

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

CVE Appeal of:

Komplete Systems Integrators, Inc.,

Appellant,

Notice of Verified Status Cancellation

SBA No. CVE-244-A

Decided: October 12, 2022

APPEARANCE

Kevin L. Doby, Chief Executive Officer, Komplete Systems Integrators, Inc.,
Fayetteville, Georgia

DECISION¹

I. Introduction and Jurisdiction

On August 22, 2022, Komplete Systems Integrators, Inc. (Appellant) appealed a decision of the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE), cancelling Appellant's status as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB). Appellant maintains that the cancellation 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 appeal within 10 business days after receiving the cancellation notice on August 9, 2022. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. CVE Verification

Appellant is a corporation based in Fayetteville, Georgia. On June 2, 2012, CVE verified Appellant as an SDVOSB and included Appellant in the Vendor Information Pages (VIP)

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA now issues this redacted version for public release.

database of eligible concerns. (Case File (CF), Exh. 39.) On July 7, 2014, CVE re-verified Appellant for a period of two years. (CF, Exh. 91.) On September 14, 2016, CVE again re-verified Appellant for an additional period of two years. (CF, Exh. 197.) On May 20, 2020, CVE re-verified Appellant for a period of three years. (CF, Exh. 199.)

B. The NOPC

On June 28, 2022, CVE issued a Notice of Proposed Cancellation (NOPC) to Appellant, proposing to cancel Appellant's verified status and registration in the VIP database. (CF, Exh. 372.) CVE observed that, under 38 C.F.R. § 74.21(d), CVE may cancel a participant's verification for “good cause,” which may include:

(2) Failure by the participant to maintain its eligibility for program participation
[or]

...

(5) Failure to make required submissions or responses to CVE or its agents, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.

(*Id.* at 2, quoting 38 C.F.R. § 74.21(d).)

In the instant case, CVE contacted Appellant by telephone on May 23, 2022 to conduct a verification examination pursuant to 38 C.F.R. § 74.20. (*Id.*) As part of this review, CVE requested “to no avail” that Appellant produce various documentation:

- Company payroll summary, listed by individual employee name and applicable wages for 2021 and 2022, year-to-date
- Please include any owner distributions
- Confirmation of the three (3) most recent rental payments for [Appellant's] principal place of business
- Current signature card authenticated by financial institution identifying all authorized signatories on the business bank account

(*Id.*) Absent such information, “CVE cannot reasonably conclude that the requirements of 38 C.F.R. § 74.21(d)(2) and (5) have been satisfied.” (*Id.*) Furthermore, without the requested records, CVE could not determine whether Mr. Kevin L. Doby, the service-disabled veteran

upon whom Appellant's eligibility as an SDVOSB is based, is Appellant's highest-compensated employee, as is generally required by 13 C.F.R. § 125.14(i)(2).² (*Id.* at 2-3.)

C. Appellant's Response to the NOPC

In response to the NOPC, Appellant uploaded five documents to CVE, including Mr. Doby's 2020 Form W-2. (CF, Exh. 373.) According to his Form W-2, Mr. Doby earned \$[XXXX] in wages, tips, and other compensation from Appellant during 2020. (*Id.*) Appellant also submitted an undated document purporting to report the “gross wages” of eight individuals associated with Appellant. (CF, Exh. 376, at 1.) Mr. Doby is not included on the list. Appellant did not provide information pertaining to the eight individuals' job positions or veteran status. (*Id.*) According to the report, the highest-paid person received gross wages of \$[XXXX]. (*Id.*)

Appellant also submitted a “Statement of Account” and various invoices for April, May, and June 2022. (CF, Exh. 374.) According to the documents, Appellant paid \$[XXXX] monthly in connection with the “GA, Fayetteville - Main Street Office Center.” (*Id.* at 1, 6, and 11.) Finally, Appellant uploaded a Wachovia Bank signature card, dated 2003, showing Mr. Doby as the sole signatory. (CF, Exh. 377.)

D. Notice of Verified Status Cancellation

On August 9, 2022, CVE issued a Notice of Verified Status Cancellation (NOVSC) formally cancelling Appellant's status as a verified SDVOSB. (CF, Exh. 378.) CVE explained that the documents submitted by Appellant were “not adequate to justify overturning all of the findings listed in the NOPC.” (*Id.* at 1.) In particular, CVE could not determine whether Appellant had maintained its eligibility for program participation in the VIP database in accordance with 38 C.F.R. § 74.21(d)(2). (*Id.* at 2.) Further, Appellant did not submit “required submissions or responses to CVE within 30 days of the date of request as required by 38 CFR § 74.21(d)(5).” (*Id.*)

CVE found that Appellant did not submit the requested “payroll summaries for 2021 and 2022, year-to-date, including confirmation of any distributions to owners.” (*Id.* at 2-3.) Instead, Appellant only submitted a 2020 Form W-2 for Mr. Doby, and “an undated list of wages that did not include Mr. Doby.” (*Id.*) Based on these scant submissions, CVE was “unable to ascertain whether the list provided reflects the payroll of either 2021 or 2022 or if Mr. Doby received any distributions in 2021 or 2022.” (*Id.* at 3.) As a result, CVE could not reasonably conclude that Mr. Doby, the service-disabled veteran upon whom Appellant's verification eligibility is based, is Appellant's highest-compensated employee. (*Id.*)

Appellant also failed to provide other requested records. CVE was not satisfied that Appellant's bank signature card, a Wachovia Bank signature card dated 2003, was from “an

² Effective August 22, 2022, SBA redesignated the SDVOSB ownership and control regulations, previously found at 13 C.F.R. §§ 125.11 through 125.14, as §§ 125.12 through 125.15. 87 Fed. Reg. 43,731, 43,739 (July 22, 2022). Citations in this decision are to the SDVOSB ownership and control regulations as redesignated.

active financial institution” since publicly-available information reflects that “Wachovia Bank was acquired in 2008 and no longer exists.” (*Id.* at 2.) Appellant offered no further explanation regarding the bank signature card. (*Id.*) CVE also found that Appellant failed to provide any response or explanation to CVE's request for confirmation of rental payments. (*Id.*) As a result, CVE concluded that cancellation of Appellant's verified status is warranted pursuant to 38 C.F.R. § 74.21(d)(2) and (5). (*Id.* at 2-3.)

E. Appeal

On August 22, 2022, Appellant appealed the NOVSC to OHA. Appellant contends that CVE erred in cancelling Appellant's verified status and requests that OHA vacate the cancellation and reinstate Appellant's CVE certification. (Appeal at 1.) Appellant offers further explanation regarding the missing information identified in the NOVSC: 1) payroll summaries; 2) bank signature card; and 3) rental payments. (*Id.* at 1-2.) In addition, Appellant seeks to introduce new evidence addressing each of the three categories of missing information. In Appellant's view, there is “good cause” to admit the new evidence into the record because it “clearly and indisputably, demonstrate[s] that the shortcomings for certification are overcome.” (*Id.* at 1.) Appellant allows that “it would have been best to submit these exhibits initially” to CVE, but offers no explanation for why Appellant failed to do so. (*Id.* at 1-2.)

Appellant contends that its President/CEO, Mr. Doby, is its highest-compensated employee. (*Id.* at 1.) In preparing a response to the NOPC, Appellant mistakenly believed that it need only submit Mr. Doby's 2020 Form W-2 as evidence of his “control” over the firm. (*Id.*) Appellant has now “remedied that error” with a signed letter from Mr. Doby describing his income over the period 2020-2022. (*Id.*, citing Exh. 2D.) The letter indicates that Mr. Doby received “compensation and distributions” of \$[XXXX] for 2020; \$[XXXX] for 2021; and \$[XXXX] for 2022 year-to-date. (*Id.*, Exh. 2D at 1.)

In addition, Appellant seeks to admit Exhibits 2A through 2C, which purportedly reflect the compensation of Appellant's employees and independent contractors for 2020, 2021, and 2022 year-to-date. (Appeal at 1, citing Exhs. 2A, 2B, and 2C.) According to Exhibit 2A, the highest-compensated individual for Appellant during calendar year 2020 was [Employee], with gross wages of \$[XXXX]. (*Id.*, Exh. 2A at 1.) Exhibit 2C also covers the 2020 calendar year, and again indicates that [Employee] is the highest-compensated employee, although his gross wages are identified as only \$[XXXX]. (*Id.*, Exh. 2C at 1.) For the 2021 calendar year, [Employee] is listed as the highest-paid individual with gross wages totaling \$[XXXX]. (*Id.*, Exh. 2B at 1.) Mr. Doby's name is absent from all three of the payroll summaries. (*Id.*, Exhs. 2A, 2B, and 2C.) Appellant asserts that Mr. Doby is not included on the payroll summaries because “he chooses, as CEO/President, to take his income in the form of distributions.” (Appeal at 1.)

Next, Appellant contends that it has “maintained the same bank account since its inception” and that Appellant's account “has not changed during the bank's name change in 2008 from Wachovia to Wells Fargo.” (*Id.* at 2.) In response to CVE's concerns, however, Appellant seeks to admit an “Addendum to Certificate of Authority,” dated August 12, 2022, identifying Mr. Doby as “the sole authorized signer” for Appellant's Wells Fargo bank account. (*Id.*, citing Exh. 3.) Finally, Appellant maintains that it “continues to lease space at [address]” in

Fayetteville, Georgia. (*Id.*) In support, Appellant offers a copy of an unsigned “Renewal Agreement,” dated July 28, 2021, and documents purporting to show that its lease payments are “in good standing and paid in full.” (*Id.*, citing Exhs. 4A-4D.)

F. Case File

According to the Case File, Appellant is a corporation established in the state of Georgia on May 3, 2001. (CF, Exh. 55, at 1.) Appellant is wholly-owned by Mr. Doby, a service-disabled veteran. (CF, Exhs. 42, 240, 280-81, and 311.) Mr. Doby is also the President and CEO of Appellant. (CF, Exh. 4.)

In the process of verifying and reverifying Appellant as an SDVOSB, CVE previously voiced concerns about whether Mr. Doby was Appellant's highest-compensated employee. In conducting Appellant's 2016 re-verification, CVE relied upon a Letter of Explanation from Mr. Doby in which he stated that, although “several of [Appellant's] employees . . . have received more compensation than I have in 2016,” this was a temporary measure to retain qualified staff. (CF, Exh. 190, at 1.) For Appellant's 2020 CVE re-verification, Mr. Doby claimed that he had “temporarily deferred taking distributions from [Appellant], which would make me the highest paid employee of the company, to pursue designations and certifications to differentiate [Appellant] from its competitors.” (CF, Exh. 331, at 1.)

The Case File includes multiple versions and copies of Appellant's bank signature card with Wachovia Bank, Fifth Third Bank, and Wells Fargo Bank. (CF, Exhs. 16, 207, 216, 287, 317-18, and 377.) According to the most recent Wells Fargo “Addendum to the Certificate of Authority,” dated September 27, 2018, [XXXXXXX] was removed as an authorized signer, leaving Mr. Doby as Appellant's sole remaining authorized signer. (CF, Exh. 318.)

Appellant did not file any objections to the Case File.

G. CVE's Response

On September 15, 2022, CVE confirmed that it did not intend to submit a separate response to the appeal, and instead “stands on the [NOVSC] as correct and factual.” (E-mail from J. Bigelow Perkins (Sept. 15, 2022).)

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, that the cancellation was based upon clear error of fact or law. 13 C.F.R. § 134.1111.

B. Analysis

Appellant has not demonstrated clear error in CVE's determination. Therefore, this appeal must be denied.

The record reflects that, as part of a verification review, CVE requested that Appellant produce various documentation to confirm that Appellant remains an eligible SDVOSB. Section II.B, *supra*. Appellant, though, did not produce all of the documentation requested by CVE. For instance, although CVE instructed that Appellant provide complete payroll information, including owner distributions, for 2021 and 2022 year-to-date, Appellant submitted only a 2020 Form W-2 for its CEO, Mr. Doby, and an undated list of “gross wages” for eight other individuals, but not Mr. Doby. Section II.C, *supra*. The applicable regulations make clear that CVE may cancel a concern's verified status if the concern “[f]ail[s] to make required submissions or responses to CVE or its agents, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.” 38 C.F.R. § 74.21(d)(5); *see also CVE Appeal of Transcendence, Inc.*, SBA No. CVE-227-A (2022); *CVE Appeal of Greenwater Marine Sciences Offshore, Inc.*, SBA No. CVE-212-A (2021). Accordingly, I see no basis to conclude that CVE improperly cancelled Appellant's verified status. Appellant did not comply with CVE's request for information, in contravention of 38 C.F.R. § 74.21(d)(5).

As CVE discussed in the NOPC and NOVSC, without the requested financial records, CVE lacked sufficient information to determine whether Appellant remained an eligible SDVOSB. Sections II.B and II.D, *supra*. In particular, CVE could not ascertain whether Mr. Doby, the service-disabled veteran upon whom Appellant's eligibility as an SDVOSB was based, is Appellant's highest-compensated employee, as is generally required by 13 C.F.R. § 125.14(i)(2). *Id.* This issue has, in fact, been a recurring problem for Appellant, previously raised by CVE during Appellant's 2016 and 2020 re-verifications. Section II.F, *supra*. Appellant's failure to provide the requested financial records, then, cannot be disregarded as mere harmless error. *CVE Appeal of David Han d/b/a Coresivity*, SBA No. CVE-140-A, at 3 (2019).

In its appeal, Appellant acknowledges that it did not submit all of the requested information to CVE. Section II.E, *supra*. Appellant asks, however, that OHA consider various new exhibits accompanying the appeal. *Id.* Pursuant to 13 C.F.R. § 134.1110, evidence beyond the Case File is admissible only if good cause is shown, and Appellant here has not demonstrated why good cause exists to supplement the Case File. Specifically, Appellant offers no rationale for why Appellant did not, or could not, provide the requested information to CVE in response to the NOPC. *Id.* Appellant's motion to introduce new evidence therefore is DENIED.

Lastly, it is worth noting that, even if OHA were to accept Appellant's new evidence, Appellant has not advanced any valid reason to disturb the NOVSC. Considering the new evidence would not, by itself, establish that CVE erred in its cancellation decision, because, at the time of the cancellation, Appellant had not responded to CVE's requests for information. *CVE Appeal of RealSims, LLC*, SBA No. CVE-129-A, at 11 (2019); *CVE Appeal of GCBO Sourcing Partners, LLC*, SBA No. CVE-112-A, at 5 (2019). Furthermore, Appellant

has not persuasively shown that the new evidence might have altered CVE's decision. Among other issues, Appellant's new evidence appears incomplete, as Appellant still has not provided payroll information for 2022 year-to-date, as CVE requested. Sections II.B and II.E, *supra*. Further, based on Appellant's new evidence, at least one individual, [Employee], apparently was more highly-compensated than Mr. Doby during both 2020 and 2021, thus seemingly corroborating CVE's concern that Mr. Doby is not Appellant's highest-compensated employee. *Id.*

IV. Conclusion

Appellant has not established that CVE erred in cancelling Appellant's verified 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); 38 C.F.R. § 74.22(e).

KENNETH M. HYDE
Administrative Judge