

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

VSBC Protest of:

Arapaho Technical Services, LLC.,

Protestor,

Re: MedForce Government Solutions, Inc.

Petition for Reconsideration of SBA
No. VSBC-302-P

SBA No. VSBC-316-P (PFR)

Decided: November 8, 2023

ORDER DENYING PETITION FOR RECONSIDERATION¹

I. Background

A. Prior Proceedings

On September 8, 2023, MedForce Government Solutions, Inc. (Petitioner) filed the instant Petition for Reconsideration (PFR) of the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decision in *VSBC Protest of Arapaho Technical Services, LLC*, SBA No. VSBC-302-P (2023) (“*Arapaho I*”).² In that decision, OHA sustained a status protest filed by Arapaho Technical Services, LLC (Arapaho) and concluded that Petitioner does not qualify as a Service-Disabled Veteran-Owned Small Business (SDVOSB) for the subject task order.

OHA found that, according to documentation in the record, which was primarily produced by Petitioner itself, Petitioner was not “at least 51%” owned by one or more service-disabled veterans, and fully controlled by service-disabled veterans, as of December 8, 2022, the

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA afforded Petitioner an opportunity to file a request for redactions if desired. No redactions were requested, and OHA therefore now issues the entire decision for public release.

² Petitioner transmitted the PFR to OHA by e-mail at 6:13 p.m. Eastern time on Thursday, September 7, 2023. Pursuant to OHA's rules of procedure, a filing received by OHA after 5 p.m. Eastern time is deemed to have been filed on the next business day. 13 C.F.R. § 134.204(b)(2).

date Petitioner submitted its offer for the task order. *Arapaho I*, at 6-7. More specifically, in response to an OHA Order, Petitioner produced a stock ledger and stock certificates, dated June 8, 2008, reflecting that Timothy C. Bucklaw, Sr., a service-disabled veteran, owned 501 shares (50.1%) of Petitioner and that Jon J. Bucklaw, who is neither a veteran nor a service-disabled veteran, owned the remaining 499 shares (49.9%). *Id.* at 3. In addition, although Petitioner's Bylaws identified Timothy C. Bucklaw, Sr. as Petitioner's sole director, Arapaho's protest included copies of Petitioner's annual reports for the years 2017-2019 which indicated that Jon J. Bucklaw is Petitioner's only director. Protest, Exhs. 2-4. OHA observed that, in 2023, Petitioner represented to SBA's Director of Government Contracting (D/GC) that both Timothy C. Bucklaw, Sr. and Jon J. Bucklaw are members of its Board. *Arapaho I*, at 5.

OHA noted that, during the protest proceedings, Petitioner offered “revised versions” of its stock ledger and stock certificates, dated July 26, 2023, purporting to show that Timothy C. Bucklaw, Sr. owns 510 shares (51%) of Petitioner. *Id.* Petitioner also had offered a revised signature page of its Bylaws, dated May 23, 2023, identifying Timothy C. Bucklaw, Sr. as “President/CEO/Owner 51%” but no longer as a director of Petitioner. *Id.* OHA found that the revised documents had no bearing on Petitioner's SDVOSB status, because they apparently reflected an ownership change that occurred after December 8, 2022, the relevant date for determining eligibility. *Id.* at 6-7.

OHA explained that “[a]s the protested firm, [Petitioner] has the burden of proving its eligibility by a preponderance of the evidence.” *Arapaho I*, at 5 (citing 13 C.F.R. § 134.1010). Because Petitioner failed to “show[] that it was an eligible SDVOSB as of December 8, 2022,” OHA sustained the protest. *Id.* at 7.

B. PFR

In its PFR, Petitioner contends that OHA committed several errors in *Arapaho I*. First, OHA committed “an error of fact” when it “reject[ed]” Petitioner's revised stock ledger and stock certificates. (PFR at 2.) In Petitioner's view, an incorrect governing document “is not determinative” on issues of ownership and control. (*Id.* at 1, citing *CVE Appeal of Mischler Financial Group, Inc.*, SBA No. CVE-127-A (2019); *Matter of Benetech, LLC*, SBA No. VET-225 (2011); and *Matter of Markon, Inc.*, SBA No. VET-158 (2009).) Further, “it is settled that courts deciding corporate ownership issues should look beyond evidence in the corporate records,” by considering “testimony of interested and disinterested parties, actions of the parties, and documentary evidence.” (*Id.* at 1-2, citing *Pottash Bros. v. Burnet*, 50 F.2d 317, 320 (D.C. Cir. 1931) and *Matter of Env'tl. Affairs and Mgmt., Inc.*, SBA No. MSB-621 (1999).) Under Pennsylvania law, the state where Petitioner is now incorporated, a stock certificate “is not a prerequisite to the formation of [a shareholder] relationship.” (*Id.* at 2, quoting *Krosnar v. Schmidt Krosnar McNaughton Garrett Co.*, 423 A.2d 370, 375 (1980).) Accordingly, Petitioner maintains, although the 2008 stock ledger and stock certificates were submitted to OHA by Petitioner itself, OHA erred in relying upon those documents to conclude that Timothy C. Bucklaw, Sr. owned only 50.1% of Petitioner as of December 8, 2022. (*Id.*) OHA, instead, should have credited the revised stock ledger and stock certificates, as well as a declaration from Timothy C. Bucklaw, Sr., dated May 24, 2023, in which he asserted that he owns 51% of Petitioner. (*Id.*)

Petitioner next attacks two issues discussed by OHA in *Arapaho I*: (1) that Petitioner represented to the D/GC that Jon J. Bucklaw manages and supervises its day-to-day operations and (2) that Petitioner's Bylaws may allow Jon J. Bucklaw, as Petitioner's sole director or as one of two directors, to exert control over Petitioner's Board. Petitioner argues that, although Jon J. Bucklaw indeed may manage Petitioner, “the issue is not who is a manager and supervisor; the issue is who *controls* the operations.” (*Id.* at 4, emphasis Petitioner's.) With regard to Petitioner's Board, Petitioner highlights that Timothy C. Bucklaw. Sr. claimed in his declaration that he is “currently the sole director” of Petitioner. (*Id.*) But, in any event:

[E]ven if Jon [J.] Bucklaw is on the board of directors, it would not matter. That is because Timothy [C.] Bucklaw [Sr.], as the 51% owner, controls the Board and can remove directors at his whim. As noted, SBA will deem service-disabled veteran individuals to control [a corporation's] Board of Directors where . . . “[a] single service-disabled veteran individual owns at least 51% of all voting stock of an applicant or concern, the individual is on the Board of Directors and no super majority voting requirements exist for shareholders to approve corporation actions.” 13 C.F.R. § 125.14(e).

(*Id.*)

Petitioner argues that OHA further erred in *Arapaho I* by positing that Petitioner may have undergone an ownership change in July 2023. (*Id.*) According to Petitioner, although Petitioner's stock ledger and stock certificates were revised in July 2023, “the actual ownership [was] in effect in December 2022 and previously.” (*Id.*) Because Timothy C. Bucklaw. Sr., a service-disabled veteran, owned 51% of Petitioner as of December 8, 2022, OHA should have found Petitioner compliant with all ownership and control requirements. (*Id.*) Particularly, “[t]he 51% owner of a corporation controls the Board of Directors, and that constitutes control.” (*Id.* at 5.)

II. Discussion

A. Jurisdiction and Standard of Review

A party seeking reconsideration of an OHA decision on an SDVOSB status protest must file its PFR within 20 calendar days after issuance of the decision. 13 C.F.R. § 134.1013(a). Here, OHA issued *Arapaho I* on August 21, 2023, and Petitioner filed the instant PFR within 20 calendar days thereafter, so the PFR is timely.

To prevail on a PFR, a petitioner “must clearly show an error of fact or law material to the decision.” *Id.* This is a rigorous standard. A PFR must be based upon manifest error of law or mistake of fact, and is not intended to provide an additional opportunity for an unsuccessful party to argue its case before OHA. *CVE Protest of HamHed, LLC*, SBA No. CVE-190-P (2021) (PFR); *CVE Protest of Covenant Constr. Servs.*, SBA No. CVE-158-P (2020) (PFR); *CVE Protest of Alpha4 Solutions LLC d/b/a Alpha Transcription*, SBA No. CVE-137-P (2019) (PFR).

B. Analysis

The instant PFR is unpersuasive for several reasons. First, as OHA explained in *Arapaho I*, in an SDVOSB status protest, the challenged firm has the burden of proving its eligibility by a preponderance of the evidence. Section I.A, *supra*. Furthermore, OHA must assess the eligibility of the challenged concern as of the date of its initial offer which included price, in this case December 8, 2022, the date Petitioner submitted its proposal for the subject task order. *Id.* In response to the protest, Petitioner introduced copies of its stock ledger and stock certificates, dated June 8, 2008, reflecting that Timothy C. Bucklaw, Sr., a service-disabled veteran, owned only 501 shares (50.1%) of Petitioner. *Id.* Furthermore, according to the same stock ledger and stock certificates, the remaining 499 shares (49.9%) were owned by Jon J. Bucklaw, who is not a service-disabled veteran. *Id.* Based on the information Petitioner itself provided, then, one or more service-disabled veterans did not own at least 51% of Petitioner. Petitioner subsequently offered “revised versions” of its stock ledger and stock certificates, purporting to show that Timothy C. Bucklaw, Sr. owns 510 shares (51%) of Petitioner, and Jon J. Bucklaw 490 shares (49%). *Id.* These documents, though, were dated July 26, 2023 and thus did not establish that Timothy C. Bucklaw, Sr. held the requisite 51% ownership interest as of December 8, 2022. *Id.* Similarly, although Timothy C. Bucklaw, Sr. asserted, in a declaration dated May 24, 2023, that he owned 51% of Petitioner at that time, he remained silent as to whether he owned 51% of Petitioner as of December 8, 2022. Section I.B, *supra*. Accordingly, OHA did not err in sustaining Arapaho's protest. Because Petitioner offered no clear evidence that Timothy C. Bucklaw, Sr. owned at least 51% of Petitioner as of December 8, 2022, OHA properly concluded that Petitioner did not carry its burden of proving this aspect of its eligibility.

Another major flaw in the PFR is that, as OHA discussed in *Arapaho I*, even apart from the question of ownership, the record also did not demonstrate that one or more service-disabled veterans fully controlled Petitioner's Board of Directors as of December 8, 2022. Section I.A, *supra*. In its PFR, Petitioner highlights that if Timothy C. Bucklaw, Sr. owned at least 51% of Petitioner, and if he was a member of the Board, he could be deemed to control the Board pursuant to 13 C.F.R. § 125.14(e)(1)(ii) (2022). Section I.B, *supra*. Although Petitioner correctly recites the law, Petitioner did not demonstrate that these factual conditions were met in the instant case. Again, documentation produced by Petitioner itself showed that Timothy C. Bucklaw, Sr. owned only 50.1% — not 51% — of Petitioner as of December 8, 2022. Section I.A, *supra*. Nor did Petitioner establish that Timothy C. Bucklaw, Sr. was a member of Petitioner's Board of Directors as of December 8, 2022. According to Petitioner's annual reports for the years 2017-2019, Jon J. Bucklaw was Petitioner's sole director. *Id.* While Timothy C. Bucklaw, Sr. may have become a director at some point after 2019, Petitioner failed to prove that he was a director as of December 8, 2022.

III. Conclusion

To prevail on a PFR, a petitioner must “clearly show an error of fact or law material to the decision.” 13 C.F.R. § 134.1013(a). Here, Petitioner has not demonstrated any error in *VSBC*

Protest of Arapaho Technical Services, LLC, SBA No. VSBC-302-P (2023). I therefore DENY the PFR and AFFIRM the decision.

KENNETH M. HYDE
Administrative Judge