

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

VSBC Appeal of:

Veterans Construction Midwest Corp.,

Appellant

SBA No. VSBC-290-A

Decided: July 10, 2023

ORDER DISMISSING APPEAL<sup>1</sup>

On June 9, 2023, VETERANS CONSTRUCTION MIDWEST CORP. (Appellant), appealed the denial of its application for certification as a Service Disabled Veteran-Owned Small Business (SDVOSB) to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA).

SBA's Director, Office of Government Contracting (D/GC) determined the individual upon whom Appellant's claim of eligibility was based was not eligible as a surviving spouse under 13 C.F.R. § 128.202(i) and denied Appellant's application. Albert Schmidt, the deceased service-disabled veteran (SDV), died on May 8, 2013. (Denial, at 1.) Thus, the eligibility of surviving spouse and President of VETERANS CONSTRUCTION MIDWEST CORP, Joan Schmidt, terminated 10 years later on May 8, 2023 under 13 CFR § 128.202 (i)(1)(iii). (Id.)

On June 15, 2023, OHA ordered Petitioner to show cause, no later than June 23, 2023, why the appeal should not be dismissed. (Order 3.15.2023, at 1.) OHA explained the change in status of Appellant's principal, Ms. Schmidt, as a surviving spouse is a material change that disqualifies her, and thus Appellant, from eligibility for the VSBC program as of May 8, 2023. Under the applicable rules, a spouse of a deceased SDV may qualify as a surviving spouse up to 10 years after the date of the veteran's death. 13 C.F.R. § 128.202(i)(2)(iii). SBA applicable rules for a “surviving spouse” are:

(1) A small business concern owned and controlled by one or more service-disabled veterans immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, will continue to qualify

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<sup>1</sup> This appeal is decided under the Small Business Act of 1958, 15 U.S.C. §§ 631 et seq., and 13 C.F.R. parts 128 and 134 subpart K.

as a small business concern owned and controlled by service-disabled veterans during the time period specified in paragraph (i)(2) of this section if:

(i) The surviving spouse of the deceased veteran acquires such veteran's ownership interest in such concern;

(ii) Such veteran had a service-connected disability (as defined in 38 U.S.C. 101(16)); and

(iii) For a Participant, immediately prior to the death of such veteran, and during the period described in paragraph (i)(2) of this section, the small business concern is included in the certification database.

(2) The time period described in paragraph (i)(1)(iii) of this section is the time period beginning on the date of the veteran's death and ending on the earlier of—

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern;

(iii) In the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, 10 years after the date of the death of the veteran; or

....

13 C.F.R. § 128.202(i).

Here, Ms. Schmidt, the individual upon whom Appellant's claim of eligibility was based, qualified as a surviving spouse from May 8, 2013 to May 8, 2023. Ms. Schmidt's status as a surviving spouse changed on May 8, 2023, and she thus no longer qualified as a surviving spouse eligible for the VSBC program. Under applicable rules “[t]he Participant must maintain its eligibility during its participation in the program and must inform SBA of any changes that may affect its eligibility. . . .” 13 C.F.R. § 128.306(b). Further, “[o]nce certified, a VOSB or SDVOSB must notify SBA of any material changes that could affect its eligibility, within 30 calendar days of any such change, and attest to its continued eligibility.” 13 C.F.R. § 128.307. (Emphasis added.) “Material changes include, but are not limited to, a change in the firm's ownership, business structure, or control, filing of bankruptcy, or change in active duty status.” (Id.)

Appellant did not respond to OHA's Order, and the time to do so has expired. A party's noncompliance with an OHA order may, by itself, be grounds for dismissal. 13 C.F.R. § 134.219. It is clear from the record that Appellant is not an eligible SDVOSB because the individual upon whom its claim of eligibility is based is no longer eligible. Accordingly,

Appellant cannot show the D/GC's denial is based on an error of fact or law. 13 C.F.R. § 134.1111. For the above reasons, I DISMISS the instant appeal. This is the final decision of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(A); 13 C.F.R. § 134.1112(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge