United States Small Business Administration
Office of Hearings and Appeals

IN THE MATTER OF: Hruckus, LLC, Petitioner	SBA No. BDPE-572 Decided: September 26, 2018

APPEARANCES

Matthew P. Moriarty, Esq., Koprince Law, LLC, Lawrence, Kansa, for Petitioner Hruckus, LLC

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DECISION

I. Introduction and Jurisdiction

On June 29, 2018, Hruckus, LLC (Petitioner) appealed a U.S. Small Business Administration (SBA) determination denying Petitioner entry into SBA 8(a) Business Development (BD) program. SBA found Petitioner did not establish that its owner is socially disadvantaged by a preponderance of the evidence. For the reasons discussed *infra*, I find that SBA's determination was reasonable and not arbitrary, capricious, or contrary to law. See 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b). Therefore, the appeal is denied as SBA's determination is reasonable.

There is jurisdiction to decide this appeal. *See* 15 U.S.C. § 637(a)(9)(A), (B)(ii); 13 C.F.R. Parts 124 and 134. Appellant filed its appeal within 45 days of its receipt of SBA's determination, and so the appeal is timely. *See* 13 C.F.R. § 134.404.

II. Procedural History

Petitioner is owned, controlled, and managed by Mr. Stephen M. Hrutka. On December 8, 2016, Petitioner submitted an application for entry into SBA's 8(a) program based on Mr. Hrutka's alleged social disadvantage stemming from his disability as a result of his service in the Navy and for his veteran status. The application included a Personal Eligibility Statement (PES) and supporting documents. On January 17, 2017, Petitioner submitted an updated PES that included more detail "in order to meet the preponderance of evidence standard." (Administrative Record (AR), Exhibit 8). On September 2, 2017, SBA denied Petitioner's 8(a) application,

finding that Mr. Hrutka was not socially disadvantaged due to his disabled veteran status. (AR, Exhibit 1). On October 17, 2017, Petitioner requested reconsideration, which included a third PES with additional documentation to support his claim of social disadvantage. (PES, at 1.)

III. Basis for Social Disadvantage

Mr. Hrutka served in the United States Navy from May 1999 to March 2009. Mr. Hrutka developed numerous medical conditions as a result of his time serving in the Navy such as post-traumatic stress disorder (PTSD), severe and chronic obstructive sleep apnea, and professional and social-based anxiety. (PES, at 3-5). Symptoms of his conditions include difficulty breathing and recurrent nightmares which cause a lack of sleep, and "shut[ing] down" when "confronted with anger or judgmental statements" that may be "perceived as aloof or hostile" to employers "who do not understand or are [not] equipped to deal" with the symptoms. (*Id.* at 4.)

IV. Instances of Alleged Social Disadvantage

In Petitioner's PES, Mr. Hrutka describes specific accounts where he alleges to have experienced bias based on his disabled veteran status, which resulted in (1) the denial of job promotions, (2) being "the first target for layoffs during periods of austerity," and (3) the denial of job offerings.

A. Working at Gartner, Inc.

1. Interview with Larry Altenburg

Mr. Hrutka began working at Gartner, Inc. (Gartner) in December 2009 during the financial crisis. (PES, at 6.) He had previously sought employment in the San Diego and Los Angeles area after graduating from the Wharton Masters in Business Administration program in 2005, but was unsuccessful. During his interview for the position with Gartner, Vice President Larry Altenburg asked Mr. Hrutka, "Why do you want to work here and why didn't you stay in the military?" (*Id.* at 7.) Mr. Altenburg also asked, "[w]hat was [he] thinking by getting out at the 10-year mark." (*Id.*) This line of questioning caused Mr. Hrutka to be concerned that his status as a veteran with service-related disabilities was not suited for civilian life and caused him to freeze and demonstrate PTSD symptoms. (*Id.*) Mr. Hrutka also felt that Mr. Altenburg's questions were intended to cause him stress, which Mr. Altenburg later admitted to be true. Mr. Hrutka was offered a position he believed was below his qualifications due to his PTSD, as compared to what he believes his non-disabled Wharton MBA classmates would have been offered for the same position. Further, the position offered to Mr. Hrutka was more suitable for non-MBA students, and well below what he would have received had he entered the job market without PTSD in 2005 instead of 2009. (*Id.* at 8.)

2. Disagreement with Kathleen Blanton

In February 2010, Mr. Hrutka was working on a project with Kathleen Blanton, a Senior Director at Gartner. In determining how to best proceed for an assignment, Mr. Hrutka voiced his point of view on the issue to which Ms. Blanton disagreed. As a result, Mr. Hrutka froze and

"gave the impression of hostility which was not the case." In response to Mr. Hrutka's PTSD symptoms, Ms. Blanton stated, "[y]ou don't make sense, I would never do it that way. Where did you learn to think like that? Is that something you learned in the Navy?" (*Id.* at 9.) Mr. Hrutka stated that he "did not connect the dots until much later, but the only explanation is that she was worried about [his] condition" due to the media's depictions of service-disabled veterans as "angry, on edge, and potentially violent." (*Id.*) Mr. Hrutka was subsequently removed from the project with Ms. Blanton and claims his reputation was tarnished due to the incident. (*Id.*)

3. Interactions with David Fraley

While at Gartner, a director and Army reservist, David Fraley, called Mr. Hrutka into his office and informed him that he was going to have to "learn how to dress better, [he] was not in the Navy anymore, and that [he] needed to buy all new clothes." (*Id.*) Mr. Hrutka stated that he was "not sure if he thought it was a healthy Army/Navy rivalry," but Mr. Fraley demonstrated "clear bias" against him due to his disabled veteran status. (*Id.*) This embarrassing criticism caused Mr. Hrutka to demonstrate PTSD symptoms, which made Mr. Fraley uncomfortable. Going forward, Mr. Fraley would collaborate and socialize with the non-veteran employees, but not with Mr. Hrutka. Mr. Hrutka claims this contributed to a false image of him being a poor performer that started with Mr. Altenburg and Ms. Blanton. (*Id.* at 9-10.)

4. Issue with Teleworking

Mr. Hrutka often worked remotely, which was expressly allowed by Gartner as long as he met his billing targets, which he did. This assisted him in maintaining a sleep pattern that accommodated his PTSD and sleep apnea, allowing him to get the rest he needed and still be able to perform. (*Id.* at 10.) Ron Gumbert, Mr. Hrutka's sponsor and mentor, would occasionally check on Mr. Hrutka to see if he was at his desk and would tell Mr. Hrutka to be at his desk "despite knowing there was no requirement to be there." (*Id.*) Mr. Hrutka claims he was the only one that received this treatment. He also stated that Mr. Gumbert made it clear that his teleworking was a direct factor in him not being promoted, when Mr. Gumbert knew that Mr. Hrutka teleworked to accommodate his disability. By Mr. Gumbert using this against him, Mr. Hrutka felt this was a direct result of bias related to his condition. (*Id.* at 10-11)

5. Lack of Promotions

In December 2010 and April 2011, Mr. Hrutka was not offered an internal promotion after applying, even though he was "able to complete work at levels two or three levels above [his] pay grade." (*Id.*) A senior partner, Kevin Gollogly, explained that Mr. Hrutka was not offered a promotion due to his performance, specifically tied to his experiences with Ms. Blanton, Mr. Fraley,[1] and Mr. Gumbert. Petitioner's "superior performance" on previous projects, however, was not mentioned and "[i]nstead, [Mr. Gollogy] focused [on] the false perception of poor performance, perpetuated by inherent bias." (*Id.* at 11.) In support of his claim

[1] Mr. Hrutka described a "David Frey" in his PES, but there is only mention of a "David Fraley in this context. Therefore, OHA is assuming Mr. Hrutka is referring to David Fraley when discussing this issue.

for inherent bias, Mr. Hrutka included an affidavit from Josh Hackett, a senior coworker of Mr. Hrutka, who stated he worked with Mr. Hrutka for approximately two years, observed that his performance was two levels above the position for which he was hired, that he was on a slower promotion track than his non-Veteran coworkers, and "Kathleen Blanton and David Fraley provided a hostile work environment to [Mr. Hrutka] based upon his Veteran status." (*Id.* at 12.)

B. Working at A.T. Kearney

1. Interview and Onboarding

In July 2011, Mr. Hrutka accepted a position with A.T. Kearney (AT), a top-tier management consulting firm, due to Gartner's failure to give him a promotion. The position with AT was higher than his previous position at Gartner, but below the level of his MBA classmates. During the interview process, Mr. Hrutka disclosed his status as a disabled veteran, to John Wolff, a partner at AT, in hopes of avoiding the experiences he encountered at Gartner. Mr. Hrutka was told that he would not be given special treatment due to his disabled veteran status. However, Mr. Hrutka was unaware of the long hours and significant travel associated with the position. Mr. Hrutka was "crushed" to learn that due to his disability, he was not physically capable of meeting the performance standards of his new job because of the long work hours and significant travel required. (*Id.*, at 14.)

2. First Assignment with Hillary Dooley and Paul Carrannanto

Before completing new consultant orientation, Mr. Hrutka was "thrown onto a team but given no tools to complete the work like the other employees," led by Paul Carrannanto, Project Principal, and Hillary Dooley, Mr. Hrutka's direct supervisor. (*Id.*) During this project, Mr. Hrutka had to abandon his sleep schedule, which negated treatments for sleep apnea, causing him to make mistakes and appear foggy during early morning meetings. (*Id.* at 14-15.) In observance of Mr. Hrutka's mistakes and appearance, Ms. Dooley informed him that he "was not functioning at the level of an A.T. Kearney Consultant and [] needed to improve." (*Id.* at 15.) In response, Mr. Hrutka explained that the "schedule was limiting his ability to function at optimal levels due to [his] [d]isabilities." (*Id.*) Ms. Dooley informed Mr. Hrutka that he would not be returning to the project after completing orientation because of his "inability to keep up." (*Id.*) Mr. Hrutka believed that Ms. Dooley and Mr. Carrannanto "disseminated inherently biased information about [him] within their personal networks" and their disparaging remarks tied to his disability "was the first step in poisoning [his] position within the firm." (*Id.*)

3. Traveling for Work

From August to October 2011, Mr. Hrutka worked on a project in California. While there, Mr. Hrutka did not feel safe traveling without GPS, so he rented the only car available that had GPS, an upgraded model Volvo, believing he could justify the expense to his manager. Mr. Hrutka then met with his direct supervisor, Matthew Cheng, and Matthew Ciuca, another manager. Mr. Hrutka observed obvious tension between the two managers about who was in charge. (*Id.*) Agitated with Mr. Cheng, Mr. Ciuca told Mr. Hrutka that his rental car was inappropriate. (*Id.*) Also, upon observing Mr. Hrutka's luggage (which included his CPAP

machine required for his sleep apnea that doubled the amount of luggage he carried); Mr. Ciuca stated Mr. Hrutka "could never be a consultant if [he] didn't learn to travel lighter and more efficiently." (*Id.* at 15-16.)

During this project, Mr. Hrutka was required to fly from Dulles, Virginia to Los Angeles, California on Monday and return on Thursday afternoon. The travel was "terrible" for Mr. Hrutka's sleep regimen and caused him to be "crippled mentally," but he was fearful of asking for non-travel assignments as he was already being rated below his peer average and "did not want to endure increased scrutiny." (*Id.* at 16.) Mr. Hrutka also states that he was given a below average performance rating and "[i]f not for [his] disability, [he] would have had no problem performing these tasks." (*Id.*) Mr. Ciuca continued to "show bias towards [Mr. Hrutka's] disability with comments he made about [his] appearance and energy levels during the work day," which caused him to also exhibit PTSD symptoms. (*Id.*) Mr. Ciuca "made it clear" that he did not want to work with Mr. Hrutka on a project again "even though his only perception of [him] was [his] PTSD symptoms rather than actual performance." (*Id.*)

4. David Giles says Mr. Hrutka is "Not a Team Player"

In early 2012, Mr. Hrutka was assigned a project with David Giles as the project principal. Mr. Giles "was particularly sensitive to all the moves made on the client site, especially by the Associate consultants." (*Id.* at 17.) Mr. Hrutka decided not to stay at the hotels as the other associates from out of town did, because his home was only 20 minutes away. (*Id.*) Mr. Giles asked Mr. Hrutka why he "wasn't being a team player, staying with the rest of the team." (*Id.*) Mr. Hrutka responded by explaining his disability and how it was "in the best interest of the client, the project, and [his] health" to have a stable sleep routine. (*Id.*) Mr. Giles did not accept this response. At project completion, Mr. Hrutka received acceptable marks for performance but also received feedback that he needed to "embrace the A.T. Kearney culture and do a better job of fitting in," which was a "huge blow to [Mr. Hrutka's] reputation at the company." (*Id.*)

5. Incident at Airport

During a project that required Mr. Hrutka to travel, he experienced a delay in the security line while at the airport due to the inclusion of his CPAP machine in his luggage. When the TSA agent did not take care with the machine while inspecting it, Mr. Hrutka asked him to "be more careful and not get it dirty as [he] had to breathe through it." (*Id.* at 18.) His colleagues who were travelling with him, heard the interaction and "the looks on their face[s] was absolute shock." (*Id.*) David Caplan, one of Mr. Hrutka's colleagues, told him to be more careful next time "as to not jeopardize [their] travel schedule." (*Id.*) Upon arrival, Mr. Caplan relayed the story to Mr. Hrutka's acting manager, Cary Shiao, which further tarnished his reputation "regardless of performance." (*Id.*)

6. PTSD Symptoms Triggered During Consultation with Colleagues

Mr. Hrutka sought advice from Mr. Shiao and Ed Butterfield regarding analysis for a project with which he was having a problem. The conversation was going well, but when all

options had been vetted, they "became upset and said, "you had better figure this out or we're all in trouble. This is your project, not ours so we're not going to be held responsible if you can't get it." (*Id.* at 18-19.) "The dramatic shift caused [Mr. Hrutka's] symptoms [to] activate" and "what looked like contempt was actual terror that [he] was responsible for losing the client and failing on the project." (*Id.*) Mr. Shiao reported the interaction to Mr. Hammer which was a specific point of topic during Mr. Hrutka's project debrief and subsequent performance ratings. (*Id.*) Mr. Hrutka explains that he was successful on the project and thought he had "certainly improved his brand within the firm[,] but the damage done from the previous bias examples was irrevocable." (*Id.*) Mr. Hrutka was subsequently placed on solo assignments, which prevented him from being able to get his name known and become a desired asset for future projects. "Despite exceeding expectations and delivering value, [he] received performance reviews that reflected [his] reputation as not a team player." (*Id.* at 21.)

7. Slower Promotion Track

During Mr. Hrutka's first performance review, he learned he was behind on his performance track because, during his job interview, he was told that he would be up for promotion in 1.5 years instead of the 3 years mentioned in his performance review. (*Id.*) Mr. Wolff stated "improved performance" and building his personal brand "by being a good team member" was the only path forward. (*Id.*) Mr. Hrutka sought out to improve his reputation and "not be labeled as the [d]isabled [v]eteran who could not keep up with everyone else," which worked for a short time, resulting in higher marks on projects. (*Id.*) However, despite his performance and being "heralded by his client," Mr. Hrutka's promotion trajectory actually declined due to the solo assignments he was given. (*Id.*)

In the Spring of 2013, there was a "drying up" of the revenue stream to AT's practice resulting in Mr. Hrutka and the majority of his peers being unassigned for projects, because there were no funds to pay for their services. (*Id.* at 24.) Every manager in the office was unbillable, and when work became available, it was assigned to associates "who did not have the unearned reputation that [Mr. Hrutka] had because of [his] disabilities." (*Id.*) During his April 2013 performance review, Mr. Hrutka was ranked even lower than he had been during his billable periods, and was warned that he may be let go before the September performance cycle. Mr. Hrutka was not assigned any further projects and was let go in November 2013 "due to zero balance performance ratings for 2013" and "as a [d]isabled [v]eteran, [] was the only person let go during this period." (*Id.*)

8. Affidavit from Mark Ball

Mr. Hrutka included an affidavit from Mark Ball, an AT colleague, who stated he "personally experienced the demands of both travel and long hours required for success at the firm," which are "physically taxing and require significant compromise in sleep, travel, and eating schedules." (*Id.* at 25.) Mr. Ball also stated that he did not observe performance issues with Mr. Hrutka related to his sleep apnea. Further, Mr. Ball states, "as the owner of an 8(a) success story," that Mr. Hrutka "can develop his firm, manage his disabilities, and achieve success that was not possible in the large corporate setting." (*Id.*) In commenting on Mr. Ball's affidavit, Mr. Hrutka states Mr. Ball can "also attest to the culture at A.T. Kearney and how

anyone who did not fit in, particularly a [d]isabled [v]eteran, would be a target for bias." (*Id.* at 27.)

C. Job Search September 2013 to October 2014

1. Requirements for Employment

After being let go from AT, Mr. Hrutka began his job search and accumulated $100,000 in debt during his unemployment from September 2013 to October 2014. To avoid from future bias occurring, Mr. Hrutka disclosed his disabled veteran status and the requirements necessary to manage his disability including limited travel for projects, the ability to manage his sleep schedule, and consistent working hours. (*Id.* at 27-28.) Many employers stated that Mr. Hrutka's military service would not count in his professional history and he would have to start from the bottom with a likely promotion cycle of three to four years. (*Id.*) In disclosing his requirements, Mr. Hrutka received one offer for a full time position. Mr. Hrutka believes that there is "no doubt" that the bias towards those with his conditions specifically hurt [his] employment opportunities. (*Id.*)

2. Interviews with Price Waterhouse Cooper

In September 2012, Mr. Hrutka was interviewing for a position with Price Waterhouse Cooper (PWC). During the interview, Mr. Hrutka mentioned that he planned to own a service-disabled veteran owned firm as a long-term goal. In response, Peter Elmer, the hiring manager stated Mr. Hrutka "couldn't be a [d]isabled [v]eteran and work at their firm." (*Id.* at 28.) Mr. Elmer's statement caused Mr. Hrutka to demonstrate PTSD symptoms, as he was "visibly distraught, cancelling out any case studies [he] had answered successful[ly], also eroding any confidence [he] had displayed." (*Id.*) Mr. Hrutka was not offered a second interview or a position.

Mr. Hrutka also had a second interview for a different position with PWC a few days later. Michelle Shafer, the same hiring manager who arranged the interview with Mr. Elmer, arranged this interview. Mr. Hrutka was "certain that [he] was out of the running for that role as well, as Ms. Shafer would brief the next leadership on my performance during this interview." (*Id.*) During the second interview, Phil Tombaugh, the interviewer, was "clearly uninterested" with Mr. Hrutka's profile, "made disparaging remarks to [his] [d]isabled [v]eteran status, and dismissed his military experience as "immaterial and not important." (*Id.*) This triggered Mr. Hrutka's PTSD symptoms causing him to "shut down," and he was unable to surpass the bias presented by Mr. Tombaugh. (*Id.*)

3. Seeking Mr. Ciuca's Assistance for Employment at Censeo

The bias of Mr. Hrutka's former supervisor, Mr. Ciuca, "led him to sabotage" an employment opportunity for Mr. Hrutka with Censeo Consulting Group, Inc. (Censeo) in September 2014. (*Id.* at 16.) Mr. Hrutka participated in a phone screen with one of the partners at Censeo and it was an "amazing call." (*Id.*) Mr. Hrutka learned that Mr. Ciuca was currently employed with Censeo and decided to contact him. Mr. Hrutka was worried that his PTSD

symptoms he had previously exhibited in Mr. Ciuca's presence would hurt his candidacy if a partner asked him about Mr. Hrutka, but Mr. Ciuca seemed to be interested in talking with Mr. Hrutka. (*Id.*) Mr. Ciuca agreed to reach out to the partner on Mr. Hrutka's behalf, but Mr. Ciuca stopped replying to Mr. Hrutka, and he was not extended a face-to-face interview. "The best explanation is that Mr. Ciuca's feelings had not changed and that he sabotaged [Mr. Hrutka's] chances due to [his] PTSD." (*Id.*)

V. SBA's Final Determination

On May 15, 2018, after evaluating Petitioner's request for reconsideration and updated PES, SBA's Acting Associate Administrator for the Office of Business Development (SBA) determined that Petitioner did not submit sufficient evidence showing bias, prejudice, and/or discrimination directed to Mr. Hrutka by others as a result of his status as a veteran with a service-related disability. (AR, Exhibit 1.) SBA found that Petitioner's submission did not establish that Mr. Hrutka suffered from "chronic and substantial social disadvantage because of [his] service connected disability." (*Id.*) The examples did not establish a pattern of chronic and substantial bias treatment directed at Mr. Hrutka, nor did they demonstrate how Mr. Hrutka's ability to compete in the marketplace was impaired due to chronic discriminatory treatment. (*Id.*)

Specifically, SBA found that Mr. Hrutka taking a position junior to his qualifications at Gartner does not appear to be due to any bias. Had there been bias, "they would have never hired [him] in the first place." (*Id.*) Rather, this was the only employment opportunity available to him due to the existing economic factors. In addition, he was told his naval service experience was not relevant, and that he would start at the bottom. There was no support for his claim that his PTSD was the underlying catalyst for his position. Further, Mr. Hrutka's salary comparison to those of his peers at Wharton is conclusory. (*Id.* at 2.)

SBA reviewed Mr. Hrutka's interactions with Ms. Blanton. His statement provided no information relative to his being rebuked for being a veteran with PTSD. This statement is conclusory, and not supported by the narrative. The disagreement with Ms. Blanton appears "to have more to do with the difference between a military versus a civilian mindset," rather than bias against veterans. Additionally, his reasoning that his removal from Ms. Blanton's project was due to his PTSD is conclusory, and the notion that the media depictions of service-disabled veterans would cause Ms. Blanton to be afraid is "speculative, at best." (*Id.* at 2-3.)

Mr. Hrutka states that there were numerous negative encounters with Mr. Fraley, but only mentioned the incident where he advised him on his clothing. This incident lacks adequate details such as the time and location. Further, the statement that Mr. Fraley's negative opinion contributed to a false image of poor performance is conclusory. Mr. Hrutka did not detail what Mr. Farley said when expressing his opinion. Mr. Hrutka did not establish any bias or prejudice against him based upon veteran status, and so he has demonstrated no negative impact upon him as a result. (*Id.* at 3.)

SBA found no bias with respect to Mr. Hrutka's experience of not being promoted due to his teleworking, because it was the fact he was not working at the office, and not bias, which was the source of the failure to promote him. (*Id.* at 3-4.)

SBA reviews Mr. Hrutka's attempts to get promoted in 2010 and 2011. He was told he was not promoted due to performance issues. The affidavit provided by Josh Hackett does not identify any specific details to support a claim of bias. Accordingly, this statement does not support a claim of bias. (*Id.* at 4.)

Ms. Dooley's statement regarding Mr. Hrutka's appearance did not exhibit bias, but instead appears to be based on his performance rather than his status as a disabled veteran. Mr. Hrutka did not identify what Mr. Wolff said that would confirm that Ms. Dooley provided him with biased feedback about Mr. Hrutka, and this example of bias is speculative. Mr. Hrutka's examples with regard to his rental car, luggage, and Mr. Ciuca's comments regarding Mr. Hrutka's appearance and energy levels provide no evidence of bias directed toward Mr. Hrutka, as no comments were made regarding his disabled veteran status. (*Id.* at 4-5.)

Mr. Giles's comments regarding Mr. Hrutka's choice to reside at home during a project while his colleagues stayed in a hotel demonstrated no evidence of bias directed toward Mr. Hrutka. SBA concluded there was no bias present when Mr. Caplan told Mr. Hrutka to not jeopardize their travel schedule after having trouble with security due to the inspection of his CPAP machine. Mr. Shiao and Mr. Butterfield's comments to Mr. Hrutka that he "better figure this out, this is all your fault," was not based on bias due to Mr. Hrutka's disabled veteran status, but because they were likely upset that Mr. Hrutka had not made progress on a project. (*Id.* at 5-6.)

With respect to Mr. Hrutka being on a slower promotion track than expected, receiving lower performance ratings, and ultimately being laid off, SBA finds there was no evidence of bias. Rather, it appears that Mr. Hrutka's ratings were due solely to his work performance, which contributed to his termination. Additionally, Mr. Ball's affidavit "does not attest to the A.T. Kearney culture, and how anyone not fitting in, especially a disabled vet, would be a target for bias." (*Id.* at 7.)

SBA found the fact that Mr. Hrutka, while unemployed, ran through his savings and accumulated debt to support himself and start his firm, nearly ruining his credit, is not indicative of bias, but of his financial distress. (*Id.* at 7-8.) Further, Mr. Hrutka's claim that he only received one offer for employment being due to his disclosure of his disability and work requirements does not provide evidence of bias, prejudice, or discrimination based upon his service disabled veteran status specifically targeted at Mr. Hrutka.

Mr. Elmer's statement that a disabled veteran could not work at PWC was indicative of bias toward Mr. Hrutka, which affected his entry into or advancement into the business world, but this is only one example. Mr. Hrutka's assertion that Mr. Tombaugh's behavior during Mr. Hrutka's second PWC interview constituted bias is speculative, because Mr. Hrutka did not identify any specific disparaging remarks made by Mr. Tombaugh. Had PWC been truly biased against Mr. Hrutka, they would have cancelled the interview. (*Id.* at 9.)

There is nothing in the denial letters Mr. Hrutka received in response to job applications which demonstrate any bias against him. (*Id.*)

In addition, Mr. Hrutka's claim that Mr. Ciuca sabotaged a career opportunity with Censeo is speculative.

SBA thus concluded that Mr. Hrutka's submission failed to establish that he had personally suffered chronic and substantial social disadvantage because of his service connected disability. (*Id.* at 9-10.)

VI. Petitioner's Appeal

On June 29, 2018, Petitioner filed its appeal arguing that SBA's determination is based on multiple errors such as ignoring relevant evidence, "focusing on acts and not their results, demanding corroborating evidence, and failing to perceive bias in the first place." (Appeal, at 1.) Further, SBA held Mr. Hrutka "to a higher, impermissible standard" by demanding unnecessary corroborating evidence. (*Id.* at 9-10.)

SBA "facially erred" in finding that Ms. Blanton's comments were not indicative of anti-veteran sentiment by separating a veteran from his mode of thinking. (*Id.* at 10.) Instead of Ms. Blanton expressing her disagreement with Mr. Hrutka's logic, she tied his thinking to his naval training. This implicates his veteran status. Further, SBA did not acknowledge the result of her comment - Mr. Hrutka's removal from the project. (*Id.* at 11.)

Mr. Fraley also attributed Mr. Hrutka's attire to his naval service. SBA's requirement that Mr. Hrutka provide a time and location when the PES stated that the incident occurred on June 2010 in Mr. Fraley's office "illustrates SBA's inadequate assessment" of the incident. SBA also failed to address Mr. Fraley's other acts of biased behavior such as providing favorable treatment to the other associates who were not veterans. (*Id.* at 12-13.)

Petitioner argues that his inability to telework without penalization is similar to that of petitioner in *In the Matter of Tony Vacca Construction, Inc.*, SBA No. BDP-321 (2009), who was not allowed to attend mandatory treatment for his hip surgery. (*Id.* at 13.) Mr. Hrutka was "effectively denied a means to accommodate his disability" and was penalized for taking advantage of an approved practice when he was not promoted, even though he was meeting his company's expectations by meeting his billing targets. (*Id.* at 14.)

Petitioner maintains SBA unreasonably dismissed Mr. Hrutka's discussion regarding the lack of promotions he received due to performance issues reported by Ms. Blanton, Mr. Fraley, and Mr. Gumbert. (*Id.*) Further, SBA's claim that Josh Hackett's affidavit did not identify any specific details was conclusory because it did not describe what information was missing. (*Id.* at 15, citing *In the Matter of Southern Aire Contracting, Inc.*, SBA No. BDP-453 at 11 (2012).) Additionally, by requiring further information from Mr. Hackett SBA holds Mr. Hrutka to a burden of proof greater than the preponderance of the evidence standard." (*Id.* at 15.)

Petitioner argues that Mr. Giles' comment that Mr. Hrutka was not fitting in with the culture when he decided to stay at home while his colleagues stayed in a hotel was "a jab at Mr. Hrutka's decision to manage his disability," and SBA erred in not finding bias in this example.

(*Id.* at 16.) Further, SBA erred in failing to accept Mr. Hrutka's account as to how the comment affected his reputation within the firm. In the absence of evidence that would cast doubt on the credibility of the examples in an applicant's submission or some other cogent reason not to accept the evidence, SBA must accept it as true. (*Id.* at 16-17, citing *In the Matter of DJ Business Solutions, LLC*, SBA No. BDP-406 (2011).)

SBA "begrudgingly conceded" that Mr. Elmer's comment that Mr. Hrutka "could not be a [d]isabled [v]eteran and work at their firm" was indicative of bias, but minimized this incident to only one example. (*Id.* at 17.) The fact Mr. Hrutka was granted a second interview does not diminish the bias demonstrated in the first interview. It is error to presume any successes preclude a finding of negative impact. The bias shown in Mr. Hrutka's first interview "bled over into th[e] second interview, poisoning Mr. Hrutka's chance for a job." (*Id.* at 17-18, citing *In the Matter of DSI Associates Inc.*, SBA No. BDP-413 (2011).)

Petitioner also argues that SBA erred in failing to consider Mr. Hrutka's veteran status and disability separately. (*Id.* at 18.) SBA focused solely on Mr. Hrutka's service related disability. Therefore, SBA "failed to use a consistent analytical thread" by assessing each example for bias based on both distinguishing features. SBA failed to make clear whether it was assessing the episodes Mr. Hrutka related for bias based upon veteran status or disability or for both. This was clear error. (*Id.* at 19, citing *In the Matter of Loyal Source Government Services, LLC*, SBA No. BDP-434 (2012); *In the Matter of Bitstreams, Inc*. SBA No. BDP-122 (1999).)

Lastly, Petitioner argues that SBA's analysis is "fatally flawed" by requiring Mr. Hrutka to produce evidence to show bias in his "education, employment, *and* business history" when bias in only one of those aspects will suffice to establish social disadvantage. (*Id.* at 19-20.) (emphasis original).

VII. Respondent SBA

On August 20, 2018, SBA responded to Petitioner's appeal maintaining that Petitioner is not owned and controlled by a socially disadvantaged individual, and the agency's decision to deny Petitioner entry into the 8(a) program was reasonable and not arbitrary, capricious, or contrary to law. (SBA Answer, at 1-2.)

SBA argues Congress "did not intend to bestow 8(a) BD program benefits to all individuals who have struggled to gain a competitive position in the business world." (*Id.* at 5.) Instead, "the definition was predicated on Congress's findings that certain individuals suffered the effects of snap judgment discrimination based solely on stigma or stereotype associated with an objective distinguishing feature, and without regard to individual qualities." (*Id.*; citing to 15 U.S.C. § 631(f)(1)(B).)

SBA highlights that OHA has never recognized an individual's claim of social disadvantage based on veteran status. However, social disadvantage based on disability is not a matter of first impression for OHA. SBA argues, "if any alleged inequality results from the nature of the disability itself, rather than society's attitudes towards it, such inequity is not evidence of social disadvantage." (*Id.* at 9-10.) However, where an individual suffers from

incidents of bias "based solely on cultural perception and without regard to individual capabilities," social disadvantage may be established. (*Id.*)

The incidents described in Mr. Hrutka's PES and supporting documents do not demonstrate that Mr. Hrutka experienced "substantial and chronic social disadvantage based on third-party perceptions of his veteran status or his service-related disabilities." (*Id.* at 11.) Further, there is no nexus between Mr. Hrutka's statuses as a veteran and disabled individual, the alleged instances of discrimination, and a negative impact as a result of these instances on his entry into or advancement in the business world. (*Id.*)

Ms. Blanton's statements "though perhaps unprofessional — were not rooted in a bias against veterans." (*Id.* at 13.) Further, the PES offers an equally-plausible alternative ground for her comment in that she disagreed with Mr. Hrutka's proposed project methodology which is a "routine difference of opinion." (*Id.*) SBA did not have to consider the negative impact of this statement once it was determined that the statement was not indicative of bias. (*Id.*)

SBA finds Mr. Hrutka's claim of bias by Mr. Fraley to be "undoubtedly bizarre" since Mr. Fraley is also a member of the armed forces and was simply providing "professional feedback delivered in the context of an age-old playful rivalry between the U.S. Army and the U.S. Navy." (*Id.* at 15.) The claim of bias is simply improbable. (*Id.*) Further, Mr. Hrutka did not provide evidence showing that Mr. Fraley's subsequent behavior was the result of bias. Mr. Hrutka concedes that he did not respond to Mr. Fraley's comments in a professional manner, making Mr. Fraley uncomfortable. Mr. Hrutka also extensively worked from home, "thereby self-imposing limits on his networking opportunities in the office." (*Id.*)

Mr. Hrutka's allegation against Mr. Gumbert for being penalized "amounts to nothing more than an unsupported belief that he experienced discrimination based on his disabilities." (*Id.* at 18.) Mr. Gumbert's occasional visits to Mr. Hrutka's office were likely common practice and Mr. Hrutka's gut feeling that his teleworking caused him to not be promoted does not demonstrate social disadvantage. (*Id.*) Further, SBA distinguishes Mr. Hrutka from the Petitioner in *Tony Vacca Construction*, SBA No. BDP-378, as Gartner accommodated his disabilities by allowing him to telework. Therefore, without a showing that Mr. Gumbert's behavior was motivated by a disdain for Mr. Hrutka's condition, there is no nexus between his disability and him not being promoted. (*Id.* at 19.)

Though Mr. Hrutka alleges he was not promoted at Gartner because of his disabled veteran status. SBA argues this is an unsupported conclusion as there is an equally-plausible nondiscriminatory explanation for why he was not promoted in that he did not have the requisite experience to proceed to a higher level. (*Id.* at 20-21; citing to AR, Exhibit 7.) Mr. Hackett's affidavit is conclusory at best, and offers no additional facts. Therefore, SBA reasonably discounted it. (*Id.*)

Regarding his interactions with Mr. Giles on the project where he has stayed with family rather than a hotel, Mr. Hrutka failed to show how Mr. Giles' comments about Mr. Hrutka not being a team player were based upon bias against him as a disabled person or as a veteran. SBA suggests Mr. Giles formed his perceptions before Mr. Hrutka self-disclosed his disability. (*Id.* at

22.) Further, SBA was not required to examine the negative impact of this claim, because it was not indicative of bias.

Mr. Elmer's statement that Mr. Hrutka could not be a disabled veteran and work at PWC will not suffice as the only incident demonstrating bias because it is not "so substantial and far-reaching that there can be no doubt [Mr. Hrutka] suffered social disadvantage." (*Id.* at 25.) Further, SBA properly dismissed Mr. Hrutka's claim that the second interview with PWC was tainted by Mr. Elmer's comment in the first interview, because that claim was conclusory and deficient. (*Id.*)

VIII. Discussion

A. Standard of Review

An SBA determination can be overturned only if the reviewing Judge concludes that (1) the administrative record is complete; and (2) based upon the entire administrative record, SBA's determination was arbitrary, capricious, or contrary to law. *See* 13 C.F.R §§ 134.402, 134.406(a)-(b); 5 U.S.C. § 706(A)(2). Therefore, as long as SBA's determination is reasonable, I must uphold it. *See* 13 C.F.R. § 134.406(b)(2), *see also In the Matter of United Global Technologies, Inc.*, SBA No. BDPE-518, at 2 (2014).

OHA may only consider information contained in the written administrative record. *See* 13 C.F.R. § 134.406(a). Therefore, the administrative record must be complete before the court may determine whether it supports SBA's conclusion. In determining whether SBA's determination was based on a complete record, I must assess "whether the agency articulated an explanation for its conclusion that is rationally connected to the facts found in the record." *See In the Matter of Southern Aire Contracting, Inc.*, SBA No. BDPE-453, at 2 (2012). In doing so, the agency's determination must show that (1) it considered all of petitioner's evidence; (2) it arrived at its conclusion using only those facts contained in the written administrative record; and (3) its conclusion provides a clear rationale based on those facts. *Id.*

The evidence presented for a claim of social disadvantage usually consists of a PES, which describes, in sufficient detail to be evaluated, each specific instance of social disadvantage experienced by the individual upon whom the claim of eligibility is based, as well as any documents supporting the statements made in the PES. *See In the Matter of Loyal Source Government Services, LLC*, SBA No. BDPE-434, at 5 (2012). The PES is often the only evidence available because there is generally no discovery during the 8(a) BD application process, as certain types of discrimination are "rarely witnessed and one cannot expect an applicant to obtain a statement admitting discrimination." *In the Matter of Bitstreams, Inc.*, SBA No. BDP-122, at 10-11 (1999).

If SBA relied on a complete record, its determination will only be disturbed if it was arbitrary, capricious, or contrary to law. 13 C.F.R. § 134.406(b). Such "clear error of judgment" occurs if SBA (1) fails to properly apply the law and regulations to the facts of the case; (2) fails to consider an important aspect of the problem; (3) offers an explanation for its decision that runs counter to the evidence; or (4) offers an explanation that is so implausible that it cannot be

ascribed to a mere difference in view between SBA and the Court. *See In the Matter of McMahon Builders, Inc.*, SBA No. BDPE-461, at 3 (2013).

OHA has remanded final determinations when SBA failed to address each instance of discrimination described in a Petitioner's PES included in its application for the 8(a) BD program. *See, e.g., In the Matter of StrategyGen Co.*, SBA No. BDP-427 (2012), *see also In the Matter of Loyal Source Government Services, LLC*, SBA No. BDP-434 (2012). Conclusory statements that "do not identify relevant facts or provide insight into the Agency's rationale" may lead to a finding that a determination was arbitrary, capricious, or contrary to law. *Southern Aire Contracting, Inc.*, SBA No. BDPE-453 (citing to *StrategyGen Co.*, SBA No. BDP-427, at 5; *In the Matter of Ace Technical, LLC*, SBA No. SDBA-178, at 6 (2008).)

B. Petitioner's Burden of Proof Before SBA

An applicant seeking entry into the 8(a) BD program must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character, are citizens of the United States, and who can demonstrate the potential for business success. 13 C.F.R. § 124.101. A socially disadvantaged individual is someone who has been the subject of racial or ethnic prejudice, or cultural bias "within American society." 13 C.F.R. § 124.103(a). Members of specific racial and ethnic groups are presumed socially disadvantage unless otherwise rebutted. *See* 13 C.F.R. § 123.103(b).

Those who are not members of any presumptively disadvantaged group must submit a PES recounting specific, bias-motivated events in the owner's education, employment history, and/or as owner of the applicant business demonstrating that (1) they have at least one objective distinguishing feature that has contributed to their social disadvantage; (2) they have personally experienced substantial and chronic social disadvantage in the United States because of that distinguishing feature; (3) the social disadvantage must be chronic and substantial, not fleeting or insignificant; and (4) the social disadvantage has negatively impacted their entry into or advancement in the business world. 13 C.F.R. § 124.103(c).

The chronic and substantial element is usually met if the applicant describes more than one or two specific, significant events. *See Tony Vacca Construction, Inc.*, SBA No. BDP-321 (2009). However, only one incident is sufficient if it is "so substantial and far-reaching that there can be no doubt that the applicant suffered social disadvantage." *In the Matter of Southern Aire Contracting, Inc.*, SBA No. BDP-505, at 6 (2013). In doing so, the applicant must prove social disadvantage by a preponderance of the evidence in the administrative record, only requiring a finding that "it is more likely than not that bias was a factor." *See* 13 C.F.R. § 124.103(c)(1); *see also In the Matter of Express Plus Staffing*, SBA No. BDPE-533, at 2 (2014). SBA must then determine whether the totality of the described events shows the requisite negative impact. 13 C.F.R. § 124.103(c)(3).

SBA "may not arbitrarily disbelieve credible evidence." *Bitstreams, Inc.*, SBA No. BDP-122 at 10. However, SBA may discount or disregard a statement in the PES if it is (1) inherently improbable, (2) inconsistent with other credible evidence in the record, (3) lacking in sufficient detail, (4) merely conclusory, or (5) if the petitioner failed to provide apparently available

supporting evidence without explanation. *See Southern Aire Contracting, Inc.*, SBA No. BDPE-453, at 6 (citing *Bitstreams, Inc.*, SBA No. BDP-122, at 9.) A sufficiently detailed statement describes (1) when and where the incident occurred, (2) who discriminated, (3) how the discrimination took place, and (4) how the individual claiming disadvantage was adversely affected by the discrimination. *Bitstreams, Inc.*, SBA No. BDP-122, at 15.

C. Analysis

My review of this matter is narrowly limited to the issue of whether SBA's denial of Petitioner into the 8(a) BD program was reasonable, and I may not substitute my own judgment for that of SBA. *See Tony Vacca Construction, Inc.*, SBA No. BDP-321 (2009). Therefore, I must find that SBA's determination was reasonable and not arbitrary, capricious, or contrary to the law.

The first step in the analysis of whether SBA's finding was reasonable is to determine whether the administrative record is complete. *See In the Matter of Southern Aire Contracting, Inc.*, SBA No. BDPE-453, at 2 (2012). On August 20, 2018, SBA provided OHA with a copy of the administrative record along with its Answer to the instant appeal. On August 30, 2018, Petitioner objected to SBA's submission of the administrative record and submitted the third and final version of the PES that was not included in SBA's record. Petitioner argues that the final version of the PES should have been included in the administrative record, as SBA relied upon it in its final determination declining Petitioner's application for participation in the 8(a) BD Program. (Petitioner's Objection, at 1.) On that same day, SBA filed a reply to Petitioner's objection conceding that the agency relied upon the third and final version of Petitioner's PES in making its determination, and it, therefore, should have been included in the administrative record. (SBA's Reply, at 2-3.) I hereby include the third and final PES as a part of the administrative record. Further, as will be discussed in further detail, I find that the administrative record is complete.

In order to determine whether SBA's determination declining Petitioner's 8(a) BD program application was reasonable, I must dissect Petitioner's PES and review each point of alleged social disadvantage SBA analyzed in reaching its determination. If SBA (1) failed to properly apply the law to the facts, (2) failed to consider an important incident highlighted in the PES, (3) offered an explanation for its decision that runs counter to the evidence, or (4) offered an explanation that is so implausible that it cannot be ascribed to a mere difference in view between SBA and OHA, I must find the determination to be unreasonable and arbitrary, capricious, and contrary to law.

In the final determination, SBA fully recounted Mr. Hrutka's experience with interviewing at Gartner and being hired to work at a position more junior as compared to his Wharton MBA peers. *See* Section IV.A.1., *supra*. SBA found Petitioner's claims that Mr. Hrutka being hired at a level junior to his qualifications did not appear to be due to bias against him. Mr. Hrutka described that there was an economic downturn at the time he was hired and SBA found this to be a possible reason as to why he was hired at a lower level as opposed to bias. This explanation reflects the evidence provided in the administrative record. Further, SBA found nothing to support Mr. Hrutka's claim that his PTSD was the underlying catalyst for his salary

and position, as his claim was merely conclusory. Conclusory statements may be discredited by SBA. *See Bitstreams, Inc.*, SBA No. BDP-122, at 9.

Next, SBA fully recounted Mr. Hrutka's disagreement with Ms. Blanton and her comments toward him. *See* Section IV.A.2., *supra*. SBA found no evidence that Mr. Hrutka was rebuked specifically because of his disabled veteran status, because this statement was conclusory. SBA reasoned that Mr. Hrutka's conclusion that his removal on the project was due to Ms. Blanton's fear of his status as a veteran with PTSD due to negative media depictions of such individuals was conclusory and speculative. This is not counter to the evidence in the record. Ms. Blanton strongly disagreed with Mr. Hrutka's point of view about their project. She only incidentally mentioned the Navy in criticizing him. The record establishes that Ms. Blanton removed Mr. Hrutka from the project because she disagreed with his proposed approach to the project, rather than his disabled veteran status.

SBA then fully describes the conversation and later lack of interaction between Mr. Fraley and Mr. Hrutka. *See* Section IV.A.3., *supra*. SBA mentions that the incident lacked details pertaining to the time and location of the event. Although I agree with Petitioner that this information was provided in the record, SBA's ultimate conclusion was not unreasonable. SBA found Mr. Hrutka's claim that Mr. Fraley's negative opinion of him contributed to a false image of him being a poor performer is conclusory, as there is no indication in the record that Mr. Fraley ever spoke of Mr. Hrutka's performance and instead, only of, in Mr. Fraley's opinion, Mr. Hrutka's poor choice in attire. Therefore, the PES failed to establish a nexus between Mr. Fraley's comment regarding Mr. Hrutka's clothing and Mr. Hrutka's perception that he was falsely perceived as a poor performer in his job at Gartner.

Next, SBA describes the issue Mr. Hrutka faced with his teleworking and not being promoted as a result. *See* Section IV.A.4., *supra*. SBA found no evidence of bias directed toward Mr. Hrutka in this example. Mr. Hrutka did not provide any facts that would suggest that Mr. Gumbert visited his desk while he was teleworking and told him to be at his desk because he was a disabled veteran. Mr. Hrutka argues that Mr. Gumbert was fully aware of Mr. Hrutka's disability and his need to accommodate his sleep apnea. Although Mr. Hrutka reasons that this was a “jab” at Mr. Hrutka in his attempt to manage his disability, nothing in the record suggests this. Petitioner argues that this is essentially the same situation as that in *Tony Vacca Construction, Inc.*; however, Mr. Hrutka was never denied the ability to telework, unlike the individual in *Tony Vacca*, who was not permitted to attend mandatory physical therapy. Mr. Hrutka mentioned that he teleworked often and that this was a factor in his not being promoted. Nothing in the record suggests that he was not promoted because of his disability; rather, Mr. Gumbert explained it was the frequency of Mr. Hrutka's teleworking which was the basis for the decision not to promote him. SBA was reasonable in finding that this claim established no incident of bias.

SBA then recounts Mr. Hrutka being ignored for promotions at Gartner despite his performance. *See* Section IV.A.5. SBA found no evidence of bias, because Mr. Hrutka explained that he was told Gartner was not promoting him due to poor performance. This explanation is supported by the record, as Mr. Hrutka described multiple unfortunate incidents that could lead to his supervisors concluding that he was performing poorly. Further, the affidavit from Mr.

Hrutka's coworker, Josh Hackett, was conclusory in that it only stated Mr. Hackett's opinion that Mr. Hrutka experienced a hostile work environment without any description of even a single incident that evidenced to a hostile work environment for Mr. Hrutka due to his disabled veteran status.

After a year and approximately four months of working at Gartner, Mr. Hrutka resigned because he had not received a promotion. SBA describes his experience during his interview and employment with AT. *See* Section IV.B.1., *supra*. Mr. Hrutka himself records in his PES that he came to the conclusion on his own that his disabilities made him physically incapable of completing the work required. OHA has held that there is a clear distinction between one being hampered by their physical disability, which prevents them from performing their job, and one not being afforded the opportunity to perform the requirements of their position due to another's bias toward that individual's disability. *See In the Matter of Omega Circuits and Engineering*, SBA No. MSBE-520, at 5 (1995); *see also In the Matter of Diamond Quality Construction Enterprises, Inc.*, SBA No. MSBE-523, at 5 (1995) (finding that the petitioner's "inability to accomplish tasks, as well, if at all, as those not suffering similar limitations, is an unfortunate result of the nature of his handicap rather than discrimination by others.") In the PES, Mr. Hrutka stated that his work schedule compelled him to abandon his sleep schedule, which aggravated his sleep apnea and caused him to make mistakes and be groggy in meetings. The record reflects Ms. Dooley observing Mr. Hrutka as he described himself without indication that her observation was based solely on his disability. *See* Section IV.B.2., *supra*. As SBA notes, Ms. Dooley's observation appears to be based upon Mr. Hrutka's performance, which he admitted was not up to standard, rather than any bias against him based upon his status as a service-disabled veteran.

SBA addressed Mr. Hrutka's experience with Mr. Cuica and his comments regarding his car and luggage. *See* Section IV.B.3., *supra*. SBA found no evidence of bias directed toward Mr. Hrutka because there was no mention or even a comment alluding to his disability. Mr. Cuica was upset with Mr. Hrutka's expensive car rental, but this was unrelated to his disability. Mr. Cuica criticized Mr. Hrutka's handling of his luggage, but this was not related to his disability, but rather how he dealt with his luggage in a manner that caused delay. Further, Mr. Hrutka provided context that suggests Mr. Cuica was not targeting Mr. Hrutka, but instead experiencing tension with another colleague, that may have resulted in his misdirected unfriendly comments to Mr. Hrutka.

SBA describes the comments Mr. Hrutka received from Mr. Giles after not staying in a hotel with his other colleagues while working on a local project. *See* Section IV.B.4., *supra*. SBA found no bias directed toward Mr. Hrutka in this example. Mr. Hrutka made a decision to stay with family rather than hotels with his colleagues, as a way of accommodating his sleep apnea. However, CPAP machines (used to assist him in breathing due to his service related disability) work as well in hotels as in homes. Mr. Giles did not attribute Mr. Hrutka's not fitting in to his disability, but instead to his lack of interaction, and comradery with his fellow colleagues by deciding not to lodge with them. SBA properly concluded the record does not provide any information suggesting that Mr. Giles attributed Mr. Hrutka's lack of fitting in to his disability.

SBA then recounts the incident with Mr. Hrutka's CPAP machine that resulted in fellow colleagues asking him to not jeopardize their travel schedule. *See* Section IV.B.5., *supra*. SBA found no evidence of bias in this interaction. Mr. Hrutka was delayed in the security line at the airport because of TSA's insistence on checking his CPAP machine. Mr. Hrutka's argument that his colleagues' irritation with him was due to bias against him because of his disability is not supported by his account of the incident. The irritation was not about his disability, but about his nearly causing a delay in his colleagues' travels. It is clear from Mr. Hrutka's description of the requirements at AT that the work is very demanding, time consuming, and leaves little room for error. AT's work apparently requires a great deal of travel and a punishing schedule which leaves little time for sleep. It is understandable that Mr. Hrutka's colleagues would be anxious about keeping with their schedules, and the record does not suggest that their irritation had anything to do with Mr. Hrutka's disability. SBA properly found no evidence of bias in this episode.

SBA fully describes Mr. Hrutka's experience when he sought advice from colleagues which resulted in Mr. Hrutka exhibiting PTSD symptoms. *See* Section IV.B.6., *supra*. However, his colleagues' negative comments to him were not a result of his disability, but due to the lack of progress on Mr. Hrutka's project, and their concern that he would not bring it to a successful conclusion. Mr. Hrutka himself stated he appeared to be out of options for the work assignment, which would understandably make one's colleagues apprehensive about the outcome of the project. SBA properly found no evidence of bias in this example.

SBA further addressed Mr. Hrutka's slower promotion track at AT, which he attributed to bias due to his disabled veteran status. *See* Section IV.B.7., *supra*. SBA reasoned, and the record reflects, that Mr. Hrutka's slower promotion track and his ultimate termination were due to poor performance. Additionally Mr. Hrutka stated that there was a “drying up” of available funds for services, so it follows that he, along with his non-veteran colleagues would become “unbillable.” SBA could reasonably conclude the record reflects that these actions had nothing to do with Mr. Hrutka's status as a disabled veteran and more to do with his poor performance and a decline in AT's business. AT's lack of work cannot be attributed to any bias against Mr. Hrutka.

Further, SBA reviewed the affidavit provided by Mark Ball that described the high demands of the work and the culture of AT, and a lack of observation of Mr. Hrutka's disabilities affecting his work performance while he worked with him. *See* Section IV.B.8., *supra*. However, as SBA concluded, this document provided no information regarding any bias toward Mr. Hrutka by AT's management or his colleagues there. Furthermore, SBA discrediting Mr. Hrutka's statement regarding Mr. Ball's being able to attest to a disabled veteran not fitting into the AT culture is permissible because Mr. Ball's affidavit does not address this issue at all.

Mr. Hrutka described his experience with being unemployed and only receiving one job offer, to which SBA found no specific incident of bias. *See* Section IV.C.1., *supra*. The fact that Mr. Hrutka provided information to potential employers regarding his disabled veteran status and only received one offer is not indicative of bias, because none of the rejection letters Mr. Hrutka received attributed a potential employer's disinterest in him being due to his status. Any attribution of discriminatory intent by the potential employers rejecting Mr. Hrutka is speculative at best.

SBA recounted Mr. Hrutka's experience interviewing with PWC, which did not result in an offer for employment. *See* Section IV.C.2., *supra*. SBA agreed that Mr. Elmer's statement was indicative of bias toward Mr. Hrutka that affected his advancement into the business world. However, this one incident was not so far-reaching as to rise to the level of being considered "chronic and substantial" in Mr. Hrutka's overall trajectory in the business world. SBA found Mr. Hrutka's claim that his second interview at PWC with Mr. Tombaugh was unsuccessful due to bias is speculative. I find this to be the case, because the record does not suggest that Mr. Hrutka did not receive a second interview or offer because of Mr. Tombaugh's bias against Mr. Hrutka due to his disabled veteran status. Although Mr. Hrutka states that Mr. Tombaugh made disparaging remarks regarding his status, this claim was insufficient in identifying what was said, specifically. Therefore, SBA acted reasonably in discrediting this claim. Further, even if Mr. Tombaugh's actions were based upon bias, two unsuccessful job interviews with one company do not amount to establishing chronic and substantial disadvantage.

SBA addressed Mr. Hrutka's claim that Mr. Cuica later "sabotaged" a potential employment opportunity due to his bias against Mr. Hrutka. *See* Section IV.C.3., *supra*. SBA found no indication of bias here. Nothing in the record reflects that Mr. Cuica did not follow up with Mr. Hrutka about a position at Censeo because of his disability, and this assertion is merely speculative. Further, Mr. Hrutka's claim that Mr. Cuica sabotaged his job application is speculative at best. Therefore, SBA acted reasonably in discounting this claim.

I conclude that SBA (1) considered all of Petitioner's evidence, (2) its conclusion was based solely on the facts presented in the administrative record, and (3) the conclusion provides a clear rationale based on those facts. *Southern Aire Contracting, Inc.*, SBA No. BDP-453 (2012). SBA outlined each of the allegations of social disadvantage provided in Petitioner's PES and explained its rationale in not finding evidence of social disadvantage as its ultimate determination. It did not insert its own facts into its explanations of what Petitioner experienced, and focused on what was contained in the administrative record. SBA found a number of Petitioner's instances of bias based upon merely conclusory or speculative assertions, and thus properly discounted them. *Bitstreams*, SBA No. BDP-122, at 9-10. Others failed to establish bias, because the incidents were based upon Mr. Hrutka's own difficulties in performing the work, not bias against him as a veteran or a disabled individual. *Omega Circuits and Engineering*, SBA No MSBE-520, at 5 (1995). Therefore, SBA made its determination based solely on the complete administrative record. I found no occurrence of SBA failing to properly apply the law to the facts presented, no failure to consider an important point contained in the record, and no explanation that was implausible or counter to the evidence.

Appellant's argument that SBA failed to address both of Mr. Hrutka's bases for social disadvantage is groundless. Throughout its decision, SBA clearly considered both Mr. Hrutka's veteran status and his disability in analyzing his claims. Some of the incidents of alleged bias Mr. Hrutka recounts involved his veteran status, some his disability, some both. SBA considered the appropriate basis for each incident it reviewed. Further, Appellant's claim that SBA erred by requiring evidence of bias in education, employment and business history is meritless. While SBA recited the areas in which an applicant must demonstrate bias, SBA's decision did not require evidence of bias in education, but concentrated on the evidence presented of employment and business history, and found it insufficient.

I conclude that SBA conducted a thorough review of all the evidence, considered all of the evidence presented, based its conclusion on that evidence, and provided a clear rationale for its conclusion. Accordingly, Petitioner has failed to establish SBA's decision was arbitrary, capricious, or contrary to law.

IX. Conclusion

For the foregoing reasons, I conclude SBA's determination denying Petitioner's admission to the 8(a) BD program was not arbitrary, capricious, or contrary to law. *See* 15 U.S.C. § 637(a)(9)(C); 13 C.F.R. § 134.406(b). I must therefore AFFIRM SBA's determination and DENY this appeal. Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. See 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

CHRISTOPHER HOLLEMAN
Administrative Judge