

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

CVE Appeal of:

Watanabe Enterprises, LLC,

Appellant,

Petition for Reconsideration of
SBA No. CVE-218-A

SBA No. CVE-224-A

Decided: March 11, 2022

ORDER DENYING PETITION FOR RECONSIDERATION

I. Background

A. Prior Proceedings

On February 4, 2022, Watanabe Enterprises, LLC (Petitioner) 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 Watanabe Enterprises, LLC*, SBA No. CVE-218-A (2022) (“*Watanabe I*”). In that case, OHA dismissed Petitioner's appeal of a decision by the U.S. Department of Veterans Affairs, Center for Verification and Evaluation (CVE), which had cancelled Petitioner's status as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB).

OHA explained that Petitioner did not file a proper appeal petition, because Petitioner did “not allege[] any error on the part of CVE, and it does not appear that [Petitioner] disputes CVE's key findings or analysis.” *Watanabe I*, SBA No. CVE-218-A, at 2. CVE had determined that Petitioner changed its ownership structure without informing CVE, and that Petitioner failed to explain the role of its new minority owner, James G. Watanabe, who is not a service-disabled veteran, in Petitioner's business operations. *Id.* at 1. In its appeal, though, Petitioner conceded that it did not promptly inform CVE of changes in its ownership and management. *Id.* at 1-2. Further, Petitioner did not attempt to argue that it had adequately described the role of James Watanabe in Petitioner's business operations. *Id.* In addition, Petitioner acknowledged, as CVE had determined, that the then-current version of Petitioner's Operating Agreement contained contradictory provisions as to whether James Watanabe is Petitioner's sole manager. *Id.* Specifically, one section within the Operating Agreement stated that both James Watanabe and George I. Watanabe, a service-disabled veteran, are managers of Petitioner, but another section of the document identified James Watanabe as the sole manager. *Id.*

B. PFR

On February 4, 2022, Petitioner filed the instant PFR, requesting that *Watanabe I* be reconsidered. In support, Petitioner offers amendments to its Operating Agreement, dated January 31, 2022. According to Petitioner, the amendments demonstrate that both George Watanabe and James Watanabe are managers of Petitioner; that George Watanabe holds Petitioner's highest officer position; and that James Watanabe works under the direction of George Watanabe, who oversees and is responsible for Petitioner's day-to-day operations. (PFR at 1-2.) Petitioner urges OHA to conclude that these changes are sufficient to “clarify the issue of control.” (*Id.* at 2.) Petitioner, again, concedes that it did not promptly inform CVE of changes in ownership and management. (*Id.* at 2-3.)

C. Response

On February 18, 2022, CVE responded to the PFR. CVE asserts that Petitioner has not shown, nor even alleged, any error in *Watanabe I*. (Response at 1-2.) The PFR therefore should be denied.

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 20 calendar days after issuance of the decision. 13 C.F.R. § 134.1112(g). OHA issued *Watanabe I* on January 24, 2022, and Petitioner filed the instant PFR within 20 calendar days thereafter, so the PFR is timely.

To prevail on a PFR, the petitioner 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 arise from a “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 Appeal of Joseph M. Walls d/b/a Jailhouse Lawyers Ass'n*, SBA No. CVE-217-A, at 2 (2022) (PFR); *CVE Appeal of Optimum Low Voltage, LLC*, SBA No. CVE-196-A, at 3 (2021) (PFR).

B. Analysis

I find no merit to this PFR. As CVE correctly observes in its Response to the PFR, Petitioner has not alleged, let alone proven, any error in *Watanabe I*. Accordingly, there is no basis to disturb *Watanabe I* based on this PFR.

In lieu of alleging error in *Watanabe I*, Petitioner's principal argument is that Petitioner has now amended its Operating Agreement in an effort to address some of the deficiencies previously identified by CVE. Section I.B, *supra*. These amendments, however, are not properly before OHA, as OHA's rules of procedure for CVE Appeals generally preclude OHA from considering new evidence beyond the CVE Case File. 13 C.F.R. § 134.1110; *CVE Appeal of JLS Med. Prods., LLC*, SBA No. CVE-147-A, at 7 (2020). Moreover, even if the amendments were

properly before OHA, the amendments were created only after OHA issued in its decision in *Watanabe I*. See Sections I.B and II.A, *supra*. As a result, the amendments could not possibly demonstrate error on the part of OHA or CVE, as those amendments did not exist at the time that OHA and CVE made their respective decisions. *CVE Appeal of Bravo Fed. Consulting, LLC*, SBA No. CVE-213-A, at 3 (2021); *CVE Appeal of David Han d/b/a Coresivity*, SBA No. CVE-140-A, at 4 (2019); *CVE Appeal of LACHIN Architects, apc*, SBA No. CVE-133-A, at 6 (2019). If anything, the fact that Petitioner evidently saw the need to make substantial revisions to its Operating Agreement suggests that CVE's concerns about the prior iteration of the Operating Agreement were well-founded.

III. Conclusion

To prevail on a PFR, a petitioner must clearly show an error of fact or law material to the decision. 13 C.F.R. § 134.1112(g). Petitioner has demonstrated no such error in *Watanabe I*. I therefore DENY the PFR and AFFIRM the decision in *CVE Appeal of Watanabe Enterprises, LLC*, SBA No. CVE-218-A (2022).

KENNETH M. HYDE
Administrative Judge