

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

CVE Appeal of:

The Hope Cos, LLC,

Appellant,

SBA No. CVE-204-A

Decided: September 29, 2021

APPEARANCE

John C. Hope, CEO, The Hope Cos, LLC, Nashville, Tennessee

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On March 9, 2021, the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) denied an application from The Hope Cos, LLC (Appellant) for verification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). CVE determined that Appellant did not demonstrate that it is fully controlled by one or more service-disabled veterans, as is required by 13 C.F.R. § 125.13, due to provisions in a Franchise Agreement between Appellant and a non-SDVOSB. On appeal, Appellant maintains that CVE's decision was clearly erroneous and requests that the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) reverse. 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. Appellant timely filed the instant appeal within ten business days after receiving the denial notice. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Franchise Agreement

Appellant is a professional development and leadership coaching business headquartered in Nashville, Tennessee. On January 4, 2021, Appellant applied for verification as an SDVOSB and provided various requested documentation. (Case File (CF), Exh. 5.) Among other information, Appellant submitted a copy of a Franchise Agreement between Appellant's majority

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<sup>1</sup> This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA now publishes a redacted version of the decision for public release.

owner, Mr. John C. Hope, and [Franchisor]. (CF, Exh. 14.) The Franchise Agreement became effective November 6, 2020 for an initial term of 10 years, and identifies Mr. Hope as “Franchisee” and [Franchisor] as “Franchisor.” (*Id.* at 4, 33-35.)

The Franchise Agreement contains the following provisions pertinent to this appeal:

[Text of the Franchise Agreement redacted]

(CF, Exh. 14, at 4, 6-9, 15-17, 19-21, 33.)

A subsequent “Consent to Transfer Agreement,” dated December 21, 2020, purported to transfer the franchise from Mr. Hope, in his individual capacity, to Appellant. (CF, Exh. 75.) The agreement, however, was signed only by Mr. Hope, not by [Franchisor]. (*Id.* at 4.)

### B. Post-Review Findings

On February 18, 2021, CVE issued Appellant a Post-Review Findings (PRF) Notice. (CF, Exh. 99.) The Notice explained that CVE had discovered issues that likely would prevent Appellant from being verified as an SDVOSB.

The Notice divided CVE's concerns into three categories. First, the Franchise Agreement between [Franchisor] and Mr. Hope places numerous restrictions on Mr. Hope's ability to control Appellant, such that [Franchisor] exerts “actual control over [Appellant's] daily management.” (*Id.* at 2.) CVE was troubled in particular by the following provisions of the Franchise Agreement:

- Section 2.2 restricts Mr. Hope's ability to delegate aspects of daily management, and section 10.7 permits delegation of daily management only with [Franchisor's] prior approval. (*Id.* at 2.)
- Section 4.1 limits Mr. Hope's ability to delegate duties related to daily management of Appellant, and further requires that [Franchisor] must approve any selection of a “Principal Operator.” (*Id.*, at 2-3.)
- Section 10.2 prohibits the franchisee from offering services and products that are not approved by [Franchisor], and from operating outside a designated territory. (*Id.* at 3.)
- Sections 5.1 and 5.2 require that the franchisee must comply with [Franchisor] specifications, standards, and operating procedures, to include an [Franchisor] “Operations Manual” that [Franchisor] may unilaterally revise at any time. (*Id.*)
- Section 10.1 places restrictions on the condition and appearance of the franchise. (*Id.* at 3-4.)
- Section 10.3 requires the franchisee to use products, suppliers, and distributors as specified by [Franchisor]. (*Id.* at 4.)

- Section 10.4 limits the franchisee's hours of operation to at least 40 hours a week. (*Id.*)
- Section 2.3 sets forth more restrictions related to territory, and restricts the franchisee's ability to advertise or to have its own website. (*Id.*)
- Section 10.6 restricts the franchisee's ability to advertise, market, and use the internet in the operations of its business. (*Id.*)
- Section 11.1 grants [Franchisor] the right to require the franchisee to invest up to 10% of its projected annual gross revenues per month on marketing. (*Id.* at 4-5.)
- Section 11.3 gives [Franchisor] control over the franchisee's website. (*Id.* at 5.)
- Sections 3.2 and 3.3 require the franchisee to use computer systems, equipment, furniture, fixtures, and signs specified by [Franchisor]. (*Id.*)
- Section 4.3 contains requirements regarding training that Mr. Hope and other employees must attend. (*Id.* at 6.)
- Section 4.2 requires advance approval from [Franchisor] before the franchisee may hire key employees. (*Id.*)
- Section 10.5 requires the franchisee to agree to specifications, standards, and operating procedures specified by [Franchisor]. (*Id.*)

Next, CVE found that Appellant's Operating Agreement identifies Mr. Hope as 51% owner, and a non-veteran, [XXXXXX], wife of Mr. Hope, as 49% owner. (*Id.* at 7.) The Operating Agreement, though, also requires unanimous agreement of the owners/members for certain actions, so Mr. Hope alone does not fully control all decisions. (*Id.* at 8.) Decisions requiring unanimous agreement include whether owners/members may be required to contribute additional capital, as well as the salaries paid to them. (*Id.*)

Third, CVE reiterated that the Franchise Agreement sets forth extensive restrictions on Mr. Hope's ability to take actions or make decisions, including in advertising, business hours, and services provided. (*Id.* at 9-13.) Such restrictions interfere with Mr. Hope's ability to control Appellant and also allow [Franchisor], a non-SDVOSB, to assert control over the company. (*Id.* at 13.) In CVE's view, it is not evident that Appellant even could continue to function as a viable business without [Franchisor's] permission and assistance. In addition to the portions of the Franchise Agreement discussed earlier in the Notice, CVE identified the following provisions as problematic with regard to non-SDVOSB control:

- Section 9.2 imposes non-disclosure requirements on Mr. Hope as well as other coaches and employees. (*Id.* at 12.)
- Section 9.3 prevents Mr. Hope and other personnel from competing with [Franchisor] for the duration of the Franchise Agreement. (*Id.*)

- Sections 13.1 and 13.2 permit [Franchisor] to inspect and audit the franchise at any time. (*Id.* at 13.)

### C. Response to PRF Notice

On February 18, 2021, Appellant responded to the PRF Notice. (CF, Exh. 106.) Appellant maintained that it had been “redefined as 100% owned by” Mr. Hope. (*Id.* at 1.) Therefore, CVE's concerns about provisions in the Operating Agreement requiring the unanimous agreement of both members are no longer valid. With regard to the Franchise Agreement, Appellant provided a new version of the “Consent to Transfer Agreement,” signed by both Mr. Hope and [Franchisor]. (CF, Exh. 103.) Appellant insisted that Mr. Hope fully controls Appellant, including its day-to-day management. (CF, Exh. 106, at 2.)

On March 3, 2021, Appellant supplemented its response to the PRF Notice. (CF, Exhs. 111-113.) Appellant submitted a document entitled “Letter of Clarification to Single Unit Franchise Agreements,” signed by Mr. Hope and an [Franchisor] official on March 3, 2021. (CF, Exh. 112.) The letter purports to clarify two issues, first, that there is “no specified territory” in which Mr. Hope may operate his franchise, and second, that Mr. Hope “does in fact have control over the day-to-day management” of the franchise. (*Id.* at 1-2.) The letter further indicates that sections 2.3, 3.2, and 3.3 of the Franchise Agreement are modified to reflect that Mr. Hope “may conduct marketing activities outside of [his] designated territory (state),” and to remove the requirements that Mr. Hope may only use computer systems, equipment, and furniture specified by [Franchisor]. (*Id.* at 2.) All other provisions of the Franchise Agreement remained unchanged. (*Id.* at 1, 3.) Appellant also submitted an updated resume for Mr. Hope, naming him as the sole owner and CEO of Appellant, with full responsibility for Appellant's day-to-day operations. (CF, Exh. 113.)

### D. Final PRF Notice

On March 4, 2021, CVE issued Appellant a Final PRF Notice. (CF, Exh. 119.) In the Final PRF Notice, CVE stated that, notwithstanding the additional information Appellant had provided, CVE still would be unable to verify Appellant as an SDVOSB. (*Id.* at 1.) The Final PRF Notice again detailed three main categories of issues. (*Id.*) First, CVE could not conclude that Mr. Hope has full control over Appellant's daily business operations, as required by 13 C.F.R. § 125.13. CVE reiterated its concerns over numerous provisions in the Franchise Agreement. (*Id.* at 1-8.) Although Appellant did provide, in response to the PRF Notice, a “Letter of Clarification to Single Unit Franchise Agreements,” this letter revised only three sections of the Franchise Agreement — sections 2.3, 3.2, and 3.3 — and thus did not resolve CVE's concerns over the remainder of the Franchise Agreement. (*Id.* at 10-11.) Further, CVE did not consider the amendments to section 3.2 sufficient to establish that Mr. Hope now fully controls this aspect of Appellant's operations. (*Id.*) CVE found that, although both the Franchise Agreement and the letter indicate that [Franchisor] does not intend to control Appellant's day-to-day operations, [Franchisor] nevertheless does control many aspects of Appellant's daily business operations through the Franchise Agreement. (*Id.* at 11-12.)

Second, CVE stated that Appellant had not yet resolved CVE's concerns over the unanimity provisions in the Operating Agreement. (*Id.* at 13-14.) Specifically, Appellant did not provide sufficient documentation to support its claim that Mr. Hope is now the sole owner of Appellant. (*Id.* at 14.)

Third, CVE continued to harbor doubts as to whether Appellant's relationship with a non-SDVOSB, [Franchisor], causes such dependence that Appellant cannot exercise independent business judgment. (*Id.* at 15.) The “Letter of Clarification to Single Unit Franchise Agreements” revised three provisions in the Franchise Agreement, but other provisions in the Franchise Agreement continue to grant [Franchisor] extensive power to control Appellant. (*Id.* at 23-26.)

The Final PRF Notice noted that Appellant could choose to withdraw its application for verified status, and re-apply at a later time. (*Id.* at 26-27.) Absent such a withdrawal, CVE would issue a letter formally denying Appellant's application. (*Id.*)

#### E. Denial Letter

On March 9, 2021, CVE denied Appellant's application for verification as an SDVOSB. (CF, Exh 123.1.) CVE found that Appellant's majority owner, Mr. Hope, is a service-disabled veteran. (*Id.*) However, CVE was unable to conclude that Appellant meets other eligibility requirements. (*Id.*)

CVE first explained that, in order to be an eligible SDVOSB, one or more service-disabled veterans must control the management and daily business operations of the concern. (*Id.*, citing 13 C.F.R. § 125.13.) Daily business operations include, but are not limited to, the marketing, production, sales, and administrative functions of the firm, as well as the supervision of the executive team, and the implementation of policies. (*Id.* at 1-2, citing 13 C.F.R. § 125.11.)

Here, Mr. Hope does not fully control the daily business operations of Appellant, due to provisions in the Franchise Agreement. (*Id.* at 2.) CVE previously explained, in the PRF Notice and the Final PRF Notice, that the Franchise Agreement is problematic in numerous respects. (*Id.*) Although Appellant provided a “Letter of Clarification to Single Unit Franchise Agreements,” this letter only revised three sections of the Franchise Agreement — sections 2.3, 3.2, and 3.3 — and therefore did not resolve CVE's other outstanding concerns about the Franchise Agreement. (*Id.* at 4-5.) In addition, CVE does not agree that the changes to section 3.2 were legally adequate. (*Id.* at 5.) As such, [Franchisor] still controls aspects of Appellant's daily business operations pursuant to sections 2.2, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 11.1, and 11.3 of the Franchise Agreement. (*Id.* at 6.) CVE noted, by way of example, that because the Franchise Agreement stipulates that [Franchisor's] approval is required for all advertising, Mr. Hope cannot fully control this aspect of daily business operations. (*Id.*)

Next, CVE found that Appellant does not comply with 13 C.F.R. § 125.13(d), because Appellant's Operating Agreement contains provisions requiring unanimous agreement of the owners/members. (*Id.* at 7-8.) In response to the PRF Notice, Appellant maintained that Mr. Hope has become the sole owner and member of Appellant. (*Id.* at 8.) However, Appellant failed to produce sufficient documentation to support this assertion. (*Id.*) Specifically, Appellant did not provide any transfer of ownership documentation signed and dated by [XXXXXX], the minority owner/member identified in the Operating Agreement. (*Id.*) Additionally, although Appellant did provide a revised VA Form 0877, dated February 20, 2021, this form was incomplete because, among other deficiencies, it did not reference Appellant by name. (*Id.*) CVE concluded that it could not reasonably determine that Mr. Hope is now the 100% owner and sole

member of Appellant, and therefore could not conclude that he could overcome the unanimity provisions in the Operating Agreement. (*Id.*)

Lastly, CVE explained that, under 13 C.F.R. § 125.13(i), non-service-disabled veteran persons or entities must not control an SDVOSB. (*Id.*) There is a rebuttable presumption that non-service-disabled veteran persons or entities control a firm when business relationships exist “which cause such dependence that the applicant or concern cannot exercise independence business judgment without great economic risk.” (*Id.*, quoting 13 C.F.R. § 125.13(i)(7).)

In the instant case, the Franchise Agreement negatively impacts Mr. Hope's ability to control Appellant, and also allows [Franchisor], a non-SDVOSB, to exert actual control over Appellant. (*Id.* at 9.) In CVE's view, it is “not clear whether [Appellant] would be able to operate as a viable independent business entity without dependence on [Franchisor].” (*Id.*) Although Appellant attempted to rebut the presumption that [Franchisor] controls Appellant by amending certain terms in the Franchise Agreement, the large majority of the provisions that CVE identified as problematic remain in effect. (*Id.* at 9-13.) Specifically, [Franchisor] “still controls aspects of [Appellant's] daily business operations pursuant to Sections 2.2, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 11.1, and 11.3” of the Franchise Agreement. (*Id.* at 13.) Because [Franchisor] “controls aspects of the daily business operations pursuant to the cited sections of the franchise agreement as amended, [Appellant] and [Mr. Hope] depend on the franchisor [Franchisor] (non-Veteran) and cannot exercise independent business judgment to conduct aspects of the daily business operations.” (*Id.*)

#### F. Appeal

On March 23, 2021, Appellant timely filed the instant appeal. Appellant contends that CVE erred in denying Appellant's application for verification. More specifically, CVE did not have a proper basis to conclude that Mr. Hope lacks control over Appellant's daily management, administration, and decision-making. (Appeal at 2-3.) Appellant alleges that CVE is “grossly biased in its views of franchise operations as a whole.” (*Id.* at 3.)

Appellant first highlights that Mr. Hope is a retired Army colonel and a service-disabled veteran. (*Id.* at 3-4.) According to Appellant, this should be “all that is necessary and required to be certified as an SDVOSB.” (*Id.* at 4.)

Next, Appellant argues that CVE had no reasonable grounds to object to Appellant's original ownership structure, whereby Appellant was 51% owned by Mr. Hope. (*Id.*) Nevertheless, in order to overcome the “unnecessary hurdle” imposed by CVE, Appellant changed its ownership structure such that Mr. Hope is now the 100% owner of Appellant. (*Id.*) In support, Appellant offers a “Sole Member Operating Agreement,” signed by Mr. Hope alone on January 11, 2021. (*Id.*, Attach. F.) Appellant argues that Mr. Hope's updated resume also shows that he is now sole owner and manager of Appellant. (*Id.* at 6.)

Appellant then addresses four issues related to control and ownership. First, contrary to CVE's decision, Appellant has clearly demonstrated that Mr. Hope controls the daily management of Appellant. (*Id.* at 6-7.) Appellant claims that the “Consent to Transfer Agreement” shows that Mr. Hope has control. (*Id.* at 6.) Further, Mr. Hope wrote the business plan for Appellant, without direction or interference by [Franchisor]. (*Id.*) Mr. Hope also prepared a document entitled “Team Hope Leadership & Management Philosophy,” which

outlines Appellant's vision statement, mission statement, values, and core services. (*Id.*) This again was not directed or required by [Franchisor]. (*Id.*) Mr. Hope selected a bank for Appellant. (*Id.*) There are currently two employees in the business, Mr. Hope and his wife, and Appellant asserts that Mr. Hope is responsible for all hiring and recruiting activity. (*Id.* at 7.) The business is run from their home, and Mr. Hope's income from other sources pays for all home office expenses. (*Id.*) Mr. Hope selected the computers, phones, and printer used by Appellant. (*Id.*) Appellant uses Zoom for virtual meetings, and [Franchisor] “did not dictate the acquisition of additional bandwidth with which to run [Appellant].” (*Id.*) Appellant further argues that [Franchisor] does not provide Appellant access to clients or sales opportunities. (*Id.* at 7-8.) Appellant additionally highlights that Mr. Hope paid start-up costs and for various subscriptions and memberships not required by [Franchisor]. (*Id.* at 9-10.) Appellant describes a variety of tools used in the course of business, such as LinkedIn. (*Id.* at 10-12.)

Next, Appellant addresses the issue of control over decision-making. (*Id.* at 12.) Appellant argues that CVE's complaints here are duplicative with its concerns over daily management and administration of operations. (*Id.*) Appellant claims that the Franchise Agreement is merely a “boilerplate” agreement that did not relinquish control over Appellant to [Franchisor]. (*Id.*) Moreover, the subsequent “Consent to Transfer Agreement” identified Mr. Hope as the sole owner of Appellant and therefore in full control. (*Id.* at 12-13.)

Third, Appellant addresses the issue of “affiliation” with [Franchisor]. (*Id.* at 13.) Appellant acknowledges that CVE did not directly raise this issue; however, Appellant believes it to have been an underlying “theme” and “consistent source of resistance” in the application process. (*Id.*) Appellant contends that CVE is unreasonably antagonistic to franchise agreements, thereby preventing legitimate SDVOSBs from benefitting from these arrangements. (*Id.* at 13-14.)

Lastly, Appellant addresses CVE's finding that Appellant is bound to a specific geographical area and required to use particular computer systems and software. (*Id.* at 16.) Appellant maintains that the “Consent to Transfer Agreement” and the “Letter of Clarification to Single Unit Franchise Agreements” made clear that “there is no specified geographical territory, no proprietary computer system and no[] proprietary software requirements.” (*Id.*) Appellant initially submitted an unsigned copy of the “Consent to Transfer Agreement,” but later corrected this oversight; CVE, though, apparently neither read nor considered the signed version that was later submitted. (*Id.*)

### III. Discussion

#### A. Standard of Review

Under VA regulations, an applicant seeking verification as an SDVOSB bears the burden of proving its eligibility. 38 C.F.R. § 74.11(d). In the event of a subsequent appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the denial was based upon clear error of fact or law. 13 C.F.R. § 134.1111.

#### B. Analysis

Appellant has not shown that CVE clearly erred in denying Appellant's application for verified SDVOSB status. This appeal must therefore be denied.

SBA regulations stipulate that an eligible SDVOSB must be unconditionally owned and controlled by one or more service-disabled veterans.<sup>2</sup> “Control” means that both the concern's daily business operations, and its long-term decision-making, are conducted by service-disabled veterans. 13 C.F.R. § 125.13(a). The regulations define “daily business operations” as including, but not limited to, “the marketing, production, sales, and administrative functions of the firm, as well as the supervision of the executive team, and the implementation of policies.” *Id.* § 125.11. Non-service-disabled veteran individuals or entities must not control the concern. *Id.* § 125.13(i).

In the instant case, CVE determined that although Appellant's principal, Mr. Hope, is a service-disabled veteran, he does not fully control Appellant. Sections II.B, II.D, and II.E, *supra*. More specifically, CVE found that the Franchise Agreement between Appellant and [Franchisor], a non-SDVOSB, imposes numerous restrictions that interfere with Mr. Hope's ability to control the daily business operations and the long-term decision-making of Appellant. *Id.* CVE expressed concern in particular that [Franchisor] controls aspects of Appellant's daily business operations through sections 2.2, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 11.1, and 11.3 of the Franchise Agreement. *Id.* A review of the Franchise Agreement confirms that CVE's concerns were well-founded. Section 10.2 of the Franchise Agreement, for instance, provides that Appellant may “not offer for sale or sell any services or products [Franchisor] ha[s] not approved,” and that Appellant must “offer and sell approved services and products only in the manner [Franchisor] ha[s] prescribed.” Section II.A, *supra*. Such restrictions fundamentally curtail the ability of Mr. Hope, the service-disabled veteran, to independently operate Appellant, as Mr. Hope must first obtain [Franchisor's] consent in deciding the types of products and services Appellant may sell, and the manner in which Appellant may sell them. Appellant's “daily business operations,” then, including Appellant's “marketing, production, [and] sales,” plainly are not solely within the control of Mr. Hope.<sup>3</sup>

On appeal, Appellant highlights that the “Letter of Clarification to Single Unit Franchise Agreements” revised three provisions in the Franchise Agreement, and made clear that [Franchisor] does not intend to control Appellant. While this is true, the “Letter of Clarification to Single Unit Franchise Agreements” revised only sections 2.3, 3.2, and 3.3 of the Franchise Agreement, leaving all other provisions intact. Section II.C, *supra*. CVE thus could reasonably conclude that the “Letter of Clarification to Single Unit Franchise Agreements” did not resolve, nor even attempt to resolve, the bulk of CVE's concerns over the Franchise Agreement. CVE also explained that, although [Franchisor] may not have subjectively intended to control Appellant's daily business operations, [Franchisor] nevertheless does control many aspects of Appellant's operations via the Franchise Agreement. This is true because the Franchise Agreement mandates that [Franchisor's] approval or authorization is required for numerous types of business decisions, thereby restricting Mr. Hope's ability to independently operate Appellant.

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<sup>2</sup> See 13 C.F.R. §§ 125.12 and 125.13. These same regulations also apply to SDVOSB eligibility determinations conducted by CVE. 38 C.F.R. §§ 74.3(a) and 74.4.

<sup>3</sup> Section 10.2 is not, by any means, the only problematic provision in the Franchise Agreement. The Franchise Agreement also contains other provisions which restrict, for example, the “coaching” personnel that Appellant may hire; the business practices and policies Appellant must utilize; and even administrative minutiae, such as Appellant's hours of operation, and the appearance and cleanliness of its offices. Section II.A, *supra*.



As such, CVE correctly concluded that the control requirements of 13 C.F.R. § 125.13 are not satisfied in the instant case.

Appellant also insists that Mr. Hope controls Appellant through the “Consent to Transfer Agreement.” This agreement, though, merely transferred the franchise from Mr. Hope, in his individual capacity, to Appellant, a limited liability company, but did not otherwise alter any substantive terms of the Franchise Agreement. Sections II.A and II.C, *supra*. Since the Franchise Agreement remains binding on Appellant, the “Consent to Transfer Agreement” does not demonstrate that Mr. Hope would be able to surmount the restrictions in the Franchise Agreement in operating Appellant.

In sum, CVE identified numerous terms within the Franchise Agreement which restrict Mr. Hope's ability to fully control the “daily business operations” of Appellant, including provisions related specifically to Appellant's marketing, production, sales, and administrative functions; to the supervision of Appellant's executives; and to the implementation of business policies. Section II.A, *supra*. These provisions within the Franchise Agreement improperly limit Mr. Hope's ability to control various aspects of Appellant's daily business operations. CVE thus did not err in denying Appellant's application for verification as an SDVOSB.

CVE also determined that Mr. Hope does not fully control Appellant because Appellant's Operating Agreement contains provisions requiring the unanimous agreement of all owners/members before certain actions can be taken. Section II.E, *supra*. Further, one of Appellant's owners/members, [XXXXX], is not a service-disabled veteran. *Id.* During the course of the verification review, Appellant submitted documentation purporting to show that Mr. Hope had become the sole owner and member of Appellant. Section II.C, *supra*. Some of Appellant's documentation, though, was incomplete, and Appellant moreover did not offer evidence from the original minority owner/member, [XXXXX], confirming that she no longer is an owner/member of Appellant. Section II.E, *supra*.

An applicant seeking verification from CVE must submit all “supplemental documentation as CVE requires.” 38 C.F.R. § 74.12. In addition, the burden is on the applicant to prove its eligibility as an SDVOSB to CVE's satisfaction. *Id.* § 74.11(d). Here, Appellant has not shown that CVE erred in concluding that Appellant did not persuasively prove that Appellant had changed its ownership structure. As CVE observed in the denial letter, although Appellant did submit a revised VA Form 0877 to support the claim that Mr. Hope is now the sole owner of Appellant, the revised form was incomplete, and thus insufficient to establish a change in ownership. Section II.E, *supra*. Moreover, given that CVE already was in possession of documentation — submitted by Appellant itself just a few months earlier — indicating that Mr. Hope is not the sole owner/member of Appellant, CVE could reasonably insist that Appellant should provide at least some documentation signed by both owners/members to corroborate that the claimed change of ownership had actually transpired. As no such evidence was forthcoming, I see no error in CVE's conclusion that Appellant did not carry its burden of proving its eligibility as an SDVOSB.

CVE also determined that Appellant is not an eligible SDVOSB under 13 C.F.R. § 125.13(i), which mandates that “[n]on-service-disabled veteran individuals or entities may not control” an SDVOSB. The same regulation further creates a rebuttable presumption that a firm is not controlled by service-disabled veterans if “[b]usiness relationships exist with non-service-disabled veteran individuals or entities which cause such dependence that the applicant or

concern cannot exercise independent business judgment without great economic risk.” 13 C.F.R. § 125.13(i)(7).

Here, CVE reviewed the Franchise Agreement and identified numerous provisions within that agreement which permit [Franchisor], a non-SDVOSB, to control important aspects of Appellant's long-term decisions and day-to-day management. Specifically, CVE found that sections 2.2, 3.2, 4.1, 4.2, 4.3, 5.1, 5.2, 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 11.1, and 11.3 of the Franchise Agreement enable [Franchisor] to exert such control. Section II.E, *supra*. While Appellant disagrees with CVE's assessment, Appellant has not shown that CVE's decision was erroneous. Appellant has not demonstrated or even argued, for example, that section 4.2 of the Franchise Agreement, which requires [Franchisor's] advance approval before Appellant may hire “Coaches,” would not enable [Franchisor] to control this aspect of Appellant's business, such as by vetoing choices that Mr. Hope might otherwise make. Accordingly, Appellant has not shown any valid reason to disturb CVE's decision.

Lastly, OHA will not consider Appellant's allegations that CVE is biased against franchise arrangements. Government officials are presumed to act in good faith, and the record reflects in any event that CVE conducted a detailed review of the particular Franchise Agreement in question here. There is no indication that CVE based its decision, in whole or in part, on any general hostility towards franchise arrangements.

#### IV. Conclusion

Appellant has not established that CVE committed error of fact or law in denying Appellant's application for verified SDVOSB status. The appeal therefore 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).

KENNETH M. HYDE  
Administrative Judge