

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

CVE Appeal of:

RealSims, LLC,

Appellant

SBA No. CVE-129-A

Decided: August 1, 2019

APPEARANCE

Robert W. McGraw, CEO, RealSims, LLC, Pensacola, Florida

DECISION

I. Introduction and Jurisdiction

On April 26, 2019, RealSims, LLC (Appellant) appealed the cancellation of its inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Vendor Information Pages (VIP) database. Appellant requests that the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) reverse the cancellation based on Appellant's response to the cancellation letter and additional information provided with the appeal. 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.¹ Appellant timely filed the appeal within ten business days of receiving the cancellation letter. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Facts

On June 4, 2015, CVE initially verified Appellant as an SDVOSB and included it on the VIP database. (Case File (CF), Exh. 1.) On October 22, 2018, CVE re-verified Appellant. (CF, Exh. 2.) The re-verification letter stated that “[w]hile CVE has confirmed that [Appellant] is

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

presently, as of the issuance of this notice, in compliance with the regulation, [Appellant] must inform CVE of any changes or other circumstances that would adversely affect its eligibility.” (*Id.*)

On January 10, 2019, Appellant submitted a Change Request to inform CVE of changes in Appellant's ownership. (CF, Exh. 4.) Appellant then submitted VA Forms 0877 for Mr. Robert McGraw (service-disabled veteran) and for Messrs. Dan Wade and Ralf Persson (non-veterans). (CF, Exhs. 11, 18, 21.) Appellant also submitted various documents on February 12, 2019, including its amended Operating Agreement dated January 1, 2019. (CF, Exhs. 32-44.)

Appellant's amended Operating Agreement states that Appellant's main office address is in Pensacola, Florida. (CF, Exh. 39, at 1.) According to the amended Operating Agreement, Appellant's sole managing member is Mr. McGraw, who holds 51% interest, and the two non-managing members are Messrs. Wade and Persson, who each have 24.5% interest. (*Id.* at 1, 22.)

Appellant provided CVE “Bios” for Mr. McGraw and Mr. Persson, but not Mr. Wade. (CF, Exh. 40-41.) Mr. Persson's “Bio” does not address his role at Appellant and identifies his current position as Executive Vice President of Badger Technology Group. (CF, Exh. 41.)

CVE requested clarification of Appellant's lease arrangements because Appellant's website referred to a second address located in Port Washington, Wisconsin. In response, Appellant stated that the Pensacola address is a home business address and that no lease or rental agreement exists. (CF, Exh. 42.) The Wisconsin address is property “owned by one of [Appellant's] members,” and is “used Pro-Bono (Lease Free) for the purpose of this office location.” (*Id.*)

On February 13, 2019, CVE requested that Appellant submit additional documentation including, among other things, signed copies of Appellant's most recent member/manager meeting minutes, the meeting minutes that reflect the adoption of the amended Operating Agreement, and the transfer of ownership agreement showing the change in membership signed and dated by all parties. (CF, Exh. 46, at 2.) CVE also noted that the resume of Mr. Persson was incomplete and that the resume of Mr. Wade was missing altogether. (*Id.* at 3.) CVE directed Appellant to submit all missing documents to CVE by February 18, 2019. (*Id.*) On February 13, 2019, Appellant forwarded a letter of explanation regarding the meeting minutes. Appellant stated:

At [this] time two of the new members are on international travel with limited access to Re Sign the meeting minutes held to authorize the management changes of the LLC.

We will up load the requested signed meeting minutes document as soon as all members are available to attach their signatures. Anticipated return from international travel is approximately 22 Feb 2019.

(CF, Exh. 49.)

B. Notice of Proposed Cancellation

On March 12, 2019, CVE issued a Notice of Proposed Cancellation (NOPC) to Appellant. (CF, Exh. 55.) The NOPC explained that, after CVE was notified of a change in Appellant's ownership structure, CVE had requested additional documents “[i]n order to ensure the concern's continued verification eligibility.” (*Id.* at 2.) Appellant provided some, but not all, of the requested information. In particular, Appellant did not submit a “[s]igned and dated Transfer of Membership or Purchase Agreement demonstrating the transfer of membership in the concern,” or the “[c]urrent resumes for all owners of the concern which include educational background, all current and prior employment, dates of employment, and duties or responsibilities.” (*Id.*) Further, some of the documentation Appellant did provide was incomplete. CVE noted that it had requested Appellant's “[m]ost recent Meeting Minutes signed by all members of the concern which designates the positions held by all current members of the company,” but “[t]he document provided was not signed by all members.” (*Id.*) Therefore, CVE could not conclude that Appellant had complied with 38 C.F.R. § 74.21(d)(2) and (5). (*Id.*)

CVE also was unable to determine whether Appellant is fully controlled by service-disabled veterans. The NOPC stated:

[Appellant]'s website identifies a second facility utilized by [Appellant] in Port Washington, Wisconsin which is owned by non-Veteran Dan Wade and provided to the concern without compensation. CVE has not received documents necessary to determine [Appellant's] continued verification eligibility or clarifying documentation regarding the extent [of] Dan Wade's involvement in the management and control of the concern. Therefore, CVE is unable to determine whether the business relationship with the non-Veteran Dan Wade causes such dependence that [Appellant] cannot exercise independent business judgment without great economic risk pursuant to 13 CFR § 125.13 (i)(7).

(*Id.* at 3.)

The NOPC indicated that Appellant would have 30 days “to provide sufficient evidence to CVE refuting the information identified [in the NOPC] and explaining why the proposed ground(s) should not justify cancellation.” (*Id.*) Pursuant to CVE policy, though, CVE would “consider only amplifying information,” and “[c]hanges to business documents or updated submissions will not be accepted as part of the cancellation process.” (*Id.* at 3-4.)

C. Response to NOPC

On March 15, 2019, Appellant responded to the NOPC. (CF, Exh. 60.) Appellant stated:

Please be advised that I [Mr. McGraw] have been hospitalized for surgery and unable to complete all of the submissions and responses to the document requests within the time constraint restrictions.

Below [are responses] answering the questions provided in the NOPC. In addition, I will be up loading the missing documents requested. Please note that some of the documents you are now requesting have been previously up loaded including:

[. . .] Signed MOST RECENT MEETINGS MINUTES dated 03 Jan 2019. This included the resignation of Debra McGraw with transfer of her 2% ownership to Robert McGraw. Admission of Mr. Ralf Persson as a 24.5 percent shareholder in the LLC and Mr Dan Wade as a 24.5% shareholder (cumulatively owning a minority member share _ of 49%[]). The remaining 51% i[s] and shall remain owned by Robert McGraw the Verified SDVOSB. This document was signed and uploaded by the majority outgoing and incoming minority members. I will be RESUBMITTING this document in [the] event it did not get posted.

[. . .] Regarding current owners resumes. We will be up loading these missing resumes within the next few business days

[. . .] **Regarding the location in Port Washington Wi.** This is a building owned by Mr Dan Wade who has a business at this address which is operating and registered in the state of WI as Badger Technology Group.

Mr Wade is now a princip[al] in [Appellant] as well. Currently he conducts his primary business for Badger TG from this location. At this time Mr Wade is minority non-controlling member of [Appellant].

In this current capacity, [Mr. Wade] merely fields sales calls and email requests addressed to [Appellant] at his primary the Badger TG business office [in] Port Washington WI. [Appellant] posted this address on our website to drive and centralize inquires to a sales person who will reply. No other activity is currently conducted from the WI location. In the future as business dictates and contracts are awarded, we may enter into a lease agreement to occupy [l]eased space in the building and at such time would apply for any necessary permits to operate or occupy. However at the moment there is no business in operation at this location.

[Appellant] pays NO Rent and there is no lease agreement in place to operate anything other th[a]n one or our principals fielding calls and email. Additionally, as a sales location no special permits or licenses are required by the state of WI to have a representative working from what is considered a HOME office.

The majority percentage of Mr Wades time is primar[il]y spent on his activity with his other business concern Badger TG. He is obligated to provide only 23.4% of his time promoting [Appellant's] business and identifying prospects and fielding sales inquires at the moment.

I do not understand why [Appellant] is being required to produce a business license from a representative working in a remote sales capacity in a state that has no such requirement.

Eventually should [Appellant's] business develop into anything more than just a sales office, we may at that time decide to engage in a lease agreement with Badger TG to sub lease additional space in Mr Wades building as described in the Partnership Agreement uploaded to [Appellant's] profile.

Furthermore, a review of the Partnership Agreement between [Appellant], Mr Wade and Mr Persson as well as our updated Jan 3rd [Appellant's] Operating agreement clearly shows no AFFILIATION exists or is insinuated to exist in the any partnership agreement with intent to MERGE or COMBINE operations between BADGER TECHNOLOGY GROUP with [Appellant].

The partnership agreement in reference is executed between the INDIVIDUAL OWNERS, and not with the BADGER organization. The intent of the ORIGINAL PARTNERSHIP AGREEMENT signed by the members.

Additionally, the above relationship between all parties is clearly defined and duly executed in the revised Jan3 2019 updated and up loaded [Appellant] Operations Agreement. Full and unconditional control of [Appellant] is clearly defined and reiterated in the Partnership Agreement duly executed and signed by all concerned members.

(Id. at 1-3 (emphases Appellant's).)

Also on March 15, 2019, Appellant uploaded a document entitled “Minutes of 2019 Annual Meeting,” which occurred in Port Washington, Wisconsin, on January 3, 2019. (CF, Exh. 61.) According to the minutes, Mrs. Debra McGraw, wife of Mr. McGraw, transferred her 2% interest in Appellant to Mr. McGraw, who then sold 24.5% of Appellant to Mr. Wade and 24.5% to Mr. Persson, keeping the remaining 51% of Appellant for himself. (*Id.* at 1-2.) Mr. Persson became Appellant's “Executive Vice President in charge of Western US, Asia and PAC Rim Business,” and Mr. Wade became “Executive Vice President in charge of Eastern and Central US, Europe and Middle East Business.” (*Id.* at 2.) The minutes were signed only by Mr. and Mrs. McGraw; the spaces for Mr. Wade and Mr. Persson to sign were left blank. (*Id.* at 3.)

Appellant also uploaded a “Purchase Agreement” on March 15, 2019. (CF, Exh. 57.) The Purchase Agreement states:

THIS AGREEMENT defines the purchase of ownership rights of [Appellant] by the Badger Technology Group LLC. . . .

Effective 18 May 2018, [Appellant] operating as a Limited Liability Company under the laws of the State of Florida, transfers ownership of 49% of the Company to the Badger Technology Group. . . .

Robert McGraw shall remain as the “Managing Member” of the Company and will retain 51% of the Company. Badger Technology Group LLC will become a “Member” with the 49% ownership. Responsibilities for being a member shall be performed on behalf of the Badger Technology Group LLC by Daniel R. Wade and/or Ralf E. Persson as each have a 50% ownership share in the Badger Technology Group LLC

The principal place of business of [Appellant] is [at] Port Washington, WI 53074. The Company's registered office shall remain [at] Pensacola, FL 32534 unless otherwise agreed by the Members. . . .

The production facility of [Appellant] shall be housed within the facility of the Badger Technology Group LLC with a dedicated area assigned for use by [Appellant]. All initial expenses to adapt the facility to be suitable for [Appellant's] demonstration, assembly, test, and training shall be borne by the Badger Technology Group LLC. . . .

(*Id.* at 1.) The Purchase Agreement is dated May 18, 2018, and is signed by Messrs. McGraw, Wade, and Persson. (*Id.* at 2.)

D. Notice of Verified Status Cancellation

On April 18, 2019, CVE issued a Notice of Verified Status Cancellation (NOVSC), formally cancelling Appellant's verification. (CF, Exh. 64.) The NOVSC recapped the findings cited in the NOPC, and explained that Appellant's response was not adequate to justify overturning those findings. Therefore, Appellant will no longer appear in the VIP database. (*Id.* at 1.)

Under Verification Eligibility, the NOVSC noted that CVE had requested Appellant's most recent meeting minutes signed by all current members, and current resumes for all of Appellant's owners, but that those documents remain outstanding. (*Id.* at 2.) The NOVSC further stated:

CVE deems the above documentation necessary in the determination of continued verification eligibility. As a result of [Appellant's] failure to submit the requested documents, CVE cannot reasonably conclude that the requirements of 38 CFR § 74.21(d)(2) and (5) have been satisfied.

(*Id.*)

Under Control by Non-Service-Disabled Veterans, the NOVSC observed that CVE had asked about the Port Washington facility, and then quoted from Appellant's response to that request for information. (*Id.* at 2-3.) The NOVSC further stated:

According to the Purchase Agreement provided, on May 18, 2018, [Appellant] transferred 49% ownership of the company to the Badger Technology

Group, “who is represented by Daniel Wade and Ralf Persson.” The VA Forms 0877, dated February 10, 2019, indicate that non-Veterans Daniel Wade and Ralf Persson each hold 24.5% ownership interest in the concern, respectively. Mr. Wade provides office space free of charge from Badger Technology Group to the concern, and CVE has not received the resumes of the new owners as requested which would allow CVE to determine the extent of non-Veteran involvement or control of [Appellant]. CVE has not received the documents necessary to determine [Appellant]'s continued verification eligibility nor has the concern provided sufficient documentation to rebut the presumption that non-Veteran individuals or entities control or have the power to control the firm. CVE cannot determine whether business relationships exist with non-Veterans or non-Veteran entities which cause such dependence that [Appellant] cannot exercise independent business judgment without great economic risk pursuant to 13 CFR § 125.13(i)(7).

(*Id.* at 3.) The NOVSC concluded that “cancellation of [Appellant's] verified status is warranted.” (*Id.*)

E. Appeal

On April 26, 2019, Appellant appealed the cancellation to OHA. Appellant insists that:

The non-managing (minority) members of [Appellant] hold no controlling interests in day to day operations and management of the company and pose no potential future risk of future control in the LLC in accordance with the legal terms and conditions of our Operating Agreement. . . .

Our Operating Agreement has been endorsed and certified by all members of the LLC and clearly eliminates the possibility of control in the company by any member of the company other than [Mr. McGraw]. . . . This Operating Agreement dated J[a]n 2019 supersedes and replaces the initial purchase agreement uploaded to the CV[E] web portal.

(*Id.* at 1.) Appellant then refers to various sections of the Operating Agreement, which, Appellant maintains, “legally defines control of the company.” (*Id.* at 2.)

With regard to CVE's concerns about Appellant's ownership structure, Appellant asserts that the Purchase Agreement was “[a]n initial and preliminary” document which has now been superseded by the amended Operating Agreement. (*Id.* at 2.) More specifically:

The intent of [the Purchase Agreement] was to outline and define the terms of investment payments and an agreement by Mr Wade the owner of a building located in Port Washington WI) to provide space for [Appellant] to establish a manufacturing shop that would be eventually staffed by [Appellant's] full time employees following modifications made to the building by Mr. Wade.

Mr Wade and his partner Mr Persson are current owners of the Badger Technology Group a Wisconsin based Avionics distributor and supplier of components used by [Appellant] in the manufacturing of our simulators.

After review of that purchasing agreement wording and prior to voting on official admission of the two members it was determined by [Appellant's] board of directors that this purchase agreement as defined could not be executed as defined since it did not clearly reflect the actual final intent of the parties.

The intent of Mr Wade and Mr Persson was not to MERGE BADGER TG with [Appellant], but to be involved in the simulation and training market and spend a portion of their time supporting [Appellant] and providing us with space for the growth of our company.

1. May 2018 this initial Purchase agreement was put in place.
2. This document defined the preliminary INTENT and TERMS required for entry into [Appellant]
3. This document intended to define[] the required payment terms and provisions for space
4. In January prior to voting on the entry of Mr Wade and Mr Persson it was determined by [Appellant's] board of directors that if Mr Wade and Mr Persson wanted to become members in [Appellant] that the initial purchase agreement would need to become NULL and VOIDED
5. In late December Mr. Persson and Mr Wade were informed that [Appellant's] board reviewed initial purchase agreement and would not recognize that agreement because it implied an acquisition and control of [Appellant] by the Badger TG
6. In Jan 2019 all parties agreed that this purchase agreement must be superseded by [Appellant's] Operating agreement which was the legal document binding Mr Wade and Mr Persson to [Appellant's] organization
7. A vote of [Appellant's] board was held during our 2019 Annual meeting in early January to vote and approve non-member status in [Appellant] to Mr Wade and Mr Persson
8. [Appellant's] 2019 Operating Agreement was amended executed and certified to include Mr Wade and Mr Persson as non-managing members in the LLC

In summary — the initial purchase agreement posted to the VetBiz site was in error. The document in question is an obsolete [] version which has been

superseded by the execution of our 2019 Operating Agreement while defines the proper language in which [Appellant] operates.

(*Id.* at 2-3.) Regarding failure to provide information to CVE, Appellant states:

I received an NOPC stating that we did not provide required documents. To our knowledge all requested documents were uploaded prior to the 30 day expiration NOPC deadline indicated.

The recent [NOVSC] we received stated that the [NOVSC] was based on non-response of the NOPC notice as well as other areas of concern which are explained herein.

We included [] explanations explicitly clarifying why we felt that we were responsive to the NOPC letter in a timely man[ner].

I then contacted [CVE] via the 800 number for assistance and guidance request regarding this NOPC. I was told that it was out of their hands once the NOPC was sent and that they could not help or provide any answers to my concerns. I was informed at that time that we should wait for additional instructions from the NOPC team. I waited for approximately three weeks and heard nothing until I finally received the [NOVSC].

(*Id.* at 3.) Appellant complains that the NOVSC was “very vague,” alleging:

EXAMPLE: When we reviewed the 2019 Annual Minutes document . . . we saw the document was uploaded but we did not realize at that time that two signatures were missing.

Had we been informed by [CVE] during our calls that this was all that was needed it could have been easily corrected at that time. Instead of explaining what the problem was with the document we were [cancelled].

CV[E] gave no detailed explanation to us as to what the problem was with this document. We logged onto the VetBiz site to check the uploaded posts and saw the document was uploaded and on file and assumed it was an oversight on CV[E]' s part because they did not provide enough information to alert us of the nature of the issue.

The mis-communication and vague descriptions of what we needed to do to correct the issue should have been communicated correctly to us so that we would not have interpreted the request wrongly.

(*Id.*) There follow several excerpts from the NOVSC, with Appellant's response to each. For Verification Eligibility, where the NOVSC identified as outstanding Appellant's “[m]ost recent Meeting Minutes signed by all current members of the concern,” Appellant responds:

RESPONSE: We mis-interpreted the NOPC's Meeting Minutes document request. Since this document was previously uploaded on 3-15-19 as requested. We assumed it was overlooked by the CV[E] and that the request was in error. If the NOPC team had clarified on the document request that there were missing signatures we would have understood and resubmitted the document immediately to avoid this denial.

(*Id.* at 4, emphasis Appellant's.) Also for Verification Eligibility, where the NOVSC identified as outstanding “Current resumes” of Appellant's owners, Appellant responds:

RESPONSE: As previously stated [] on 3-15-19 the two new members were on international travel when we received the request. This [] letter explained that there would be a delay in getting the resumes updated and filed in time. Please see the [letter] posted to the Vet Biz site on 3-15-19 which was submitted within the response time required on the NOPC. Also to insure CV[E] has these on file the requested RESUMES of the two new members are attached hereto in appendix A. If [CVE] can provide a new document request we will upload these to our profile.

(*Id.* at 4.) With regard to potential control by non-service-disabled veterans, Appellant wrote:

RESPO[NS]E: The building in WI is owned by Mr Wade (one of the two new members in [Appellant] please note that Mr Wade and Mr Persson own[] Badger Technology group. BadgerTG is a supplier of avionics equipment for [Appellant].

We integrate their avionics equipment into our simulators. There is NO affiliation with BadgerTG, other th[a]n [Appellant] from time to time purchases equipment from BadgerTG.

Mr Wade and Mr Persson spend most of their time on BadgerTG business and only a small portion of their time is spent on [Appellant's] business. As minority members they have no control in [Appellant's] day to day business or management in the LLC. Please refer to **Mr Wades Affidavit located in the APPENDI[X] section attached hereto.**

(*Id.* at 5, emphasis Appellant's.) Regarding the Purchase Agreement, Appellant copied and highlighted the portions of the NOVSC that Appellant had “transferred 49% ownership of the company to the Badger Technology Group” and that the resumes of Messrs. Wade and Persson were missing. Appellant stated:

RESPONSE: The highlighted assumption above related to the transfer of ownership is incorrect.

There is and was never any transfer of control to the Badger Technology Group. The document CVE based the denial decision on was an initial draft created in May of 2018. That document became obsolete in Jan 2019 and was [replaced] by the executed and legal[ly] binding [] 2019 Operating agreement put into effect following our 2019 Annual Meeting and documented in our 2019 Annual Meeting of the board.

NOTE: [Appellant's] Operating Agreement is the basis of the organization and management of our company. It includes Mr Wade and Mr Persson as individuals and non-managing members of the LLC. There is no reference or affiliations between [Appellant] and Badger TG.

(*Id.* at 5.) As relief, Appellant requests:

Pleased accept this Appeal letter filing as an official request for reconsideration as to the [NOVSC]. [. . .] If additional documentation or clarification is required we are pleased to submit. If we know exactly what is [] different th[a]n a few months ago when we were re verified please let us know in terms that we can understand and correct.

(*Id.* at 6.)

With its appeal petition, Appellant attaches (1) a version of the Minutes of the 2019 Annual Meeting containing all four signatures, (2) the resumes of Mr. Wade and Mr. Persson, and (3) a “Members Affidavit” from Mr. Wade. These documents are not contained in the Case File and thus are new evidence on appeal.

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

VA regulations make clear that CVE may remove a concern from the VIP database if the concern “[f]ail[s] to make required submissions or responses to CVE or its agents, including a failure to make available . . . requested information or data within 30 days of the date of request.” 38 C.F.R. § 74.21(d)(5). Here, on February 13, 2019, CVE requested documents related to Appellant's recent changes of ownership, including a signed transfer of membership agreement, meeting minutes signed by all members, and the resumes of the new members. Section II.A, *supra*. Appellant submitted a “Bio” for one of the new members, Mr. Persson, but did not address his role at Appellant, and no resume for the other new member, Mr. Wade, along with a letter asserting that Messrs. Persson and Wade were unavailable to sign the meeting minutes until February 22, 2019. *Id.* On March 12, 2019, CVE issued the NOPC, noting specifically that

the meeting minutes uploaded had not been signed by all members, that resumes still had not been submitted, and that CVE had not received documents necessary to determine Appellant's verification eligibility in light of Mr. Wade's involvement and Appellant's apparent reliance on the Port Washington facility. Section II.B, *supra*.

On March 15, 2019, in response to the NOPC, Appellant submitted meeting minutes signed only by Mr. and Mrs. McGraw, some discussion about Mr. Wade's and Mr. Persson's contributions to Appellant, and a Purchase Agreement, executed by Messrs. McGraw, Wade, and Persson. Section II.C, *supra*. Pursuant to this Purchase Agreement, which was dated and went into effect on May 18, 2018, Badger Technology Group LLC became a 49% member of Appellant, and the Port Washington, Wisconsin address became Appellant's "principal place of business." *Id.* The Purchase Agreement clearly conflicts with information submitted on Appellant's VA Forms 0877 as well as with provisions of the Operating Agreement, and no document in the Case File provides any explanation for these inconsistencies.

Accordingly, as of April 18, 2019, the date CVE issued the NOVSC, Appellant had been asked twice for the meeting minutes signed by all members and for the resumes of the new members. The first time was in CVE's February 13, 2019 e-mail, and Appellant responded incompletely. Section II.A, *supra*. The second time was in the March 12, 2019 NOPC, and in response Appellant provided meeting minutes signed only by the McGraws and no further resume material. Sections II.B and II.C, *supra*. On this record, then, I see no basis to conclude that CVE improperly removed Appellant from the VIP database. Appellant twice failed to comply with CVE's requests for information, in contravention of 38 C.F.R. § 74.21(d)(5).

On appeal, Appellant argues that it provided sufficient information to CVE. Section II.E, *supra*. Yet Appellant, which has the burden of proof on appeal, has not shown that it actually did submit to CVE the requested complete resumes for Messrs. Persson and Wade, or the minutes of the January 3, 2019 members meeting signed by all members, even as late as April 18, 2019, more than two months after CVE initially requested those documents. These documents are not in the Case File, and CVE properly cited Appellant's failure to produce them as grounds for cancelling Appellant's verification.

In its appeal, Appellant also criticizes CVE for not adequately describing the information it expected Appellant to provide. This argument is unpersuasive for two reasons. First, contrary to Appellant's contentions, both of the CVE requests did specifically identify documents needed in order for CVE to approve Appellant's change of ownership. Sections II.A and II.B, *supra*. Second, the record contains no contemporaneous evidence that Appellant considered CVE's requests to be unclear. On the contrary, Appellant responded to both requests, albeit incompletely, and even commented at one point that "[Appellant] will be up loading these missing resumes within the next few business days." Sections II.A and II.C, *supra*. Thus, the record does not support the notion that CVE's requests were unclear. *See also CVE Appeal of GCBO Sourcing Partners, LLC*, SBA No. CVE-112-A, at 5 (2019).

Lastly, 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 has not explained why good cause exists here to supplement the Case File. Section

II.E, *supra*. Moreover, even if OHA were to consider the new documents, Appellant still could not demonstrate that CVE's decision to cancel Appellant's verification was erroneous because, at the time of the cancellation, these documents had not been provided to CVE.

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