

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

CVE Appeal of:

ISC Intelligent Strategic Coaching and Consulting d/b/a Meineke Car Care Center #2835,

Appellant,

SBA No. CVE-246-A

Decided: November 15, 2022

ORDER DISMISSING APPEAL¹

I. Background

On October 25, 2022, ISC Intelligent Strategic Coaching and Consulting LLC d/b/a Meineke Car Care Center #2835 (Appellant) filed an appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). In its appeal, Appellant sought to challenge a Final Post-Review Findings (PRF) Notice issued by the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE).

Because the appeal made no reference to any formal CVE decision, OHA ordered Appellant to show cause why the appeal should not be dismissed as premature and/or for lack of standing. On November 8, 2022, Appellant provided a copy of a CVE decision, dated October 18, 2022, denying Appellant's application for verification as a Veteran-Owned Small Business (VOSB). In an accompanying e-mail, Appellant stated:

The basic premise of my appeal begins with [CVE] not evaluating my company as registered in Vetbiz [] but basing my eligibility on a sub company that operates under the umbrella of my legal company. The sub company is one of many business ventures that are subordinate to the primary company. If the sub company did not exist the primary company would still exist [].

(E-mail from R. Gathers (Nov. 8, 2022) (emphasis in original).)

Appellant's response to OHA's order established that a final CVE decision was issued, so the appeal no longer appeared premature. Nevertheless, the appeal appeared deficient for other reasons. Appellant's latest e-mail was neither signed nor served to CVE, as required by 13 C.F.R.

¹ OHA adjudicates CVE appeals pursuant to 38 U.S.C. § 8127(f)(8)(A), 38 C.F.R. part 74, and 13 C.F.R. part 134 subpart K.

§§ 134.209 and 134.1105. The e-mail did not explain why CVE's denial decision was alleged to be erroneous, as required by 13 C.F.R. §§ 134.1105(a)(2) and 134.1111. Furthermore, because more than 10 business days had passed since the issuance of CVE's denial decision, the appeal appeared untimely. As a result, OHA directed Appellant to show cause why the appeal should not be dismissed as non-specific, untimely, or otherwise not in compliance with OHA's rules of procedure.

On November 9, 2022, Appellant filed a response to OHA's second order. Appellant asserted that:

[Appellant's principal, Mr. Ronnie Gathers,] filed for VA certification for my legal business which is [Appellant] as registered with the state of Maryland. Somehow the [CVE] have turned the request into seeking approval for one of the several businesses that I operate under the Legal name. My tax returns acknowledge, and my [Employer Identification Number (EIN)] number is assigned to [Appellant]. For this reason, I believe their decision is made in "Error."

(Response at 1.) Accompanying the response, Appellant provided a copy of Mr. Gathers' DD Form 214, confirming his veteran status; a communication from the Internal Revenue Service assigning Appellant an EIN number; and "Articles of Organization," dated March 28, 2017, reflecting that Appellant was organized as an LLC in the state of Maryland.

II. Discussion

The instant appeal is deficient and must be dismissed. In response to OHA's first order, Appellant provided a copy of CVE's denial decision, dated October 18, 2022. Section I, *supra*. The decision indicates that CVE identified multiple problematic provisions in a Franchise Agreement between Appellant and a non-VOSB, which interfered with Mr. Gathers' ability to control Appellant's daily business operations and long-term decision-making. (CVE Denial, at 1-18.) CVE further found that Mr. Gathers has other outside employment, preventing him from working for Appellant during normal business hours. (*Id.* at 18-21, citing 13 C.F.R. § 125.14(k).)

Although Appellant disagrees with CVE's determination, Appellant has not alleged any error in CVE's decision. Indeed, Appellant makes no mention of the Franchise Agreement or Mr. Gathers' outside employment — the central issues raised in CVE's decision — and Appellant does not attempt to explain why CVE's decision on these points was erroneous.

Under OHA's rules of procedure, a proper CVE appeal petition must include "[a] statement of why the cancellation or denial is in error." 13 C.F.R. § 134.1105(a)(2). Such information is essential because, in a CVE appeal proceeding, the appellant has the burden of proving, by a preponderance of the evidence, that CVE's decision is based upon a clear error of

fact or law. *Id.* § 134.1111. Here, Appellant has not alleged any error on the part of CVE, and it does not appear that Appellant disputes CVE's key findings or analysis. Accordingly, this appeal is defective and must be dismissed. *CVE Appeal of Watanabe Enterprises, LLC*, SBA No. CVE-218-A, at 2 (2022), *recons. denied*, SBA No. CVE-224-A (2022) (PFR); *CVE Appeal of Rock Int'l Envtl. Corp.*, SBA No. CVE-168-A, at 1 (2020) (dismissing appeal that merely “request[ed] that OHA allow Appellant to remain verified but has not articulated any valid basis for OHA to disturb CVE's decision”); *CVE Appeal of Arctic Tundra Supply and Servs. LLC*, SBA No. CVE-130-A (2019); *CVE Appeal of Secure2ware, Inc.*, SBA No. CVE-111-A, at 2 (2019) (rejecting appeal that “d[id] not include any statements, arguments, or evidence as to why the CVE's determination was based on clear error of fact or law”).

An additional problem for Appellant is that, under OHA's rules of procedure, a CVE appeal must be filed “within 10 business days of receipt of the denial.” 13 C.F.R. § 134.1104(a). An untimely appeal must be dismissed, and OHA has no authority to extend, or waive, the deadline for filing an appeal. *Id.* §§ 134.202(d)(2)(i)(A) and 134.1104(c). Here, CVE's decision was issued October 18, 2022, and Appellant has yet to identify any error in CVE's denial decision. Section I, *supra*. Any attempt to file a new or proper appeal at this juncture would be untimely.

III. Conclusion

For the above reasons, the appeal is DISMISSED. 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).

KENNETH M. HYDE
Administrative Judge