

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)	
[NAME REDACTED],)	No. 23 AA 35
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 August 2, 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 and the process for appeal (“Notice”). In support of its decision, Department cited conduct it alleged formed the bases of Disqualification(s) Based on Criminal Conduct and False Statements or Omissions and/or Failure to Cooperate in the Application Process.

In a letter dated September 20, 2023, Applicant appealed the disqualification decision to the Police Board by filing a written request in order 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 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 November 1, 2023. Reply was filed November 30, 2023.

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 PARTIES

According to the Notice, which includes the Candidate Background Investigation Summary dated July 12, 2023 (hereinafter “Background Investigation Report”), 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

c. Conduct Involving 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; stalking; 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. (Background Investigation Report, p. 1-2)

Department cited the following conduct, in summary:

Two incidents of conduct indicating violent tendencies were alleged. One occurred when Applicant was a juvenile in February 2010 in which he was released to a parent after being arrested for misdemeanor reckless conduct for shooting a Pulse Air Rifle at vehicles on the street. Investigator reported Applicant said at the time of the arrest, “It was me. I didn’t think it

would hurt anybody.”

The second incident involved reports of threatened violence by Applicant against a former sexual partner (“the ex” or “his ex”) in 2018. It was reported that the ex phoned a suburban police department about Applicant’s potential employment after Applicant allegedly told the ex that Applicant would “come after her” if she gave that suburban agency a negative report about him, stating that this occurred shortly after she ended their relationship to spend more time with her fiancée and infant daughter. In an additional four-page letter, the ex reported Applicant told her not to enter that suburban area because he would “make her life hell.” She reported that during the phone encounter Applicant kept getting louder and told her that he was an adult now with a real job and a taser and wasn’t a little boy anymore who had to “listen to my shit,” and that Applicant was purchasing a gun and that this was the first step in a lifetime of having “power over me.” The ex also reported the conduct to the police department in another suburb where she resided. Per the Background Investigator’s summary of that report, the ex alleged Applicant said, “I’ll come after you if you don’t do that for me’ (meaning providing a good reference to Chicago Police and the other suburban police departments).”

(Background Investigation Report, p. 2-3)

Basis #2

IV-B. Disqualification Based on False Statements or Omissions and/or Failure to Cooperate in the Application Process, as cited by Department:

1. Honesty and credibility are vital characteristics for a police officer to possess in order to ensure the integrity of police operations and investigations and to protect the public and maintain its trust in the police. Honest and complete answers to background questions asked of applicants during the application process, as well as full cooperation with the application process, are thus extremely important to the maintenance of the Chicago Police Department’s fore and the integrity of its hiring process. Therefore, applicants are expected to cooperate with the City of Chicago and the Chicago Police Department in all matters relating to the processing of their applications for the position of Police Officer. Any applicant who fails to cooperate with the City of Chicago and its Police Department in processing his or her application for the position

of Police Officer could be disqualified. Prohibited conduct within this category includes, but is not limited to: failure to provide any required information, failure to respond to requests for information in a timely manner; failure to respond to requests for interviews in a timely manner; failure to fully disclose all known information requested, whether it is beneficial or prejudicial to the applicant; making false or misleading statements in connection with any part of the application process; failing to include any material or relevant information requested by the City of Chicago or the Chicago Police Department; or failing to appear for scheduled appointments or processing sessions as directed.”

2. Once employed, any employee who is found to have engaged in any conduct prohibited in the paragraph above will be subject to discipline, up to and including discharge. (Background Investigation Report, p. 3)

Department cited the following conduct, in summary:

Applicant’s PHQ was submitted February 3, 2023. Applicant omitted information required under PHQ Q40 and/or Q94 in that Applicant did not report having applied to other law enforcement agencies. Applicant was initially offered a position as an auxiliary police officer at a suburban department, but the offer was rescinded a few hours later due to the allegations raised by the ex hours after learning Applicant was hired as discussed in the conduct alleged in Basis #1 above.

Additionally, Applicant failed to report that he was questioned, arrested and charged for Reckless Conduct and failed to report that he had been questioned by the police regarding the allegations made by the ex in the conduct alleged in Basis #1 above. Investigator reported that according to the case report, Applicant was questioned by a detective in the suburb where the ex resided as well as the other suburban police department where he was verbally hired hours prior to his phone call with the ex. These disclosures were required by Q65 of the PHQ as to whether he’d ever been questioned by the police. (Background Investigation Report, p. 3-4).

Appeal, Response and Reply

The following is a summary.

Appeal.

Reckless Conduct – juvenile arrest. Applicant explained he was a 14-year-old boy and was playing with the “toy gun” in his bedroom and that he never had any “ill intent” in its use. He reported he was told to write a formal essay on consequences. Applicant further argued that the incident was a one-time misdemeanor over 13 years ago, and therefore “his record” does not meet the requirements for disqualification based on Conduct Indicating Violent Tendencies because it was not a misdemeanor in the last three years, or more than once in his life. (Appeal, p. 1).

Incident reported by Ex. Applicant noted that no criminal charges were ever brought against him, and that the allegations were from five years ago from a single individual. Applicant wrote that he filed a FOIA request for information regarding the reports made by the ex. Applicant wrote that the four-page letter and corresponding statements could not be found. (Appeal, p. 2-3, and Exhibits). Applicant provided a recording and transcript of the conversation between the ex and the suburban police department that had given a verbal offer of employment as an Auxiliary Officer when the ex was contacted for a follow-up by a detective from that department. Applicant pointed out that during the call the ex stated she had contacted the Chicago Police Department and had asked them questions. Applicant also noted that he sent an email August 21st to request the file used for his Background Investigation and that the Human Resources Division responded that Applicant had already received all of the information needed to form his appeal. Applicant explained his FOIA request regarding the phone call to the Chicago Police Department by the ex yielded no results. (Appeal, p.3 and Exhibits).

Information Omitted on PHQ. As to omitting the Reckless Conduct arrest incident on the PHQ, Applicant “deeply apologize[d].” Applicant wrote that until it was “revealed” as part of his

background investigation he never knew he had been criminally charged and that his parents (who are from Poland) did not know that he had been questioned or charged with any criminal offense. Applicant argued that it was a confusing experience and he didn't understand the legal implications. Applicant further stated that he later disclosed the incident during his polygraph examination. He further explained that the incident did not prevent him from being hired as an Auxiliary Officer in his current law enforcement agency. Further, when Applicant sought to expunge the record in August, he said he was told it would be difficult because there was no record to expunge even though the Cook County Expungement Help Desk filed a Freedom of Information Act request on his behalf. The name check documentation supplied by Applicant showed the arrest case report number with Applicant at his then address on West Addison Street. The Circuit Court showed no case information. (Appeal, p. 1-2, and Exhibits.)

As to his omissions regarding applications to other law enforcement agencies on the PHQ, Applicant "deeply apologize[d]" for the failure to disclose. He explained that he was verbally hired by the suburban department before the incident with the ex "cost" him the job, and that he did not expect it would follow him through the hiring process with the Chicago Police Department ("CPD"). Applicant argued that the ex told law enforcement Applicant had used her as a reference on his applications to the suburban agency and the CPD. Applicant's exhibits included a letter of recommendation the ex had sent to Applicant in February 9, 2018 for his application to CPD. This email was forwarded to the detective by Applicant on February 16th, the day after he was hired, told the ex he was hired, and she called in the complaint hours later (February 15th). Exhibits also included an audio recording and transcript of a follow-up phone call between the suburban police department that had initially hired and then revoked the offer to Applicant. The transcript indicated the detective wanted to speak further with the ex after she

had placed what the detective described as an “alarming” call to dispatch the day before (which was also the day she learned Applicant was hired by that agency) in which the ex expressed fear for her safety if Applicant became a police officer. It appeared that the ex did not want to give any further statements and the detective asked why she would write Applicant a recommendation on February 9, 2018 and then call and say she’s fearful of him on February 15, 2018 the day she learned he was hired by a law enforcement agency. The transcript indicated the ex said she’d also called CPD, but neither the hiring suburban department nor CPD had her listed as a reference by Applicant. At one point the detective asked the ex why just two hours after Applicant had been hired she’d called “hysterical” to report the conduct and why she would “come forward and hurt this guy, to do this now, all of a sudden” to which the ex explained, “He was scaring me” and further the ex asked the detective, “Sir, are you getting angry with me?” The detective explained that she was not listening to what he was asking her to do to either be interviewed in person or file a report because it was a serious allegation and that a statement would not be taken over the phone. (Exhibits, Transcript, p. 5). The ex agreed to an in-person interview but refused to go to the station. Officers interviewed her in her backyard and she stated that she stood by her statements made to the police department in the suburb which she resided. She was said to have told the detective that she felt threatened and afraid that Applicant would now be an officer with a taser, but that Applicant had never made an actual threat. The ex explained she wrote Applicant a recommendation a few days earlier because “he was a nice guy then” without further elaboration. (Exhibits Incident Report 1802-00192). In the ex’s recommendation email, the ex claimed the sexual relationship ended in 2017 after she decided she wanted to have children, and given she was four years older than Applicant. After the phone call with the Applicant in which she learned Applicant was hired that day by the suburban police

department, she reported to the police department in the suburb where she resided that she'd been seeing Applicant behind her fiancée's back until about a month prior and that during the call Applicant told her he used her as a reference for both the suburban and Chicago police departments and that he "threatened" her to give him good references even though she had not said whether she'd give him a good reference or not. When asked how she was threatened, the ex reported Applicant said, "I'll come after you if you don't do that for me." She reported that she was afraid if he was issued a taser Applicant would hurt her if she drove through that suburb. It was reported the ex also stated that she'd reported the conduct to the hiring suburban police department and was told to file a report so that "I can be safe from him hurting me." The officer reported that the ex told the officer that he cannot let Applicant know that she made the report because she didn't want Applicant to know she'd contacted the police. In a follow-up conversation the officer told the ex that he'd spoken to Applicant, the ex was reportedly "unhappy" that he had done so, and she then said Applicant would "paint her as a liar," and that it was "not right" that she was the one crying and afraid. Responding officer also interviewed Applicant who told the officer that he'd been seeing the ex behind her fiancée's back and while she was pregnant, but that the sexual part of the relationship ended in 2017 and they had sporadic contact since then. Applicant reported that it was the ex who had called him that day and wanted Applicant to maintain their "intimate" relationship and that she said he was not trying enough to take care of her. Applicant explained that he told her he was done with that part of his life and that he just got the new Auxiliary Police job and was in a happy relationship with someone at which time the ex became irate and caused Applicant to tell the ex "what he thinks of her," but Applicant could not remember exactly what he said but that he never threatened the ex or told her he had used her as a reference on any application. Applicant said he sent the ex a text

message later “to apologize for his behavior.” (Exhibits, Case No. 2018-00006965)

Applicant noted that the ex attempted to accuse the detective of telling her fiancée that she was a crazy ex-girlfriend and that when the detective said, “Who said that?” the ex changed it to her fiancée told her that the detective “insinuated” that she was a crazy ex-girlfriend and that the detective had gotten these things (presumably those types of calls) all the time. (Appeal, p. 4 and Exhibits Transcript, p. 2). He also noted that when the ex spoke to the detectives in person, as opposed to the call to dispatch and the initial case report, the ex admitted that Applicant had never made an actual threat during the phone call. (Appeal, p. 4 and Exhibits Incident Report 1802-00192). In the Appeal Applicant wrote that it was he who called the ex that day to share his “exciting news” and that during the conversation “she could not accept that I was moving forward with my life, without her, and that I had started seeing someone else.” (Appeal, p. 4). Applicant also argued that when the suburban police officer told the ex he had spoken with Applicant, the ex’s reaction was a concern that Applicant would paint her as a “liar,” rather than concern for her own personal safety. (Appeal, p. 5 and Exhibits Case No. 2018-00006965).

Response. In summary, Department iterated it stands on the reasons and bases set forth in the disqualification letter, and cited caselaw supporting its rights to disqualify. (Response)

Reply. In summary, Applicant explained that he has been working as an Auxiliary Officer for another suburban police department without any rule violations. He iterated his apologies and explanations for omitting the information from his PHQ. He explained he did not know the Reckless Conduct arrest was a criminal charge and that the incident the ex alleged never resulted in an arrest or criminal charge. Applicant also distinguished the facts in the caselaw presented by Department to the facts of his case. Applicant wrote that the “angry” ex’s

allegations were false, he never used her as a reference, and that her allegations came after he told her he did not want an intimate relationship with her. Applicant also included a letter in support of his application from a retired Department detective who has known Applicant for 10 years.

FINDINGS OF FACT

All 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 specifying why the Department erred in the factual determinations underlying the Department's decision *and/or* provide additional facts directly related to the bases for disqualification.

Applicant submitted his PHQ February 3, 2023

This Appeals Officer finds Applicant did not provide sufficient additional facts and did not adequately specify why Department erred in its factual determination that Applicant engaged in the conduct of failing to disclose or omitting information prejudicial to Applicant during the Applicant Process. Applicant did not disclose ANY questioning by police in either the Reckless Conduct arrest as a juvenile or the questioning by the police department in the suburb where the ex lived as regards the ex's report of Applicant's alleged threatening conduct. He also failed to disclose his application to the suburban police agency that extended an offer of employment which was then revoked after the ex's report of alleged conduct to that department. That Applicant failed to disclose any of that information on the initial application (submission of the PHQ) does not appear to be from a lack of understanding of what it is to be questioned by the police, what an application to a law enforcement agency means, or due to a faulty memory, but

rather an intentional act to omit information potentially prejudicial to the Applicant. While Applicant eventually admitted to the police questioning after being confronted during follow-up background interview/polygraph examination it is highly suspect that the only two encounters in which Applicant was questioned by the police were BOTH omitted in the submission of his PHQ. The same goes for finally admitting his application to other law enforcement agencies. It appears Applicant was intentionally not being truthful when he filled out the PHQ. Truthfully answering the PHQ is part of cooperating with the application process. Admitting to information AFTER it's been otherwise discovered by Department and apologizing for not disclosing it when first requested to do so does not negate the conduct.

This Appeals Officer finds Applicant provided sufficient additional facts and adequately specified why Department erred in its factual determination Applicant engaged in the conduct indicating a propensity for violence as it relates to the Reckless Conduct incident. Applicant engaged in the conduct as described in the circumstances that led to his arrest for Reckless Conduct as a youth. However, it was one incident, 13 years ago, and there have been no similar incidents reported. He was released to his parents. There was no evidence that showed how this "reckless conduct" equated to conduct that showed a "propensity for violence."

This Appeals Officer finds Applicant provided sufficient additional facts and adequately specified why Department erred in its factual determination as to threatening conduct alleged by the ex that is conduct indicating a propensity for violence. The initial police reports and follow-up by the suburban police when taken as a whole show a very muddy account of what the alleged violent/threatening conduct was. In one account the ex reported that Applicant never actually threatened her. As Applicant pointed out in his argument, it appeared that in the follow-up with the ex by the suburban agency the ex was more concerned with being "painted as a liar" than her

own personal safety. Applicant is employed at another suburban law enforcement agency as an Auxiliary Officer without incident. While Applicant's account is somewhat inconsistent in that Applicant at one point said the ex called him and at another point said he called the ex, given the totality of the accounts and circumstances, Applicant did provide sufficient additional facts and adequately specified the error in factual determination as to the alleged threatening conduct.

Letters of support do not bear on the consideration of whether disqualifying conduct occurred.

Applicant's assertion that caselaw cited by Department are factually distinguishable from those in his case is unpersuasive because it appears Department cited the caselaw to support the general proposition that Department has the right to remove an applicant from the eligibility list if disqualifying conduct is found.

By a preponderance of the evidence, **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 ALL bases presented. Conduct satisfying any ONE basis is enough to justify disqualification. In this case it was conduct that formed the basis for Disqualification Based on False Statements or Omissions and/or Failure to Cooperate in the Application Process for Applicant's omissions and failures to disclose information regarding questioning by police in two incidents and an application to another law enforcement agency that extended an offer of employment to Applicant and then revoked that offer. As stated above and given the totality of the circumstances these omissions and failures to disclose appeared to be intentional.

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

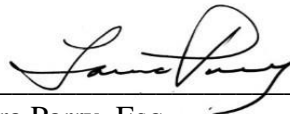
Applicant shall show by a preponderance of evidence that Department's decision to remove the applicant from the Eligibility List was erroneous (MCC 2-84-035(c)). Therefore, according to the law and procedures, findings and recommendations are based upon whether Applicant's Appeal shows by a preponderance of the evidence that Department erred in removing Applicant's name from the Eligibility List, based upon the employment standards established by the Department.

Applicant **DID NOT** show by a preponderance of the evidence that Department erred in the exercise of its decision to remove Applicant's name from the Eligibility List for the reasons stated herein.

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,



Laura Parry, Esq.
Appeals Officer

Date: January 12, 2024

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 9 in favor (Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Ghian Foreman, 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 **affirmed**.

This decision and order are entered by a majority of the members of the Police Board: Kyle Cooper, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Michael Eaddy, Ghian Foreman, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF JANUARY, 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director