

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

VSBC Appeal of:

Vialytix, LLC,

Appellant

SBA No. VSBC-462-A

Decided: January 22, 2026

APPEARANCE

John Givens, II, for Vialytix, LLC

DECISION

I. Introduction and Jurisdiction

On September 19, 2025, Vialytix, LLC (Appellant) appealed a decision of the Director of Government Contracting (D/GC) U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). The D/GC found that a Service-Disabled Veteran (SDV) was not the direct and unconditional owner of a majority interest in Appellant. 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 filed the appeal within 10 business days after receiving the denial notice on September 5, 2025. 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. 6.) Appellant resolved to apply for certification as an SDVOSB and submitted various supporting documents to SBA. Appellant's Operating Agreement, executed December 21, 2021, provides that Appellant is 100% owned by Mr. John Givens II and his wife Mrs. Michelle Givens as tenants by the entirety with the right of survivorship. (CF, Exh. 2, 5.) The Operating Agreement provides that the company will be managed by the Manager and that the officer shall have sole right and exclusive authority to manage the affairs of the company and

to make all decisions. The initial Manager was Mrs. Givens. (CF, Exh. 5, ¶ 5.1.) On January 2, 2023, the Members amended the Operating Agreement to designate Mr. Givens as the Manager. (CF, Exh. 3).

B. Denial

On September 5, 2025, the D/GC denied Appellant's application because when the applicant firm is a limited liability company, at least 51% of each class of member interest must be unconditionally owned by one or more qualifying veterans. 13 C.F.R. § 128.202(d).

Appellant is owned 100% by both spouses as tenants by the entirety with right of survivorship. The D/GC interpreted this as 50/50 ownership by the two spouses. Therefore, John Givens, the Qualifying Veteran, did not majority own and fully control the concern. Further, the regulations require the Qualifying Veteran to hold the highest officer position in the concern, and Ms. Givens is the CEO. 13 C.F.R. § 128.203(b). The D/GC therefore found that Appellant was not an eligible SDVOSB or VOSB.

C. Appeal

On September 19, 2025, Appellant filed the instant appeal. Appellant argues it meets the regulatory qualifications. Tenancy by the entirety is a long-established property form in American law, recognized as creating a single unified ownership interest. Appellant cites to *United States v. Craft*, 535 U.S. 274, 280 (2002) “At common law, husband and wife were considered one person, and hence they took by the entirety, not by moieties” and to *Beal Bank, SSB v. Almand & Assoc.*, 780 So.2d 45, 52 (Fla. 2001) “An estate by the entirety is vested the spouses as a single owner, with each spouse being seized of the whole.” Appellant argues that a spouse under tenancy by the entirety ownership holds direct and unconditional ownership rights in the entirety of the business interest. Appellant argues Mr. Givens thus meets the regulatory requirement of veteran ownership. (Appeal at 1.)

Appellant further argues that the right of survivorship strengthens, not weakens Mr. Givens's ownership, because if the spouse predeceases him, he will be sole owner. Appellant does concede that if Mr. Givens predeceases his spouse, the concern's eligibility would end. (*Id.*, at 1-2.) However, Appellant points to the amendment of the Operating Agreement, naming Mr. Givens as Manager, and vesting all control in him. Therefore, he is in control of Appellant. The D/GC overlooked this evidence of his control.

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 clearly erroneous. 13 C.F.R. § 134.1111.

B. Analysis

In order to qualify as a VOSB or an SDVOSB, one or more qualifying veterans must unconditionally and directly own at least 51% of the concern. 13 C.F.R. § 128.202. The ownership must be direct, and not through another business entity or trust. 13 C.F.R. § 128.202(a). The ownership must be unconditional, and not subject to any conditions, executory agreements, restrictions on or assignments of voting rights. 13 C.F.R. § 128.202(b). In the case of a limited liability company such as Appellant, at least 51% of each class of member interest must be unconditionally owned by one or more qualifying veterans. 13 C.F.R. § 128.202(d). In determining whether a concern meets the regulatory requirements, the terms of a concern's governing documents determine who controls the company's decisions. *CVE Protest of Valiant Construction, LLC*, SBA No. CVE-205-P, at 15 (2021), citing *XOtech v. U.S.*, 950 F. 3rd 1376, 1380 (Fed. Circ. 2020).

Here the Qualifying Veteran, Mr. Givens, does not, by himself, own any stock in Appellant. The entire 100% of Appellant's stock is owned by both Mr. and Mrs. Givens, together as tenants by the entirety. The regulation requires that the Qualifying Veteran's ownership be direct and not subject to any conditions. In determining whether ownership is unconditional, OHA has applied the standard from *In the Matter of Wexford Group Int'l*, SBA No. SDV-105 (2006):

[U]nconditional necessarily means there are no conditions or limitations upon an individual's present or immediate right to exercise full control and ownership of the concern. Nor can there be any impediment to the exercise of the full range of ownership rights. Thus, a service-disabled veteran: (1) Must immediately and fully own the company (or stock) without having to wait for future events; (2) Must be able to convey or transfer interest in his ownership interest or stock whenever and to whomever they choose; and (3) Upon departure, resignation, retirement, or death, still own their stock and do with it as they choose. In sum, service-disabled veterans must immediately have an absolute right to do anything they want with their ownership interest or stock, whenever they want.

Here, however, Mr. Givens does not fully own his interest in Appellant, nor can he make decisions on his own. Mr. Givens does not have an absolute right to anything with his ownership whenever he wants, because Mrs. Givens has equal rights in the ownership interest in Appellant. Therefore Mr. Givens' ownership interest in Appellant is not unconditional and fails to meet the regulatory standard. The D/GC properly found that Mr. Givens, the Qualifying Veteran, was not

the unconditional owner of a majority interest in Appellant. Appellant is therefore not eligible to be a VOSB or an SDVOSB.¹

Accordingly, I find that the D/GC did not err in finding Appellant ineligible as a qualified SDVOSB.

IV. Conclusion

Appellant has not shown that the D/GC committed an error in denying Appellant's application for SDVOSB 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 The D/GC did err in finding that Michelle Givens was CEO of the company, because of the Amendment which designated Mr. Givens as Manager. However, the fact that Mr. Givens did not own an unconditional majority interest is dispositive.