

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

CVE Appeal of:

SDVE, LLC,

Appellant,

SBA No. CVE-123-A

Decided: June 19, 2019

APPEARANCE

William J. McClain, Vice President, SDVE, LLC, Andalusia, Alabama

DECISION

I. Introduction and Jurisdiction

On April 3, 2019, SDVE, LLC (Appellant) appealed the decision of the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) cancelling Appellant's verification in the Vendor Information Pages (VIP) database of eligible Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Appellant maintains that the cancellation was clearly erroneous and requests that the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is denied.

OHA adjudicates CVE appeals pursuant to 38 U.S.C. § 8127(f)(8)(A) and 13 C.F.R. part 134 subpart K.<sup>1</sup> Appellant timely filed the instant appeal within ten business days of receiving the cancellation notice. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Facts

Appellant was formed in Alabama on July 16, 2008. (Case File (CF), Exh. 10.11.) On June 11, 2014, Mr. Vernell Craig, a service-disabled veteran, joined Appellant after acquiring a previous owner's interest. (*Id.*) On January 26, 2017, CVE approved Appellant's application for re-verification as an SDVOSB. (CF, Exh. 1.)

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<sup>1</sup> The regulations at 13 C.F.R. part 134 subpart K became effective October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

On November 13, 2018, Appellant notified CVE that Mr. Craig had passed away. CVE explained that a Change Request (CR) would need to be submitted. (CF, Exh. 2, at 1.) Later that day the CR was initiated. (CF, Exh. 3.) Appellant began submitting the required documents to CVE. (CF, Exhs. 4-21.)

On January 23, 2019, CVE spoke with William McClain, a representative of Appellant, who informed CVE that “he is planning to add another [service-disabled veteran] owner within the next few weeks” and that “he may want to finalize ownership before submitting [the] CR”. (CF, Exh. 2, at 2.) On January 28, 2019, Mr. McClain told CVE that he would withdraw the CR because there were more changes to be completed in the near future. (*Id.*) On January 29, 2019, CVE notified Appellant that Appellant had been voluntarily withdrawn from the VIP database at Mr. McClain's request. (CF, Exh. 23.)

CVE's internal records describe the CR as a change from SDVOSB to VOSB, and from previous ownership (Vernell Craig 51%, William McClain 24.5%, and Angie McClain 24.5%) to present ownership (William McClain 75.5% and Angie McClain 24.5%). (CF, Exh. 25.1, at 5-6; Exh. 13.6, at 9-10.)

#### B. Notice of Proposed Cancellation

On February 14, 2019, CVE issued a Notice of Proposed Cancellation (NOPC) informing Appellant that CVE was proposing to cancel Appellant's verified status as an SDVOSB. (CF, Exh. 26.) The NOPC stated that CVE had been notified that Mr. Craig, Appellant's majority owner and the service-disabled veteran upon whom Appellant's verification eligibility was based, had passed away, and that Appellant's “new ownership structure . . . is not finalized.” (*Id.* at 1-2.) Therefore, CVE “is unable to confirm that [Appellant] has satisfied the ownership requirements of 13 C.F.R. § 125.12.” (*Id.* at 2.) As a second ground for cancellation, the NOPC stated that CVE “cannot reasonably conclude that [Appellant] has maintained its eligibility for program participation or that [it] has maintained ownership, management, and control as required” by 38 C.F.R. § 74.21(d)(2) and (3). (*Id.*)

The NOPC instructed Appellant that it had 30 days “to provide sufficient evidence to CVE refuting the information identified and explaining why the proposed ground(s) should not justify cancellation.” (*Id.*) The NOPC warned, however, that according to CVE policy, CVE would “consider only amplifying information” and that “[c]hanges to business documents or updated submissions will not be accepted as part of the cancellation process.” (*Id.*)

#### C. Response to the NOPC

On February 20, 2019, Appellant responded to the NOPC. (CF, Exh. 31-32.) In a “Letter of Explanation — Change in Ownership”, Appellant stated:

We have uploaded Minutes from our Special Stockholder Meeting in which Mr. Christopher Stephen Salter purchased 51% of the company and has become the President of [Appellant] as per 13 CFR section 125.12. We have also uploaded

Mr. Salter's DD Form 214 for Disabled Veteran Verification if needed. Please let us know if any other documents are required.

(CF, Exh. 32.) Mr. Salter's DD-214 and two other papers accompanied this submission. (*Id.*) The “Minutes of Stockholder Special Meeting” recounted a February 19, 2019, meeting called by Mr. Salter, as President, in which he announced his purchase of 51% of Appellant's stock, and requested that Mr. McClain remain as Vice President and that Ms. McClain remain as Secretary/Treasurer. (CF, Exh. 31.)

#### D. Notice of Verified Status Cancellation

On March 25, 2019, CVE issued a Notice of Verified Status Cancellation (NOVSC), formally cancelling Appellant's status as a verified SDVOSB. (CF, Exh. 33.) CVE found Appellant's response to the NOPC “not adequate to justify overturning all of the findings listed in the NOPC”. (*Id.* at 1.) The NOVSC cited the same two grounds for cancellation — ownership and verification eligibility — that were cited in the NOPC.

After reviewing the facts it had presented in the NOPC, that Mr. Craig was Appellant's 51% owner, that he was the service-disabled veteran upon whom Appellant's verification eligibility was based, and that CVE had been notified that he had passed away, CVE described Appellant's response to the NOPC, in which Appellant stated that Mr. Salter had purchased 51% of Appellant and had become Appellant's President. (*Id.* at 1-2.) CVE then noted:

Prior to this statement, CVE was not informed of Mr. Salter's ownership or his involvement with [Appellant]. As indicated in the NOPC, it is VA CVE policy to consider only amplifying information regarding cancellation responses and changes to business documents or updated submissions will not be accepted. Moreover, the current verification term of the concern is based upon its ownership and control by Mr. Vernell Craig who has passed away.

(*Id.* at 2.) Thus, CVE concluded, it “is unable to confirm” that Appellant has satisfied the ownership requirements of 13 C.F.R. § 125.12. (*Id.*)

Turning to the second ground, verification eligibility, CVE quoted its authority for removing a concern from verified status for good cause, noting that good cause may include the death of the individual on whom the concern's eligibility is based. (*Id.*) CVE then noted that Mr. Craig was the service-disabled veteran on whom Appellant's verification eligibility was based and that he has died. (*Id.*) Thus, CVE “cannot reasonably conclude that [Appellant] has maintained its eligibility for program participation or that [it] has maintained ownership, management, and control as required” under 38 C.F.R. § 74.21(d)(2) and (3). (*Id.*)

#### E. Appeal

On April 3, 2019, Appellant filed the instant appeal, which states, in its entirety:

In reference to the letter of cancellation [Appellant] received on March 25, 2019, please [ac]cept our formal appeal to the letter as per 38 CFR 74.22. We are appealing and exercising this option to [OHA]. Please review the attached documentation for appeal and contact us if we can provide any clarification or additional information in reference to this appeal. Prior to receiving the [NOVSC], we were working closely with [CVE] and uploaded all requested documents from those conversations. We respect and appreciate what the CVE certification stands for. Thank you for your help and consideration.

(Appeal Petition.)

Appellant attached six documents to the appeal. These are: (1) Operating Agreement, dated February 19, 2019; (2) Amendment to Operating Agreement, dated February 19, 2019; (3) Amendment to Articles of Organization, dated February 19, 2019; and (4) Minutes of Stockholder Special Meeting, dated February 19, 2019; (5) State of Alabama filing for the Amendment to Articles of Organization, dated February 19, 2019, and stamped by the county official on April 3, 2019; and (6) Appellant's February 20, 2019 Letter of Explanation with Mr. Salter's papers. Documents 4 and 6 are already in the Case File as Exhibits 31 and 32, and therefore are not new evidence. Documents 1, 2, 3, and 5 are new evidence, as they were not previously provided to CVE.

OHA cannot consider the new evidence accompanying the appeal. Pursuant to 13 C.F.R. § 134.1110, evidence beyond the Case File is admissible only if good cause is shown, and Appellant here has not explained why good cause exists for admitting the new evidence. Accordingly, Documents 1, 2, 3, and 5 are EXCLUDED from the record and have not been considered for purposes of this decision.

### III. Discussion

#### A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, that the cancellation was based upon clear error of fact or law. 13 C.F.R. § 134.1111.

#### B. Analysis

In the NOPC and the NOVSC, CVE identified two grounds for canceling Appellant's verification as an eligible SDVOSB. First, due to the death of Appellant's majority owner, Mr. Craig, CVE “is unable to confirm that [Appellant] has satisfied the ownership requirements” of 13 C.F.R. § 125.12. Sections II.B and II.D, *supra*. The cited rule states, in pertinent part: “In the case of a concern which is a limited liability company, at least 51% of each class of member interest must be unconditionally owned by one or more service-disabled veterans.” 13 C.F.R. § 125.12(c).

The second ground for cancellation was that CVE “cannot reasonably conclude that [Appellant] has maintained its eligibility for program participation or that [it] has maintained

ownership, management, and control as required” by 38 C.F.R. § 74.21(d)(2) and (3). Sections II.B and II.D, *supra*. In support, CVE again highlighted that Mr. Craig had died and that Appellant's ownership structure was unsettled as of February 14, 2019, the date of the NOPC. Section II.B, *supra*. The referenced regulations permit that CVE may remove a concern from the VIP database for “good cause”. 38 C.F.R. § 74.21(d). According to the regulations, “good cause” includes failure “for any reason, including the death of an individual upon whom eligibility was based, to maintain ownership, management, and control” by service-disabled veterans. 38 C.F.R. § 74.21(d)(2) and (d)(3).

In the NOPC, CVE offered Appellant the opportunity to demonstrate why the cancellation was not justified, but cautioned that “[c]hanges to business documents or updated submissions will not be accepted.” Section II.B, *supra*. Despite these instructions, Appellant's response to the NOPC consisted only of papers relating to a purported change in Appellant's ownership (in turn based on events occurring on February 19, 2019, after the date of the NOPC), and did not include any refutation of the information CVE had presented in the NOPC or any explanation of why the proposed cancellation was not justified. Section II.C, *supra*.

On this record, I see no basis to conclude that CVE improperly cancelled Appellant's verification. Having learned that Mr. Craig — Appellant's majority owner and the service-disabled veteran upon whom Appellant's eligibility was based — had died, CVE had ample grounds to question whether Appellant still was owned by a service-disabled veteran, and whether Appellant had maintained its eligibility as an SDVOSB. Further, CVE reasonably determined that Appellant's response to the NOPC was not adequate to resolve CVE's concerns. In particular, Appellant presented no refutation of the information CVE discussed in the NOPC, nor any explanation or argument addressing why CVE should not proceed with the proposed cancellation. Section II.C, *supra*. Instead, Appellant requested that CVE review information pertaining to a post-NOPC change of ownership, even though the NOPC had specifically warned that CVE would not consider such information. *Id.*

On appeal to OHA, Appellant has the burden of proving error in CVE's decision. 13 C.F.R. § 134.1111. The instant appeal, however, makes no argument as why cancellation of Appellant's SDVOSB status was erroneous. Section II.E, *supra*. As a result, Appellant has not specified any valid grounds to overturn the NOVSC. *CVE Appeal of Secure2ware, Inc.*, SBA No. CVE-111-A, at 2 (2019) (denying appeal which failed to provide “any statements, arguments, or evidence as to why the CVE's determination was based on clear error of fact or law”).

#### IV. Conclusion

For the above reasons, the appeal is DENIED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(A); 13 C.F.R. § 134.1112(d); 38 C.F.R. § 74.22(e).

KENNETH M. HYDE  
Administrative Judge