

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

VSBC Appeal of:

The Old Breed Services, LLC

Appellant

SBA No. VSBC-305-A

Decided: September 13, 2023

APPEARANCE

Frederick Snocker, President, The Old Breed Services, LLC, Manchester Center, VT

DECISION

I. Introduction and Jurisdiction

On March 9, 2023, The Old Breed Services LLC (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). SBA found that Appellant could not be verified due to Appellant's unaddressed business affiliation issues. On appeal, Appellant maintains that SBA's denial decision was clearly erroneous and requests that the U.S. Small Business Administration (SBA) 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 March 14, 2023. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Frederick Snocker is a Service-Disabled Veteran and the President of Appellant, a limited liability company based in the state of Vermont and formed on February 28, 2018. (Case File (CF), Ex. 26.) In February 2023, Appellant applied for certification as an SDVOSB, and submitted various supporting documents to SBA. (CF, Exhs. 2 to 18.) Appellant's Operating Agreement reflects that Mr. Snocker is its sole Member and owner and that no capital contributions were made to the business. Pursuant to the Operating Agreement “the management of the business is invested in its [sole] Member.” (CF, Duplicate Exhs. 23, 26, 33.)

The record also showed the original approval date for Appellant's SBA Mentor-Protégé Program Agreement was December 17, 2018. (CF, Exh 24.) The Mentor-Protégé Agreement with HP Group, LLC was signed by the parties on June 28, 2018. (CF, Exh 25.)

B. Denial

On March 7, 2023, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for certification as an SDVOSB. (CF, Exhs. 22, 23, 24.) The D/GC found that the documentation Appellant provided as part of the application process had not demonstrated that all affiliation concerns had been addressed and that Appellant had not sufficiently demonstrated it met the eligibility criteria because it had not sufficiently addressed the issue of its affiliation with other businesses. (*Id.*) The D/GC concluded that the documentation Appellant provided was insufficient to address all SBA's concerns concerning its affiliation with other businesses, citing 13 C.F.R. § 128.200(a)(1).

The D/GC addressed the issue of whether all affiliation concerns regarding Appellant had been “addressed and accounted for”:

According to the business questionnaire, the applicant is co-located with SP Services LLC, All Service Contracting, LLC, and Tri Services LLC. The business questionnaire also confirms the applicant is a partner in a Joint Venture and in a Mentor Protege Agreement. The applicant has provided a Mentor-Protege Agreement which lists The HP Group LLC (page 1) as the mentor. Pages 2-4 of the Mentor Protege Agreement indicates the applicant is requesting for Management & Technical Assistance, Financial Assistance, Contracting Assistance, International Trade Education Assistance, Business Development Assistance, and General and/or Administrative Assistance from the mentor. The applicant was requested multiple times to elaborate on their relationship with their mentor along with an SBA approval letter and to elaborate on their relationship with the companies they are co-located with (SP Services LLC, All Service Contracting, LLC, and Tri Services LLC).

The applicant has provided an approval letter for their Mentor Protege Agreement with HP Group LLC which expired on 12/17/2021. The SDV also confirmed the Mentor Protege Agreement is expired; however, he confirmed he has completed an annual survey in order to extend his agreement. The SDV confirmed the applicant has established Joint Ventures with SP Services LLC, All Service Contracting, LLC, and Tri Services LLC with a fellow SDVOSB business in order to pursue solicitations that the applicant does not have relevant past performance in order to submit a competitive proposal. The SDV confirmed the companies are acting alone entities and do not share any other resources, employee, equipment, contracts, etc.

(CF, Exh. 22.)

In discussions with the D/GC's office regarding affiliated businesses, Mr. Snocker stated that the company could operate on its own for smaller contacts; however, Mr. Snocker admitted

that the company was financially dependent on HP Group, LLC for financial assistance to perform larger contracts. (*Id.*) With the applicant relying on financial assistance to perform larger contracts, the D/GC found that all affiliation concerns had not been addressed and accounted for.

C. Appeal

On March 29, 2023, Appellant appealed the D/GC's decision to OHA, stating that the company qualified as a small business and that there was no affiliation issue that disqualified it under 13 C.F.R. § 128.202(a). In the appeal, Appellant states that it is not affiliated with HP Group, LLC for financial assistance but maintains an approved and current Mentor/Protégé relationship with the company:

. . . Old Breed Services, LLC is not affiliated with its Mentor, The HP Group, LLC, due to financial assistance as was indicated in the SBA's Veteran Small Business Certification Program's rejection letter. The HP Group as outlined in our SBA approved Mentor Protégé agreement can provide financial assistance to The Old Breed Services if necessary to support operational performance... As evidence of this The Old Breed Services, LLC had provided the SBA ASMPP approval letter dated Dec the 17, 2018 which was effective for three years and potentially renewable for another three years. Upon receiving the veteran owned small business certification program's rejection letter I inquired with the SBA Mentor-Protégé Program (MPP) requesting they provide an updated letter with the extended date showing that our existing MPA was still in place. SBA replied to my inquiry on the expiration date and has stated that my Mentor-Protégé agreement is in good standing as of the date of this letter. . . .

(Appeal, at 1.)

Appellant then attempted, without formally moving for admission, to introduce new evidence, in the form of an email received from SBA's All Small Mentor Protégé program. (*Id.*, at 5.)

III. Discussion

A. Standard of Review

When a concern seeks certification as a VOSB or 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).

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.

Appellant seeks to introduce new evidence not in the record concerning its Mentor-Protégé status. However, such evidence is not admitted except for good cause. 13 C.F.R. § 134.1110. Appellant fails to show good cause why it did not submit this evidence earlier, when it was clearly available, and so I EXCLUDE this evidence from the record.

B. Analysis

In the instant case, Appellant has not shown that the D/GC committed any error of fact or law in reaching his decision. As a result, this appeal must be denied.

The record before OHA reflects that the D/GC did consider the various business relationships and associations that Appellant had on record to determine if any of these business relationships disqualified Appellant as a small business concern under 13 C.F.R. § 128.200(a)(1), which requires an SDVOSB to qualify as a small business for its industry and business classification under the regulations at 13 C.F.R. Part 121. In the D/GC review of the record, HP Group, LLC appeared to have a relationship with Appellant that created financial dependency and thus affiliation under 13 C.F.R. § 121.103(f). While 13 C.F.R. § 125.9(d)(4) does permit an SDVOSB to be working with an approved mentor in an approved SBA mentor-protégé relationship, Appellant did not present evidence on the record that a Mentor-Protégé Agreement was currently in force.

SBA sought numerous times to get information from Appellant on its relationship with HP Group, and Appellant did not submit information during the review process to establish that its Mentor-Protégé was still in force. Furthermore, the D/GC decided it had insufficient evidence that the other businesses Appellant was co-located with, in this case SP Services LLC, All Service Contracting, LLC, and Tri Services LLC, did not raise affiliation concerns. Appellant failed to submit evidence which addressed those concerns sufficiently for the D/GC. As a result, it was not unreasonable for the D/GC to conclude that no definitive evidence had been presented by Appellant that addressed all potential affiliation concerns as part of the SDVOSB application.

Appellant bore the burden of proof before the D/GC that it was an eligible SDVOSB. 13 C.F.R. § 128.302(d). Appellant failed to establish that it was not affiliated with a concern upon which it admitted it was financially dependent to perform larger contracts, and other concerns with which it was co-located (SP Services LLC, All Service Contracting, LLC, and Tri Services LLC). Appellant's appeal is based upon evidence which I have excluded. On the basis of the record before me, I find that the D/GC could reasonably find that Appellant did not produce sufficient evidence to persuasively show how all its affiliation relationships met the requirements of 13 C.F.R. § 128.200(a)(1). Appellant has failed to show any clear error by the D/GC, and I must deny this appeal.

IV. Conclusion

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

CHRISTOPHER HOLLEMAN
Administrative Judge