

**United States Small Business Administration  
Office of Hearings and Appeals**

IN THE MATTER OF:

Hazzard's Excavating and Trucking Co.,

Petitioner

SBA No. BDP-364

Decided: August 3, 2010

**ORDER DENYING PETITION FOR RECONSIDERATION**

I. Background

A. Prior Proceedings

On October 30, 2009, the U.S. Small Business Administration (SBA) terminated Hazzard's Excavating and Trucking Co. (Petitioner) from the 8(a) Business Development (BD) program because Petitioner: failed to maintain its eligibility for 8(a) BD program participation; failed to make required submissions to SBA in a timely manner; and materially breached the terms of its participation agreement.

On December 24, 2009, Petitioner appealed SBA's termination to the Office of Hearings and Appeals (OHA). Petitioner stated it submitted Form 4506 and updated its Central Contractor Registration, but was not aware it was required to submit documentation. Petitioner explained it had faced challenges due to employees' sicknesses, auto accidents, and hospitalizations. Petitioner asked not to be terminated, requested an extension, and asserted it would submit all the other required documentation. Petitioner also noted the lack of support it has received from SBA's District Office in Clarksburg, West Virginia.

On February 12, 2010, SBA moved to dismiss this appeal for lack of jurisdiction or, in the alternative, for summary decision. SBA stated Petitioner's appeal did not cite any facts that refute SBA's grounds for termination or provide any evidence that SBA's determination was arbitrary, capricious, or contrary to law. SBA noted Petitioner conceded it failed to make required submissions to SBA.

Petitioner did not respond to SBA's motion to dismiss or for summary decision.

On March 29, 2010, OHA granted SBA's motion for summary decision. *Matter of Hazzard's Excavating and Trucking Co.*, SBA No. BDP-345 (2010). OHA found SBA established both the absence of a genuine issue of any material fact and SBA's entitlement to a decision in its favor as a matter of law. 13 C.F.R. §§ 134.212(a), 134.408(a). The record demonstrated: SBA provided multiple opportunities for Petitioner to satisfy its submission

requirements; Petitioner failed to timely respond to SBA's requests; and SBA could not determine whether Petitioner remained eligible for the 8(a) BD program due to Petitioner's failure to respond.

## B. Petitioner's Petition for Reconsideration

On March 30, 2010, Petitioner filed a petition for reconsideration. Petitioner seeks reconsideration and for a resolution other than termination from the 8(a) BD program. Petitioner requests reinstatement in the 8(a) BD program so that it will have an opportunity to finish its tenure and graduate from the program. Petitioner reiterates that it has not received any help from SBA's District Office. Petitioner states it did submit records to SBA and requested time extensions, but its requests were ignored.

## II. Discussion

### A. Jurisdiction and Standard of Review

A party requesting reconsideration of an OHA decision must serve the petition for reconsideration within twenty days after service of the written decision. 13 C.F.R. § 134.227(c). Petitioner filed the instant petition for reconsideration within twenty days of the service of the decision in *Matter of Hazzard's Excavating and Trucking Co.*, SBA No. BDP-345. Accordingly, this matter is properly before OHA for decision.

SBA's regulations provide that OHA may grant a petition for reconsideration upon a “clear showing of an error of fact or law material to the decision.” 13 C.F.R. § 134.227(c). This is a rigorous standard. A petition for reconsideration must be based upon manifest error of law or mistake of fact and is not intended to give an additional opportunity for an unsuccessful party to argue its case before OHA. *Size Appeal of Env'tl. Prot. Certification Co., Inc.*, SBA No. SIZ-4935, at 2 (2008) (citing 13 C.F.R. § 134.227(c); *Bishop v. United States*, 26 Cl. Ct. 281, 286 (1992)).

### B. Analysis

Petitioner's petition for reconsideration does not demonstrate a “clear showing of an error of fact or law material to the decision.” 13 C.F.R. § 134.227(c).

In *Matter of Hazzard's Excavating and Trucking Co.*, SBA No. BDP-345, SBA moved to dismiss the appeal for lack of jurisdiction or, in the alternative, for summary decision. The decision explains that to prevail on a motion for summary decision, SBA must establish both the absence of a genuine issue of any material fact and SBA's entitlement to a decision in its favor as a matter of law. 13 C.F.R. §§ 134.212(a), 134.408(a). The decision notes SBA regulations permit the SBA to terminate a participant from the 8(a) BD program for good cause, which includes: a failure to maintain eligibility for 8(a) BD program participation, 13 C.F.R. § 124.303(a)(2); a pattern of failure to make required submissions to SBA in a timely manner, 13 C.F.R. § 124.303(a)(7); and materially breaching the terms of the participation agreement. 13 C.F.R. § 124.303(a)(19). Additionally, the decision explains SBA has an affirmative responsibility to

enforce the regulations governing the 8(a) BD program and 8(a) BD program participants bear responsibility for timely complying with SBA's regulations, *Matter of Hazzard's Excavating and Trucking Co.*, SBA No, BDP-345 at 2-3, Petitioner conceded it failed to make required submissions to SBA, *Id.* at 2. No genuine issue of material fact existed because Petitioner acknowledged it failed to file required documents and, accordingly, the SBA was entitled to judgment in its favor as a matter of law. *Id.* at 2-3.

Petitioner's lack of support from the District Office does not establish a basis to grant Petitioner's petition for reconsideration and does not raise an error of fact or law material to the decision in *Matter of Hazzard's Excavating and Trucking Co.*, SBA No, BDP-345.

In *Matter of Hazzard's Excavating and Trucking Co.*, SBA No. BDP-345, OHA found SBA properly applied the law and regulations to the facts of the case and articulated a reasonable explanation for SBA's determination, If the SBA determination is reasonable, it must be upheld on appeal. 13 C.F.R. § 134.406(b).

### III. Conclusion

Petitioner does not allege any clear error or mistake in OHA's decision. Rather, Petitioner criticizes the lack of support it has received from the SBA District Office and pleads for an opportunity to be reinstated in the 8(a) BD program. Petitioner's petition for reconsideration does not meet the high burden established in 13 C.F.R. § 134.227(c) and is DENIED.

BRENDA P. MURRAY  
Administrative Law Judge