

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

VSBC Appeal of:

Xebec Systems, Inc.,

Appellant

SBA No. VSBC-411-A

Decided: October 30, 2024

APPEARANCE

William Taylor Stuart, CEO, Xebec Systems, Inc., Las Vegas, Nevada.

DECISION

I. Introduction and Jurisdiction

On August 14, 2024, Xebec Systems, Inc. (Appellant) appealed a decision of the U.S. Small Business Administration's (SBA) Director of the Veteran Small Business Certification Program (D/VSBC), denying Appellant's application for certification as a Veteran-Owned Small Business (VOSB). The D/VSBC found that Appellant could not be certified due to issues with control of Appellant's ownership structure. On appeal, Appellant maintains that the D/VSBC's denial decision was erroneous and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is granted.

OHA adjudicates VOSB 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 its appeal within 10 business days after receiving the denial notice on August 7, 2024. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Appellant was incorporated as of April 15, 2024, in the State of Nevada. (Case File (CF), Exh. 29.) The qualifying veteran is William Taylor Stuart, who owns 51% of the corporation. (CF, Exh. 32, 90.) The Amended Bylaws were adopted on July 29, 2024. (CF, Exh. 26.) The Board of Directors is composed of Mr. Stuart and the minority shareholder, William Gammell. (CF, Exhs. 28, 30.)

The Bylaws provide, as to the actions of the shareholders:

## ARTICLE I

### SHAREHOLDERS

**Section 6. Informal Action.** Any action required to be taken, or which may be taken, at a shareholders meeting, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, is signed by the shareholders who own all of the shares entitled to vote with respect to the subject matter of the vote.

The Bylaws, however, have no provision as to formal actions of the shareholders.

#### B. Denial Letter

On August 7, 2024, the D/VSBC denied Appellant's application for certification as a VOSB. The D/VSBC found that because Appellant's Amended Bylaws had no provision addressing formal actions of the shareholders and its provision on informal actions of the shareholders required unanimous consent of the shareholders, that the D/VSBC could not reasonably conclude that the requirements of 13 C.F.R. § 128.203(a) & (e) had been met. (Denial Letter, CF, Exh. 23.)

#### C. Appeal

On August 14, 2024, Appellant timely filed the instant appeal. Appellant argues that Mr. Stuart, as majority shareholder, controls the company. As majority shareholder he has the ability to dictate the outcome of any shareholder action. The provision on informal shareholder action ensures that no action can be taken without Mr. Stuart's consent. (Appeal, at 1.)

Appellant maintains that formal actions require approval by a majority of shareholders at a board meeting, ensuring unilateral control by the majority shareholder. Informal actions may be deferred to other parts of the organization, with the stipulation that such authority be consented to in writing by all shareholders. Appellant points to other provisions of the Bylaws which give Mr. Taylor, as majority shareholder, power to control the corporation.

### III. Discussion

#### A. Standard of Review

When a concern seeks certification as a VOSB, 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.

### B. Analysis

Appellant has established that the D/VSBC's decision was based on error of fact and law, and thus, I find that Appellant has addressed all concerns in its Appeal and amended Bylaws. As a result, I must grant this appeal.

To be considered an eligible SDVOSB, a concern must be at least 51% owned, and controlled, by one or more service-disabled veterans. 13 C.F.R. §§ 128.200(a), 128.202 and 128.203. The “control” requirement means that “both the long-term decision-making and the day-to-day operations” must be controlled by one or more veterans. 13 C.F.R. § 128.203(a).

Here, it is clear that Mr. Stuart, the eligible veteran, directly and unconditionally owns 51% of Appellant's stock. Appellant thus meets the ownership requirements. 13 C.F.R. § 128.202(e). The D/VSBC denied Appellant's application on the basis that it had failed to meet the control requirements of 13 C.F.R. § 128.203(a) & (e). However, Mr. Stuart sits on the Board of Directors and is the majority shareholder. There are no supermajority voting requirements. Mr. Stuart thus controls the Board of Directors. 13 C.F.R. § 128.203(e)(1)(i). As for D/VSBC's concern that the Bylaws fail to address what vote is required for formal action, under the State of Nevada law, a simple majority is required for shareholder action, and Mr. Stuart as majority shareholder clearly has the ability to control formal shareholder action. NRS § 78.320(1)(b). This State law merely requires a plurality vote to elect directors, and as majority shareholder, Mr. Stuart clearly has the ability to control the election of directors. NRS § 78.330(1). Appellant thus meets the requirement that he controls any formal actions by Appellant's shareholders.

The D/VSBC's remaining concern in Appellant's Bylaws is that informal action by the shareholders requires the written consent of all shareholders. While the concern is that this gives the minority shareholder negative control by allowing them to block such action, OHA has held that such provisions do not constitute a supermajority voting requirement and do not deprive a majority shareholder of control. Rather, such a provision

merely permits, as a matter of convenience, that shareholder votes need not necessarily occur at a shareholder meeting, but also may take place informally at other times. OHA has considered similar provisions in other contexts and has held that such language “provides an alternate mechanism for actions and decisions to be made without a meeting, but does not in any way enable minority [shareholders] to block or interfere with [the majority owner's] control.” *Size Appeal of GC&V Constr., LLC*, SBA No. SIZ-5952, at 5 (2018). OHA has reasoned that, even absent unanimous agreement to take actions without a meeting, “votes and decisions may

still occur via the normal meeting process,” so a provision of this type does not grant a minority owner any substantive power over the concern. *Id.*

*CVE Protest of First Nation Group, LLC*, SBA No. CVE-201-P, at 17 (2021) (*First Nation*).

The provision here fits the standard in *First Nation*. It provides, as a convenience, an alternate mechanism for actions to be taken without a meeting, but it does not enable the minority shareholder to block any action. If they did not consent to the informal action, Mr. Stuart could simply call a formal meeting, and use his majority to achieve whatever result he chooses.

Appellant has persuasively shown that it is majority owned and controlled by Mr. Stuart, the qualifying veteran. Because D/GC expressed no other concerns with Appellant's application, Appellant is an eligible VOSB.

#### IV. Conclusion

Appellant has established that the D/VSBC's determination was based on error of fact and law in denying Appellant's application for VOSB certification. The appeal therefore is GRANTED. The D/GC must immediately include Appellant in the SBA certification database. 13 C.F.R. § 134.1112(f). 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