

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

VSBC Appeal of:

BlackHays Group LLC,

Appellant

SBA No. VSBC-400-A

Decided: October 1, 2024

APPEARANCE

Scott E. Hayford, CEO and Senior Managing Member, BlackHays Group LLC, Saint Augustine, Florida

DECISION

I. Introduction and Jurisdiction

On August 1, 2024, BlackHays Group LLC (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for recertification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). SBA found that Appellant did not demonstrate that it is fully controlled by one or more service-disabled veterans. On appeal, Appellant maintains that the denial 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 denial notice on July 22, 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 Delaware. (Case File (CF), Exh. 14.) The U.S. Department of Veterans Affairs' Center for Verification and Evaluation (CVE) previously verified Appellant's SDVOSB eligibility on July 6, 2020. (CF, Exh. 2.) In June 2024, Appellant applied for recertification as an SDVOSB, and submitted various supporting documents to SBA. (CF, Exh. 97.) Appellant is 51% owned by Mr. Scott E. Hayford, a service-disabled veteran. (CF, Exhs. 115 and 125.) Mr. Cameron Conger owns the remaining 49% of Appellant. (CF, Exh. 110.) Mr. Conger is a veteran but does not have a service-connected disability. (CF, Exh. 124.) According to the minutes of a meeting of

Appellant's Members held on June 1, 2024, both Messrs. Hayford and Conger have the title "Managing Member." (CF, Exh. 88.)

According to its Operating Agreement dated June 7, 2018, Appellant designated Mr. Hayford as Managing Member. (CF, Exh. 84, at 8.) However, Appellant's Members may vote to appoint one or more "additional Managing Member[s]." (*Id.*) The Operating Agreement delineates a Managing Member's responsibilities as follows:

The business and affairs of the company shall be conducted and managed by the Managing Member of the company in accordance with this Agreement and the laws of Delaware. The Managing Member shall have responsibility for the day-to-day management of the business and affairs of the Company and shall devote such time and attention as the Managing Member deem necessary to the conduct and management of the business and affairs of the Company. Until such time as determined otherwise by the affirmative vote or consent of Members holding a majority of the Membership Units, the Managing Member shall manage the Company in such a manner that it remains a SDVOSBC within the meaning set forth in Section 3(q) of the Small Business Act (15 U.S.C. 632(q)) and [SBA's] implementing SDVOSBC Program Regulations (13 C.F.R. 125).

The Managing Member hereby is given sole power and authority to execute instruments on behalf of the Company and to otherwise bind the Company. Unless authorized by the Managing Member, no other person shall have the power or authority to execute instruments on behalf of the Company and to otherwise bind the Company. No person, firm or corporation dealing with the Company shall be required to investigate the authority of the Managing Member or to secure the approval of or confirmation by the Members of any act of the Managing Member in connection with the business or affairs of the Company.

(*Id.* at 8-9.) The Operating Agreement does not recognize any distinction between a Managing Member and a Senior Managing Member.

Appellant submitted three amendments to its Operating Agreement. On December 19, 2022, Appellant amended its Operating Agreement to admit Mr. Conger as "an additional Managing Member of the Company". (CF, Exh. 87.) On July 6, 2024, Appellant amended its Operating Agreement to clarify that, although Mr. Conger is an additional Managing Member, Mr. Hayford retains control of Appellant due to his 51% ownership interest. (CF, Exh. 80, at 1.) On July 9, 2024, Appellant again amended its Operating Agreement to state that Mr. Hayford holds the highest officer position at Appellant as its CEO and "Senior Managing Member". (CF, Exh. 78, at 1.)

B. Denial

On July 22, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for SDVOSB recertification. (CF, Exh. 81.) The D/GC found that the documentation Appellant provided did not demonstrate that Mr.

Hayford holds Appellant's highest officer position and has full control over Appellant's ordinary decision-making. (*Id.*)

The D/GC found that, under Appellant's Operating Agreement dated July 7, 2018, Mr. Hayford was designated as Appellant's sole Managing Member. (*Id.* at 1-2.) Subsequently, however, Appellant appointed Mr. Conger, who is not a service-disabled veteran, as an “additional Managing Member.” (*Id.* at 2.) Appellant amended its Operating Agreement in July 2024, asserting that Mr. Hayford is Appellant's “Senior Managing Member” and highlighting that he “retains 51% of shares and majority holdings, resulting in his position maintaining controlling interest.” (*Id.*) Nevertheless, because Messrs. Hayford and Conger are “both Managing Members” of Appellant, the D/GC could not determine that one or more service-disabled veterans holds the highest position in the company, and controls all of Appellant's ordinary decision-making. (*Id.*)

C. Appeal

On August 1, 2024, Appellant filed the instant appeal. Appellant argues that the D/GC erred in determining that Mr. Hayford, a service-disabled veteran, does not hold Appellant's highest officer position and does not exercise complete control over Appellant. (Appeal at 1.)

Appellant contends that its Operating Agreement and the amendments submitted to D/GC clearly show that the decision was made in error. (*Id.*) Appellant claims that the July 6, 2024 and July 9, 2024 amendments establish that Mr. Hayford holds the highest officer position of CEO and “Senior Managing Member.” (*Id.*) Appellant further contends that these provisions, along with Mr. Hayford's majority ownership interest, make clear that he controls the decision-making process of Appellant. (*Id.*) Insofar as the D/GC continues to doubt Appellant's SDVOSB eligibility, Appellant offers a statement from Mr. Hayford attesting that he has “sole decision-making authority over all aspects of [Appellant's] operations.” (*Id.* at 2.)

III. Discussion

A. Standard of Review

When a concern seeks certification as an SDVOSB, SBA regulations provide that:

An Applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, any independent research conducted by SBA, and any changed circumstances. The Applicant bears the burden of proof to demonstrate its eligibility as a VOSB or SDVOSB.

13 C.F.R. § 128.302(d). Furthermore, “[i]f a concern submits inconsistent information that results in SBA's inability to determine the concern's compliance with any of the VOSB or SDVOSB eligibility requirements, SBA will decline the concern's application.” *Id.* § 128.302(d)(1).

On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the denial decision is based upon clear error of fact or law. 13 C.F.R. § 134.1111.

B. Analysis

Appellant has not demonstrated clear error of fact or law in the D/GC's decision. As a result, this appeal must be denied.

The principal problem for Appellant is that both Messrs. Hayford and Conger are designated as Managing Members of Appellant. Section II.A, *supra*. SBA regulations make clear that, in the case of an LLC, one or more service-disabled veterans must serve as an LLC's managing members, “with control over all decisions of the [LLC].” 13 C.F.R. § 128.203(d). While Mr. Hayford is a qualifying service-disabled veteran, Mr. Conger is not. Section II.A, *supra*. Accordingly, the D/GC did not err in concluding that Appellant failed to demonstrate that its Managing Member is a service-disabled veteran. *See, e.g., VSBC Appeal of Facekay LLC*, SBA No. VSBC-388-A (2024) (D/GC correctly found that a veteran did not hold a concern's highest officer position, when applicable records named both a veteran and a non-veteran as the concern's “President”).

On appeal, Appellant highlights that, in July 2024, Appellant amended its Operating Agreement to clarify that Mr. Hayford is the “Senior Managing Member” and controls Appellant through his majority ownership stake. Section II.C, *supra*. There is, however, nothing in Appellant's Operating Agreement or the amendments that describes, or defines, the authority of a “Senior Managing Member” vis-à-vis a “Managing Member.” Section II.A, *supra*. On the contrary, Appellant's Operating Agreement recognizes that Appellant may appoint multiple Managing Members, and gives all Managing Members equal power over “the day-to-day management of the business and affairs of the Company.” *Id.* As such, the D/GC reasonably found that, since Messrs. Hayford and Conger are both Managing Members, they both can control Appellant.

IV. Conclusion

Appellant has not established that the D/GC committed any error of fact or law in denying Appellant's application for recertification. 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