

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

VSBC Appeal of:

Display Devices, Inc.,

Appellant

SBA No. VSBC-439-A

Decided: August 11, 2025

APPEARANCES

Mervin Perkins, President, Eric Perkins, Chair of the Board, Andrew Shaw, Treasurer, Display Devices, Inc., Golden, Colorado

DECISION

I. Introduction and Jurisdiction

On June 30, 2025, Display Devices, Inc. (Appellant) appealed the denial of its application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) by the U.S. Small Business Administration (SBA) Office of Government Contracting & Business Development (GCBD). SBA found that Appellant was ineligible for certification due to issues with Appellant's ownership and control as well as with the qualifying veteran's compensation. 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 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 April 30, 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 Colorado in 1989. (Case File (CF) Exh. 29). In May 2025, Appellant re-applied for certification as a VOSB, and submitted various supporting documents to SBA. (CF Exh. 1). Appellant identified the qualifying veteran for VOSB certification as Mervin B. Perkins. (CF Exh. 12).

Appellant answered “No” in the questionnaire to whether the Qualifying Veteran, Mr.

Mervin Perkins, is the highest compensated in the business. (CF Exh. 12). Appellant asserts this election was to benefit the concern. (*Id.*)

Two different copies of company shareholders' meeting minutes, both dated April 30, 2025, were provided to SBA. (Exhs. 17 and 23). One copy identifies Mr. Mervin Perkins as the President of the firm. However, another set of meeting minutes from the same day identifies Mr. Eric Perkins as President of the firm. (*Id.*)

Furthermore, another answer from Appellant in the Questionnaire stated, "Eric Perkins now oversees day to day operations" and that the Qualifying Veteran, Mervin Perkins, has 100% ownership in another entity, D.D.I. Properties, Inc., although he does not have any outside employment. (Exh. 12).

Appellant's Bylaws also state: Section 18 of the firm's Bylaws require that any act of the shareholders must be passed by an affirmative vote of a majority of the shareholders present at the meeting. Section 45 provides any Director, or the entire Board may be removed with or without cause by the holders of a majority of shares entitled to vote in an election of Directors. (CF Exh. 24). The firm's Stock Ledger reflects Mervin Perkins holds 50,000 of the firm's 50,000 outstanding shares, making him the sole shareholder. (CF Exh. 20). Thus, as sole shareholder, Mervin Perkins is necessary and sufficient to control decision-making and Board of Directors decision-making through his ability as sole shareholder to remove Directors at will. (CF Exh. 12).

B. Denial

On June 30, 2025, the SBA Director of the Office of Government Contracting (D/GC), acting through the Director of SBA's Veteran Small Business Certification Program, denied Appellant's application for certification as an SDVOSB. The D/GC found that Appellant did not meet, or provide sufficient proof of meeting, the following requirements:

- that no non-qualifying veteran may "[r]eceive compensation from the concern in any form as a director, officer, or employee, that exceeds the compensation to be received by the qualifying veteran who holds the highest officer position (usually Chief Executive Officer or President), unless the concern demonstrates that the compensation to be received by non-qualifying veteran is commercially reasonable or that the qualifying veteran has elected to take lower compensation to benefit the concern" as required by 13 C.F.R. § 128.203(h)(6). (SBA Denial Letter).
- that "a qualifying veteran must hold the highest officer position in the concern" as per 13 C.F.R. 128.203(b). (*Id.*)
- that the "management and daily business operations of the concern must be controlled by one or more veterans" as per 13 C.F.R. 128.203(a). (*Id.*)

The D/GC made these determinations on the basis of answers from Mr. Mervin Perkins to the questionnaire on SBA's application portal, as well as Section 66 of Appellant's Bylaws document Appellant submitted to SBA.

The D/GC came to this conclusion on the basis that the Qualifying Veteran, Mervin Perkins, was not the highest compensated person in the company. Further, the Meeting Minutes of April 30, 2025 identified Eric Perkins as Appellant's President, and so the qualifying veteran did not hold the highest officer position in the company. Finally, the regulation requires that the qualifying veteran oversee the management and daily business operations of the company, and Mr. Mervin Perkins stated that his son Eric now oversees day-to-day operations.

C. Appeal

On June 30, 2025, Appellant appealed the D/GC's decision to OHA. On July 9, 2025, Appellant submitted a letter of explanation from the Qualifying Veteran, Mervin Perkins. This letter presents Appellant's arguments on appeal. The letter asserts that the copy of the meeting minutes that identified Eric Perkins as President of the firm was incorrect, and the copy identifying Mervin Perkins as President is the correct copy, which Appellant also submitted to SBA.

Regarding the issue of control, Appellant asserts that “[e]very loan, every lease, every contract, salaries and all the corporate matters have been personally signed or approved by me [Mervin Perkins] with no exceptions.” (Appeal Letter at 1). Appellant states that it does “rely on others for some of the day-to-day operations because there is a great deal of traveling involved with some of the jobs we do.” (*Id.*) Appellant concludes this section by stating that his son, Eric, “will probably wind up running the business in future years. That time is not here yet however.” (*Id.*)

Addressing the issue of Mervin's salary not being the highest in the company, Appellant maintains this is its deliberate choice but is in no way a reflection of how authority is distributed in the concern. Appellant asserts “in a small business, the owner is the last to be paid after all the expenses and employees have been taken care of,” and that accordingly, Mervin Perkins has “taken a wage that, while it may not be the highest, is more than adequate for a single person with virtually no personal debt.” (Appeal Letter at 1). Appellant also points out that, as evidenced by his tax returns, Mervin Perkins also receives “a significant amount of money for rental income from the company,” and so the wage figure by itself does not tell the entire story. (Appeal Letter at 2).

Moreover, Appellant also mentions that this year, Mervin Perkins “put a substantial amount of [his] personal savings into the company to address cash flow issues” and that there were “many time[s] over the years that [he] received no paycheck at all when things were tight.” (*Id.*) The letter further explains that Mervin Perkins pays his income taxes, and that if he takes a salary, pays taxes on it, and gives it back to the company, he thereby loses money compared to just keeping it in the company. This is especially true in a bad year or when the company pays less tax. This is done on the advice of his CPA. Simply put, if the company does well, then

Mervin does well individually, but if it fails he risks losing everything. The letter concludes by stating Appellant doesn't think Mervin could be more involved than that. (*Id.*)

III. Discussion

A. Standard of Review

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).

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.” 13 C.F.R. § 128.302(d)(1).

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.

B. Analysis

Appellant has failed to establish that the D/GC decision was based upon error of fact or law. Accordingly, I DENY 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(b), 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 service-disabled veterans. 13 C.F.R. § 128.203(a). Further, SBA regulations prohibit the service-disabled veteran upon whom a concern's claim of eligibility is based from engaging “in outside employment that prevent[s] [him or her] from devoting the time and attention to the concern necessary to control its management and daily business operations.” 13 C.F.R. § 128.203(i).

Here, the D/GC determined that Appellant did not meet or provide sufficient proof of meeting SBA regulations to qualify as a SDVOSB.

First, the D/GC found that the qualifying veteran, Mr. Mervin Perkins, was not the highest compensated officer in the concern. The regulation provides that no non-qualifying veteran may receive compensation exceeding that paid the qualifying veteran. 13 C.F.R. §

128.203(h)(6). The D/GC thus found Appellant failed to qualify as a concern controlled by a veteran under the regulation. However, Appellant stated clearly in its application that the qualifying veteran had agreed to lower compensation to benefit the concern. This statement was in response to a question on the SBA form which asked clearly whether the action was taken to benefit the concern. (CF Exh. 12). The regulation provides that the qualifying veteran not receiving the highest salary is not indicative of lack of control by the qualifying veteran if “[T]he concern demonstrates . . . the qualifying veteran has elected to take lower compensation to benefit the concern.” 13 C.F.R. § 128.203(h)(6). Here, Appellant made clear that was the reason for the disparity in salary and did so using SBA's own form. It is not at all uncommon for small business owners to take reduced or deferred compensation in order to benefit the business. Appellant did so here, in compliance with the regulation, and informed SBA using SBA's own form. The D/GC therefore erred in finding Appellant had not complied with the regulation.

The D/GC also found the qualifying veteran did not hold the highest officer position in the company, as required by the regulation. 13 C.F.R. § 128.203(b). The evidence in the Case File is contradictory on this point. Some documents identify Mervin Perkins, the qualifying veteran, as President, and his son Eric as Chairman. (CF, Exhs. 17, 18). Some documents identify his son Eric Perkins as President. (CF, Exhs. 23, 25). Appellant's Certification to SBA as part of its application form clearly answers “No” to the question of whether the qualifying veteran holds the highest officer position in the concern. (CF, Exh. 12). The D/GC thus was justified in declining the application, because it submitted inconsistent information on the vital question of just who was Appellant's highest-ranking officer. 13 C.F.R. § 128.302(d)(1).

Finally, the regulation requires that the management and daily business operations of the concern must be controlled by one or more veterans. 13 C.F.R. 128.203(a). Appellant's application states clearly that the qualifying veteran's son “Eric Perkins now oversees day to day operations.” The SBA's notes on the application state: “A statement was provided which attests Eric Perkins is effectively the COO (Chief Operating Officer) of the company.” Given this record before them, the D/GC could not conclude that the qualifying veteran-controlled Appellant's management and daily business operations, and therefore was justified in denying the application.

I conclude that Appellant has failed to meet its burden to establish that the D/GC erred in denying Appellant's application.

IV. Conclusion

Appellant has not established that the D/GC committed reversible 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