

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

VSBC Appeal of:

Tower Sales and Consulting,

Appellant

SBA No. VSBC-365-A

Decided: June 21, 2024

ORDER DISMISSING APPEAL¹

On June 11, 2024, Tower Sales and Consulting (Appellant) appealed its decertification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA).

On June 13, 2024, OHA issued an Order to Show Cause which explained that the appeal was insufficient for three principal reasons. First, OHA ordered Appellant to show cause why the instant appeal should not be dismissed as untimely. (OHA's Order at 1, citing 13 C.F.R. § 134.1104 (a) and (c).) The Director of SBA's Veteran Small Business Certification Program (D/VSBCP) issued a Notice of Decertification (NOD) on May 15, 2024. (*Id.*) Appellant's appeal was not filed at OHA until June 11, 2024. (*Id.*) Second, the appeal did not clearly state what error(s), if any, Appellant alleged the D/VSBCP to have committed, as is necessary for a valid appeal under 13 C.F.R. §§ 134.1105(a)(2) and 134.1111. (*Id.*) Indeed, Appellant conceded that it did not respond to a Notice of Proposed Decertification issued to Appellant by the D/VSBCP. (*Id.*) Appellant reasoned that it did not “timely” receive the NOPD because the D/VSBCP's e-mail was inadvertently routed to its spam folder. (*Id.*) Third, the appeal appeared to be based largely, if not entirely, on new evidence, which OHA generally cannot consider. (*Id.*, citing 13 C.F.R. § 134.1110.) Specifically, Appellant proffered bank information, Articles of Incorporation, stock ledger, and S-corporation election form, that purport to address the concerns raised in the NOPD. (*Id.*)

On June 15, 2024, Appellant responded to OHA's Order. Appellant repeats its claim that the e-mail containing the NOPD was routed to its spam folder, which it “takes responsibility for.” (Response at 1.) Appellant adds that the D/VSBCP's “method of notification . . . and the quick appeal turn around time creates an undue burden upon small companies. . . .” (*Id.*) Appellant then appears to state that the D/VSBCP erred by failing to provide Appellant an opportunity to respond to the NOPD simply because of a “technical issue.” (*Id.*) Lastly,

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 128 and 134 subpart K.

Appellant avers that the documents it proffered are “not new” and good cause exists for OHA to consider them because they “directly respond to the deficiencies” in the NOPD. (*Id.*)

Appellant's explanation that the D/VSBCP's e-mail was inadvertently routed to its spam folder, though unfortunate, appears to stem from Appellant's own error and internal workings. OHA has repeatedly ruled that SBA's email notice delivered to a junk or spam folder does not extend, or modify, the deadline for filing an appeal. *See e.g., VSBC Appeal of EMC Partners LLC*, SBA No. VSBC-338-A (2024); *In the Matter of LFM Industries, Inc. d/b/a Massey Industries, Inc.*, SBA No. BDP-601 (2022) (finding that SBA cannot be on notice of petitioner's internal workings as to what happens when petitioner receives an email communication delivered to its junk folder); *Size Appeal of Red Orange North America, Inc.*, SBA No. SIZ-6136, at 3 (2021); *Size Appeal of RBVetCo, LLC d/b/a Rocky Bleier Construction Group*, SBA No. SBA No. SIZ-6154 (2022). The same principle applies here, and thus, Appellant has not cured its untimeliness. Likewise, Appellant's belief that it should have been given an opportunity to respond to the NOPD beyond the deadline does not establish any error on the part of the D/VSBCP. Furthermore, Appellant concedes that it failed to provide the documents in response to the NOPD, and now seeks the opportunity to submit them. In an SDVOSB appeal proceeding, OHA cannot consider evidence beyond the Case File unless good cause is shown. 13 C.F.R. § 134.1110. These documents were not presented to the D/VSBCP in response to the NOPD at the time of its request and is therefore new evidence. Appellant thus has not shown good cause to introduce these documents for the first time on appeal.

OHA's regulations require the dismissal of an untimely SDVOSB appeal. 13 C.F.R. § 134.1104(c). Furthermore, under OHA's rule of procedure, a deficient appeal may be summarily dismissed. 13 C.F.R. § 134.1105(d). Here, as discussed above, Appellant's appeal is deficient, and Appellant did not cure the defect. *VSBC Appeal of Willpower Athletes, LLC*, SBA No. VSBC-330-A (2024); *VSBC Appeal of Divinely Elegant Vines LLC*, SBA No. VSBC-317-A (2023); *CVE Appeal of Watanabe Enters., LLC*, SBA No. CVE-218-A, at 2 (2022), *recons. denied*, SBA No. CVE-224-A (2022) (PFR); *CVE Appeal of Rock Int'l Env'tl. Corp.*, SBA No. CVE-168-A, at 1 (2020).

Accordingly, I DISMISS the instant appeal. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.1112(d).

CHRISTOPHER HOLLEMAN
Administrative Judge