

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

IN THE MATTER OF:

Joseph M. Walls d/b/a Jailhouse Lawyers
Association,

Appellant,

U.S. Department of Veterans Affairs

SBA No. CVE-209-A

Decided: November 10, 2021

APPEARANCES

Joseph M. Walls, Appellant

John B. Perkins, Director for the U.S. Department of Veterans Affairs, Center for
Verification and Evaluation

DECISION¹

I. Introduction and Jurisdiction

On August 25, 2021, the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) issued a denial of the application of Joseph M. Walls d/b/a Jailhouse Lawyers Association (Appellant or Mr. Walls) for inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in the VA's Vendor Information Pages (VIP). On September 3, 2021, Appellant appealed the denial to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA).

OHA adjudicates SDVOSB appeals under the authority of 38 U.S.C. § 8127, and 13 C.F.R. § 134.102(u).

¹ This decision was originally issued under confidential treatment. Pursuant to 13 C.F.R. § 134.205, OHA afforded Appellant an opportunity to file a request for redactions if desired. OHA received no requests for redactions. Therefore, I now issue the entire decision for public release.

II. Background

A. CVE's Denial

On August 25, 2021, the CVE denied Appellant's application and identified two areas of Appellant's non-compliance with the regulation. First was the issue of good character. The regulation requires that individuals having an ownership interest in an SDVO SB must be of good character. The regulation, 38 C.F.R. § 74.2(b), mandates that debarred or suspended concerns or concerns owned by debarred or suspended individuals are ineligible for inclusion in the VIP. Also, concerns owned or controlled by a person currently incarcerated, on parole or probation following conviction for a felony or any crime involving business integrity, or concerns owned or controlled by a person convicted of a crime listed at FAR 9.406-2(a)(3) are ineligible during the pendency of any subsequent legal proceedings.² The CVE asserts the list of crimes in the regulation is illustrative, not exhaustive. (Denial, at 1-2.)

The CVE's research revealed that Mr. Walls has been convicted of First-Degree Burglary, Second Degree Conspiracy, and First-Degree Robbery, and has been sentenced to life imprisonment, plus eighty-nine years. A search of the Delaware inmate locator indicated that Mr. Walls has been on probation/parole since May 4, 2021. (*Id.*, at 2.) The CVE found it could not reasonably conclude that Appellant met the good character requirements of 38 C.F.R. § 74.2(b) and FAR 9.406-2(a)(3) in order to participate in the VIP Verification Program. (*Id.*)

The second issue was Mr. Walls's management experience. The regulation requires that the service-disabled veteran have managerial experience of the extent and complexity needed to run the concern. The primary North American Industry Classification System (NAICS) code for Appellant is 624229, Other Community Housing Services. However, there are a number of other codes listed on the VIP profile: All Other Legal Services (541199); Other Computer Related Services (541519); All Other Professional Scientific and Technical Services (541990); All Other Support Services (561990); All Other Automotive Repair and Maintenance (811198); Religious Organizations (813110); and Other Social Advocacy Organizations (813319). The capabilities narrative is blank. Mr. Walls's resume states that he has been Chief Executive of Appellant since March 2011, and he has experience providing legal support services for incarcerated veterans and other citizens. He was on the NAACP Political Action Committee from January 26, 1986 to November 15, 2020. He also taught at the Henry George Institute from January 26, 1986 to November 15, 2020, where he gained experience teaching economics to incarcerated citizens. (*Id.*, at 2-3.)

The CVE concluded the record has no documentation that Mr. Walls has any actual hands-on experience in the majority of the services identified by Appellant's NAICS codes, including its primary NAICS code. Several of the codes, such as Legal Services, appear to be of a technical nature requiring licensing or certification. The CVE acknowledged that the regulation does not require the service-disabled veteran to have technical expertise if the service-disabled veteran can demonstrate that they have ultimate managerial or supervisory control over those

² The regulation 38 C.F.R. § 74.2(b) identifies FAR 9.406-2(b)(3), but the CVE asserts this is a typographical error, and instead, the correct citation is FAR 9.406-2(a)(3). (Denial, at 1.)

who have the expertise. However, in order to have supervisory control, the service-disabled veteran must be able to show that he is able to observe and direct the services identified by the applicant's primary line of business, as well as any ancillary services identified. Mr. Walls's resume has no information demonstrating that he would currently be able to manage and supervise the services identified by Appellant's NAICS codes. The experience listed on his resume appears to have been obtained while incarcerated, which would likely have been overseen by someone with the necessary licenses. It is, however, not clear what services Appellant is providing, as the listed NAICS codes identify services very different in nature. The CVE concluded it could not determine that Mr. Walls has the necessary managerial and technical experience of the extent and complexity to run the concern. (*Id.*, at 3.)

The CVE thus concluded that Appellant was not eligible for inclusion in the database and denied the application.

B. The Appeal

On September 3, 2021, Appellant filed the instant appeal with OHA. Appellant admits that he is serving parole in Delaware. Nevertheless, Appellant objects to the finding against him, because the offenses in question took place in 1985-1986, over 35 years ago, and he has now a well-established reputation for good character. Appellant asserts that he is a service-disabled veteran whose offenses stemmed from his (then untreated) Post Traumatic Stress Disorder (PTSD). Appellant further asserts there is no authority in the U.S. Code, which authorizes the CVE to draw a presumption of no "good character." (Appeal, at 1-2.)

C. CVE's Motion to Dismiss

On September 29, 2021, the CVE filed a Motion to Dismiss the appeal. The CVE asserts that good character is a criterion separate from ownership and control, which a concern must meet in order to qualify as an SDVO SB. (CVE's Motion, at 4, citing 15 U.S.C. § 632(q)(2)-(3); 38 U.S.C. § 501(a); 38 U.S.C. § 8127(f)(7).) The CVE argues that denials of CVE status may not be appealed if they are based upon failure to meet any veteran or service-disabled veteran eligibility criteria, because such denials are final VA decisions, which cannot be appealed to OHA. (*Id.*, citing 13 C.F.R. § 134.1103.)

The CVE also asserts the VA Secretary has the authority to make regulations. (*Id.*, citing 38 U.S.C. § 501(a).) The regulation requiring that individuals upon whom a concern's claim of eligibility be based of good character was first promulgated in 2008 and restated in 2018. (*Id.*, citing 38 C.F.R. § 74.2(b); 73 Fed. Reg. 29024 (May 19, 2008) and 83 Fed. Reg. 48221 (Sept. 24, 2018).) This regulation does not conflict with SBA's exclusive authority to issue regulations concerning the status of a concern and its ownership and control. Good character in the context of the regulation refers solely to an eligibility criterion for veterans and service-disabled veterans who participate in the VA's Veterans First Contracting Program. Because good character is not an issue relating to the status of a concern as a small business concern and the ownership or control of such small business concern, OHA has no jurisdiction over the issue. (*Id.*, at 4 citing 13 C.F.R. § 134.1103.)

Finally, the CVE argues that because the instant appeal does not include any statement as to why the CVE's negative finding with respect to Mr. Walls's managerial and technical experience was in error, Appellant has failed to state a basis for appeal of the CVE's finding here. (*Id.*, at 5.)

D. Appellant's Response to the Motion to Dismiss

On October 19, 2021, Appellant responded to the CVE's Motion to Dismiss. First, Appellant asserts because of his age and disabilities, it is difficult for him to maintain the schedule required by his appeal, and requests that OHA appoints an attorney or veterans' services representative to assist him in making his case here. (Response to CVE's Motion, at 1.)

Appellant then, maintains that the VA is prohibited from enacting regulations related to the status of a SDVOSB. Therefore, the question of whether Mr. Walls satisfies the good character requirement is a “substantive rather than a procedural determination.” (*Id.* at 2, citing 38 U.S.C. § 8127(f)(7).)

Appellant argues the VA has the authority to enact procedural rules (38 U.S.C. § 501(a)) but is prohibited from enacting substantive rules (38 U.S.C. § 8127(f)(7)) on the status of service-disabled veteran-owned concerns and the VA promulgated 38 C.F.R. § 74.2(b) under “misinterpreted authority to implement and monitor preferential treatment for veterans who seek to contract with the Federal Government and especially the VA.” (*Id.*) Appellant further argues the statutes the VA relies upon for authority to enact § 74.2 do not support it. Appellant maintains 15 U.S.C. § 632(q)(2)-(3) limits the VA's authority to the question of whether concerns are majority-owned by veterans. This is substantive not procedural language. (*Id.*, at 3.) Appellant maintains the legislation is concerned with three issues, preventing large corporations from crowding out small veteran-owned businesses, preventing firms which are not veteran-owned from purporting to be so, and preventing firms with a history of fraudulent business practices from doing business with the Government. The legislative intent was never to prevent veteran-owned businesses owned by veterans who had committed offenses that were not business related from doing business with the VA. (*Id.*, at 4.) Appellant argues that the VA may only consider whether it is majority-owned by a service-disabled veteran, and there is no statutory authority for it to impose a good character test on applicants. (*Id.*)

Appellant claims the CVE is ignoring federal statutes and maintains that the CVE can answer only two questions, whether the individual upon whom the applicant firm's claim is based is a service-disabled veteran, and whether that individual owns a majority interest in the concern. Appellant also maintains no other eligibility criteria should be considered. (*Id.*, at 5.) Appellant then argues there is a difference between the language of 38 U.S.C. § 8127(f)(4) (appeals based upon failure to verify the status of a concern) and 13 C.F.R. § 134.1103 (no appeal if denial is based on failure to meet and veteran or service-disabled veteran eligibility criteria). Appellant indicates the regulatory language is impermissibly more restrictive than the statutory language and notes that denials based upon probation or parole are conducted on a case-by-case basis and must consider all relevant facts. (*Id.*)

Lastly, Appellant proceeds to argue that by filing an appeal, it raises all the issues that were considered below, and so it should be considered as having appealed the issue of managerial and technical experience. Appellant further maintains the CVE has no authority to consider the issue of Mr. Walls's managerial and technical experience, but that this is a question for officials of a procuring agency. Appellant asserts Mr. Walls spoke with the CVE officials as part of the application process and explained that he had extensive experience prior to his incarceration and had completed extensive training and two degrees while incarcerated. There is thus no question, Appellant maintains, that the managerial and technical issue was addressed during the CVE review. Further, in his conversations with the CVE officials, it was clear that good character was the most important issue, and that managerial and technical experience was not determinative. (*Id.*, at 6-7.)

III. Discussion

A. Burden of Proof

Appellant has the burden of proving, by a preponderance of the evidence, that the CVE's denial of Appellant's inclusion 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).

Appellant's request for appointment of counsel or other assistance is DENIED. As a tribunal of limited jurisdiction, OHA does not have authority to appoint attorneys or representatives to assist *pro se* litigants.

B. Analysis

The regulation identifying the grounds for filing CVE appeals states:

Denials and cancellations of verification of CVE status may be appealed to OHA, so long as the denial or cancellation is not based on the failure to meet any veteran or service-disabled veteran eligibility criteria. Such denials and cancellations are final VA decisions and not subject to appeal to OHA.

13 C.F.R. § 134.1103.

The VA regulations lay out the veteran eligibility criteria. These include good character. A concern owned by a debarred or suspended person is not eligible for verification. So is a concern “owned or controlled by a person currently incarcerated, on parole or probation (pursuant to a pre-trial diversion or following conviction for a felony or any crime involving business integrity).” 38 C.F.R. § 74.2(b). Concerns owned or controlled by a person formally convicted of a crime identified in FAR 9.406-2(a)(3)³ are ineligible for verification during the

³ The current regulation identifies FAR 9.406-2(b)(3), but there is no such provision. The provision at FAR 9.406-2(a)(3), which the CVE asserts, is the correct provision and identifies the crimes of “commission of embezzlement, theft, forgery, bribery, falsification or destruction of

pendency of any subsequent legal proceedings. *Id.* If a person controlling a participant is found to lack good character, the CVE will remove the participant, notwithstanding the provisions of 38 C.F.R. § 74.22. *Id.* The last cited regulation gives the CVE applicants their right to appeal to OHA. 38 C.F.R. § 74.22(e). Further, the statute which is the basis for OHA's jurisdiction over CVE Appeals specifically identifies the issues which OHA may address as the small business status of the concern and the ownership and control of the concern. It does not mention the issue of good character on the part of the individual upon whom the claim of eligibility is based. 38 U.S.C. § 8127(f)(8). The Small Business Act's definition of service-disabled veteran owned small business concern addresses only the issues of ownership and control and does not address the issue of good character. 15 U.S.C. § 632(q)(2)-(3).

I, therefore, conclude that the issue of good character of a service-disabled veteran upon whom a concern's claim of eligibility is based is not appealable to OHA, but it is a decision left to the VA's discretion.⁴

Here, one of the reasons for the CVE's decline of Appellant's application was the question of Mr. Walls's character. The decision is based on Mr. Walls's admitted status as a parolee on a felony conviction. It is by itself sufficient to deny the application.⁵ Further, the CVE's decision on this issue is not reviewable by OHA. Accordingly, I GRANT the CVE's Motion to Dismiss.

IV. Conclusion

OHA does not have jurisdiction to review the CVE's determination that Mr. Walls fails to meet the good character standard, which was the basis of its denial of Appellant's application. I must therefore **DISMISS** the instant 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

records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property.”

⁴ Appellant's numerous challenges to the regulations here, are meritless. It is well settled that OHA cannot entertain challenges to the regulations themselves. *Size Appeal of North Wind Site Services, LLC*, SBA No. SIZ-5988, at 6 (2019); *Matter of Precise Systems, Inc.*, SBA No. VET-243, at 10 (2014).

⁵ The issue of good character is dispositive of Appellant's eligibility for inclusion as a verified SDVOSB and therefore, OHA does not need to address the remaining issue of whether Appellant had managerial and technical experience.