

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

IN THE MATTER OF:

Transcendence, Inc.

Appellant,

U.S. Department of Veterans Affairs

SBA No. CVE-227-A

Decided: April 25, 2022

APPEARANCES

Saroja C. Koneru, Esq., for Transcendence, Inc., Montgomery, Alabama

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

DECISION

I. Introduction and Jurisdiction

On November 10, 2021, the U. S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) issued a Notice of Proposed Cancellation (NOPC) to Transcendence, Inc. (Appellant). On February 7, 2022, 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 February 22, 2022, 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

On May 2, 2016, Appellant was first certified as a SDVOSB. (Case File Exhibit (CF Ex.) 160, at 1). On September 29, 2021, Appellant was notified of the identity of the site visit examiner, and that she would be conducting a site visit. (CF Ex. 412.1, at 25.) On October 14, 2021, the CVE examiner conducted a telephonic site visit. (*Id.*, at 1.) CVE issued a Document Request for more information to determine whether Appellant continued to meet SBA's requirements, to be submitted by October 19, 2021. (*Id.*, at 18.) Appellant noted technical

difficulties with the online system, and so CVE provided two additional days, until October 21, 2021, for Appellant to submit the requested documents. (*Id.*, at 1.) CVE did not receive the documents by the deadline and issued a NOPC on November 10, 2021. (CF Ex. 418.)

In the NOPC, CVE found that it was unable to conclude that Appellant satisfies the requirements set forth at 38 C.F.R. Part 74. (*Id.*, at 1.) The NOPC noted that CVE was unable to determine verification, legal organization, control, or size because Appellant failed to provide the requested documentation. (*Id.*, at 2-3.) The NOPC requested that Appellant provide the following documents within 30 days of receipt of the NOPC: (1) business license(s); (2) technical licenses and certifications; (3) 2020 IRS Federal business tax returns; (4) 2020 IRS Federal personal tax returns for all shareholders of the concern; (5) company payroll summary; (6) copies of the last five contract awards; (7) three most recent rental payments; (8) current building lease; and, (9) copy of the minutes of the most recent Board of Directors meeting. (*Id.*, at 2-3.)

B. Response to NOPC

In response to the NOPC, Appellant uploaded, among other things, the following on or about November 10, 2021: (1) a copy of the building lease; (2) IRS Forms 941; (3) contract awards; (4) Board of Directors minutes; (5) license; (6) extension to file 2020 Federal personal tax returns; (7) extension to file 2020 Federal business tax returns. (CF Exs. 423-429.) On December 6, 2021, CVE sent Appellant a notification email regarding document request. (CF Ex. 431.) Appellant uploaded, among other things, the following additional information: (1) additional contract awards; (2) 2020 IRS Forms 941 for Q1, Q2, and Q3; and (3) lease agreement. (CF Exs. 432-443.) On January 19, 2022, CVE sent Appellant another notification email regarding document request. (CF Ex. 445.) Appellant submitted a letter from its Certified Public Accountant (CPA), as of which the CPA notifies CVE that it received a request from Appellant on January 10, 2022, to provide 2020 tax returns by January 19, 2022. (CF Exs. 446-448.) CPA further stated that it was unable to meet this deadline and requested an extension to January 26, 2022 to submit the 2020 tax returns. (*Id.*)

C. CVE's Cancellation

On February 7, 2022, CVE issued a NOVSC to Appellant. (CF Ex. 454.) CVE stated that Appellant's response to the NOPC was not adequate to justify overturning the findings of the NOPC. (*Id.*, at 1.) Therefore, CVE cancelled Appellant's status in the VIP Database. (*Id.*) CVE concluded that it was unable to determine verification eligibility because Appellant failed to provide (1) 2020 IRS Federal business tax returns; (2) 2020 IRS Federal personal tax returns; (3) company payroll summary; and (4) three most recent rental payments. (*Id.*, at 2.) Absent this information, CVE was also unable to determine that the service-disabled veteran (SDV) maintains control over Appellant or receives the highest compensation pursuant to 13 C.F.R. § 125.13(i)(2). (*Id.*, at 2-3.) Lastly, without the requested documentation, CVE was unable to determine size; specifically, whether Appellant qualified as a small business under the size standards at 13 C.F.R Part 121. (*Id.*, at 3.)

D. The Appeal

On February 22, 2022, Appellant filed the instant Appeal with OHA. (Appeal, at 1.) Appellant requests that OHA supplement the Case File with additional exhibits and argues good cause exists under 13 C.F.R. § 134.1110. (*Id.*, at 5-6.) Appellant maintains that it was unable to meet the deadline due to Covid-19 and technical issues and consequently requested an extension of time. (*Id.*, at 6.) According to Appellant, CVE failed to address its request for additional time and failed to reopen the portal. (*Id.*) Appellant summarizes that the additional exhibits will establish that it qualifies as a SDVOSB. (*Id.*)

Secondly, Appellant argues it timely submitted a request for an extension to provide CVE the 2020 Federal business and personal tax returns. (*Id.*, at 7.) Specifically, Appellant alleges that the CPA failed to complete Appellant's tax returns due to Covid-19 and technical issues. (*Id.*) Accordingly, Appellant alleges that the CPA filed an extension to submit the tax returns. (*Id.*) Appellant submitted to CVE a copy of this request for an extension on January 19, 2022, but CVE failed to acknowledge the request. (*Id.*) Appellant concludes that if CVE had provided an extension, Appellant would submit tax returns that reflect its annual receipts and qualification as a small business pursuant to 13 CFR § 121.201. (*Id.*)

Further, Appellant contends that it had good cause to assume its submission of IRS Forms 941 qualified as an alternative to CVE's payroll request due to its acceptance in past verifications. (*Id.*, at 8.) Specifically, Appellant alleges that CVE has never objected to the substitute of IRS Forms 941; which caused Appellant to assume this document was a viable alternative to verify employee compensation. (*Id.*) Appellant further notes that former shareholder, now deceased, who was a CPA, had completed the CVE verification in the past, and so it was unclear to Appellant that IRS Form 941 was insufficient to show Appellant's payroll summary. (*Id.*) Appellant provides copies of the payroll summary and concludes that if CVE had considered these documents, it would determine that the SDV received the highest compensation in 2020 and 2021, thereby confirming his control of the concern, pursuant to 13 C.F.R § 125.13(i)(2). (*Id.*, at 9.)

Finally, Appellant argues that the submission of the three recent rental payments was sufficient compliance with CVE's request. (*Id.*, at 9.) Appellant maintains that it submitted three accurate rental payment receipts. (*Id.*) According to Appellant, the third payment was double the monthly rent to cover two months. (*Id.*, at 10.) Appellant further explains that the difference in rental payments is a “de minimis rounding error that in no way undercuts the receipt.” (*Id.*) Appellant also asserts that the recipients are different because the rental property was sold to a new landlord during the current lease terms, but the location remains the same. (*Id.*)

E. CVE's Response

On March 16, 2022, CVE filed a response to this appeal. (Response, at 1.) CVE recounts that it contacted Appellant via telephone to conduct a verification examination on October 14, 2021. (*Id.*) CVE requested Appellant provide a number of documents. (*Id.*) Appellant failed to provide any documents, despite a seven-day extension, and a suggestion to contact the helpdesk

for assistance. (*Id.*) CVE asserts Appellant neither contacted the examiner to request additional time nor provided the documents. (*Id.*)

CVE asserts it issued the NOPC on November 10, 2021, enumerating the items which had not been provided together with alternative documents which would be acceptable if the requested documents were not available. (*Id.*, at 1-2.) The NOPC gave Appellant 30 days to file its response. (*Id.*, at 2.) Appellant filed 18 documents, but the filed documents did not resolve the issue. (*Id.*) CVE granted an additional extension of time to January 19, 2022, and Appellant submitted nine more documents. (*Id.*)

CVE asserts it issued the NOVSC on February 7, 2022, because a number of the requested documents remained outstanding, and without these it could not determine whether an SDV was the highest compensated employee, whether Appellant qualified as a small business, and whether a dependent relationship existed between Appellant and its Lessor. (*Id.*, at 2-3.)

CVE contends that Appellant received extensions on two separate occasions but failed to inform the site examiner of any technical issues nor provide documentation that would resolve the issue. (*Id.*, at 6.) CVE has been requesting this very same evidence since October of 2021. (*Id.*, at 7.) CVE further argues against the admission of additional evidence and maintains that Appellant had “adequate time and opportunity” to respond to CVE's request. (*Id.*) CVE concludes that even if OHA were to allow new evidence, this “would not alter whether CVE committed clear error of fact or law.” (*Id.*)

CVE further argues Appellant does not meet the burden of proof that CVE committed a clear error of fact or law. (*Id.*, citing 13 C.F.R. § 134.1111.) Specifically, CVE argues that it was unable to complete the verification examination because of the various discrepancies in the rental payments provided by Appellant and missing documents. (*Id.*) According to CVE, Appellant holds a rental lease with 60 Commerce, LLC; however, the provided documents show a wire transfer to Ascent Hospitality Management Co. (*Id.*) Further, the lease suggests a monthly payment of \$2,128.00; however, Appellant submitted documents with an amount of \$2,054.00. (*Id.*) CVE determined that based on the submitted documentation, it could not conclude that the documents reflected payments in accordance with the provided lease. (*Id.*)

CVE further contends that it issued a cancellation because Appellant did not provide the requested payroll information for CVE to determine control. (*Id.*, at 7-8.) According to CVE, Appellant was notified in the NOPC to provide payroll information to determine whether the SDV received the highest compensation. (*Id.*) Appellant provided IRS Forms 941, and alleged this was a sufficient alternative; however, CVE points out that these forms did not provide payroll information for employees. (*Id.*) Therefore, CVE concludes that it was unable to determine the highest compensation, pursuant to 38 C.F.R. § § 74.20(a) and (b); and 38 C.F.R. §§ 74.21(d)(2) and (5), because it lacked the requested documentation. (*Id.*)

Lastly, CVE argues that it was unable to determine size because Appellant failed to provide personal and business tax returns for year 2020. (*Id.*, at 8.) CVE explains that while Appellant could have provided copies of extensions in lieu of returns, it only provided one extension, which was for the SDV's 2020 personal tax return, and no copies of qualifying

extensions for Appellant's business tax returns. (*Id.*) Therefore, CVE concludes that it was unable to determine size in compliance with the regulations at 13 C.F.R. §§ 121.104(a); 13 C.F.R. § 125.11; 38 C.F.R. § 74.13(d); and 38 C.F.R. §§ 74.20(a) and (b).

F. Appellant's Objections to the Case File

On March 28, 2022, Appellant filed Appellant's Objections to the Case File. (Objection, at 1.) Appellant maintains that good cause exists to supplement the Case File with additional exhibits. (*Id.* at 2.) Appellant again argues that Covid-19 and technical issues out of its control resulted in it requesting an extension; however, CVE failed to respond to the request. (*Id.*) Appellant further argues that the Case File omits an email chain between Appellant and CVE where Appellant notifies CVE of the CPA's delay, and requests that CVE reopen the portal and allow Appellant to submit the missing documents. (*Id.*) Therefore, Appellant submits the following documents and requests they be included in the Case File: 2022 email chain as Exhibit A; 2020 IRS Federal business tax returns as Exhibit B; and 2020 IRS Federal personal tax returns as Exhibit C. (*Id.*, at 2-3.)

Secondly, Appellant again maintains its belief that IRS Forms 941 were a sufficient substitute to payroll information and refers to past verifications where these forms were submitted and accepted. (*Id.*, at 3, citing CF Exs. 105, 339, 347, 390.) Therefore, Appellant submits the following documents and requests that they be included in the Case File: Appellant's 2020 wage and tax register as Exhibit D; Appellant's 2021 wage and tax register as Exhibit E. (*Id.*)

G. CVE's Response to Appellant's Objections to the Case File

On March 29, 2022, CVE filed a Motion for Leave to respond to Appellant's Objections to the Case File. (Motion for Leave, at 1.) OHA granted this motion, ordering that CVE respond by April 4, 2022. (Order 3.29.2022, at 1.)

On April 4, 2022, CVE filed a Response to Appellant's Objections to Case File. (Response, at 1.) CVE concedes to the inclusion of Appellant's Exhibit A, 2022 email chain, finding that the email was inadvertently not included in the Case File. (*Id.*, at 1-2.)

Conversely, CVE argues against the inclusion of the remaining exhibits in Appellant's Objections to the Case File. (*Id.*, at 2.) Specifically, CVE argues that Exhibit B, 2020 IRS Federal business tax returns, and Exhibit C, 2020 IRS Federal personal tax returns, should not be included because Appellant received multiple extensions to submit these documents but failed to do so. (*Id.*) Further, CVE argues that although Appellant did submit copies of IRS Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, the extension “appears to have expired,” as it was filed on May 17, 2021, and the extension lasts for 6 months. (*Id.*) CVE refers to the IRS Tax Form 4868, which states, “[u]se form 4868 to apply for 6 more months . . . to file Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SS.” (*Id.*, at 2 n.1 citing CVE Exhibits A and B.) CVE maintains that “the CVE cancellation process does not provide for extension of time.” (*Id.*, at 2.)

CVE further argues that Exhibit D, Appellant's 2020 wage and tax register, and Exhibit E, Appellant's 2021 wage and tax register, should be omitted from the Case File. (*Id.*, at 3.) According to Appellant, these exhibits were available and should have been provided prior to the January 19, 2022 deadline. (*Id.*) Further, CVE contends that its request for a payroll summary was “straight forward, unambiguous and specific.” (*Id.*, at 3.) CVE provides email correspondence where it specifically requested payroll documents for the remaining 2020 and 2021. (*Id.*) CVE maintains that Appellant's argument that CVE accepted IRS Forms 941 as a substitute in past verifications is incorrect and unsubstantiated. (*Id.*, at 4.) CVE refers to past verifications in the Case File and determines that it may have not requested payroll information in certain instances in the past. (*Id.*) However, CVE maintains it could not determine an instance where it requested IRS Forms 941 in place of payroll information. (*Id.*) Instances where CVE requested IRS Forms 941 were due to Appellant's change request and used to determine whether Appellant was eligible for employee-based size standards. (*Id.*)

Lastly, CVE argues against Appellant's appeal argument on rental payments, finding that the differences between the rental payments are “more than a de minimus amount.” (*Id.*, at 5.) CVE maintains that it requested rental payments that reflect the amount listed on the lease. (*Id.*) Appellant did not provide an additional amended lease to reflect the new landlord or the rental payment amount; therefore, CVE concluded there was a dependent relationship under 13 C.F.R. § 125.13(i)(7). (*Id.*)

III. Discussion

A. Burden of Proof and Objections to the Record

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).

Appellant objects to the record, and request that OHA admit Exhibits A to E into the Case File. Section II.F, *supra*. CVE consents to the admission of Exhibit A but objects to admission of Appellant's remaining exhibits. Sections II.F and II.G, *supra*. Exhibit A is an email chain where CVE allowed Appellant seven days to upload missing documents; Appellant requested an extension; and Appellant requested that CVE reopen the portal. *Id.* CVE admits that it inadvertently omitted this email chain. *Id.* The regulation requires that evidence beyond the Case File will not be admitted except for good cause shown. 13 C.F.R. § 134.1110. Here, the information in the email is important to show CVE's attempt to collect the missing information and Appellant's requests; both agree it should be included; therefore, this email chain should have been included in the Case File. Accordingly, I find that good cause to admit it has been established, and I order it ADMITTED into the record.

Nevertheless, I decline to admit into the record, Appellant's Exhibits B to E. These documents are not part of the Case File because Appellant did not submit the documents to CVE within the applicable deadlines despite CVE's grant of multiple extensions. Appellant had numerous opportunities to submit these documents and failed to do so. I conclude that I must

therefore exclude them from the record, because Appellant has not established good cause for the untimely submission of these documents.

B. Analysis

VA regulations are clear that CVE may remove a concern from the VIP database if the concern “[f]ail[s] to make required submissions or responses to CVE or its agents, including a failure to make available . . . requested information or data within 30 days of the date of request.” 38 C.F.R. § 74.21(d)(5). In the instant case, there is no dispute that Appellant failed to produce the documents requested by the site examiner. Sections II.D and II.E, *supra*. On October 14, 2022, Appellant received a seven-day extension, but failed to produce documents. Section II.E, *supra*. On November 10, 2022, Appellant received a NOPC with 30 days to produce the missing documents or an alternative. *Id.* Although Appellant filed 18 documents, nine remained outstanding. *Id.* Again, CVE provided a second extension with a January 19, 2022 deadline; however, Appellant failed to produce the missing documents by the deadline. *Id.* Given Appellant failed multiple times to comply with CVE's request for information, I find that CVE had the authority to remove Appellant.

Appellant maintains that cancellation was unwarranted because it requested an extension prior to the deadline, and CVE failed to reopen the portal once the documents were available. Sections II.D and II.F, *supra*. I find this argument unpersuasive for various reasons. First, CVE requested the same information since October of 2021, but Appellant did not attempt to provide any documents until after receiving a NOPC. Section II.E, *supra*. Second, Appellant was able to file 19 documents on or about November 10, 2021 and an additional nine documents on or about January 18, 2022; although it cited to technical issues in October of 2021, it failed to notify the site examiner of any additional technical issues until the day of the deadline. *Id.* Third, as argued by CVE, Appellant did not notify its CPA of CVE's request until January 10, 2022, providing the CPA only nine days to produce the requested tax returns. Sections II.D and II.E, *supra*. Lastly, VA regulations do not mandate that CVE provide extensions when requested; this is a discretionary action. Section II.E, *supra*. I find that when given the opportunity, Appellant failed to comply with CVE's requests, justifying its removal in accordance with 38 C.F.R. § 74.21(d). CVE Appeal of GCBO Sourcing Partners, LLC, SBA No. CVE-112, at 4 (2019).

Appellant further maintains that Covid-19 and technical issues caused a delay in submission. Sections II.D and II.F, *supra*. Appellant argues that these factors are good cause to admit the requested documents into the Case File. *Id.* Outside of Exhibit A of the Appellant's Objections to the Case File, OHA cannot consider the new evidence accompanying this appeal. Section III.A, *supra*. Appellant has not explained why good cause exist to supplement this record. *Id.* Moreover, even if OHA were to consider the new information, this still would not demonstrate that CVE erred in its cancellation decision because, at the time of the cancellation, Appellant had not responded to CVE's requests for information. GCBO Sourcing patterns, LLC, SBA No. CVE-112, at 5.

The remaining contentions, that Appellant submitted IRS Forms 941 as an acceptable substitute for payroll summary in past reverifications and provided sufficient rental payment receipts, also failed to show CVE erred as a matter of fact or law. Section II.D, *supra*. The

arguments are not supported by the record. It is clear from the record that CVE specifically requested Appellant's payroll summary via email on three separate occasions. Sections II.E and II.G, *supra*. The record also does not provide an instance where CVE accepted IRS Forms 941 in lieu of payroll summaries. *Id.* Further, discrepancies in the rental payments and the missing documents led CVE to reasonably conclude that it could not determine verification. *Id.* I find that Appellant did not adequately respond to CVE's repeated request for specific information, and Appellant failed to meet the deadlines to provide the information. *In the Matter of: Greenwater Marine Sciences Offshore, Inc.*, SBA No. CVE-212, at 7 (2021).

Appellant is thus unable to establish that CVE erred as a matter of fact or law in its decision to remove it from the VIP database. Appellant failed to submit information when requested. That Appellant claims it can submit such information now does not alter the fact that it failed to submit it in a timely manner, and thus CVE was not in error at that time to decide to remove Appellant from the database.

IV. Conclusion

Appellant has not proven CVE's decision was based on a clear error of fact or law. 13 C.F.R. § 134.1111. I must therefore DENY the 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