

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

IN THE MATTER OF:

Cali Electric, Inc.,

Appellant,

SBA No. CVE-135-A

Decided: September 11, 2019

APPEARANCE

Kriztofer Cole, Cali Electric, Inc., California, for Appellant

DECISION

I. Introduction and Jurisdiction

On July 2, 2019, the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) issued a Notice of Proposed Cancellation (NOPC) to Cali Electric, Inc. (Appellant). On August 22, 2019, CVE issued a letter cancelling Appellant's inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in the CVE Vendor Information Pages (VIP). On that same day, Appellant appealed the denial 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).

II. Background

A. CVE's Notice of Verified Status Cancellation

As noted above, on August 22, 2019, CVE sent Appellant a Notice of Verified Status Cancellation. (Cancellation at 1.) The Cancellation states Appellant did not respond to the July 2, 2019 NOPC or Appellant's response was inadequate. (*Id.*) The Cancellation finds that although Appellant has confirmed that Mr. Kriztofer Cole is a veteran, CVE is unable to conclude that Appellant satisfied the requirements for participation in the program set forth at 38 C.F.R. Part 74. (*Id.*) The Cancellation focuses on three factors: Verification Eligibility, Legal Organization, and Close Proximity. (*Id.*)

CVE first considered the Appellant's verification eligibility. The regulation provides:

CVE may remove a participant from public listing in the VIP database for good cause upon formal notice to the participant in accordance with § 74.22. Examples of good cause include, but are not limited to, the following:

...

(2) Failure by the participant to maintain its eligibility for program participation;

...

(5) Failure to make required submissions or responses to CVE or its agents, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

38 C.F.R. § 74.21(d).

The CVE noted that on May 23, 2019, Cali Electric, Inc. submitted a change request informing CVE that its ownership interests had changed. (*Id.* at 2.) Previously, at the time of verification, service-disabled veteran Cecil Spence owned 75% of Appellant and Mr. Cole owned 25%. (*Id.*) The May 23, 2019 change request stated that Mr. Cole was now the 100% owner. (*Id.*) CVE requested several documents from Appellant to confirm its continued verification eligibility, but the Appellant failed to adequately address the issues identified. (*Id.*)

CVE noted it requested a current stock ledger listing all ownership interests and changes in ownership. (*Id.*) The stock ledger Appellant provided merely listed Mr. Cole as Appellant's sole shareholder. (*Id.*) CVE also requested the current Bylaws of Appellant. (*Id.*) CVE states Appellant provided an incomplete, undated, and unsigned document entitled "Bylaws of Cali Electric, Inc.," which failed to designate officers or directors. (*Id.*) Additionally, Appellant submitted a letter stating that the "signed and dated bylaws were sent in during the original submission and have not changed." (*Id.*) The previous Bylaws were dated February 20, 2019 and identify Mr. Cole as the CFO, which does not appear to accurately reflect the current management structure of the company. (*Id.*)

Furthermore, the NOPC requested that Appellant identify all changes that have occurred since the last verification. (*Id.*) Appellant responded that its address had changed since it is currently operating via "mobile means." (*Id.*) Appellant had previously identified its operating address as 3422 Mission Mesa Way in San Diego, California. (*Id.*) Appellant now states that it operates out of Mr. Cole's home and that Mr. Cole would be moving on July 15, 2019 to 11504 Bay Gardens Loop, Riverview, Florida. (*Id.*) The NOPC had also requested the ten most recent checks negotiated on the concern's business bank account and the five most recent contracts and/or proposal submissions. (*Id.*) Appellant stated that since Mr. Spence departed, no checks had been negotiated or contracts executed. (*Id.*) Based on this information, CVE concluded that

it could not reasonably determine the location of the firm or whether it has continued business operations. (*Id.*) As a result, CVE could not reasonably conclude that Appellant had maintained verification eligibility as required by 38 C.F.R. § 74.21(d)(2). (*Id.*)

CVE then considered Appellant's legal organization. CVE noted the regulation provided that a participant in the CVE may be removed for failure to obtain and keep current any and all required permits, licenses, and charters. (*Id.* at 3, citing 38 C.F.R. §§ 74.21(d)(9), 74.4, and 13 C.F.R. § 125.13(g).)

The CVE found that it could not determine Appellant's principal place of business. (*Id.*, at 3.) The address provided on Appellant's VIP profile is 1166 16th Street, San Diego, CA. (*Id.*) The California Secretary of State identifies Appellant as a California corporation at this address. (*Id.*) CVE states that it has not received adequate information to determine the location of Appellant and whether it intends to operate from the new Florida address noted above. (*Id.*) The Florida Secretary of State has no record of Appellant. (*Id.*) As a result, CVE concluded that it could not determine whether Appellant has obtained, and kept current, all required licenses necessary in the operation of the business as required by 38 C.F.R. § 74.21(d)(9) and 13 C.F.R. § 125.13(g). (*Id.*)

The CVE then considered the issue of “close proximity,” noting that there is a rebuttable presumption that a service-disabled veteran does not control the firm if that individual is not located within a reasonable commute to the firm's headquarters and/or job-site locations. (*Id.*, citing 13 CFR § 125.13(l).) CVE noted that it had not received confirmation of Mr. Cole's move to Florida, or clarification of the concern's principal place of business. (*Id.*, at 3.) As a result, CVE could not reasonably determine whether Appellant met the requirements of 13 CFR § 125.13(l). (*Id.*, at 4.)

### B. The Appeal

On August 22, 2019, Appellant filed its Appeal with OHA. The full text of the Appeal is:

Please give me back sdvosb.

My determination letter is incorrect because I am a service disabled veteran and I have provided all the documents proving that to the va.

(Appeal, at 1.) The Appeal is accompanied by copies of the documents previously supplied to the VA. (*Id.*)

### III. Discussion

#### A. Burden of Proof

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

decision is 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

While there is no required format for CVE Appeals, they must be in writing, and there are certain requirements they must meet. One is that an appeal must include “[a] statement of why the cancellation or denial is in error.” 13 C.F.R. § 134.1105(a)(2). Here, Appellant has failed to include any such statement. Appellant asserts that Mr. Cole is a service-disabled veteran, but the CVE does not dispute this. The CVE's cancellation found Appellant failed to meet the regulatory requirements to remain eligible as a verified SDVOSB for participation in the CVE. Appellant offers no rebuttal and raises no issue with the CVE's decision. The Appeal fails to meet the regulatory requirement that it give a reason why the CVE erred in cancelling its verified SDVOSB status.

An appeal that does not state the reasons why the decision being appealed is in error, and leaves OHA to “guess why an Appellant has submitted an appeal,” fails to meet the requirements of the regulations and must be denied. *Size Appeal of Aerosage, LLC*, SBA No. SIZ-5841, at 5 (2017). Accordingly, I find that the instant appeal is defective because it fails to include a statement identifying any error in the CVE's cancellation letter. Therefore, I conclude that I must DENY the appeal.

IV. Conclusion

Appellant has not proven the CVE's denial was based on a clear error of fact or law. 13 C.F.R. § 134.1111. I must therefore **DENY** the Appeal. 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