

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

VSBC Appeal of:

Precise Management, Inc.,

Appellant

SBA No. VSBC-402-A

Decided: October 9, 2024

APPEARANCE

Chirayu “Charlie” Shah, Esq., Counsel for Appellant, Bomar Law Firm, LLC,
Birmingham, Alabama

DECISION

I. Introduction and Jurisdiction

On August 6, 2024, Precise Management, Inc. (Appellant) appealed the denial of its application for re-certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) by the U.S. Small Business Administration (SBA) Director of Government Contracting (D/GC), acting through the Director of the Veteran Small Business Certification Program (D/VSBC). SBA found that Appellant was ineligible for re-certification due to documentation issues regarding Appellant's management and day-to-day control over operations. On appeal, Appellant maintains that the denial decision 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 25, 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 corporation established in the state of Alabama in 2004. (Case File (CF), Exh. 116.) In May, 2024, Appellant re-applied for certification as a VOSB, and submitted various supporting documents to SBA. (CF Exh. 31.) Appellant identified the qualifying veteran for VOSB certification as Kenyardiai Wright. (*Id.*) SBA identified potential issues regarding the qualifying veteran's management and daily business operations of the concern, a requirement under 13 C.F.R. § 128.203(a). (CF Exh. 71.) The documentation Appellant submitted, together with its responses to SBA's established that:

Appellant's [business] is located at was 6920 Tyler Chase Drive, McCalla, AL, the address of its minority member Ronjiel Thomas Sharpe (non-Veteran). This location is about 100 miles away from Mr. Wright's address at 1669 Oak St., Montgomery, AL. The sole point of contact listed in SAM.gov for Appellant was Mr. Sharpe, the non-Veteran. Every time SBA officials telephoned Appellant's listed number, Mr. Sharpe answered the phone. Mr. Wright did not have an assigned company email, whereas Mr. Sharpe, the non-Veteran, did. (CF Exh. 83.) When questioned about this, Mr. Wright responded that, while not in his name, it was the assigned company email address to which he had access. (CF Exh. 109.) In light of these discrepancies, SBA requested Appellant provide further documentation to demonstrate that Mr. Wright sufficiently controlled the daily activity of the business. (CF Exh. 78).

These requests for documentation, and Appellant's responses were:

- On July 8th, SBA asked Appellant provide copies of the ten (10) most recently available cancelled business checks signed by Mr. Wright. (CF Exh. 83.) Appellant responded with a letter stating that the business did not use checks to conduct financial transactions, and so checks could not be used to show Mr. Wright controlled the company's daily activity. (CF Exh. 106.)

- SBA asked Appellant provide copies with signatures of the Appellant's five (5) most recent contracts and/or proposals signed by Mr. Wright. (CF Exh. 83.) Each of the documents provided contained what SBA concluded was Mr. Wright's typed signature, as opposed to a handwritten or electronic one. Accordingly, SBA did not use these documents to verify Mr. Wright's signature authority. (CF Exhs. 92, 95, 104, 108, 110).

- SBA asked Appellant to provide a detailed letter explaining the roles of both Mr. Wright and Mr. Sharpe in the day-to-day operations of the company. (CF Exh. 83.) Appellant responded with a letter dated July 11, 2024 stating that Mr. Wright "control[s] the below day-to-day operations for Precise Management, Inc.":

1. Schedule routes daily for pest control technicians.
2. Review and approve contracts, proposals and invoices.
3. Schedule approved training for pest control technicians.
4. Review and approve payroll and all raises if applicable.
5. Schedule company meetings and vehicles maintenance.
6. Daily review of company bank account activity. (CF Exh. 107.)

- Accordingly, on July 16, SBA requested Appellant provide ten (10) emails or other forms of communication demonstrating that Mr. Wright controlled and participated in the company's daily activity in the manner indicated by the letter. (CF Exh. 83.) Appellant replied on July 18 with a letter reiterating that Mr. Wright delegated most correspondence activity to Mr.

Sharpe, but that Mr. Wright exercised the requisite level of control through the performance of the duties outlined in the previous letter. (CF Exh. 99.)

B. Denial

On July 25, 2024, the D/GC denied Appellant's application for certification as an SDVOSB. (CF, Exh. 87.) The D/GC found Appellant failed to provide sufficient proof it met the requirement that Mr. Wright, the qualifying veteran, control and manage the daily business operations of the company, as required by 13 C.F.R. § 128.203(a).

The D/GC noted that Mr. Wright resides about 100 miles from Appellant's location, and that all telephone calls to the concern were answered by the non-veteran minority shareholder, and Mr. Wright was not available. The sole point of contact was Mr. Sharpe. Mr. Wright did not have his own email, unlike Mr. Sharpe. (*Id.*, at 1.)

The D/GC further found checks could not be used to support a decision Mr. Wright controlled Appellant, as no checks were submitted. Further, the lack of actual or electronic signature on invoices or contracts meant control of day-to-day operations by the qualifying veteran could not be established by Mr. Wright's signature on important documents. SBA's request for copies of emails signed by Mr. Wright was met with the statement that he had delegated the handling of correspondence to Mr. Sharpe. (*Id.*, at 2.)

The D/GC also noted that in a document request dated July 16, 2024, SBA requested Appellant to provide Mr. Wright and Mr. Sharpe's W-2 and Schedule A forms, referenced in their 2023 Individual Income Tax Returns (Form 1040). The D/GC found Appellant had failed to submit this documentation. (*Id.*)

As a result of these deficiencies, D/GC concluded Appellant had failed to establish that the qualifying veteran control the management and daily business operations of the company and had thus failed to satisfy all the requirements of the regulation for certification as an SDVOSB. (*Id.*)

C. Appeal

On August 6, 2024, Appellant appealed the D/GC's decision to OHA. Appellant contended that the qualifying veteran's residence is not a relevant factor when determining control, as Mr. Wright either worked remotely, in the field, or could drive 1.5 hours to the listed address. Appellant argued the standard was whether or not the location prevented a qualifying veteran from performing his core functions, and Mr. Wright was able to do so regardless of his location. (Appeal at 1-2, citing *VSBC Protest of In and Out Valet Co.*, SBA No. VSBC-363-P (2024).)

Appellant maintained Mr. Wright had designated Mr. Sharpe as his point of contact with SBA, and that it is immaterial that he did not use email to respond to SBA's inquiries. (*Id.*) Appellant further argued that the lack of business checks is not dispositive, because most businesses now make payments electronically. Nevertheless, Appellant sought to submit bank

documents with its appeal to establish Mr. Wright had signature authority and had made withdrawals. (*Id.*, at 2.)

Appellant asserted it submitted a copy of an executed proposal and did not use a typed signature as alleged. Rather, Appellant maintained it submitted attached invoices with a genuine valid electronic signature. The Department of Veterans Affairs has paid invoices referenced by SBA without objection. Appellant argued it had submitted to SBA bank documents in which the aforementioned invoices to the Department of Veterans Affairs were paid entirely online.

Appellant relies upon these documents as evidence that the qualifying veteran had signature authority on Appellant company bank accounts. Appellant argues SBA's own guidelines allow for such signatures. (*Id.*, at 3-4, citing SBA Procedural Notice 5000-1323.)

Appellant argued Mr. Wright's delegation of the duty of handling correspondence to Mr. Sharpe is evidence of eligibility. Appellant seeks to submit copies of Mr. Wright's execution of Appellant's renewal of general liability insurance, to show his control of the company. Appellant also maintained that contrary to the D/GC's letter, it timely provided its 2023 tax returns on July 23, 2024. (*Id.*, at 4.)

Appellant argued that because Mr. Wright owns a majority interest in the concern, sits on its Board of Directors, and there are no supermajority voting requirements, Mr. Wright controls the concern. Further, none of the actions the regulations prohibit a non-veteran from undertaking are applicable to Mr. Sharpe. (*Id.*, at 4-6, citing 13 C.F.R. § 128.203(e) & (h).)

D. Objection and New Evidence

Appellant filed an objection to the Case File on September 13, 2024, in which it objected to the absence of the following items: “1.) A July 8, 2024, document request and the responses thereto. 2.) Reference to ‘the correct individual tax returns.’ 3.) Email communications which provided detailed background information.” (Objection at 2). Appellant's objections were rejected on the grounds of being insufficiently specific, but it was nevertheless given the opportunity to proffer such documents by September 25, 2024 along with an explanation as to the documents' relevance. (Rejection Order at 1). The tax returns and email discussions with VetCert (primarily regarding issues on the application end of the VOSB re-certification process) referenced in the Objection were filed by the September 25 deadline, albeit without a clear explanation of relevance. Nevertheless, I ADMIT these proffered exhibits into the Case File in the interest of a complete record.

III. Discussion

A. Standard of Review

On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the denial decision was based upon clear error of fact or law. 13 C.F.R. § 134.1111. The decision will be based primarily upon the evidence in the case file, arguments made on appeal, and any responses thereto. 13 C.F.R. § 134.1112(c).

B. Analysis

Appellant has failed to show that the D/GC decision was based upon clear error of fact or law. As a result, I must DENY this appeal.

When a concern seeks certification as a VOSB or SDVOSB, SBA regulations require 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).

[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.

13 C.F.R. § 128.302(d)(1).

In order to qualify as an SDVOSB, a concern must be not less than 51% owned and controlled by one or more service-disabled veterans. 13 C.F.R. § 134.200(b). There is no dispute here that Appellant meets the ownership requirements in the regulation, because the qualifying veteran owns 70% of its stock. CF, Exh. 24; 13 C.F.R. § 134.202(a) & (e).

The issue is then whether the D/GC's determination that Appellant had not met its burden of establishing that the qualifying veteran controlled its management and daily business operations was based upon a clear error of fact or law.

Some of the D/GC conclusions were based upon error. Appellant did provide its tax returns in a timely manner. Section II.C and Section II.D, *supra*. The D/GC erred in citing the 100-mile distance between Mr. Wright's home and Appellant's place of business as a factor indicating a lack of control. Section II.B, *supra*. The regulation previously identified a distance longer than a reasonable commute between a qualifying veteran's home and place of business as a factor giving rise to a rebuttable presumption the qualifying veteran did not control the concern (13 C.F.R. § 125.13(l) (2022)) but that regulation has since been repealed and is thus not a basis for a determination of eligibility.

Further, it is clear that the signatures on the documents Appellant submitted are electronic signatures. They are nearly identical to those OHA uses on its decisions. SBA's own guidelines allow for such signatures in the Agency's loan programs. SBA Procedural Notice 5000-1323 (October 14, 2014); Section II.C, *supra*. On the question of Appellant not submitting checks

signed by Mr. Wright, Appellant is correct that many businesses have replaced paper checks with electronic means of payment. The D/GC thus erred in basing his conclusion upon these points.

Nevertheless, I conclude the D/GC's errors in this matter were ultimately harmless, and would not have changed the result, for the reasons outlined below. *Size Appeal of OSG, Inc.*, SBA No. SIZ-5178, at 8 (2016).

It is clear that Appellant was frequently unable to produce correspondence signed by Mr. Wright on behalf of the business, that Mr. Wright had no email account of his own, and that he was never available on the telephone, despite SBA's many attempts to reach him. While the record reflects Appellant was able to provide a few examples of forms and contracts that contained a valid electronic signature from Mr. Wright (CF Exhs. 97, 108, and 110.) in attempting to satisfy that same request, Appellant was equally likely to provide printed-out pages of already-paid invoices, with those pages appearing to be electronically signed by Mr. Wright after the fact. (CF Exhs. 92, 95, and 104.)

SBA's initial request was that Appellant provide five examples of documents signed by the qualifying veteran sufficient to show he had signature authority over the operations of the business. This was far from an unreasonable request. That Appellant was just as likely to proffer invoice documents which showed tenuous (at best) signature authority as opposed to documents such as contracts and financial forms in which a valid signature would be required was a curious decision on the part of Appellant, and one which seems to support the D/GC's conclusion on the issue of management and control. This is especially true given that Appellant stated one of the qualifying veteran's primary roles in the operation of the company was to “[r]eview and approve contracts, proposals and invoices.” (CF Exh. 107.) If this is indeed one of the core functions Mr. Wright performs in the company's daily operations, there should have been no difficulty meeting this request.

Appellant's response to SBA's request for emails confirming the contents of Appellant's own letter was even more troubling. Appellant submitted a list of six different tasks that claimed to demonstrate the qualifying veteran was engaged in the management of and control over the company's daily operations. SBA accordingly requested that Appellant provide ten emails or some other form of communication providing evidence the qualifying veteran performs the tasks outlined in the letter. Section II.C, *supra*. This was a reasonable request from SBA, and one that any business should have no trouble complying with. Appellant instead responded with another letter explaining how most correspondence was delegated to the non-veteran, and then merely stated that the tasks outlined in the previous letter constituted evidence to satisfy the requirement. (CF Exhs. 99 and 109.) That Appellant failed to produce such correspondence is enough to support the D/GC's conclusion Appellant's submission was inconsistent upon the issue of Mr. Wright's control of Appellant.

Given that approving documents such as contracts and proposals is apparently one of the main tasks within the qualifying veteran's purview, it is baffling that Appellant was not able to timely proffer even five documents with Mr. Wright's valid signature evidencing this core function. The email issue is even more disconcerting. Appellant proffered, after its initial objection to the case file, 90 pages of email correspondence between Appellant and SBA. (CF

Obj. Resp.) During this correspondence, which at least did confirm that non-Veteran controlled the vast majority of correspondence from the company's (evidently) only email account, there were numerous occasions in which Mr. Wright stated he was himself signing that particular email despite it coming from Mr. Sharpe's email account. Mr. Wright was therefore more than capable of handling correspondence in his own name when the situation required it. That Appellant could not provide to SBA even ten emails of a similar variety throughout the company's recent history supports the D/GC's conclusion the record was inconsistent on the question of whether Mr. Wright controlled Appellant.

As noted above, the regulation provides that an applicant concern's eligibility is based upon the totality of the circumstances, including the application, the supporting documentation and information received in response to any SBA request for clarification. If SBA is unable to determine whether the concern complies with the regulations, due to inconsistent information in the application, SBA will decline the concern's application. 13 C.F.R. § 128.302(d)(1). SBA's inquiry is required to, when necessary, go beyond the formalities of business ownership and titles to examine how the business entity in question is actually run on a daily basis. *Matter of Teamus Construction Co., Inc.*, SBA No. VET-146 (2009) (citing *Matter of Eason Enterprises OKC LLC*, SBA No. SDV-102, at 8 (2005)); see also *Matter of Markon, Inc.*, SBA No. VET-158 (2009); *Matter of Corners Construction*, SBA No. VET-190 (2010).¹

Here, while the formalities of corporate ownership and organization are in place, the D/GC found inconsistencies in Appellant's actual operation. The qualifying veteran had no email account, signed little to no correspondence, and was never available via telephone to discuss the business. Thus, viewing the totality of the circumstances, and going beyond the formalities of ownership to examine how the business was actually run, the D/GC was not in error to find overall inconsistencies in Appellant's application, and thus to deny it in accordance with the regulation.

Appellant has failed to meet its burden, and I cannot reasonably conclude that D/GC's denial decision was based upon clear error of fact or law.

IV. Conclusion

Appellant has not established that the D/GC's decision was based upon clear 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

¹ All of these cases cite the underlying regulation being referenced as 13 C.F.R. § 125.10(a), as it was numbered in the time period when these cases were decided. The text of the regulation is virtually identical to that of its current iteration, 13 C.F.R. § 128.203(a).