

Cite as: *CVE Protest of Blue Cord Development Group, LLC*, SBA No. CVE-188-P (PFR)
(2021)

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

CVE Protest of:

Blue Cord Development Group, LLC,

Protestor,

Re: Purple Heart Heroes, LLC

Petition for Reconsideration of
SBA No. CVE-179-P

SBA No. CVE-188-P

Decided: May 4, 2021

APPEARANCES

Gordon Griffin, Esq., Amy L. Fuentes, Esq., Holland & Knight LLP, Washington, D.C.,
for Blue Cord Development Group, LLC

John R. Sharp, Esq., Keith Bradley, Esq., Squire Patton Boggs (US) LLP, Denver, CO,
for Purple Heart Heroes, LLC

ORDER GRANTING PETITION FOR RECONSIDERATION¹

Purple Heart Heroes (Petitioner) seeks reconsideration of OHA's decision in *CVE Protest of Blue Cord Development Group, LLC*, SBA No. CVE-179-P (2021) ("*Blue Cord I*"). OHA sustained the protest finding Petitioner failed to establish that the concern is controlled by a service-disabled veteran. For the reasons discussed below, the Petition for Reconsideration is granted.

I. Background

A. Prior Proceedings

On April 27, 2020, the Department of Veterans Affairs (VA) issued RLP No. 36C10F20R0066 for a 20-year lease of 26,202 square feet of space and 177 surface and outside

¹ This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received one or more timely requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

parking spaces for a community-based outpatient clinic. The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs and assigned North American Industry Classification System (NAICS) code 531120, Lessors of Nonresidential Buildings (except Miniwarehouses), with a corresponding \$30 million annual receipts size standard. On September 30, 2020, the CO notified unsuccessful offerors, including Blue Cord Development Group, LLC (Blue Cord), that Petitioner was the apparent awardee. On October 6, 2020, Blue Cord filed the instant protest with the CO, challenging Petitioner's SDVOSB status.

In its protest, Blue Cord alleged that Petitioner was not controlled by a service-disabled veteran because the concern cannot perform the requirements of the contract without critical assistance from Catalyst Capital GP Holdings, LLC (Catalyst), which is controlled by Mr. Robert Pardo, who is not a service-disabled veteran. (*Blue Cord I*, at 3.) Blue Cord argued that Petitioner relies on Catalyst for experience, employees, financing, and for performance of the instant contract requirements. (*Id.*, at 3-4.) In its response to the protest, Petitioner contended that Zachariah Gore, its service-disabled veteran owner, does in fact control the concern despite sharing employees with and receiving financial assistance from a Catalyst entity. (*Id.*, at 7-8.)

In reaching its decision, OHA found that, although Mr. Gore has admirable military experience, he does not have the managerial experience necessary to run a major real estate concern, aside from his current work for Petitioner. (*Id.*, at 10.) OHA determined that Petitioner is completely dependent on employees from Catalyst to perform important managerial duties and is receiving financing from a Catalyst entity. Thus, Mr. Gore could not exercise independent business judgment. (*Id.*, at 11.) OHA also highlighted that Mr. Gore's location in relation to that of Petitioner creates a rebuttable presumption that he does not control the firm since he is not located within a reasonable commute of Petitioner's headquarters or job locations. (*Id.*, citing 13 C.F.R. § 125.13(l)).

B. Petition for Reconsideration

On March 15, 2021, Petitioner filed a Petition for Reconsideration (PFR) of *Blue Cord I*. Petitioner contends that *Blue Cord I* depended on key errors of fact and law, and raised a new ground that was not raised in the protest. Petitioner contends Mr. Gore had the requisite experience and cites to Mr. Gore's resume in the record that includes his experiences as being a property manager for a year before he began his service with the U.S. Army, and having served as an asset manager for a year and a half after his service. (PFR, at 3, CF, Ex. 105.)

Petitioner also directs OHA to consider Mr. Gore's work with Petitioner to establish his experience and argues the facts here are analogous to those in *CVE Appeal of Veterans 1st Architecture, LLC*, SBA No. CVE-122-A, where OHA considered the service-disabled veteran (SDV) owner's experience with the protested concern as management experience. (*Id.*, at 2.) Petitioner also contends OHA ignored Mr. Gore's leadership training during his military service, and that real estate-specific experience is not required. (*Id.*, at 3-4.)

Petitioner argues Mr. Gore can exercise independent business judgment where Mr. Gore owns 70% of Petitioner. The fact that Petitioner shares employees with Catalyst and receives financial assistance from the concern is not indicative of a lack of independent business

judgment. (*Id.*, at 4-5, citing *In the Matter of AWG Series, LLC*, SBA No. VET-163 (2009); *In the Matter of DooleyMack Government Contracting, LLC*, SBA No. VET-159 (2009).) Petitioner found OHA's dependence on *Artis Builders* irrational as the reliance on the non-veteran-owned firm is different from Petitioner's reliance on Catalyst. (*Id.*, at 5., citing *In the Matter of Artis Builders, Inc.*, SBA No. VET-214 (2011).) Petitioner contends the financing provided by Catalyst was made available under "ordinary commercial terms" which would be available from other sources, "so losing the Catalyst financing would not ordinarily pose 'great economic risk.'" (*Id.*)

Lastly, Petitioner argues OHA committed a clear error by finding Mr. Gore lacks control over Petitioner due to an unreasonable commute to Petitioner's headquarters when this was not raised in the protest. Petitioner contends it disputed in the initial protest response that its headquarters are at the location Blue Cord claims, and asks OHA to consider a lease showing that Petitioner's headquarters moved to Mr. Gore's city before the VA issued the solicitation for the current contract. (*Id.*, at 6.)

C. Response

On April 1, 2021, Blue Cord responded to the PFR. Blue Cord argues that Petitioner has not shown that OHA committed any error of fact or law. Rather, the petition consists primarily of arguments and evidence that could have been presented during the protest. (Response, at 1.)

Blue Cord contends Mr. Gore's lack of managerial experience was raised multiple times, yet Petitioner did not highlight any relevant managerial experience until this PFR. (*Id.*, at 2.) Blue Cord contends Petitioner has not established clear error by OHA in determining that the record is insufficient to establish Mr. Gore has the requisite management experience to run Petitioner, and questions the validity of the cited managerial experience Mr. Gore received prior to and shortly after his military service. (*Id.*, at 8, stating "the resumes submitted in [Petitioner's] CVE application and in response to Blue Cord's protest conflict with each other - showing overlapping dates in different parts of the United States for vastly different jobs and a continued dependence on Mr. Pardo.") Blue Cord argues Mr. Gore's work on Petitioner cannot serve as a basis for demonstrating management experience where any experience gained is tied to Petitioner's reliance on Mr. Pardo's experience and Catalyst. (*Id.*, at 7-9.)

Blue Cord maintains Petitioner cannot exercise independent business judgment where Catalyst has an ownership interest in Petitioner, and Catalyst is providing financing and employees to Petitioner to manage its projects. Blue Cord opines that *AWG* and *DooleyMack* are inapplicable here since the regulations and OHA caselaw require factors to determine economic dependence beyond a totality of circumstances analysis. (*Id.*, at 11-15.) Blue Cord agrees with OHA's reliance on *Artis*, as the facts are similar here.

Lastly, Blue Cord contends OHA did not make a procedural error in finding that Mr. Gore lives too far from Petitioner's headquarters, where the rule is clear of the rebuttable presumption concerning a reasonable commute to establish control, and the record confirms that the instant award was to Petitioner at its address in California. (*Id.*, at 16-18, citing to 13 C.F.R. § 125.13(l).)

II. Discussion

A. Jurisdiction and Standard of Review

A party seeking reconsideration of an OHA decision on a CVE Protest must file its PFR within twenty calendar days after issuance of the decision. 13 C.F.R. § 134.1013(a). Petitioner filed the instant PFR within twenty calendar days after issuance of *Blue Cord I*, so the PFR is timely.

SBA's regulations provide that OHA may grant a petition for reconsideration “upon a clear showing of an error of fact or law material to the decision.” 13 C.F.R. § 134.227(c). This is a rigorous standard. *See Size Appeal of Envtl. Prot. Certification Co., Inc.*, SBA No. SIZ-4935 at 2 (2008). A petition for reconsideration must be based upon manifest error of law or mistake of fact and is not intended to give an additional opportunity for an unsuccessful party to argue its case. *Matter of Hazzard's Excavating and Trucking Co.*, SBA No. BDP-364, at 2 (2010). A petition for reconsideration is “appropriate only in limited circumstances, such as situations where OHA has misunderstood a party, or has made a decision outside the adversarial issues presented by the parties.” *Size Appeal of KVA Elec., Inc.*, SBA No. SIZ-5057 at 2 (2009). A petitioner will not prevail on a motion for reconsideration if it merely repeats arguments OHA already considered in the original decision, or seeks rehearing based upon evidence previously presented. *Size Appeal of Luke & Assocs., Inc.*, SBA No. SIZ-4993 at 2 (2008).

B. Analysis

Petitioner first argues OHA ignored much of Mr. Gore's leadership and property management experience in determining he does not have the managerial experience of the extent and complexity needed to run the concern and finds OHA's reliance on *Valor* improper.

Vague or unclear descriptions of a service-disabled veteran's experience may result in a finding that the concern does not meet the requirements of 13 C.F.R. § 125.13(b). *See CVE Appeal of Spartan Group, Inc.*, SBA No. CVE-128-A (2019). In *Spartan*, the service-disabled veteran appeared to have no formal training nor licensing in industrial building construction — his firm's line of work. The SDV's resume stated that he was a Director of Sales/Project Manager for a company where he oversaw a roofing contract, developed an office buildout division, and collaborated with other firms to procure contracts on behalf of the company. *Spartan*, SBA No. CVE-128-A, at 1. In finding that the SDV did not demonstrate the managerial experience of the extent and complexity needed to run the concern, OHA found that the firm failed to provide information concerning the nature of the work completed by the SDV, how many contracts he managed, the magnitude of his efforts, and whether the work involved construction.

Although Petitioner points to Mr. Gore's described experience and resume as establishing that he had relevant experience prior to his work with Petitioner, I find the information vague and unclear. The narrative response regarding Mr. Gore's experience states he was responsible for “overseeing the local property managers in Oklahoma City and the vendors necessary to operate the property for the VA.” CF. Exhibit 105, at 48. It also states that Mr. Gore was an asset

manager “responsible for meeting the requirements of the lease with the VA and managing local property manager.” *Id.* No information was provided, however, to describe the requirements of the lease Mr. Gore managed. Further, Mr. Gore's resume simply provides for his title as “Asset Manager” and “Property Manager” without providing a description of the type of work he completed, specific tasks accomplished, or the level of complexity of his work. Further, as Blue Cord pointed out, Mr. Gore's resume states he was a Property Manager in Oklahoma City at the same time he was a dishwasher, cook, delivery worker, and tattoo artist in Connecticut. The work of a dishwasher, cook, delivery worker, and tattoo artist all require a person to be on-site. It is unclear how Mr. Gore was able to work these jobs in Connecticut while also gaining experience as a property manager in Oklahoma that would establish the level of experience and complexity required to run his current business. Thus, I find that the description of Mr. Gore's job duties prior to his work at Petitioner does not establish that he had the requisite experience to run Petitioner.

Although Mr. Gore's experience prior to running Petitioner does not establish the requirements under 13 C.F.R. § 125.13(b), I do find that Mr. Gore's work with Petitioner does establish the managerial experience of the extent and complexity needed to run Petitioner. In *Valor*, OHA affirmed the Center for Verification and Evaluation (CVE) denial of a concern's initial application for inclusion in the CVE Vendor Information Page (VIP) due to the SDV's inability to demonstrate managerial experience of the extent and complexity needed to run the concern other than his experience working for the concern, where the concern had obtained no work contracts or revenue.

The CVE determines an initial applicant's eligibility as a service-disabled veteran-owned concern for inclusion in the VIP “based on the totality of circumstances existing on the date of application.” 38 C.F.R. § 74.11(d). For CVE protests, OHA determines a concern's eligibility for inclusion in the VIP based on (1) the date the protested concern submitted its offer for the subject procurement, and (2) the date the protest was filed. Petitioner initially applied for inclusion in the VIP on April 18, 2018 and was verified as an SDVOSB included in the VIP as of December 3, 2018. (CF. Exhibits 2 & 110.) Petitioner submitted its initial proposal including price on March 8, 2020, and the instant protest was filed on October 6, 2020. Therefore, OHA is tasked with examining Petitioner's eligibility as of these dates. Due to the difference in procedural posture of the concern in *Valor* for an initial application as an SDVOSB, compared to the posture of Petitioner, which was after the concern was approved as an SDVOSB to be included in the VIP, I find on reconsideration that it was erroneous to rely on *Valor* for a finding of a lack of experience by Mr. Gore. In working for Petitioner since its inception in 2018, Mr. Gore:

. . . actively monitors and researches Veterans Administration development opportunities for PHH to pursue. He frequents Beta.Sam.Gov (formerly FBO.Gov) and employs a tailored search in order to keep track of VA development opportunities that are of interest. Once a target of opportunity is identified, Mr. Gore uses the web based platform CoStar to canvass the delineated area that VA has specified and create a “short-list” of properties that will fill the requirement. Mr. Gore then works with Vice President and Chief Financial Officer Steven Cody to contact ownership for the properties that are of interest to enter into option to purchase contracts, and to prepare the detailed proposals

required in order to adequately respond to the VA's RLP. Once the proposal is submitted and Lease is awarded, Mr. Gore's involvement in a particular procurement continues from the standpoint of an active managerial role. He manages Steven Cody and Vice President of Facilities and Construction Mike Cocco as these PHH employees' contract and partner with architects, engineers and contractors in order to design and construct the facility, as well as Robert Pardo in order to obtain proper financing for the Project. Once the Project is completed and Lease commences, Mr. Gore continues his involvement in the Project via his management of PHH's VP of Asset Management, Jason Shoman.

Response, at Exhibit E.1. Though the description of Mr. Gore's experience before working for Petitioner lacks clarity, Petitioner has established that, by the time Petitioner submitted its offer for the instant procurement and at the time of Blue Cord's status protest, Mr. Gore had the requisite managerial experience to run Petitioner. I, therefore, conclude that on this issue, OHA made an error of fact in its initial decision.

Next, Petitioner contends OHA made a significant error in finding that Mr. Gore is unable to exercise independent business judgment without great economic risk. Petitioner found error with OHA relying on *Artis* in reaching this decision.

Although not identical, I find that *DooleyMack* is most analogous to the facts in this case. Thus, the record does not suggest that Mr. Gore is unable to exercise independent business judgment without great economic risk. In *DooleyMack*, OHA found that there was no evidence to support a conclusion that non-veteran-owned entities had the “ultimate authority to administer and manage [the concern's] long-term or daily business operations.” *DooleyMack*, SBA No. VET-159, at 6 (2009). The minority non-veteran owner shared ties with the concern including a previous work connection, the businesses being in the same industry, the businesses sharing a business location, a significant initial cash capitalization to the concern from the minority owner, the minority owner providing business support services to the concern, and the businesses having similar names. *Id.*, at 5. OHA found that “a prior work relationship, a landlord, a lease, a financial supporter, and a business support agreement may *influence* managerial decisions. . .but there is nothing in the record to demonstrate these facts amount to control” under the regulations. *Id.*, at 6 (emphasis added). Additionally, the record provided that there were no conditions on any agreements between the majority service-disabled owner and minority owner that would vest control in the minority owner over the concern.

When a minority non-veteran owner holds a key license and has negative control over the concern, the service-disabled veteran cannot exercise independent business judgment without great economic risk. *See In the Matter of Artis Builders, Inc.*, SBA No. VET-214 (2011). OHA addressed the differences between the facts in *Artis* and *DooleyMack* by finding that, in addition to sharing resources and finances, the majority service-disabled veteran owner in *Artis* relied on the minority non-veteran owner for a key license, and the personnel for the minority owner performed all or nearly all of the work to run the concern. *Id.*, at 6. Additionally, the concern's operating agreement and bylaws allowed the minority owner to assert negative control over the concern's board of directors by preventing a quorum and blocking certain actions. *Id.*, at 2-5. Thus, OHA determined the minority owner in *Artis* indirectly controlled the concern. Because

OHA's procedures for handling other types of protests and appeals can provide guidance here. In *Trailboss Enterprises*, OHA remanded a size determination when the area office did not provide the appellant with an opportunity to rebut a presumption of affiliation. *Size Appeal of Trailboss Enterprises, Inc.*, SBA No. SIZ-5442, at 6 (stating the area office, “altered the focus of the review without permitting Appellant an opportunity to respond to the new issues.”). OHA's failure to allow Petitioner an opportunity to rebut the presumption of a lack of control by Mr. Gore based on his proximity to Petitioner's headquarters was, in hindsight, a clear error. In its PFR, Petitioner provides evidence to sufficiently rebut the presumption of a lack of control by showing that Petitioner's headquarters were located within a reasonable distance from Mr. Gore at the time of the offer for the instant procurement.

III. Conclusion

Petitioner's arguments were fully considered and accepted. For these reasons, I must GRANT the Petition for Reconsideration. I must therefore DENY the protest. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.1007(i). The contracting officer must follow 13 C.F.R. § 134.1007(j) in applying this decision's results. 13 C.F.R. § 134.1013(b).

CHRISTOPHER HOLLEMAN
Administrative Judge