

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

IN THE MATTER OF:

Warrior Service Company, LLC,  
  
Appellant,

SBA No. CVE-214-A

Decided: December 9, 2021

APPEARANCES

Frank V. Reilly, Esq., for Warrior Service Company, LLC, Oakland Park, Florida

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

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On June 15, 2021, the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) issued a Notice of Proposed Cancellation (NOPC) to Warrior Service Company, LLC (Appellant). On July 21, 2021, CVE issued a Notice of Verified Status Cancellation (NOVSC) cancelling Appellant's inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in the CVE Vendor Information Pages (VIP). On August 4, 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).

II. Background

A. CVE's NOPC

In the NOPC, CVE first noted that on May 14, 2021, it contacted Appellant to conduct a verification examination in accordance with 38 C.F.R. § 74.20. (Case File (CF) Ex. 490, at 2.)

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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 received one or more requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

Appellant's VA Form 0877 was signed by Alex Presman on September 9, 2019, who is the service-disabled veteran (SDV) upon whom Appellant's claim of eligibility is based and Appellant's 100% owner. (CF, Exs. 408; 490 at 2.) However, Appellant's Operating Agreement, dated April 22, 2021, and submitted as part of the verification, showed Mr. Presman as Appellant's 95% owner and Leonel Extramil, a non-veteran, as owner of the remaining 5%. (CF, Exs. 463; 490, at 2.) CVE had no record of Mr. Extramil's ownership of Appellant prior to conducting Appellant's verification of eligibility and prior to finding eligibility based on Mr. Presman's 100% ownership and control. (*Id.*) CVE stated, absent clarifying documentation identifying Mr. Extramil's role in the business operations of the concern, including Mr. Extramil's resume, CVE cannot determine whether the concern has maintained its verification eligibility pursuant to 38 C.F.R. § 74.21(d)(2) or the extent to which Mr. Extramil participates in the management of the concern pursuant to 38 C.F.R. § 71.21(d)(f). Lastly, as Appellant did not provide an updated VA Form 0877 that accurately reflects the current ownership interests held in the concern, CVE cannot reasonably conclude that the requirements of 38 C.F.R. § 74.21(d)(7) have been satisfied. (CF, Ex. 490, at 2.)

In the same context of the non-verified owner of Appellant, CVE indicated that without clarifying documentation addressing the role and involvement of the new minority owner in the management and control of Appellant, CVE cannot reasonably determine whether a business relationship with a non-SDV individual causes such dependence that the concern cannot exercise independent business judgment without great economic risk or whether non-SDVs control or have the power to control the concern pursuant to 13 C.F.R. § 125.13(i)(7). (*Id.*)

Therefore, CVE gave Appellant 30 days from receipt of this NOPC to provide sufficient evidence to CVE and explain why the proposed grounds should not justify cancellation. (*Id.*, at 3.) CVE reminded that changes to business documents or updated submissions will not be accepted as part of the cancellation process. (*Id.*)

#### B. Appellant's Response

On June 25, 2021, Appellant submitted a one-page letter in response to the NOPC. (CF, Ex. 492.) In the letter, Appellant noted the revised Operating Agreement was signed on April 22, 2021. Appellant maintained it submitted the Operating Agreement to a CVE investigator on May 14, 2021, within thirty days of its execution. The Operating Agreement provides that the closing date for the sale of the 5% interest will be the later of 30 days after notice of the exercise of the option has been received or 30 days after the parties have received notice of the fair market value of the ownership interest. Appellant here maintained, neither of these events had taken place as of June 15<sup>th</sup>. Appellant asserted that no closing had yet occurred, and no change had yet occurred in ownership and management. Thus, its VA Form 0877 dated September 9, 2019, remained true and correct. Appellant further stated of ongoing negotiations with Mr. Extramil, and that it planned to submit a Form 0877 when these are concluded. (*Id.*, at 1.)

With its letter response, Appellant also submitted Mr. Presman's certified verification, signed and dated June 25, 2021, and Mr. Extramil's resume. (CF, Exs. 493-494.) Particularly, Mr. Extramil's resume showed that he is Appellant's Chief Operating Officer since 2017. (CF, Ex. 494, at 1.)

### C. CVE's Cancellation

On July 21, 2021, CVE issued the NOVSC to Appellant (CF, Ex. 498.) CVE found that Appellant's response to the NOPC was inadequate. (*Id.*, at 1.) Particularly, CVE noted again that the May 14, 2021 verification examination produced the Operating Agreement, dated April 22, 2021, which had not previously been submitted to CVE. The Operating Agreement showed Mr. Extramil owning 5% of Appellant and Mr. Presman 95%. It also included Exhibit A, which indicated that as of January 11, 2021, the shareholders were Mr. Presman, with a capital contribution of \$XXXX and a 95% interest, and Mr. Extramil, with a capital contribution of \$XXX and a 5% interest. The Operating Agreement also has an effective date of January 1, 2021. (*Id.*, at 2.) The name of the Members was set forth in Exhibit A. (*Id.*; Art. II, § 2.3.) CVE noted that when a person not already a member becomes a member, the Managers shall amend Exhibit A. (*Id.*; Art. X, § 10.1.2). CVE, thus, concluded that based upon the Operating Agreement, Appellant's management structure had changed since the time CVE had approved it for inclusion in the VIP database. CVE found that Appellant had failed to provide an updated Form 0877 within 30 days of a change in ownership as required by 38 C.F.R. § 74.21(d)(7). (*Id.*, at 2-3.)

CVE also found inapplicable Appellant's assertion that the change of ownership has not yet occurred based upon the closing date provisions of the Operating Agreement. (*Id.*, at 3.) In particular, Article XI, Section 11.5 provides that the closing date for the sale of an interest will be the later of 30 days after notice of the exercise of the option has been received or 30 days after the parties have received notice of the fair market value of the ownership interest. Sections 11.2, 11.3 refer to a member's ability to purchase a bankrupt member's interest, but these are not applicable here. Rather, it was during the verification examination that Mr. Presman indicated the transfer to Mr. Extramil was an incentive. (*Id.*) CVE concluded the Operating Agreement's closing date provisions are not applicable to the transfer of interest to the minority shareholder.

Further, CVE stated Appellant had provided a letter, which stated Mr. Extramil was in negotiations with Appellant on the extent to which he would be involved in Appellant's future management. Based on this statement, CVE concluded it could not determine the extent to which nonveterans participate in Appellant's management. (*Id.*; 38 C.F.R. § 74.21(d)(4).) CVE also found that Appellant had failed to notify CVE of changed circumstances as required by 38 C.F.R. 74.21(d)(8) and therefore, CVE could not conclude it had maintained its eligibility as required by 38 C.F.R. § 74.21(d)(2). (*Id.*)

As for non-veteran control, Appellant added a non-SDV minority owner who was not contemplated at the time of Appellant's most recent verification. (*Id.*, at 4.) In response to the NOPC, Appellant explained that it had acquired a non-veteran minority owner and that Appellant had stated it was in negotiations over Mr. Extramil's role. Thus, CVE could not determine whether the relationship with Mr. Extramil was such that Mr. Presman could not exercise independent business judgment without great economic risk. (*Id.*; 13 C.F.R. § 125.13(i)(7).)

Therefore, CVE concluded that Appellant was no longer eligible for inclusion in the VIP database. CVE informed Appellant it must wait six months to reapply for inclusion. (*Id.*, at 4-5; 38 C.F.R. § 74.14(a).)

#### D. The Appeal

On August 4, 2021, Appellant filed the instant appeal. Appellant states that on April 21, 2021, it amended its Operating Agreement to grant Mr. Extramil, an at will employee, an ownership interest in Appellant. Appellant further asserts that on May 14, 2021, 22 days later, it provided a copy to CVE, and concedes it did not file an amended Form 0877. While Form 0877 asks for the name of each stockholder and owner, Appellant's position is that it amended its Operating Agreement to give Mr. Extramil a 5% membership interest. At the time Mr. Extramil was an employee, he was not an owner of Appellant and held no stock. Appellant asserts it made CVE “aware of the situation” and CVE did not request an updated Form 0877. Appellant claims it reasonably believed it has complied with CVE's requirements. (Appeal, at 2-3.)

Appellant claims the NOPC, sent on June 15, 2021, was its first notice of the requirement of a new Form 0877. Appellant then complains that CVE would not accept a new Form 0877 after issuing the NOPC. Further, Appellant states CVE informed Appellant that it would be able to re-apply with a newly filed Form 0877. (*Id.*, at 3.)

Appellant then proceeds to acknowledge that it received the NOVSC on July 21, 2021. However, Appellant claims it is subject to an “additional penalty” not mentioned in the NOPC, of not being able to refile a Form 0877 for six months. Appellant states that it had asked for assistance from CVE to refile on July 23<sup>rd</sup> and 25<sup>th</sup>. On July 30<sup>th</sup>, CVE denied the requests. (*Id.*)

Appellant argues its due process rights are violated by the “additional six-month penalty” because it had no notice or opportunity to respond on this issue. CVE abused its discretion in imposing this penalty. (*Id.*, at 4.) Appellant further argues that once it has shown that it is majority owned and controlled by an SDV, cancellation and removal are not appropriate. (*Id.*, citing *CVE Protest of PDS Consultants, Inc.*, SBA No. CVE-189-P (2021).)

Appellant then argues CVE's initial decision did not require an updated Form 0877 at the time the revised Operating Agreement was submitted, because Mr. Presman still retains either 100% or 95% ownership of Appellant. CVE did not find that Mr. Presman's ownership was subject to any conditions, and his unconditional ownership percentage is well over the 51% required by the regulation, and so it is clear he owns and controls Appellant. (*Id.* at 4-5.) Appellant maintains that to the extent it erred in failing to update its Form 0877, this was a good faith error based on misunderstanding that does not warrant sanctions. Appellant, again, argues its due process rights were violated because it was deprived of any opportunity to come into compliance, and CVE did not provide notice and an opportunity to be heard. (*Id.*, at 5-6.)

Moreover, Appellant contends CVE erred in refusing to accept a new Form 0877 because the regulation requires CVE to consider any information submitted by the participant. (*Id.*, at 6, citing 38 C.F.R. § 74.22(b).) Appellant argues an updated Form 0877 is important information, and eligibility issues in a firm's past should not impact present eligibility. (*Id.* at 6-7, citing *CVE*

*Protest of Alpha4 Solutions LLC d/b/a Alpha Transcription*, SBA No. CVE-103-P, at 8-9 (2019.) Finally, Appellant reasserts that it was not a reasonable exercise of discretion to remove it from the VIP database and to issue an additional six-month sanction. (*Id.*, at 7.)

#### E. CVE's Response

On September 9, 2021, CVE responded to the appeal. (CVE's Response.) CVE asserts that it did not impose an additional six-month sanction upon Appellant. CVE relies upon the regulation, which requires that if there is any change in a participant firm's ownership or business structure it must file an updated VA Form 0877 within 30 days of the change. (*Id.*, at 1, citing 38 C.F.R. § 74.3(b)(1).) Appellant failed to provide a new VA Form 0877 showing its new business interest and was found ineligible. (*Id.*, at 2, citing 38 C.F.R. §§ 74.21 and 74.22.) Upon that basis, outlined in the NOVSC, Appellant was required to wait a period of six months before CVE would process a new application. (*Id.*, citing 38 C.F.R. § 74.14(a).)

#### Appellant's Reply

On September 14, 2021, Appellant filed a motion for leave to file a Reply to CVE's Response, together with the Reply. Appellant reasserts it attempted to file a new Form 0877, but CVE would not accept it. (Reply, at 1-2.) The NOPC stated that changes to business documents or updated submissions would not be accepted as part of the cancellation process; however, Appellant argues CVE should have accepted a new Form 0877 from it, and its refusal to do so was clear error. CVE was noncompliant with 38 C.F.R. § 74.22(b) and Appellant's full compliance would have negated or at least minimized the existence of a good cause to enforce § 74.21(d). (*Id.*, at 2.)

Appellant claims CVE had no authority to deny Appellant the right to voluntarily come into compliance with CVE rules by providing a new Form 0877 to CVE. Appellant argues that if a new Form 0877 was important enough to warrant removing Appellant from the program, then it necessarily follows that a new Form 0877 was also important enough for CVE to accept so that Appellant could stay in the program. (*Id.*) Appellant further argues, "Since CVE's goal is compliance, [Appellant]'s voluntary compliance should have been acceptable to CVE. CVE erred when it rejected voluntary compliance in favor of continued enforcement proceedings seeking the very same compliance that CVE made impossible and deemed unacceptable." (*Id.*)

Appellant contends that under the totality of the circumstances, CVE's refusal to accept a new Form 0877 did not constitute good cause to subsequently remove Appellant from the SDVOSB program for failure to provide the same. Appellant argues that 38 C.F.R. § 74.21(d) has no provision supporting CVE's refusal to accept a new Form 0877 from Appellant.

### III. Discussion

#### A. Burden of Proof and Motion

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

As for motions, I ADMIT Appellant's Reply to CVE's Response into the record. 13 C.F.R. § 134.1108(d).

B. Analysis

The VA regulations on SDVOSBs provide that:

A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans own and control it after the change. The participant **must** file an updated VA Form 0877 and supporting documentation **identifying** the new veteran owners or **the new business interest within 30 days of the change.**

38 C.F.R. § 74.3(b)(1) (emphasis supplied).

For removal of the VIP database, the regulation states:

(d) CVE may remove a participant from public listing in the VIP database for good cause upon formal notice to the participant in accordance with § 74.22. Examples of good cause include, but are not limited to, the following:

...

(7) Failure by the concern to provide an updated VA Form 0877 within 30 days of any change in ownership, except as provided in § 74.3(f)(3).

(8) Failure to inform CVE of any such changed circumstances, as outlined in paragraphs (c) and (d) of this section.

38 C.F.R. § 74.21(d)(7) & (8).

To be an eligible SDVOSB, a concern must be owned and controlled by a service-disabled veteran. 13 C.F.R. § 125.11. A concern must file a VA Form 0877 identifying its owners/stockholders as part of the application process. 38 C.F.R. § 74.12. A change in a concern's ownership **must** be documented with a new VA Form 0877, identifying the new

Here, CVE conducted a verification examination of Appellant on May 14, 2021, pursuant to 38 C.F.R. § 74.20. In the course of examination, CVE learned that a non-veteran, Mr. Extramil, had acquired a 5% interest ownership in Appellant as of January 1, 2021, but Appellant did not file a new VA Form 0877 reporting such change. Section II.A, *supra*. Appellant's most recent VA Form 0877 on file and dated September 9, 2019, only listed Mr. Presman as Appellant's 100% owner. However, Mr. Extramil's ownership interest was documented in the Operating Agreement dated April 22, 2021, listing capital contributions from two members and their respective ownership percentages as of January 1, 2021. *Id.* This showed Mr. Extramil

having a 5% ownership interest in return for a capital contribution of \$XXX, as of January 1, 2021. *Id.* CVE, then, faced a clear case of a violation of 38 C.F.R. § 74.3(b)(1). The language of the regulation makes it clear that the timely submission of Form 0877 is mandatory and allows no exceptions. Yet, Appellant failed to file a timely Form 0877 within 30 days of a change in ownership and failed to inform CVE of any changed circumstances at that time. Sections II.A and II.B, *supra*.

Appellant's argument that Mr. Extramil was not an owner is simply not supported by the record. The Operating Agreement clearly identifies Mr. Extramil's 5% membership interest. CF, Ex. 463. Because Appellant is a limited liability company (LLC), and not a corporation, there is no stock; rather, there are membership interests. The Operating Agreement makes it clear that a membership interest is an ownership interest. *Id.*, § 1.18. Further, Appellant's argument that new ownership did not take effect is contradicted by its own Operating Agreement, making it clear that Mr. Extramil held an ownership interest in the concern as of January 1, 2021. Yet, as of May 14, 2021, Appellant had not filed a Form 0877 to document the change, required by the regulation at 38 C.F.R. § 74.3(b)(1). Accordingly, CVE was fully justified in removing Appellant from the VIP database. 38 C.F.R. § 74.21(d)(7) & (8). *CVE Appeal of JLS Medical Products, LLC*, SBA No. CVE-147-A, at 10-11 (2020); *CVE Appeal of Lachin Architects, APC*, SBA No. CVE-133-A, at 6 (2019).

Appellant's alleged reliance on provisions of the Operating Agreement dealing with the time of closing transactions for members' interest is misplaced, because these provisions relate to the purchase of interest of a bankrupt member. CF, Ex. 463, §§ 11.2, 11.3, 11.5. As indicated, *supra*, the Operating Agreement makes it clear that Mr. Extramil held his interest as of January 1, 2021. While Appellant claims that CVE should have accepted a new Form 0877, Appellant's attempt to cure its failure to submit a new Form 0877 after the fact is not permitted by the regulation. Indeed, Appellant failed to file a timely Form 0877, and that act is grounds for cancellation and removal from the VIP database. 38 C.F.R. § 74.21(d)(7). An untimely cure is not contemplated by the regulation, and CVE was not in error to refuse to accept it. *See JLS Medical Products*, at 10 (finding that OHA must determine whether CVE's decision was based upon an error of fact or law, not whether CVE made appropriate use of its discretionary authority to decide not to remove appellant.)

Lastly, Appellant's argument that CVE has imposed an unjustified six-month additional penalty is meritless and based on a misunderstanding of the process. Once a firm is found ineligible, it must wait six months before reapplying. 38 C.F.R. § 74.14(a). This is not an additional penalty, but an integral part of the cancellation process, required by the regulation.

Accordingly, I find that Appellant has failed to establish that CVE's decision to remove Appellant from the VIP database for failing to timely file a VA Form 0877 was based on any error of fact or law. Because this issue is dispositive, I need not consider the remaining issues raised in the CVE's NOVSC. *Size Appeal of [Drug Applicant]*, SBA No. SIZ-5362, at 10, fn. 3 (2012) (finding that when an issue is dispositive, OHA need not reach other issues raised in an appeal.)

IV. Conclusion

Appellant has failed to establish that CVE committed any error of fact or law in cancelling Appellant's verified status. I therefore DENY the appeal. 13 C.F.R. § 134.1112(f). 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); 38 C.F.R. § 74.22(e).

CHRISTOPHER HOLLEMAN  
Administrative Judge