

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

SIZE APPEAL OF:

Mechanix Wear, LLC,

Appellant,

Appealed From
Size Determination No. 06-2020-088

SBA No. SIZ-6108

Decided: July 7, 2021

ORDER DISMISSING APPEAL¹

On February 5, 2021, Mechanix Wear, LLC (Appellant) filed an appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) of SBA Office Government Contracting — Area VI's Size Determination No. 06-2020-088 (remand of SD No. 06-2020-041). On May 19, 2021, I issued *Size Appeal of Mechanix Wear, LLC*, SBA No. SIZ-6098 (2021) (*Mechanix Wear I*), denying the appeal.

On June 21, 2021, Appellant filed a request for review by the SBA Administrator of *Mechanix Wear I* under 13 C.F.R. § 134.228(a). On June 22, 2021, I issued an Order to Show Cause, requiring Appellant to state why the instant request for review should not be dismissed for lack of jurisdiction.

On June 30, 2021, Appellant responded to the Order to Show Cause. Appellant argues first that OHA does not have jurisdiction to determine whether its request for review should be dismissed for lack of jurisdiction. Appellant is seeking review by the Administrator, not OHA. OHA's jurisdiction terminated upon its issuing a decision resolving the issues of fact and law. 13 C.F.R. § 134.229. Appellant maintains that only the Administrator may determine whether she has jurisdiction. “As the head of the SBA, all management and oversight responsibilities of the agency vest in the Administrator. *See* 15 U.S.C. § 633(b)(1). Thus, the Administrator has plenary authority to review the actions of the Administrator's subordinate offices including OHA.” (Response to Show Cause Order, at 1.)

Appellant maintains that *Mechanix Wear I* is based upon a policy change that “will send shockwaves through the federal procurement system” and only a review by the Administrator can rectify this error. Accordingly, Appellant asserts its request is reviewable by the Administrator. (*Id.*, at 2.)

¹ This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

OHA decisions are initial decisions except for those specific categories of decisions which the regulation provides will be final agency decisions. 13 C.F.R. § 134.227(a). Initial decisions or reconsidered initial decisions may be reviewed by the Administrator. 13 C.F.R. § 134.228(a). However, OHA decisions in size appeals are included in those decisions designated as final agency decisions. 13 C.F.R. §§ 134.227(b)(3), 134.316(d). There is no provision for review by the Administrator of final agency decisions, and OHA has held that size appeals are not subject to review under 13 C.F.R. § 134.228(a). *Size Appeal of George E. Hill*, SBA No. SIZ-4232 (1996).

Appellant points to 13 C.F.R. § 134.229, which terminates OHA's jurisdiction upon issuance of a decision, implying that the issuance of *Mechanix Wear I* terminated OHA's jurisdiction, and therefore I may not rule on whether the Administrator has jurisdiction over this petition for review. However, the regulation clearly is not absolute in its termination of jurisdiction because it also provides for petitions for reconsideration.² It therefore does not exclude post-decision reviews by OHA under the regulations. Here, it is clear that there is no jurisdiction for a review by the Administrator under OHA's regulations, and OHA has dismissed such petitions for review in the past. *See George E. Hill, supra*. Accordingly, I do so now.

For the aforementioned reasons, I DISMISS the instant appeal. This is the final agency decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge

² I note that Appellant has not submitted a Petition for Reconsideration under 13 C.F.R. § 134.227(c). It is now too late to do so.