

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

IN THE MATTER OF:

Stokes Webb, LLC

Appellant

Solicitation No. VA-259-10-10003

SBA No. VET-187

Decided: April 5, 2010

ORDER DISMISSING APPEAL¹

I. Background

On February 22, 2010, the U.S. Small Business Administration (SBA) Director for Government Contracting (D/GC) issued a determination that Stokes Webb, LLC (Appellant) was not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC).

On March 25, 2010, the Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received Appellant's appeal petition via facsimile transmission. The appeal petition is dated March 2, 2010. The appeal included a FedEx tracking confirmation indicating delivery in Washington, D.C., on March 3, 2010.

On March 30, 2010, OHA issued an Order to Show Cause why the appeal should not be dismissed as untimely.

On April 1, 2010, Appellant responded to the Order to Show Cause. Appellant asserts that it properly addressed the appeal petition, but its Administrative Assistant addressed the appeal petition to the D/GC because of Appellant's practice of responding to the attention of the author of government letters. Appellant asserts that FedEx delivered the package to the D/GC on March 3, 2010, and expresses puzzlement as to why the appeal petition was not forwarded to OHA. Appellant argues that its appeal should be found timely as a matter of equity, because it was delivered to SBA within the regulatory time period.

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 125 and 134.

II. Discussion

The regulations governing SDVO SBC status appeals provide that an appeal must be commenced by filing and serving an appeal petition within 10 business days after the appellant receives the SDVO SBC protest determination. 13 C.F.R. § 134.503. The regulations also cross-reference § 134.204 for filing and service requirements, which defines filing as the receipt of pleadings at OHA, and gives OHA's address for proper filing. 13 C.F.R. §§ 134.204(b)(1), 134.503. The regulations require OHA to dismiss an untimely appeal. 13 C.F.R. §§ 134.503, 134.509(a)(3). Further, the regulations do not permit OHA to modify time limits governing when a case may be commenced. 13 C.F.R. § 134.103(b).

Here, Appellant failed to ensure that its appeal was properly filed. Accordingly, the appeal was filed late, after the regulatory deadline. The D/GC's failure to forward the petition to OHA was likely because she thought she had received the service copy required by 13 C.F.R. § 134.505(b)(1). Appellant's timely delivery to the D/GC does not render its untimely filing timely. Timely service on other parties does not cure untimely filing at OHA. *Matter of MED Trends, Inc.*, SBA No. VET-124 (2008)

Here, Appellant has failed to timely file its appeal, and I must dismiss it. I have no discretion to do otherwise. *Matter of A. Grant Services*, SBA No. VET-151 (2009).

Accordingly, because the appeal petition is untimely filed and OHA may not modify the time limit governing when the case may be commenced, Stokes Webb, LLC's appeal is **DISMISSED**.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge