

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

IN THE MATTER OF:

Jean Frantz Guillaume d/b/a Negro  
American,

Appellant,

SBA No. CVE-249-A

Decided: November 30, 2022

ORDER DISMISING APPEAL

I. Background

On November 3, 2022, Jean Frantz Guillaume doing business as (d/b/a) Negro American (Appellant/Applicant) received an e-mail from the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE), notifying Appellant that its application for verification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) had “been administratively removed from processing because CVE has not received all documentation required to support your application.” (Appellant's Exh. A, at 1-2.) The CVE identified two types of documents and noted a “summary of the documents that have not been submitted or have been submitted but are insufficient.” (*Id.*, at 1.)

The e-mail also notified Appellant that the VA has ceased accepting new applications as of October 24, 2022, an action taken to facilitate the January 1, 2023, transfer of CVE's verification functions to the U.S. Small Business Administration (SBA) as mandated by the 2021 National Defense Authorization Act. (*Id.*, at 2.) CVE informed Appellant that all documentation and information it had previously provided would be saved in the system and securely migrated to SBA's verification database prior to January 1, 2023. If Appellant was still interested in pursuing verification, the CVE recommended applying to SBA when it begins receiving new applications on or about January 2023. (*Id.*)

On November 4, 2022, Appellant appealed CVE's removal of its application from processing to the SBA, Office of Hearings and Appeals (OHA), pursuant to 13 C.F.R. § 134.1103. Appellant argues:

The two claims the [VA] made in the denial of the application are not valid. The Department did receive all the “signed” documents that the applicant timely provided. However, the Department failed to provide responses for the sections the applicant requested in order to properly respond. The Department is intentionally stonewalling the applicant.

(Appeal, at 2.)

Upon receipt of the appeal, OHA informed Appellant of the requirement to comply with 13 C.F.R. Part 134 Subpart K, and 13 C.F.R §§ 134.1104, 134.1105, and 134.1111, before OHA could process the appeal. (E-mails from OHAFilings @sba.gov to gaxpo@gaxpo.com (Nov. 10, 2022, and Nov. 21, 2022).) As a response to OHA's e-mails, on November 10, 2022, Appellant filed an amended Appeal, this time adding a two-page appendix to the original pleading. (Amended Appeal, at 2-3.) On November 21, 2022, Appellant informed OHA that it had resent the requested documents and asked what was missing. (E-mail from gaxpo@gaxpo.com to OHA (Nov. 21, 2022).)

On November 23, 2022, I issued an Order to Show Cause why this matter should not be dismissed for lack of standing and lack of jurisdiction. On a footnote, I indicated that “While Appellant alleges that the removal of its application is a denial of verification of CVE status in the form of ‘stonewalling its application’ Appellant does not proffer a regulation, case law, or authority where OHA may adjudicate the removal of an application for verification of CVE status. (Amended Appeal, at 3.) Therefore, OHA finds this contention without merit.” The response was due no later than November 30, 2022.

## II. Appellant's Pleadings

On November 24, 2022,<sup>1</sup> Appellant filed several pleadings, i.e., a Response to the Order to Show Cause, a Motion for Recusal pursuant to 13 C.F.R. § 134.218, and a Request to Disqualify the Judge under 28 U.S.C. § 455 with OHA.

In its Response, Appellant alleges that OHA has committed a reversible error and is arbitrary in the Show Cause Order, denying the appeal in its footnote, and refusing or ignoring the jurisdictional and statutory claims of ownership and control and fraud. (Response, at 2.) Appellant contends, the issue of “ownership and control” is an appealable right of veteran applicants, and it has merit. Thus, the appeal is not a veteran status appeal, but an ownership and control qualification denied by the VA that can be appealed. Appellant adds that its appeal clearly states that OHA has jurisdiction repeating eight alleged facts from its Amended Appeal. (*Id.*, at 3.)

Referring to the VA's email and removal of its application, Appellant claims the VA's “action” has the effect of a formal judicial tribunal, which Appellant seeks to appeal as a due process right and argues it is entitled to a judicial review and a hearing. The VA “did not provide Appellant a way to disagree with its ‘Final Agency Action’ decision, it simply closed the door in the face of the Appellant. The OHA can see that is clearly arbitrary and capricious Agency Action.” (*Id.*, at 4.) The VA's final action has the effect of debarment of the applicant for an unspecified period of time, probably a minimum of four months or greater when the applicant's recourse is to reapply on January 1, 2023. Appellant explains that such a timeframe does not give

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<sup>1</sup> Appellant's pleadings were filed after the close of business on November 23, 2022. Therefore, they are counted as filed on the next business day. 13 C.F.R. § 134.204(b)(2).

Appellant the certainty that its application will be approved within a time, and it will amount to a six-month cancellation period without a hearing. (*Id.*)

Further, Appellant argues, the VA has “formally debarred the Appellant by circumventing the law for debarment, which is illegal. This is clearly a denial loop. The Agency has the Appellant in a loop to keep him out. Cancelled in 2019 at a prior applicant firm, and now with further retaliation, surreptitiously debarred in 2022 through circumvention of the formal debarment statute.” (*Id.*, at 4-5.) Appellant maintains, it showed evidence the VA “and its Agents are not used to working within the laws or rules governing these Small Business programs” and the VA “routinely overlooks laws, and destroys or hides the facts on record, and the Veteran's brought this to light, but was elided by OHA Judge previously.” (*Id.*, at 5.) The VA punished Appellant, “using its power to administratively adjudicate the application of the Appellant, with a denial disguised with a term ‘administratively removed from processing’ and did previously remove specific facts from the record that go against its current decision, or its prior decisions against this applicant Veteran owner.” (*Id.*)

In Appellant's view, even though the VA's email lacks an Agency's letterhead and Director's signature, it is still an agency adjudication, when it is the agency's final decision, and final agency decisions are subject to judicial review. (*Id.*) The word “administratively” is an indicator that it is aware of a decision-making process and is “still somewhat behaving or acting as a formal tribunal, even though it did not provide the Appellant a means of recourse to challenge its decision to deny the application.” (*Id.*) Appellant maintains that “the Department must provide the Veteran a means of recourse against its administrative action,” that the final decision is entitled to review, that the administrative removal is a formal denial, even if disguised, and that it is a formal adjudication. (*Id.*)

Additionally, Appellant sustains that any agency action that is not rulemaking is considered an adjudication, and an adjudication denial is a punishment, subject to a judicial review, “especially when the [VA] did punish this Veteran recently and cancelled this Veteran recently.” (*Id.*) Appellant proposes that OHA “may weigh that prior action too and see if additional punishment is warranted.” Appellant defines the term “agency adjudication” as agency action, and the VA's “action” removed the property interest of Appellant. (*Id.*, at 6, 7.) The VA cannot prevent Appellant's property interest in the right to contract mandated by Congressional law pursuant to Title 38, which is a benefit to the Appellant. Appellant also makes claims of due process violation, retaliation, and bad faith against the VA. (*Id.*, at 7-8.)

Finally, Appellant states the Show Cause Order overlooks statutes mentioned in the complaint that give standing and jurisdiction, restating its own appeal:

The [VA's] denial is in error especially due to Fraud, and not approving a qualified Veteran applicant who is qualified by Ownership and Control of the applicant Negro American. Pursuant to 13 C.F.R. § 134.1105(2). The denial was based on clear error of fact or law because the applicant Jean Frantz Guillaume DBA Negro American does own and control the applicant. 13 C.F.R. § 134.1111.

(*Id.*, at 8.)

As for the Motions for Recusal and Request to Disqualify the OHA judge/s, Appellant alleges that the undersigned has exhibited immediate, biased behavior against Appellant based upon his race and veteran status and actions that would affect the justice and fairness of this appeal, and it requests a non-SBA OHA judge to adjudicate this matter. (Motion for Recusal, at 2.) Appellant proffers a YouTube video link of the undersigned speaking in a public forum, to support groundless claims of biases against veteran applicants. Appellant then argues the issue of ownership and control is an appealable basis for jurisdiction and standing, and therefore, it was the undersigned's biases to issue the Order to Show Cause, to cherry-pick its appeal, to omit facts, etc. (*Id.*, at 2-5.)

Furthermore, Appellant states that it has a basis for an appeal under the “Arbitrary and Capricious” standard, which under the APA, “Arbitrary and Capricious Agency Action is jurisdictional, and the Appellant has standing to use for an Appeal.” (*Id.*, at 4.) While attacking the character of the OHA Judges with unsupported claims, Appellant seeks to recuse the undersigned from this proceeding.

Similarly, Appellant submits a Motion Request to disqualify the undersigned under 28 U.S.C. § 455 based on unsupported allegations of bias and based upon race and veteran status. (Motion for Request, at 2-4.)

### III. Preliminary Matters

Upon review of Appellant's Motions, *supra*, I DENY them as I find no basis to require my recusal from presiding over this matter. Appellant's Motions are an attempt to call into question the OHA Judge's impartiality, but they do so without any evidence or identification of any specific incidents of bias or partiality. They are unfounded claims of bias, and most certainly, irrelevant accusations to the issue at hand, i.e., does OHA have jurisdiction over this matter and does Appellant have standing per the regulations. Appellant's only proffer of evidence is a YouTube video of me, conducting a webinar on OHA's procedural rules for CVE Protests and Appeals. There is no point in time in this webinar where I demonstrated any bias against veterans or any racial or ethnic groups. Appellant's motions are utterly without support. Therefore, I DENY the Motions.

### IV. Discussion

OHA is a tribunal of limited jurisdiction, and in order to sustain an appeal, a party must be able to articulate how the issues being raised are within OHA's jurisdiction. While OHA adjudicates SDVOSB status appeals under 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. Part 134 Subpart K, the rules of practice for Appeal of Denials and Cancellations of Verification for Inclusion in the CVE Database clearly state that “A concern that has been denied verification of its CVE status or has had its CVE status cancelled may appeal the denial or cancellation to OHA.” *See* 13 C.F.R. § 134.1102.

Further, the grounds for filing a CVE Appeal are:

Denials and cancellations of verification of CVE status may be appealed to OHA, so long as the denial or cancellation is not based on the failure to meet any veteran or service-disabled veteran eligibility criteria. Such denials and cancellations are final VA decisions and not subject to appeal to OHA.

13 C.F.R. § 134.1103.

Additionally, the contents of a CVE appeal must be in writing and must include:

- (1) A copy of the denial or cancellation and the date the appellant received it;
- (2) A statement of why the cancellation or denial is in error;
- (3) Any other pertinent information the Judge should consider; and
- (4) The name, address, telephone number, and email address or facsimile number, if available, and signature of the appellant or its attorney.

13 C.F.R. § 134.1105(a).

In this case, Appellant does not appeal the denial or cancellation of verification of CVE status, but the administrative removal of Appellant's application for consideration of inclusion in the CVE Database. A removal which is not final, because Appellant may reapply after the new year, when its application must be addressed to SBA and conform to the new regulations, mandated by the 2021 National Defense Authorization Act. Section I, *supra*. In applying the regulations, Appellant lacks standing to file a CVE appeal under 13 C.F.R. §§ 134.1102, 134.1103, and 134.1105(a), because there is no denial or cancellation of verification of CVE status, and therefore, the matter falls outside of OHA's jurisdiction, as set forth in 13 C.F.R. § 134.102(v).

OHA has no jurisdiction over Appellant's claim that CVE's administrative removal of Appellant's application to obtain a SDVOSB status is an agency action, or a form of denial or cancellation of its CVE status. Plainly, OHA does not have jurisdiction over the Agency's actions, merely because Appellant claims that it affects the veteran's due process rights, property interests, or ownership and control of his or her own firm. More importantly, CVE has not issued a denial or cancellation of verification of CVE status on Appellant, and therefore, there is no case or controversy for OHA to adjudicate.

While it is Appellant's view that OHA may have jurisdiction over this appeal by reviewing the "actions" taken by the CVE to administratively removed Appellant's application, such actions are not grounds appealable to OHA.<sup>2</sup> 13 C.F.R. §§ 134.102, 134.1102, 134.1103, and 134.1105(a).

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<sup>2</sup> Similarly, OHA does not have jurisdiction over Appellant's claims of due process violation, property interest, retaliation, and bad faith against the VA. 13 C.F.R. § 134.102.

V. Conclusion

The appeal is DISMISSED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(B); 13 C.F.R. § 134.1112(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge