

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

VSBC Appeal of:

Wigs Plus L.L.C.,

Appellant

SBA No. VSBC-278-A

Decided: May 2, 2023

APPEARANCE

Bennie R. Williams, Jr., President, Wigs Plus L.L.C., Sunny Isles Beach, Florida

DECISION

I. Introduction and Jurisdiction

On February 20, 2023, Wigs Plus L.L.C. (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). SBA found that Appellant did not demonstrate that it is fully controlled by one or more service-disabled veterans. On appeal, Appellant maintains that the denial decision was erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is denied.

OHA adjudicates SDVOSB status appeals pursuant to the Small Business Act of 1958, 15 U.S.C. §§ 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart K. Appellant timely filed the appeal within 10 business days after receiving the denial notice on February 16, 2023. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Appellant is a limited liability company (LLC) based in the state of Florida. (Case File (CF), Exh. 11.) In February 2023, Appellant applied for certification as an SDVOSB, and submitted various supporting documents to SBA. Appellant is 60% owned by Mr. Bennie R. Williams, Jr., a service-disabled veteran. (CF, Exh. 5, at 2.) His wife, Mrs. Leslie K. Williams, owns the remaining 40% of Appellant. (*Id.*, at 8.) Mrs. Williams is neither a veteran nor a service-disabled veteran. (*Id.*)

According to Appellant's Articles of Organization, filed with the state of Florida on October 5, 2021, Appellant is managed solely by Mrs. Williams, who is also Appellant's "CEO."

(CF, Exh. 11, at 2.) On January 24, 2023, Mrs. Williams, on behalf of Appellant, filed an annual report with the state of Florida, again identifying herself as Appellant's "CEO." (CF, Exh. 4.)

Appellant provided a copy of its current Operating Agreement, dated January 3, 2023. (CF, Exh. 10.) The Operating Agreement reflects that Mr. and Mrs. Williams are Appellant's two Members. (*Id.*, at 1.) The Members "shall have the exclusive right to manage the Company's business and shall: (i) manage the affairs and business of the Company; (ii) exercise the authority and powers granted to the Company; and (iii) otherwise act in all other matters on behalf of the Company." (*Id.*, at 4.) However, "[n]o contract, obligation or liability of any kind or type can be entered into on behalf of the Company by any single Member other than the Managing Member (if appointed) or through a corporate officer (if duly authorized)." (*Id.*) Mr. Williams is identified in the Operating Agreement as Appellant's Managing Member. (*Id.*)

With regard to officers, Appellant's Operating Agreement indicates that Appellant will, "[a]t a minimum," have three officers: a President, a Secretary, and a Treasurer. (*Id.*, at 15.) The Operating Agreement does not describe any duties or powers associated with these positions. (*Id.*) Rather, "[o]fficers shall perform such duties as may be defined by the Members with respect to their position, and those from time to time assigned to them by the Members." (*Id.*) The position of "CEO" is not discussed in the Operating Agreement.

Appellant provided minutes of an "organizational meeting" held on February 3, 2023, during which both Mr. and Mrs. Williams were in attendance. (CF, Exh. 2.) The minutes indicate that Appellant's Members elected Mr. Williams to serve as President and Treasurer, and Mrs. Williams to serve as Secretary. (*Id.*, at 1.)

In support of its application for certification, Appellant also submitted a letter signed by Mr. Williams. (CF, Exh. 12.) In his letter, Mr. Williams asserted that he "ha[s] delegated authority to my wife Leslie Williams to supervise the day-to-day operations of [Appellant]." (*Id.*) Mrs. Williams thus "handles all travel, appointments, and site visits," and is more highly compensated than Mr. Williams "due to the number of duties and task[s] she performs." (*Id.*) Mr. Williams added that Mrs. Williams "has been in this role for over 10 years prior to me coming on board." (*Id.*)

## B. Denial

On February 16, 2023, SB A, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for certification as an SDVOSB. (CF, Exh. 1.) The D/GC found that the documentation Appellant provided did not demonstrate that Appellant is fully controlled by one or more service-disabled veterans. (*Id.*, at 1.)

The D/GC noted that, according to the minutes of the February 3, 2023 meeting, Mr. Williams, a service-disabled veteran, is Appellant's President. (*Id.*) Appellant, however, also submitted other documentation reflecting that Mrs. Williams, who is not a service-disabled veteran, is Appellant's "CEO." (*Id.*) Appellant's Operating Agreement does not clarify which of these positions is highest ranking, and as a result, the D/GC could not determine whether a

service-disabled veteran holds Appellant's highest officer position, as is required under 13 C.F.R. § 128.203(b).

The D/GC also expressed concern as to whether Mr. Williams fully controls Appellant's decision-making. (*Id.*, citing 13 C.F.R. § 128.203(a) and (d).) In a letter accompanying Appellant's application, Mr. Williams acknowledged that Mrs. Williams oversees and manages Appellant's daily business operations. (*Id.*, at 1-2.) Furthermore, Mr. Williams apparently lacks relevant technical experience, whereas Mrs. Williams “ran the business for 10 years” before Mr. Williams acquired an ownership interest. (*Id.*)

### C. Appeal

On February 20, 2023, Appellant appealed the D/GC's decision to OHA. Appellant asserts that Mrs. Williams was its CEO “prior to [Appellant's] most recent Organizational meeting” on February 3, 2023, when Mr. Williams was elected President. (Appeal at 1.) Therefore, in Appellant's view, it is immaterial that Mrs. Williams used the title “CEO” when she filed Appellant's annual report on January 24, 2023. (*Id.*)

Appellant further maintains that the D/GC misunderstood comments in Mr. Williams's letter. (*Id.* at 2.) Although Mr. Williams stated that he had delegated day-to-day managerial responsibilities to Mrs. Williams, this remark was “taken out of context” as Mr. Williams intended to refer only to “customer service related” tasks. (*Id.*) In addition, contrary to the D/GC's decision, Mr. Williams does bring relevant experience to Appellant. Specifically, he served for 10 years as Chief of Prosthetics and Sensory Aids at a VA Medical Center. (*Id.*)

## III. Discussion

### A. Standard of Review

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

### B. Analysis

Appellant has not shown error of fact or law in the D/GC's decision. As a result, this appeal must be denied.

When a concern seeks certification as a VOSB or SDVOSB, SBA regulations provide that:

An Applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, any independent research conducted by SBA, and any changed circumstances. The Applicant bears the burden of proof to demonstrate its eligibility as a VOSB or SDVOSB.

13 C.F.R. § 128.302(d).

Here, based on documentation provided by Appellant itself, the D/GC found that Appellant did not persuasively demonstrate that it is an eligible SDVOSB. Section II.B, *supra*. Appellant submitted contradictory information as to whether a service-disabled veteran holds Appellant's highest officer position, as is required by 13 C.F.R. § 128.203(b). *Id.* Furthermore, the documentation Appellant provided did not establish that a service-disabled veteran fully controls Appellant's decision-making. *Id.*

On appeal, Appellant maintains that the D/GC misunderstood information Appellant provided. Section II.C, *supra*. The problem for Appellant, however, is that Appellant ultimately was responsible for proving its eligibility as an SDVOSB. 13 C.F.R. § 128.302(d). Thus, while Appellant argues on appeal that Mrs. Williams ceased to hold the position of “CEO” following Appellant's February 3, 2023 organizational meeting, Appellant offered no evidence to this effect to the D/GC, and the minutes of the February 3, 2023 meeting likewise are silent on this point. Section II.A, *supra*. The mere fact that Mr. Williams was elected Appellant's President does not demonstrate that the position of “CEO” had been abolished or that Mrs. Williams had been removed from that position. Given the record before him, then, the D/GC could properly conclude that Appellant did not carry its burden of proving whether Mr. Williams, rather than Mrs. Williams, is Appellant's highest-ranking officer.

Similarly, in a letter accompanying Appellant's application, Mr. Williams acknowledged that he “ha[s] delegated authority to my wife [Mrs.] Williams to supervise the day-to-day operations of [Appellant],” Section II.A, *supra*. Appellant argues, on appeal, that Mr. Williams intended to refer only to the delegation of “customer service related” tasks, but the D/GC could appropriately give weight to the literal text of Mr. Williams's statement in concluding that Appellant did not demonstrate that Mr. Williams fully controls Appellant's decision-making.

#### IV. Conclusion

Appellant has not established that the D/GC committed any error of fact or law in denying Appellant's application for certification. The appeal therefore is DENIED. This is the final agency action of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(A); 13 C.F.R. § 134.1112(d).

KENNETH M. HYDE  
Administrative Judge