

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

VSBC Appeal of:

Chips Renovations LLC,

Appellant

SBA No. VSBC-381-A

Decided: August 9, 2024

ORDER DISMISSING APPEAL

I. Background

On July 19, 2024, Chips Renovations LLC (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).

Because appeal petition was deficient, OHA ordered Appellant to show cause why the appeal should not be dismissed. OHA explained that the appeal did not clearly state what error(s), if any, Appellant alleged the Director of SBA's Veteran Small Business Certification Program (D/VSBC) have committed, as is necessary for a valid appeal under 13 C.F.R. §§ 134.1105(a)(2) and 134.1111. Further, the appeal appeared to be based largely, if not entirely, on new evidence, which OHA cannot consider, except for good cause shown. 13 C.F.R. § 134.1110. In particular, Appellant proffered an undated Operating Agreement, the majority owner's signature, and a statement of military service, but failed to clearly state how these documents show error in the denial letter.

On July 25, 2024, Appellant responded to OHA's Order. This time, Appellant identifies four errors in the denial letter. First, Appellant claims that D/VSBC's "decision incorrectly assessed the control exercised by the veteran owner, [Owner 1]. As per 13 C.F.R. § 125.11, the qualifying veteran must hold the highest position and control the firm. The revised Operating Agreement explicitly states that [Owner 1] is the President and holds the highest position, thereby controlling all major decisions." Response to Order, at 1. Second, Appellant asserts that while the D/VSBC noted the absence of references to officers or managers in the Operating Agreement, "[t]he amended Operating Agreement now clearly defines the roles and responsibilities of officers and managers, with [Owner 1] explicitly mentioned as the President who controls the company." *Id.* Third, the D/VSBC highlighted the lack of clarity on quorum requirements and voting provisions, and "the revised Operating Agreement includes specific provisions regarding what constitutes a quorum for member meetings and the process for decision-making, ensuring that the veteran owner retains control without requiring the non-veteran member's consent for critical decisions." *Id.*

Lastly, Appellant argues that “[t]he initial Operating Agreement indicated that no member may assign or transfer any part of their interest without the other members' consent. The updated document now specifies that **[Owner 1]**, as the qualifying veteran, has the authority to transfer interests and make financial amendments independently, ensuring her control over the firm's financial interests.” *Id.*

Then, Appellant offers supporting evidence, identified as “attached documents” and refers to a “Revised Operating Agreement”, alleging that the document clearly states **[Owner 1]** is the President and the highest-ranking officer, defines the roles and responsibilities of officers and managers, specifies quorum requirements and voting provisions, and details the process for assignment of interest and financial amendments. Appellant also identifies an “Affidavit of **[Owner 1]**,” where it affirms her service-disabled veteran status and her role in the company and confirms her position as President and the highest-ranking officer controlling all major decisions. As the third document, Appellant describes a “Business Questionnaire” reflecting **[Owner 1]** as the President and primary decision-maker. *Id.*, at 1-2, emphasis in original.

Next, Appellant explains the corrective actions it has taken, such as amending the Operating Agreement to address all concerns raised by the D/VSBC. *Id.*, at 2. Now, Appellant states that it clearly “outlines the control exercised by **[Owner 1]**, ensuring compliance with 13 C.F.R. § 125.11.” *Id.* Similarly, “the updated document includes explicit details on quorum requirements and voting provisions, ensuring that the qualifying veteran's control is unambiguous and legally enforceable.” *Id.* For the issue of independence in financial decisions, “the revised Operating Agreement ensures that **[Owner 1]** has the sole authority to make financial decisions and transfer interests, thereby eliminating any dependence on the non-veteran member for critical decisions.” *Id.*

Based on the corrective actions taken and the evidence provided, Appellant requests that SBA reconsider and approve its application for certification as an SDVOSB. Furthermore, Appellant indicates that “the attached documents demonstrate compliance with all relevant regulations and affirm **[Owner 1's]** control over **[Appellant]**.” *Id.*

II. Analysis

The instant appeal, even as revised, remains deficient and must be dismissed. Just as in Appellant's original appeal petition, the new appeal in response to OHA's Order does not clearly identify any error in the D/VSBC's decision. Appellant merely states that D/VSBC is in error because now, Appellant has cured the defects and revised the Operating Agreement after the denial letter. Moreover, Appellant appears to concede the correctness of the D/VSBC's determination by affirming that it has amended the Operating Agreement to address all concerns raised by the D/VSBC. Section I, *supra*.

Furthermore, Appellant does not argue that the original version of its Operating Agreement was in compliance with the regulations or that the undated, revised version was ever presented to the D/VSBC before receipt of the denial letter. Nor does Appellant attempt to demonstrate that there is good cause for OHA to consider the new evidence for the first time on

appeal. 13 C.F.R. § 134.1110. Notably, Appellant's response makes references to an Affidavit of [Owner 1] and Business Questionnaire as attached documents, which were not included with the Response.

Under OHA's rule of procedure, a deficient appeal may be summarily dismissed. 13 C.F.R. § 134.1105(d). Such is the case here, because Appellant has not alleged any error on the part of the D/VSBC and does not dispute the D/VSBC's key finding or analysis. Appellant merely asserts that it has now corrected the issues raised. However, these corrections are after the fact, and cannot serve as a basis for finding error in the D/VSBC's decision based upon the documents originally submitted by Appellant. *VSBC Appeal of GDINexus LLC*, SBA No. VSBC-350-A (2024); *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).

For the above reasons, 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