

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF THE APPEAL BY)
[NAME REDACTED],) **No. 23 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 January 5, 2023, the Office of Public Safety Administration (the “Office”) gave Applicant written notice of its decision to remove him from the list of eligible applicants for this position (“Eligibility List”) due to the results of a background investigation, along with the reasons for the disqualification decision (“Notice”).

In early February 2023, Applicant appealed this decision to the Police Board by filing a written request specifying why the Chicago Police Department (the “Department”) erred in the factual determinations underlying the disqualification decision and bringing to the Police Board’s attention additional facts directly related to the reasons for the disqualification decision, pursuant to Section 2-84-035(b) of the Municipal Code of Chicago (the “Appeal”).

On February 27, 2023 the Department filed a response to the Appeal (the “Response”).

Appeals Officer Cooper has reviewed the Notice, Appeal and Response.

APPEALS OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Appeals Officer Cooper, 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 timely appealed his removal from the Eligibility List, as authorized by Section 2-84-035(b) of the Municipal Code of Chicago.

The Notice indicates that the Applicant was removed from the Eligibility List because of “criminal conduct” indicating violent tendencies. (Notice at pgs. 2-3.) Specifically, the Notice states that a background investigation revealed that Applicant was arrested on December 26, 2020 and charged with domestic battery in connection with a domestic violence incident with his ex-girlfriend. (*Id.*) According to the case report associated with this incident, Applicant’s ex-girlfriend claimed that Applicant struck her in the face with a cell phone, choked her and threw her cellphone out the window while the pair were travelling in a car. (*Id.*) The Notice also cites a separate domestic incident from February 2022 involving the same ex-girlfriend. (*Id.*) While Applicant was not arrested during this incident, the case report purportedly indicates that Applicant’s ex-girlfriend accused him of punching her on the right side of her face during a verbal altercation and taking her some of her belongings. (*Id.*)

In his Appeal, Applicant claims that his ex-girlfriend has a history of mental illness and that she was, among other things, the aggressor in the relationship. (Appeal at pgs. 1-2.) Applicant further claims that the police report regarding the December 2020 incident contains several errors and is unreliable. (*Id.*) Specifically, Applicant claims that: (1) his ex-girlfriend was drunk, erratic and angry that night; (2) that he never struck or choked her; and (3) that he never threw her cellphone out of a vehicle. (*Id.*) Applicant further maintains that the charges against him were later dropped because the ex-girlfriend did not show up to court. As for the February 2022 incident, Applicant denies ever punching his ex-girlfriend or taking any of her belongings. (*Id.*)

On February 27, 2023, the Department filed a response to the Appeal. In its Response, the Department states that it continues to rely on the facts and evidence cited in the Notice in support of its decision to remove Applicant from the Eligibility List. (Response.)

Findings of Relevant Facts

Biographical Information

Applicant is a twenty-three-year-old male who appears to be a military veteran. (Notice at pg. 2; Appeal at pg. 1.)

The December 2020 Incident

Based on the limited record made available to this Appeals Officer, it appears that a background check revealed that Applicant was arrested on December 26, 2020 and charged with domestic battery following a domestic dispute with his ex-girlfriend. (Notice at pg. 3.) There are considerable differences between what is apparently contained in the case report regarding this incident and what Applicant told investigators and what he writes in his Appeal.

For example, according to the case report, Applicant's ex-girlfriend alleged that he assaulted her with a cellphone, choked her and discarded her phone out of the car window while they were traveling together. (Notice at pgs. 2-3.) Moreover, according to the case report, an evidence technician was called to photograph the ex-girlfriend's alleged injuries, and she was taken to a nearby hospital for treatment (*Id.*)

On the other hand, Applicant told investigators that while the couple got into an argument on that date in question, it was because the ex-girlfriend was drunk and acting erratically. (Appeal at pgs. 1-2.) He maintains that he never struck, hit or choked her. (*Id.*) Specifically, in his Appeal, Applicant states that the evening began with a disagreement at a restaurant over whether the couple should leave the restaurant without paying due to bad service. (Appeal at pg. 1.) Applicant claims that the ex-girlfriend became enraged when he told her he did not want to leave the restaurant

without paying. (*Id.*) During their drive home, the ex-girlfriend, under the influence of alcohol, purportedly repeatedly attempted to exit the moving vehicle. (*Id.*) According to Applicant, this alarming behavior continued until they reached a gas station, where Applicant tried to defuse the situation. (*Id.*) When the gas station's cashier threatened to involve the police, Applicant, purportedly concerned about his military career and future law enforcement aspirations, left the scene. (*Id.*) Later, based on the ex-girlfriend's assault allegations, the police arrested Applicant. (*Id.*) The charges were later dropped, however, due to the ex-girlfriend's failure to appear in court. (*Id.*)

The February 2022 Incident

Like the December 2020 incident, there are substantial differences between what is apparently contained in the case report regarding this incident and what Applicant told investigators and what he writes in his Appeal.

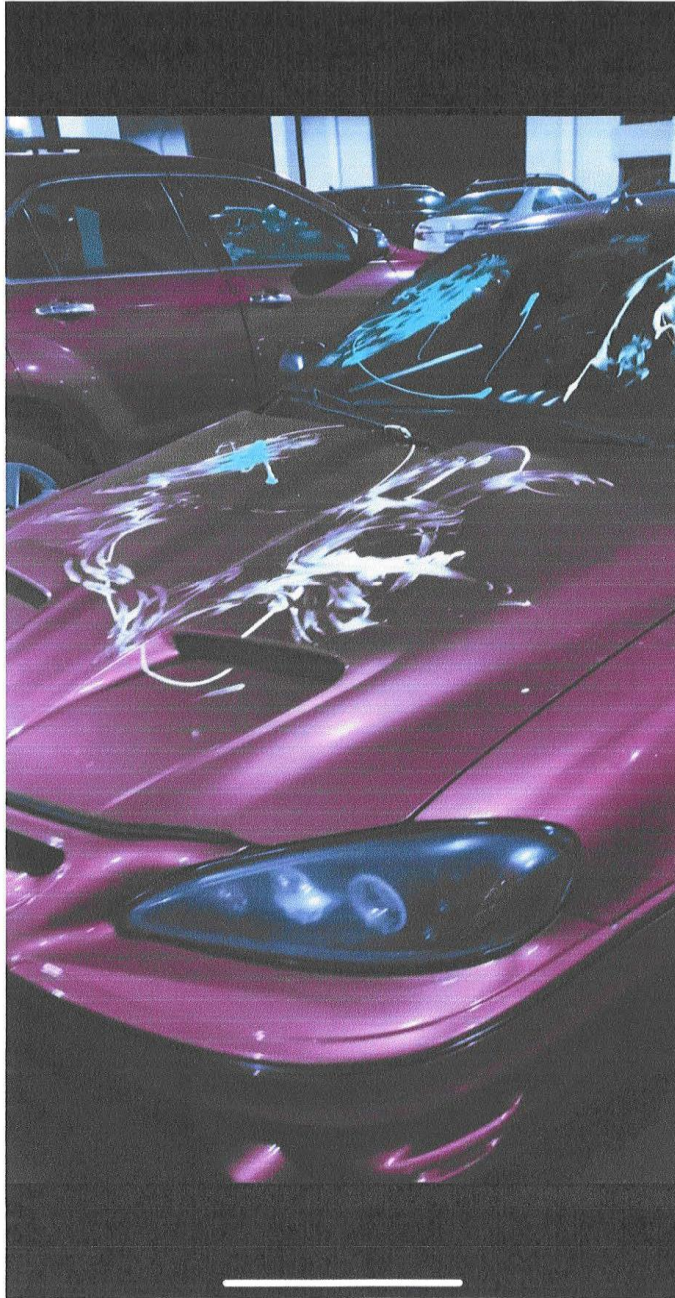
According to the case report cited in the Notice, on February 14, 2022, Applicant allegedly punched the same ex-girlfriend involved in the December 2020 incident on the right side of her face and told her to be quiet after hitting her so that no one in the house they were at would hear her crying. (Notice at pg. 3.) The case report apparently further indicates that Applicant was "not on the scene" when police arrived and no arrest was made. (*Id.*)

On the other hand, Applicant maintains that after a failed attempt at reconciliation and a night out together, Applicant falsely accused her of stealing items she allegedly left at his residence. (Notice at pg. 3; Appeal at pg. 2.) Specifically Applicant asserts that he and the ex-girlfriend had decided to spend Valentine's Day together in the hope of reconciling their relationship. (Appeal at pgs. 2-3.) The plan was to play pool at a local billiard hall. During the ride to the poolhall, the ex-girlfriend mentioned that she had forgotten some wine at her friend's house. (*Id.*) The night proceeded smoothly until a misunderstanding arose concerning the retrieval of the

wine, which led to accusations of infidelity. (*Id.*) The situation deteriorated further when the pair returned to Applicant's home. (*Id.*) Applicant apparently prevented the ex-girlfriend from entering the house, choosing instead to retrieve her belongings for her. (*Id.*) At this point, she accused Applicant of theft, which caused Applicant's grandmother to intervene by closing the door. (*Id.*) Unbeknownst to Applicant, the ex-girlfriend had called the police, who were allowed to inspect Applicant's before departing without incident. (*Id.*) Applicant claims that he only learned about the battery charge when a friend saw the police report posted on the ex-girlfriend's social media account. (*Id.*) Applicant was never arrested or charged regarding this incident.

Applicant's Ex-Girlfriend

While investigators attempted to contact Applicant's ex-girlfriend regarding the December 2020 and February 2022 incidents, they were apparently unable to do so because the number they had for her was no longer in service. (Notice at pg. 3.) Moreover, while there is no medical documentation in the record regarding the mental health history or status of Applicant's ex-girlfriend, Applicant claims that she "has an extensive history" of mental illness, and he attaches to his Appeal photos purportedly showing that she vandalized his car on or about March 5, 2022, which is a few weeks after the February 2022 incident. (Appeal at pgs. 4-7.)



Conclusions of Law

Standard of Review

Pursuant to Section 2-84-035(c) of the Municipal Code of Chicago, an applicant challenging the decision to remove him or her from the Eligibility List has the burden of showing, by a preponderance of the evidence, that the decision was erroneous.

Disqualification Based on Criminal Conduct

Special Order 21-01 (the “Special Order”) contains the “Pre-Employment Disqualification Standards for Applicants for the Position of Police Officer.” (*See* Special Order 21-01.) The relevant section from Special Order 21-01, Section IV(B)(7)(a), states as follows:

a. 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 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 PHO submission), or more than one (1) time in his or her life, will be found unsuitable for employment.

(emphasis added.)

The circumstance under which this case is being presented to this Appeals Officer is unfortunate due to the existence of evidence that both affirms and disputes whether the Applicant assaulted or battered his ex-girlfriend. Such evidence is far from conclusive or uncontested.

To illustrate, the charges stemming from the December 2020 incident were dropped when the ex-girlfriend failed to appear in court. However, there is no record indicating that she

subsequently retracted or disputed the assertions in the case report. This report states that the Applicant assaulted her with a cellphone, choked her, and discarded her phone from a moving vehicle. (Notice at pgs. 2-3.)

Similarly, the incident from February 2022, which did not result in an arrest, lacks evidence to corroborate the Applicant's account of events beyond his testimony and a self-serving affidavit provided by his grandmother. (Appeal at pgs. 1-3.)

The above scenarios exemplify "he said, she said" situations. Without the ability to directly communicate with or assess the credibility of the ex-girlfriend who made the allegations or the Applicant himself, it is impossible to conclusively determine the decision to remove the applicant from the Eligibility was erroneous based on a preponderance of the evidence. Accordingly, the decision to remove Applicant from the list of eligible applicants for the position of probationary police officer should be **affirmed**.

Recommendation

Based on my findings and conclusions set forth above, I regretfully 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/ Kyle A. Cooper

Appeals Officer

Date: June 12, 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.

Police Board Case No. 23 AA 01
Findings and Decision

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, Jorge Montes, 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: Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareilé Cusack, Nanette Doorley, Jorge Montes, and Andreas Safakas.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 15th DAY OF JUNE, 2023.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director