

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

CVE Appeal of:

Oasys International Corporation,

Appellant,

SBA No. CVE-126-A

Decided: July 2, 2019

APPEARANCES

Matthew Moriarty, Esq., Ian Patterson, Esq., Robert Kampen, Esq., Koprince Law LLC, Washington, D.C., for Appellant

DECISION

I. Introduction and Jurisdiction

On April 26, 2019, the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) issued a letter cancelling Oasys International Corporation's (Appellant)¹ inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in the CVE Vendor Information Pages (VIP). On May 10, 2019, Appellant appealed the cancellation to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA).

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB appeals under the authority of 38 U.S.C. § 8127, and 13 C.F.R. 134.102(u).²

¹ Oasys International Corporation was identified as C2 Solutions Group, Inc. (C2) before a merger with Oasys, whereby C2, took on the name Oasys.

² On October 1, 2018, 13 C.F.R. § 134.102(u) took effect, establishing OHA's jurisdiction over protests of eligibility for inclusion in the Department of Veterans Affairs Center for Verification and Evaluation (CVE) database. 83 Fed. Reg. 13626, 13628 (Mar. 30, 2018).

II. Background

a. Initial Inclusion in the CVE VIP Database

On September 6, 2016, C2 Solutions Group, Inc. (C2) was verified as a SDVOSB and included in CVE's VIP database. (Case File, (CF), Ex. 1.) The eligibility was based on Service-Disabled Veteran (SDV), Gary Shumaker's majority ownership and control (as President and CEO) over C2. (*Id.*)

When a change in ownership occurred, such as a co-owner surrendering his ownership interest to Mr. Shumaker, C2 submitted a notice to CVE. (*e.g.*, CF Exs. 7, 11, 12.)

b. March Site Visit

On March 5, 2019, a CVE examiner conducted a site visit at C2's headquarters. (CF, Ex. 16.) The examiner spoke with the minority owner of C2, who informed the examiner that the eligible SDV, majority owner, and CEO was out of the office. (*Id.*) The minority owner told the examiner Mr. Shumaker was retired and had cleaned out his office the day before. The minority owner stated a deal had been finalized the prior week to sell C2 to another SDVOSB, Oasys IC. (*Id.*)

c. Notice of Proposed Cancellation

On March 25, 2019, CVE informed Appellant it intended to cancel Appellant's verification and registration with VIP because CVE was unable to conclude Appellant satisfied the eligibility requirement at 38 C.F.R. § 74.15(b). (CF, Ex. 18.) CVE stated it could remove participants from its VIP database for good cause according to 38 C.F.R. § 74.21(d), and noted good cause included failure of a participant to maintain eligibility for participation, failure to maintain ownership, management and control by veterans, and failure to inform CVE of changed circumstances. (*Id.*, at 2.) CVE noted that based on the site visit, Mr. Shumaker no longer owned or controlled C2 as required by 38 C.F.R. § 74.21(d)(3), and that CVE could not conclude Appellant maintained verification eligibility pursuant to 38 C.F.R. §§ 74.21(d)(2) and 74.15(b). (*Id.*, at 3.)

d. Merger and Response to Notice of Proposed Cancellation

Mr. Shumaker submitted an email to CVE on April 1, 2019, informing them that on March 5, 2019, C2 and Oasys merged. The original Oasys was owned by Anthony Johnson, a qualifying SDV. (CF, Ex. 22.) After the merger, Mr. Johnson became the 51% owner of the merged company (Appellant). (*Id.*) C2 opted to take on the name of Oasys International, because “the Oasys brand name remains strong,” but the change was merely “cosmetic,” and the company would remain fundamentally the same. (*Id.*)

On April 2, 2019, Appellant submitted its Certificate of Ownership and Merger for the state of Delaware, certifying Oasys International Corporation was merged into C2 on March 5, 2019. (CF, Ex. 27.) Appellant also submitted the Agreement and Plan of Merger that was

executed on March 5, 2019. (CF, Ex. 28, at 16.) On that same day Appellant filed an updated Form 0877 indicating Anthony Johnson, an SDV, was Appellant's 51% owner, signed on March 31, 2019. (*Id.*, at 26.)

e. Notice of Verified Status Cancellation

On April 26, 2019, CVE sent a Notice of Verified Status Cancellation (NVSC) to Appellant noting Appellant would no longer appear in the VIP database. (CF, Ex. 31.) CVE determined it could not reasonably conclude Appellant maintained its eligibility for participation in the VIP system. (*Id.*, at 2, citing 38 C.F.R. § 74.21(d)(2).) CVE stated Appellant's verification term was based on Mr. Shumaker's eligibility. Mr. Shumaker no longer holds ownership interest nor controls or manages Appellant as required by 38 C.F.R. § 74.21(d)(3). (*Id.*) CVE also found Appellant failed to inform CVE of its changed circumstances pursuant to 38 C.F.R. § 74.15(b) and 38 C.F.R. § 74.21(d)(8).

f. Appeal

Appellant filed a timely appeal with OHA, arguing CVE's cancellation of Appellant's verification was clear error. (Appeal, at 1.) Appellant insists the merger between C2 and Oasys consisted of two eligible SDVOSB's merging to form Appellant and that the transaction complied with VA's ownership change regulations because Appellant notified VA of the change within the prescribed 30-day window. (*Id.*)

Appellant maintains it submitted notice of its ownership change within 30 days of the March 5, 2019 merger, as required by 38 C.F.R. § 74.3(b)(1). (*Id.*, at 3.) Appellant asserts it provided a notification to CVE, a Form 0877, merger details, related merger filings, Articles of Merger, the Plan of Merger, and Certificate of Ownership and Merger, along with a detailed response to the Notice of Proposed Cancellation. (*Id.*)

Appellant argues the facts demonstrate it is an eligible SDVOSB despite the merger because the only change was that ownership went from one SDV to another, which is permitted under 38 C.F.R. § 74.3(b). (*Id.*, at 5.) Appellant insists it informed CVE via email of the ownership change within the required 30 days set forth in 38 C.F.R. § 74.3(b)(1). (*Id.*) Appellant categorized the CVE site examination on the date of the merger as an unfortunate coincidence. (*Id.*) Appellant insists it responded to the NOPC explaining the merger and providing documents, but CVE seemingly did not review the information. (*Id.*) Appellant contends the cancellation is based on CVE's clear error in fact. (*Id.*, at 6.) Appellant insists it has always been compliant with the control regulations found in 13 C.F.R. § 125.13. (*Id.*)

g. Show Cause Order and Response

CVE's Case File included two separate notices from CVE to Appellant's owner and former owner acknowledging Appellant's voluntary withdrawal from the CVE VIP database. (CF. Exs. 32, 36.) On June 13, 2019, OHA issued an Order to Show Cause, directing Appellant to show cause as to why the instant appeal should not be dismissed for mootness because it

appeared the Appellant had withdrawn from the database rather than being cancelled from inclusion.

Appellant explained the owners never withdrew from the CVE database. Rather, the notices are automatically generated through CVE's web portal when a participant withdraws a Change Request. (Response to Show Cause, at 1.) The generated responses represent glitches in CVE's system.

The two notices were issued when Mr. Johnson submitted a Change Request to add a new NAICS code for Appellant, then withdrew the change request, and when Appellant withdrew a Change Request that had been filed for a changed DUNS Number following the merger. (*Id.*, at 3.) Appellant's response demonstrates there is still a case in controversy and the appeal is not moot.

h. CVE's Reply to Appellant's Response

On June 24, 2019, CVE filed a motion for leave to file a clarifying statement. On the same day, I issued an Order permitting CVE to reply and setting a deadline for the response. CVE filed a timely reply.

In its reply, CVE states Appellant received the NVSC from CVE then five days later initiated a new application for verification. (CVE Reply, at 1.) CVE explained Appellant later submitted a request to withdraw that application, at which time Exhibit 32 was created by the CVE database. (*Id.*, at 2.) CVE noted Exhibit 35 was created when the predecessor Oasys intended to withdraw from the company and erroneously submitted the Change Request to CVE, but later withdrew because it had been uploaded on the wrong company's profile. (*Id.*)

CVE went on to argue it is unable to accurately verify ownership in Appellant company based on the documents submitted. (*Id.*, at 3.)

III. Discussion

A. Burden of Proof

Appellant has the burden of proving CVE's denial or cancellation was based on a clear error of fact or law by a preponderance of the evidence. 13 C.F.R. § 134.1111. OHA's decision is generally based on evidence in the CVE case file, arguments made on appeal, and any responses thereto. 13 C.F.R. § 134.1112(c).

B. Analysis

To be considered an eligible SDVOSB, a concern must be a small business that is unconditionally owned and controlled by one or more service-disabled veterans. 38 C.F.R. § 74.2(a); 13 C.F.R. §§ 125.12 and 125.13; *CVE Protest of Alpha4 Solutions, LLC d/b/a Alpha Transcription*, SBA No. CVE-103-P (2019); *CVE Protest of Blue Cord Design and Constr., LLC*, SBA No. CVE-100-P (2018). CVE analyzes control based on SBA's SDBVO SBC

regulations found at 13 C.F.R. Part 125. (Determinations on eligibility prior to October 1, 2018 are based upon the VA's regulations at 38 C.F.R. § 74.4.)

CVE applicants are required to submit “supplemental documentation as CVE requires.” 38 C.F.R. § 74.12. The regulation states that when a change of ownership occurs, a participant may remain eligible so long as one or more veterans own and control the entity after the change. The only requirement is the participant must “file an updated VA Form 0877 and supporting documentation identifying the new veteran owners or the new business interest within 30 days of the change.” 38 C.F.R. § 74.3(b)(1).

In the case at hand, ownership and management transferred from one eligible SDV to another. The record here clearly reflects that Appellant accomplished the merger and properly notified CVE. There is extensive documentation of the properly conducted merger. CF, Exs. 22, 26, 27, 28, 29, 33. Mr. Johnson, an SDV, is Appellant's 51% owner after the merger. Appellant notified CVE on April 1, 2019, and filed a Form 0877, less than 30 days after the change in ownership. Appellant thus complied with the regulation. 38 C.F.R. § 74.3(b). Accordingly, I conclude the CVE's cancellation was a clear error of fact or law.

IV. Conclusion

Appellant has proven CVE's denial was based on a clear error of fact or law. 13 C.F.R. § 134.1111. I must therefore **GRANT** the Appeal. The D/CVE must immediately reinstate Appellant into the database. 13 C.F.R. § 134.1112(f). 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).

CHRISTOPHER HOLLEMAN
Administrative Judge