

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

In the Matter of:

Optimum Low Voltage dba
Optimum Fire & Security,

Appellant,

Petition for Reconsideration of
SBA No. 187-A

SBA No. CVE-196-A

Decided: June 14, 2021

ORDER DENYING PETITION FOR RECONSIDERATION

I. Background

A. Prior Proceedings

On May 17, 2021, Optimum Low Voltage, LLC dba Optimum Fire & Security (Appellant) filed the instant Petition for Reconsideration (PFR) of the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decision in *CVE Appeal of Optimum Low Voltage, LLC*, SBA No. CVE-187-A (2021) (“*Optimum I*”). In that decision, OHA dismissed the appeal as Appellant's petition failed to allege an error of law or fact for OHA to adjudicate.

More specifically, OHA found that Appellant had not identified any error in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) decision to cancel its participation in the VA's Vendor Information Pages (VIP) of the VA database of Service-Disabled Veteran-Owned Small Businesses. (*Optimum I*, at 2; citing 13 C.F.R. § 134.1105(a)(2).) OHA also found that Appellant did not provide any pertinent information to demonstrate that the cancellation was based on a clear error of fact or law for consideration. (*Id.*; citing 13 C.F.R. § 134.1105(a)(3).) Therefore, OHA was unable to reach any conclusion that CVE's cancellation decision was based on any error of fact or law, and thus reversible, because Appellant failed to allege any error in the cancellation. (*Id.*)

OHA also determined that after receiving the Notice of Proposed Cancellation (NOPC) on March 19, 2021, Appellant had the opportunity to cure the deficiency before CVE issued the Cancellation Letter on April 21, 2021. (*Id.*) The appeal clearly stated that Mr. Richard Oates was back in his office working by March 19, 2021 and therefore should have been able to resolve this matter at that time. (*Id.*) Accordingly, Appellant's petition failed to meet its burden of complying with the regulatory requirements for a CVE appeal petition. (*Id.*; citing 13 C.F.R. § 134.1105(a)(2).) Thus, OHA found the appeal to be defective and dismissed it. (*Id.*, at 2-3; citing

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); and *CVE Appeal of Secure2ware, Inc.*, SBA No. CVE-111-A, at 2 (2019).)

B. PFR

In its PFR, Appellant contends OHA's finding that Mr. Oates had received the NOPC letter, when he only received an allegedly broken hyperlink to the letter, constitutes an error of fact that was material to OHA's decision to dismiss in *Optimum I*. (PFR, at 3.)

The PFR also refers to OHA's finding that Mr. Oates had returned from medical leave and was in the office working by March 19, 2021 and “should have been able to resolve this matter at that time.” (*Id.*; citing *Optimum I*, at 2.) Appellant contends that this is a misunderstanding because Mr. Oates only received the automated notification that the NOPC can be viewed by logging into the VIP portal. (*Id.*) Appellant points to its Exhibit 1, an email from VetBiz Vendor Information Pages stating that a Notice of Proposed Cancellation has been issued and that Appellant can view the notice by logging into the account portal. Appellant also submits its Exhibit 2, a sworn declaration of Mr. Oates. In it, Mr. Oates declares that when he clicked on the link, he was unable to summon up the NOPC. It was only after retaining counsel and viewing the “Archive” section that Appellant viewed the NOPC. (PFR, at 2, Ex. 2.)

Appellant argues that in Appellant's response to a show-cause order, Appellant noted, “Richard Oates received an email notification [and] was under the impression that this was the 1st step to receive the cancellation letter which he could then appeal.” (*Id.*; citing Order to Show Cause Response, at 2.) Appellant maintains it never received the NOPC because when Mr. Oates clicked the hyperlink, he did not see it. (PFR, at 3.)

Appellant maintains that the issue here is one of due process, that CVE failed to give adequate notice to Appellant of the NOPC, and that he should not been required to search for it. (PFR, at 2.) OHA's finding that Mr. Oates had received the NOPC letter, when he only received what was essentially a broken hyperlink to the letter, constitutes an error of fact that was material to OHA's decision to dismiss the appeal. Appellant argues it must state why its cancellation was in error — it need not prove its allegations at the pleading stage. *Optimum* did just that. (*Id.*)

C. CVE's Response

On June 2, 2021, CVE responded to PFR. CVE states that the notification in the email was clear. CVE refers to Appellant's Exhibit 1 to the PFR. This is CVE's March 19, 2021 email informing Appellant of the issuance of an NOPC:

Your business has been issued a Notice of Proposed Cancellation of your verified status and registration in the VetBiz Vendor Information Pages (VIP) database. You may view this notice by logging into your account in the VIP portal. If you have any questions, please call the VA Office of Small and Disadvantaged Business Utilization (OSDBU) HELP Desk at (866) 584-2344.

(PFR, Ex. 1.)

CVE states that the link in the email worked properly and if Appellant had trouble accessing the portal, one of Appellant's representatives should have called the HELP Desk, as referenced in the email. (Response, at 2.)

CVE further asserts that Appellant was given sufficient notification and had ample opportunity to respond to the NOPC. Even if OHA were to find merit in Appellant's arguments, Appellant still has not demonstrated that the cancellation was based on a clear error of fact or law, and therefore, has not met its burden “to clearly show an error of fact or law material to the decision.” (*Id.*; 13 C.F.R. § 134.1112(g).)

II. Discussion

A. Jurisdiction and Standard of Review

A party seeking reconsideration of an OHA decision on a CVE Appeal must file its PFR within twenty calendar days after issuance of the decision. 13 C.F.R. § 134.1112(g). Appellant filed the instant PFR within twenty calendar days after issuance of *Optimum I*, so the PFR is timely.

To prevail on a PFR, an appellant must make “a clear showing of an error of fact or law material to the decision.” *Id.* This is a rigorous standard. A PFR must be based upon manifest error of law or mistake of fact and is not intended to provide an additional opportunity for an unsuccessful party to argue its case before OHA. *CVE Protest of Alpha4 Solutions LLC d/b/a Alpha Transcription*, SBA No. CVE-137-P (2019) (PFR); *CVE Protest of Covenant Construction Services*, SBA No. CVE-158-P (2020) (PFR).

B. Analysis

Appellant has not shown a clear error of fact or law material to the decision in *Optimum I*. I must therefore deny the instant PFR.

First, Appellant contends that OHA erred in finding Mr. Oates had received the NOPC letter, when he only received an email with a link to letter, which did not connect him to the letter. I find no merit in this argument and agree with CVE. Appellant's PFR Exhibit 1 email clearly states that the notice may be viewed by logging into the account portal and if there are any questions, Appellant should reach out to the CVE HELP Desk. Nothing in Mr. Oates' declaration, or any other material, states that Mr. Oates attempted to seek assistance as directed in the email.

Appellant then argues that in its response to OHA's show-cause order, Appellant stated, “Richard Oates received an email notification [and] was under the impression that this was the 1st step to receive the cancellation letter in which he could then appeal.” (Response, at 3; citing Order to Show Cause Response, at 2.) I find this argument meritless. Assuming, that Mr. Oates

did in fact think that the first step was to receive the cancellation letter which he could appeal, Appellant's incorrect impression does not establish error of fact or law by OHA.

Moreover, when considering the fundamental principles of notice and due process, Appellant concedes in Mr. Oates' declaration that on March 19, 2021, he received an automated email stating that CVE had issued a Notice of Proposed Cancellation (NOPC), and that he could view the NOPC by logging into his account. (PFR Ex. 2.) While the email did not contain the text of the NOPC, attachments, or any substantive content regarding the company, it did contain information that the NOPC had been issued, provide Appellant a link to view it, and a contact number for assistance. Appellant submitted no evidence to establish that it attempted to contact the HELP Desk. Appellant provided no reason for failing to contact the HELP Desk when it was unable to locate the NOPC.

The email informed Mr. Oates of the NOPC, told him where to find it, and informed how he could obtain assistance if he had difficulty in locating it with the link provided. I find that under these facts Appellant had adequate notice.¹ CVE was thus justified in issuing its cancellation of Appellant's participation in the VIP.

Accordingly, I conclude that Appellant was given sufficient notification and had ample time to respond to the NOPC. Further, Appellant has failed to establish any clear error in *Optimum I*. Therefore, I must deny the instant PFR.

III. Conclusion

To prevail on a PFR, an appellant must “clearly show an error of fact or law material to the decision.” 13 C.F.R. § 134.1112(g). Here, Appellant has not demonstrated any error in *CVE Appeal of Optimum Low Voltage, LLC*, SBA No. CVE-187-A (2021). I therefore DENY the PFR and AFFIRM the decision.

CHRISTOPHER HOLLEMAN
Administrative Judge

¹ Appellant refers to this proceeding as “the pleading stage”. Appellant may be confused. CVE Appeals are commenced with an appeal petition. 13 C.F.R. § 134.1104. The petition includes the denial or cancellation being appealed, a statement of why it is in error, and any other pertinent information the judge should consider. 13 C.F.R. § 134.1105. This is Appellant's opportunity to submit any facts or legal argument for the judge to consider, and the only stage for Appellant to make any argument. At this point, CVE submits the Case File or administrative record and there is an opportunity to respond to the appeal. 13 C.F.R. §§ 134.1107-1108. There is no discovery or oral hearings. 13 C.F.R. § 134.1109. The judge then issues a decision. 13 C.F.R. § 134.1112. Had I not dismissed this case, I would have gone on to issue a decision based upon the appeal petition, any response filed, and the Case File. This stage is not the “pleading stage”, but the decision stage at which Appellant must make any submission it wants considered in this appeal.