

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

**IN THE MATTER OF THE APPEAL BY** )  
**[NAME REDACTED],** ) **No. 22 AA 12**  
**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 October 12, 2022, 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”).

Applicant appealed the disqualification decision to the Police Board by filing a written request, through Applicant's attorney, dated December 8, 2022. Such an appeal must 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”).

Police Board Appeals Officer Laura Parry has reviewed the Notice and Appeal.

**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**

In addition to the Notice and Appeal, a Response and a Reply were timely filed, as required by Section 2-84-035(b) of the Municipal Code of Chicago.

Notice

According to the Notice, Applicant was removed from the list of eligible applicants for the position of probationary police officer for the following reasons based upon Pre-employment Investigation Standards for Applicants to the Position of Police Officer CPD BSSSO 18-01 (“disqualification standards” or “standards”) Section(s) IV.B.1. Disqualification Based on Criminal Conduct; IV.B.6. Disqualification Based on Criminal Conduct - Felonies; IV.B.7. a) Disqualification Based on Criminal Conduct - Other Criminal Conduct - Conduct Involving Drugs; and IV.B.7. b)(1) Disqualification Based on Criminal Conduct - Other Criminal Conduct - Conduct Indicating Dishonesty. Department cited the bases below.

"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. Even more than other City employees, Chicago Police Department officers are specifically tasked with and sworn to uphold the law. Therefore, an applicant will 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." (Notice at p.1)

"6. Felonies

An applicant who has engaged in any criminal conduct which would constitute a felony is not eligible for employment." (Notice at p.2)

"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" (Notice at p. 7).

b) Conduct Indicating Dishonesty

1) Credibility, honesty and veracity are extremely important characteristics for a police officer to possess on and off duty. Honesty is required to ensure the integrity of police operations and investigations and to protect the public and maintain its trust in the police. The pre-employment investigation therefore looks for information that shows that the applicant has a reputation or propensity for truthfulness, is believable and has a personal history free from deceit or fraud." (Notice at p.7-8)

Department cited the following conduct for the bases above. In summary:

Applicant sold marijuana, approximately 10 times, (making \$40 per sale) as admitted to the investigator conducting the background interview in July 2022. When questioned by the polygraph examiner on an undisclosed date, Applicant "changed his story" and said that he'd sold marijuana ("cannabis) for three months, and that when questioned during the polygraph about whether Applicant was withholding information about his involvement with illegal drugs the polygraph registered a significant response ("SR") to Applicant's answer. In September 2022 Applicant contacted the investigator to explain why he had sold "weed" (marijuana/cannabis).

Appeal

The Appeal asserts that repeated attempts were made by Applicant himself and his attorney, to obtain the "background file" to no avail (Appeal at pg.1, n.1), however nothing was presented as evidence of those requests. In summary as to the conduct that formed the bases of the disqualification, Applicant does not deny selling marijuana 10 times. Reasons for the conduct were provided regarding Applicant's home life, living situations and homelessness at various stages starting when he was three years old. The sales occurred when he was a teen,

some 15 years ago. There were no arrests or convictions. Applicant self-reported the conduct. The appeal goes on to explain Applicant's conduct and achievements since that time. Applicant also presented argument on how the Department should adhere to Office of Inspector General ("OIG") recommendations to eliminate Applicants only on grounds relevant to predicting job performance, and that Applicant's conduct in selling marijuana was so short in time and so long ago that it should except him from disqualification under caselaw. In both the Appeal and Reply, Applicant included language from an Illinois Appellate Court case that analyzed the disqualification standards from 2014 (Appeal at p.4, Reply at p.1, citing *Apostolov v. Johnson*, 2018 IL App (1st) 173084). The disqualification standards from that Appellate case appears contain language within its provisions that made limited exception to criminal conduct disqualifications based on certain factors, including the seriousness, frequency and recency of the applicant's criminal conduct. (Appeal, citing *Apostolov*, ¶28). Applicant did not note whether that same language appears within the provisions for the disqualification standards used in Applicant's case. Applicant pointed out that when the Department alleged Applicant "changed his story" about the circumstances of selling marijuana, what Applicant did was to give a time frame (three months) that he engaged in selling the marijuana and that he did not change the number of times he said that he had sold it. The "significant response" to the polygraph when the polygraph examiner asked whether Applicant was withholding information about illegal drugs was not addressed. Applicant further argued that according to Illinois caselaw if more than one instance of conduct forms the basis for a disqualification, but some of the conduct is found erroneous then the Department must reconsider whether the remaining conduct was sufficient for disqualification. The Appellate Court case involved application of the standards other than those used in this Applicant's case. (*Johnson v. O'Connor*, 2018 IL App (1st) 171930). (Reply at p.1,

citing *Johnson* ¶24.

### **Findings of Fact**

Filings were timely.

Applicant illegally sold marijuana 10 times within a three-month period as a teenager. There were no arrests or convictions. Applicant did not address the classification of the conduct as felonious. Applicant self-reported the conduct during the background interview and the polygraph exam interview. During the polygraph exam interview Applicant added the time frame of three months, to the already disclosed number of times he sold marijuana. A Significant Response ("SR") registered on the polygraph when Applicant was asked whether he was withholding any information about his involvement with illegal drugs.

### **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)). Findings, Conclusions and Recommendations are based upon whether an applicant's Appeal specifies why the Department erred in the factual determinations underlying the disqualification decision and/or provides additional facts directly related to the reason(s) for the disqualification decision (MCC 2-84-035(b)). As such, any arguments made as to the propriety of the standards established by the Department are not considered in the analysis by the Appeals Officer herein.

Under the Department disqualification standards, IV.B.1. Disqualification Based on Criminal Conduct, an applicant **will 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" (emphasis added). Additionally, under IV.B.7. a) (3) Disqualification Based on Criminal Conduct - Other Criminal Conduct - Conduct Involving Drugs **an applicant who has sold**, distributed or manufactured any illegal drug **at any time will be found unsuitable** for employment. Even though Applicant was not arrested or convicted of a criminal offense, and whether or not it was self-reported, and regardless of the age of the Applicant when the conduct occurred, Applicant engaged in 10 acts of criminal conduct in selling illegal drugs 10 times over a three-month period. This was not a single act as was at issue in the *O'Connor* case addressed by Applicant. Even if it were a single act of criminality, Applicant's argument that the seriousness, frequency and recency of the applicant's criminal conduct are factors that must be considered are based on standards from 2014. Applicant did not show that the standards used in this case contained the same language as that in the provisions of the standards at issue in the *Apostolov* or *O'Connor* cases. Also, under IV.B.6. Disqualification Based on Criminal Conduct - Felonies, an applicant who has engaged in any criminal conduct which would constitute a felony is not eligible for employment. Applicant did not explain factual error or offer additional facts directly related to whether the conduct constituted a felony. Any omitted facts, evidence, or arguments are deemed waived (Section VII. B. of Rules of Procedure effective 18 February 2021 promulgated pursuant to MCC 2-84-035 (b)(4)). Applicant failed to provide sufficient and credible additional facts directly related to the reasons for the disqualification and/or specify why there was error in the factual determinations underlying the disqualification decision under these bases. **Applicant failed to show by a preponderance of evidence that Department's decision to remove the applicant from the Eligibility List was erroneous under** (1) IV.B.1. - Disqualification Based on Criminal Conduct; (2) IV.B.6.

Disqualification Based on Criminal Conduct - Felonies; and (3) IV.B.7. a) Disqualification Based on Criminal Conduct - Other Criminal Conduct - Conduct Involving Drugs.

As to IV.B.7. b) (1) Disqualification Based on Criminal Conduct - Other Criminal Conduct - Conduct Indicating Dishonesty, Applicant added a time frame in which the marijuana was sold. This is a clarification or addition, not a change in the story, and might explain a significant response in the polygraph test itself. **Applicant showed by a preponderance of evidence that Department's decision to remove the applicant from the Eligibility List was erroneous only as to IV.B.7. b) (1) Criminal Conduct - Other Criminal Conduct - Conduct Indicating Dishonesty.**

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.

### **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,

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Laura Parry, Esq.  
Appeals Officer

Date: February 28, 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 does **not** adopt the Appeals Officer's findings, conclusions, and recommendation by a vote of 6 in favor (Ghian Foreman, Paula Wolff, Steven A. Block, Mareil  B. Cusack, Nanette Doorley, and Jorge Montes) to 0 opposed.

**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 **reversed** and he is restored 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 A. Block, Mareil  B. Cusack, Nanette Doorley and Jorge Montes.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16<sup>th</sup> DAY OF MARCH, 2023.

Attested by:

/s/ GHIAN FOREMAN  
President

/s/ MAX A. CAPRONI  
Executive Director