

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

VSBC Appeal of:

McLellan Integrated Professional Services,
LLC,

Appellant

SBA No. VSBC-382-A

Decided: August 19, 2024

APPEARANCE

Tod L. McLellan, Chief Executive Officer, McLellan Integrated Professional Services, LLC, Dallas, Texas

DECISION

I. Introduction and Jurisdiction

On June 24, 2024, McLellan Integrated Professional Services, LLC (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). SBA decertified Appellant after concluding that Appellant failed to cooperate with a program examination initiated by SBA. On appeal, Appellant maintains that the decertification 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 decertification notice on June 14, 2024. 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) established in the state of Texas in 2020. (Case File (CF), Exh. 35.) Appellant is 51% owned by Mr. Tod L. McLellan, a service-disabled veteran. (CF, Exhs. 35, 73.) On July 7, 2023, SBA certified Appellant as an SDVOSB for a period of three years. (CF, Exh. 22.) In his letter approving Appellant's certification, the Director of SBA's Office of Government Contracting's (D/GC) noted that "SBA may conduct a program

examination at your office or work site during your certification period to verify the accuracy of your certification.” (*Id.* at 1.)

On April 10, 2024, SBA informed Appellant that it had been selected for a program examination. (CF, Exh. 114.) SBA requested Appellant submit responses and documentation confirming its eligibility as an SDVOSB. (*Id.*) When Appellant did not respond, SBA sent a follow-up request on April 22, 2024. (CF, Exh. 113.) SBA again contacted Appellant on April 30, 2024, warning that:

Pursuant to 13 CFR 128.306(c), a participant must respond to any program examination initiated by SBA to remain a certified VOSB or SDVOSB. This is the third request to obtain a response to the below Program Examination Questionnaire. As outlined in 13 CFR 128.308(b), if a response is not uploaded by the due date, SBA may draw an adverse inference from a concern's failure to cooperate with a program examination or provide requested information and assume that the information that the concern failed to provide would demonstrate ineligibility, and decertify on this basis pursuant to 13 CFR 128.310.

(CF, Exh. 112.)

On May 9, 2024, SBA issued a Notice of Proposed Decertification (NOPD) to Appellant, demanding a response within 30 days. (CF, Exh. 107.) Appellant again did not respond, and SBA decertified Appellant on June 14, 2024. (CF, Exh. 105.)

While the appeal was pending, OHA afforded Appellant the opportunity to supplement the Case File with relevant information. (Notice and Order at 2.) Appellant did not produce any supplemental documentation.

B. Decertification

In the Notice of Decertification (NOD) dated June 14, 2024, the D/GC explained that, on May 9, 2024, SBA had issued a NOPD to Appellant and instructed that Appellant must respond to various questions to confirm its eligibility as an SDVOSB. (CF, Exh. 105, at 1.) Appellant “either did not respond to the NOPD or the response did not provide sufficient evidence refuting the information identified and explaining why the proposed ground[s] should not justify decertification.” (*Id.*) Decertification is warranted because the “[d]ocumentation provided is insufficient” and because “[Appellant] failed to cooperate with the Program Examination initiated by SBA.” (*Id.*)

C. Appeal

On June 24, 2024, Appellant appealed the D/GC's decision to OHA. Appellant acknowledges receipt of the initial program examination inquiry on April 10, 2024. (Revised Appeal at 1.) Appellant claims, however, that “responses were submitted on May 20, 2024.” (*Id.*) In its appeal, Appellant offers a description of the responses it purportedly submitted. (*Id.* at 1-4.) Appellant concedes that it changed its address during 2023 and did not inform SBA. (*Id.* at 1.)

Furthermore, although the program examination inquiry posed a series of ten “YES or NO” questions, Appellant acknowledges that it did not respond with a “YES or NO” to nine of the ten questions. (*Id.* at 1-4.)

III. Discussion

A. Standard of Review

SBA regulations require that, once a concern has been certified as an SDVOSB, the concern “must respond to any program examination initiated by SBA to remain a certified VOSB or SDVOSB.” 13 C.F.R. § 128.306(c). A program examination is an “investigation by SBA officials, which verifies the accuracy of any statement or information provided by a certified Participant.” 13 C.F.R. § 128.308(a). Furthermore:

SBA may draw an adverse inference from a concern's failure to cooperate with a program examination or provide requested information and assume that the information that the concern failed to provide would demonstrate ineligibility, and decertify on this basis pursuant to [13 C.F.R.] § 128.310.

13 C.F.R. § 128.308(b).

On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the decertification is clearly erroneous. 13 C.F.R. § 134.1111.

B. Analysis

Appellant has not shown that the D/GC committed any error of fact or law in reaching his decision. This appeal must therefore be denied.

The record reflects that the D/GC decertified Appellant after Appellant failed to respond to multiple program examination inquiries. Sections II.A and II.B, *supra*. Specifically, SBA contacted Appellant four times before decertifying Appellant on June 14, 2024. *Id.* According to the documentation in the Case File, Appellant did not respond to any of SBA's inquiries. *Id.* On appeal, Appellant acknowledges that it received the initial program examination inquiry on April 10, 2024, and maintains that “responses were submitted on May 20, 2024.” Section II.C, *supra*. No such response is in the Case File, however, and Appellant offers no evidence that any such response was ever actually submitted or received by SBA. Sections II.A and II.C, *supra*. Notably, OHA afforded Appellant the opportunity to supplement the Case File to prove its submission but Appellant did not do so. *Id.* Accordingly, the D/GC did not err in decertifying Appellant, as SBA regulations are clear that a concern which “fail[s] to cooperate with a program examination or provide requested information” may properly be decertified. 13 C.F.R. § 128.308(b).

Inasmuch as the instant appeal attempts to cure Appellant's repeated failures to respond to the program examination, the appeal must still be denied. As discussed above, the D/GC decertified Appellant due to its failure to cooperate with a program examination, and Appellant

has not demonstrated that it did, in fact, cooperate. Furthermore, even assuming, for purposes of argument, that Appellant did respond to the program examination on May 20, 2024 in the manner it claims in its appeal, that response too appears deficient. This is true because SBA posed a series of ten “YES or NO” questions to Appellant, yet Appellant evidently did not respond with a “YES or NO” to nine of those ten questions. Section II.C, *supra*.

IV. Conclusion

Appellant has not established that the D/GC committed any error of fact or law in decertifying Appellant. 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