time that his wife spent out of state, or that the BAH was rated differently in Florida and New York. Applicant states that after the Army brought this to his attention, he was "held accountable for mismanagement," and paid back the difference.

Applicant stresses that the Army agreed that no criminal charges would be filed, and he was not Dishonorably Discharged. Applicant states that he is still designated a veteran, and his OTH discharge allows him to receive military health benefits, VA Loans, and GI Bill benefits. He argues that Department's disqualification letter states that candidates with a Dishonorable Discharge or Bad Conduct Charge will be unsuitable for employment, but he does not fit in either category.

Applicant shares that since his discharge from the Army in 2021, he has worked as a

Security K-9 Handler for Action K-9 Security at Navy Pier. He has also received numerous trainings and commendations, and has collaborated and worked alongside CPD's K-9 Unit during major events. Applicant provides letters of recommendation from the Director of Patrol for Action K-9 Security and the Executive Director of Navy Pier Safety and Security. He also provides letters from a deacon at his church, several neighbors, his alderman, and two friends who are also members of the Chicago Police Department. The letters consistently describe Applicant as hardworking, disciplined, dependable, and ethical. Many of the letters add that he is committed to serving the community and would be an asset to the Chicago Police Department.

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.

Criminal Conduct

Section B (1) of the Standards states: "an applicant may be disqualified from consideration for a police officer position if there is evidence that the applicant has engaged in criminal conduct, even if the applicant was never convicted of any criminal offense... It is the conduct itself, not the fact that the applicant was convicted, that makes the applicant unsuitable for employment."

Applicant received benefits from the Army based on his wife living in New York when she was actually living in Florida with her family for six months. As a result, Applicant received a larger stipend than he was entitled to and received infractions from the Army for Fraud against the United States and Larceny of Government Funds. Applicant was not criminally charged, and instead agreed to an OTH discharge, along with a reduction of two ranks and an inability to re-

enlist.

In support of Applicant's disqualification, Department also cites Section B(4) of the Standards, which states: "In describing examples of disqualifying conduct, these Standards may refer to the Illinois Compiled Statutes. The references to the Illinois Compiled Statutes are descriptive only. Any similar federal offense, military offense or offense in any other jurisdiction within the United States (state or local) or any foreign jurisdiction may serve as a basis for disqualification."

Department lists 740 ILCS 80 (Frauds Act), as well as 720 ILCS 5/16-1(a) (Theft) to describe the disqualifying criminal conduct committed by Applicant. While the Frauds Act does not appear to be directly applicable, Section B(4) states that the references to the Illinois Compiled Statutes are "descriptive only." Department's description of Applicant's conduct could possibly be considered criminal under state, federal and/or military offenses, but no additional evidence was presented in Department's Response to counter the explanation provided by Applicant in his Appeal.

Applicant states that he was unaware that his wife was in Florida for an extended period, and only became aware that it was an issue when the Army brought it to his attention. He also argues that the Army agreed that no criminal charges would be filed against him.

Even if Applicant's Army infractions are treated by Department as arrests, Section B(3) states: "Unlike a record of conviction or an admission, an arrest record merely indicates an allegation of criminal conduct and must be investigated further in order to be the basis for disqualification."

While Department states that Applicant was "well aware" that he needed to notify

the Army of any zip code changes, it is unclear what evidence was used to support this assertion. In addition, there was nothing in the record that confirmed that Applicant was aware that his wife was living in Florida for six months. Therefore, even if Applicant knew that he needed to report a change of zip code, he would still need to be aware that the change took place.

Applicant asserts that the Army brought the matter to his attention, and he was “held accountable.” While Applicant’s conduct and subsequent compromise agreement raises questions, nothing in the record confirms that Applicant intentionally failed to report his wife’s change of residence.

Applicant’s compromise agreement with the Army does not, in and of itself, prove that Applicant committed the criminal acts of Fraud or Larceny. Soldiers are held to a higher standard, and there are some military infractions that do not rise to the level of disqualifying criminal conduct under Department’s Standards.

It is important to note that even if Applicant’s conduct is deemed criminal, the conduct would not necessarily mandate disqualification. Section B(1) states that an applicant “may” be disqualified from consideration.

Applicant’s Appeal contains seven letters of recommendation from supporters in several different areas of his life. Applicant’s current supervisor at K-9 Patrol describes Applicant as an “excellent student” and “shining example of what military members are capable of in this field.” The Executive Director of Navy Pier Security agrees, stating that Applicant is a professional with an “exceptional ability to manage a wide variety of tasks and assignments.” Both state that Applicant would make an outstanding police officer.

[Name redacted] at St. Genevieve Church (where Applicant is an active parishioner and

former graduate) states that he would recommend Applicant for a position as a police officer due to his “perseverance and dedication.” Furthermore, two current CPD officers (one of whom has known Applicant his entire life) state that Applicant has all of the skills necessary to become a police officer and would make a great addition to the CPD family.

Applicant also presents letters from his alderman and a family friend who has known Applicant since he was a child. Both reference Applicant’s service in the military, and express confidence that he possesses all of the required skills to succeed as a Chicago police officer. Throughout the letters, Applicant is consistently described as trustworthy, hardworking, responsible, and courageous.

Military History

Section E states: “Police officers are required to follow workplace rules and obey orders in a high-pressure and often dangerous environment. An applicant who has received a Dishonorable Discharge or Bad Conduct Discharge from the United States Armed Forces or the National Guard or State Militia has demonstrated his or her inability to work in such a setting and therefore will be found unsuitable for employment. An applicant who has received a discharge with other characterizations may be found unsuitable for employment based on the nature of the underlying offense.”

Applicant did not receive a Dishonorable Discharge or Bad Conduct Discharge from the Army. Therefore, based on his OTH discharge, Applicant *may* be found unsuitable for employment “based on the nature of the underlying offense.” Applicant’s underlying offense is his failure to report his wife’s change of zip code while he was in basic training in Italy, which resulted in an overpayment in BAH. Applicant’s offense was not directly related to his work in the military or his inability to work in high-pressure or dangerous environments.

While Applicant agreed to an OTH discharge based on actions that may have constituted misconduct based on military standards, there is insufficient evidence to show that Applicant's failure to update his wife's address constituted disqualifying criminal conduct under Department's Standards.

For the reasons stated above, Applicant has shown, 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 **reversed**.

Respectfully submitted,

/s/ Mamie A. Alexander

Mamie Alexander
Appeals Officer

Date: October 16, 2023

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 8 in favor (Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, and Andreas Safakas) 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 **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: Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF NOVEMBER, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director