

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

In the Matter of:

Optimum Low Voltage, LLC dba Optimum  
Fire & Security,

Appellant

SBA No. CVE-187

Decided: May 3, 2021

ORDER DISMISSING APPEAL<sup>1</sup>

I. Background

On April 21, 2021, the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) issued a Notice of Verified Status Cancellation Letter (Cancellation Letter) to Optimum Low Voltage, LLC dba Optimum Fire & Security (Appellant), stating that Appellant would no longer appear in the Vendor Information Pages (VIP) database of eligible Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). The Cancellation Letter stated that CVE was issuing the letter because Appellant did not respond to the Notice of Proposed Cancellation (NOPC) letter issued on March 19, 2021.

On April 26, 2021, Appellant appealed the Cancellation Letter to the U.S. Small Business Administration (SBA) Office of Hearing and Appeals (OHA). 13 C.F.R. § 134.1102. Appellant states the President and sole owner, Mr. Richard Oates, was absent on medical leave and missed CVE's request. Appellant further states that it received the Cancellation Letter on April 21, 2021 and hopes to rectify the issue now because it has all of the documentation originally requested and is prepared to upload it into VETBIZ VIP portal. (Appeal, at 1.) Appellant does not mention or reference the NOPC letter dated March 19, 2021.

On April 27, 2021, I issued an Order to Show Cause why the instant appeal should not be dismissed for failure to state a claim. More specifically, the Order to Show Cause states that Appellant may have failed to state a claim because CVE Appeals must include a statement explaining why the cancellation or denial is in error. 13 C.F.R. § 134.1105(a)(2). While the standard of review is whether the D/CVE's cancellation is based on a clear error of fact or law, Appellant does not argue that the cancellation was in error for any reason. 13 C.F.R. § 134.1111. Instead, Appellant concedes that it missed the deadline for submitting eligibility documentation to the VETBIZ VIP portal and now seeks another chance to rectify the situation. (Order to Show Cause, at 1.)

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<sup>1</sup> OHA adjudicates SDVOSB status appeals pursuant to 38 U.S.C. § 8127(f)(8)(A) and 13 C.F.R. part 134 subpart K.

On April 30, 2021, Appellant responded to the Order to Show Cause. Appellant outlined the timeline of events related to an incident requiring medical attention and subsequent bedrest of Mr. Oates between March 5, 2021 and March 15, 2021. During that time, Mr. Oates was not actively engaged in work or taking calls. (Response, at 1.) On March 19, 2021, Appellant received the NOPC; however, Appellant was under the impression that he would have to wait until a cancellation letter was generated to appeal, so that Appellant could upload the requested documentation into the VETBIZ portal. (*Id.*, at 2.) Appellant then once stated that it is “requesting forgiveness for its failure to supply documentation in the time requested. . .” and that it “wants nothing more than to correct” the issue regarding timing. (*Id.*) In the Response, Appellant did not identify any reason why CVE's decision was in error.

## II. Discussion

A concern that has had its CVE status cancelled may appeal the cancellation to OHA, so long as the cancellation is not based on failure to meet any veteran or service-disabled veteran eligibility criteria. 13 C.F.R. §§ 134.1102-1103. While there is no required format for an appeal petition, CVE Appeals must include: a copy of the cancellation letter and the date appellant received it; a statement of why the cancellation is in error; any other pertinent information the Judge should consider; and specific contact information of the appellant or its attorney. 13 C.F.R. § 134.1105(a). An appeal petition that does not meet all of the requirements is deficient and may be dismissed. 13 C.F.R. § 134.1105(d). Furthermore, Appellant has the burden of proving CVE's cancellation was based on a clear error of fact or law by a preponderance of the evidence. 13 C.F.R. § 134.1111.

In the instant case, Appellant has not identified any error in CVE's decision. 13 C.F.R. § 134.1105(a)(2). Nor has Appellant provided OHA with any other pertinent information to demonstrate that the cancellation was based on a clear error of fact or law for OHA to consider. 13 C.F.R. § 134.1105(a)(3). OHA is therefore unable to reach any conclusion that CVE's cancellation decision was based on any error of fact or law, and thus reversible, because Appellant does not submit that the cancellation was in error. Appellant is requesting, in essence, that OHA exercise a general equitable power to give it a third chance to correct its failure to submit the necessary documentation. Unfortunately for Appellant, OHA has no such power. I can only grant an appeal when I can identify an error of law or fact by the CVE, and I cannot identify such an error here.

After receiving the NOPC on March 19, 2021, Appellant had the opportunity to cure the deficiency before the Cancellation Letter was issued on April 21, 2021. Appellant states that Mr. Oates was back in the office working by March 19, 2021 and, as such, should have been able to resolve this matter at that time. Accordingly, as Appellant's petition has failed to meet its burden of complying with the regulatory requirements for a CVE appeal petition. 13 C.F.R. § 134.1105(a)(2). Accordingly, the instant appeal is defective, and I must dismiss it. 13 C.F.R. § 134.1105(d). *CVE Appeal of Rock International Environmental Corp.*, SBA No. CVE-168-A (2021); *CVE Appeal of Arctic Tundra Supply and Servs. LLC*, SBA No. CVE-130-A, at 1 (2019) (dismissing appeal that “d[id] not allege any error in CVE's decision”); *CVE Appeal of Secure2ware, Inc.*, SBA No. CVE-111-A, at 2 (2019) (rejecting appeal that “d[id] not include

any statements, arguments, or evidence as to why the CVE's determination was based on clear error of fact or law”).

III. Conclusion

For the above reasons, the appeal is DISMISSED. 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