

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

VSBC Appeal of:

Borek's Concrete Company,

Appellant

SBA No. VSBC-457-A

Decided: January 6, 2026

APPEARANCE

Melia Borek, President, Borek's Concrete Company, Concord, North Carolina

DECISION

I. Introduction and Jurisdiction

On October 3, 2025, Borek's Concrete Company, LLC (Appellant) appealed a decision of the U.S. Small Business Administration's (SBA) Acting Deputy Associate Administrator of the Office of Certification and Eligibility, acting for the Director of Government Contracting (D/GC), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran Owned Small Business (VOSB). SBA found that Appellant did not establish that one or more service-disabled veterans controls 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 30, 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 North Carolina corporation, with a primary North American Industry Classification System (NAICS) code of 238110, Poured Concrete Foundation and Structure Contractors, with a corresponding \$19 million annual receipts size standard. (Case File (CF), Exh. 2, 34, 35, 37.) Its primary Qualifying Veteran owner is Melina Borek, a Service-Disabled Veteran (SDV) who owns 51% of the concern's stock. (*Id.*) Ms. Borek's spouse, Patrick Borek, owns 49%. (CF, Exh. 3.) Appellant's Bylaws provide that a quorum is 60% of the shareholders.

(CF, Exh. 35, ¶ IX.) The corporation is to be managed by 2 directors, who are Mr. and Ms. Borek. A majority of the Directors is necessary to constitute a quorum, and to transact business. Any Director may be removed at any time by a majority vote of the shareholders. (CF, Exh. 35, ¶ XVI.) The Bylaws may be amended by a 75% vote of the shareholders. (CF, Exh. 34, ¶ XIV.)

In Appellant's application, Ms. Borek stated:

In my role as co-owner of the business I manage all administrative and office functions, including: Weekly payroll processing and tax filing Customer invoicing and billing Receipt management and contract administration Company insurance management Bookkeeping using QuickBooks Account reconciliation (credit cards, fuel cards) Vehicle management (taxes, insurance, DOT registration, repairs, and maintenance scheduling) Apparel and tool inventory oversight Equipment maintenance, scheduling and billing. I hold Associate's degrees in Mechatronics Engineering, Electrical Systems, and General Education, and completed over 100 credit hours toward an Associate degree in Business Administration. My professional background includes U.S. Army (MEPS) Personnel processing and data entry Energizer; Electrician and technician trainer Elite Line Service (Amazon contractor) Robotic technician manager and trainer Amazon; Promoted to Scheduler/Planner; where responsibilities included: Preventive Maintenance scheduling Equipment and parts inventory management Technician onboarding, training and scheduling (vacation/sick time) Prior to acquiring the business; it was owned by my in-laws, Kim and John Borek, Sr. My husband and I formally took over operations after a transitional period during which I was trained by Kim, a professional accountant, in all administrative and financial aspects of the company. Currently, my husband and I share responsibility for job bidding, collaborating on estimates proposals and client communications. While he focuses on field operations and project execution, I manage all office-related functions to ensure the business runs smoothly efficiently and in compliance with all regulations.

(CF, Exh. 3.)

In answer to the question: "Do you manage or supervise the day-to-day operations of the business?" Ms. Borek stated:

I manage all administrative and office functions, including weekly payroll processing and payroll tax filing Customer invoicing and billing Receipt management and contract administration Company insurance management Bookkeeping using QuickBooks Account reconciliation (credit cards, fuel cards) Vehicle management (taxes, insurance DOT registration, repairs, and maintenance scheduling) Apparel and tool inventory and oversight Equipment maintenance scheduling and billing.

(*Id.*)

Mr. Patrick Borek answered the same question:

Project Management: Oversee all phase of concrete construction projects from initiation to completion. Coordinate with clients, subcontractors, suppliers and internal teams. Track project progress and adjust schedules and resources as needed. Ensure compliance with project specs, budgets and deadlines. Field work supervision: Supervise field crews, ensuring work quality, safety standards and productivity. Conduct site inspections and ensure adherence to constriction plans. Resolve on-site issues and conflicts quickly and efficiently. Job estimating: prepare accurate cost estimates and proposals for concrete construction projects. Review plans and specifications to determine labor material and equipment needs. Assist with bidding processes and client negotiations. Read and interpret blueprints, drawings and technical documents. Translate construction plans into actionable field instructions. Verify layout and alignment according to project specifications. Concrete work: Possess hands on knowledge of concrete forming, placing, finishing and curing. Ensure proper handling of concrete materials and adherence to mix designs. Train and mentor crew members on concrete practices and safety protocols.

(Id.)

In a message to SBA as part of the application process, Ms. Borek stated:

My husband (Patrick Borek), who is also a co-owner of the business, has significantly more experience in the field and has been working with the company since 2013. In contrast, my role is primarily administrative, and I do not have the same level of technical experience or tenure in the industry.

(Email to SBA from Appellant 9/16/2025.)

B. Denial

On September 30, 2025, the D/GC declined Appellant's application. The D/GC concluded that Appellant was not an eligible VOSB or SDVOSB. The D/GC referred to the regulations on control of a Limited Liability Company (LLC) at 13 C.F.R. § 128.203(a) & (d) and noted that both Ms. Borek, the Qualifying Veteran and Mr. Borek, both state that they manage Appellant's daily operations. Reviewing the statements made by Appellant's principals, the D/GC concluded, addressing Ms. Borek:

It appears that the NQO [Mr. Borek] has the firm's industry experience, is responsible for the firm's construction projections from initiation to completion and controls the management and supervision of the day-to-day operations. Whereas it appears that you manage the administrative and office functions of the firm. Thus, QO [Ms. Borek] does not have control of the management and daily business operations of the concern or control over all decisions of the limited liability company.

(Decline Letter at 3.)

The D/GC went on to note that, under the regulations, there are limitations on the control of a concern by persons not Qualified Veterans. These persons cannot exercise actual control or have power to control the concern or have business relationships that cause such economic dependence that the Qualifying Veteran cannot exercise independent business judgment without great economic risk. (*Id.*, at 3, citing 13 C.F.R. § 128.203(h)(1)(i)&(ii).)

The D/GC concluded that it was Mr. Borek, who was not a Qualified Veteran, who has the concern's industry experience, is responsible for the firm's construction projects from initiation to completion and controls the management and supervision of day-to-day operations. The D/GC concluded that Ms. Borek managed Appellant's administrative and office functions. Thus, Appellant relies upon Mr. Borek's knowledge, experience, and management of construction projects. The D/GC concluded that a non-qualifying veteran can exercise actual control or have the power to control the concern and has business relationships such that the Qualifying Veteran cannot exercise independent business judgment without great economic risk. (Decline letter, at 3-4.)

Further, the D/GC found that Ms. Borek was not the highest compensated person in the firm, as required by 13 C.F.R. § 128.203(h)(6). Mr. Borek, a non-Qualifying Veteran is highest compensated individual. The D/GC stated SBA had inquired whether the compensation was commercially reasonable or whether the Qualifying Veteran had elected to take lower compensation to benefit the concern.

Ms. Borek responded for Appellant on September 16, 2025 that Mr. Borek had significantly more experience than Ms. Borek and has been working at the company since 2013, whereas her role is primarily administrative and she does not have the same level of technical experience or tenure in the industry. "His compensation reflects his years of experience and the value he brings to the operational side of the business." Further, Ms. Borek stated that as co-owners the Boreks plan to take dividends from company profits following this fiscal year, and deposit them in their joint account, which aligns with their shared ownership of the business.

The D/GC concluded that a Non-Qualifying Veteran received compensation higher than that of the Qualifying Veteran who holds the highest officer position. Appellant had failed to explain how Ms. Borek's lower salary benefits the company. Therefore, the Qualifying Veteran is not the highest compensated individual with the firm and Appellant failed to demonstrate how the compensation received by the non-Qualifying person is commercially reasonable or that the Qualifying Veteran had elected to take a lower compensation to benefit the concern. (Decline letter, at 4.)

The D.GC thus concluded Appellant was not controlled by the Qualifying Veteran and declined Appellant's application.

C. Appeal

On October 3, 2025, Appellant appealed the D/GC's decision to OHA. Appellant argues the D/GC misinterpreted the control requirement in making the decision to decline Appellant's application.

Appellant asserts Ms. Borek owns 51% of Appellant, holds the highest officer position and exercises control over Appellant's long-term strategic decisions and day-to-day operations. Her responsibilities include signing all contracts and overseeing the company's multi-million dollar operations; searching for new work opportunities, drafting proposals, and reviewing contracts; and initiating certified payroll, managing monthly invoicing, and overseeing insurance, bookkeeping, account reconciliation, vehicle management and equipment maintenance scheduling. These functions are critical to the management and administration of the business. While Mr. Borek oversees field operations, his role is subordinate to Ms. Borek's authority, she approves all project proposals, contracts and budgets, ensuring alignment with the company's strategic objectives. Mr. Borek controls Appellant in accordance with the requirements at 13 C.F.R. § 128.203(a). (Appeal at 1.)

Appellant further points out that it is not an LLC, but a corporation. Thus the D/GC's reliance upon regulations applicable to LLCs is misplaced. Ms. Borek's 51% ownership and role as President ensure her control over all decisions. Ms. Borek holds ultimate decision making authority, consistent with the requirements for VOSB/SDVOSBs. (*Id.*, citing 13 C.F.R. § 128.203(d).)

Addressing the issue of managerial experience, Appellant asserts Ms. Borek has the managerial experience necessary to run a multi-million dollar concrete business. Her role includes strategic decision-making, financial oversight and regulatory compliance. The concrete industry requires both office-based leadership and field execution. Ms. Borek's oversight of both demonstrates her capability. Mr. Borek's responsibilities of supervising field crews, preparing estimates and managing project execution are performed under Ms. Borek's direction. She reviews and approves all proposals, contracts and budgets, and no decision is finalized without her review. SBA's concern that Mr. Borek's field experience means he is in control is misplaced. This division of labor is standard in the concrete industry, where field operations complement administrative and strategic management. It is also necessary, because due to Ms. Borek's disabled status, she is unable to perform physically demanding tasks. This complementary structure is essential for the company's operations. (*Id.*, at 3.)

Appellant argues the D/GC's conclusion that Ms. Borek cannot exercise business judgment independent of Mr. Borek without economic risk because of his role as manager and field supervisor is misplaced. This role does not confer control over the company. His tasks of overseeing field crews, ensuring quality performance and preparing budget estimates are all executed under Ms. Borek's authority. His technical expertise supports operations but does not equate to control over the company's management or strategic direction. (*Id.*, citing 13 C.F.R. § 128.203(h)(1).)

Ms. Borek approves all contracts, budgets and strategic decisions, and ensures Mr. Borek's field activities align with her directives. The company's success is dependent upon Ms. and Mr. Borek's complementary roles. Her strategic and administrative leadership is crucial to securing contracts and managing finances and effective operation of the company. Appellant's message of 9/16/2025 was meant to acknowledge Mr. Borek's technical contributions, not to suggest Ms. Borek's role was secondary or dependent. Her independent judgment in contract negotiations, financial management and operational oversight is essential, and there is no economic risk in her exercising her authority. (*Id.*, citing 13 C.F.R. § 128.203(h)(2).)

Appellant argues Mr. Borek's higher compensation is commercially reasonable because he is a field supervisor, which commands a higher salary in the industry due to its technical and labor-intensive nature. Appellant maintains it is following IRS guidelines for reasonable compensation for an S Corporation shareholder-employee as the amount a similar business would pay for comparable services under similar circumstances. Ms. Borek's salary is reasonable for her administrative and executive duties, including contract management, financial oversight, and strategic leadership. (*Id.*, at 2-3, citing 13 C.F.R. § 128.203(h)(6).)

Appellant further argues Mr. Borek's higher salary is commercially reasonable given industry standards for NAICS code 238110. Field supervisors with extensive experience like Mr. Borek (he has been with Appellant since 2013) typically earn higher salaries than administrators or executives in similar-sized firms. Mr. Borek has multiple duties, including field supervision, project management, and estimation. Appellant would have to hire multiple individuals to replace him, paying more than double his current salary. Mr. Borek's compensation aligns with market rates for compatible services. Appellant maintains it is thus in compliance with 13 C.F.R. § 128.203(h)(6). (*Id.*, at 3.)

Appellant maintains that Ms. Borek, as President and 51% shareholder has elected to take a lower salary to benefit the company, as permitted by 13 C.F.R. § 128.203(h)(6). This decision permits Appellant to retain more working capital for operational expenses such as equipment and bidding on larger projects, enhancing Appellant's competitiveness. Ms. Borek receives a higher draw of new profits during distributions as majority shareholder. These are deposited into her joint account with Mr. Borek, aligning with their co-ownership. (*Id.*)

Appellant concludes by arguing it meets all the VOSB/SDVOSB criteria of 13 C.F.R. § 128.203. Ms. Borek, as President and 51% shareholder controls management and daily operations, possesses the requisite management experience, and holds the highest officer position. Mr. Borek's field experience complements but does not supersede her authority, and his compensation is commercially reasonable, while Ms. Borek's lower salary benefits Appellant's financial health. (*Id.*)

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

An SDVOSB must not be less than 51% owned and controlled by one or more Service-Disabled Veteran. 13 C.F.R. § 128.200(b)(2). The management and daily business operations of the concern must be controlled by one or more service-disabled veterans. 13 C.F.R. § 128.203(a). A qualifying veteran must hold the highest officer position in the concern and must have managerial experience of the extent and complexity needed to control the concern. The qualifying veteran need not have the technical expertise or possess the required license to be found to have control of the concern if the qualifying veteran can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. 13 C.F.R. § 128.203(b).

Individuals who are not qualifying veterans may be involved in the management of the concern and may be shareholders. 13 C.F.R. § 128.203(h). However, such individuals may not exercise actual control or have the power to control the concern. 13 C.F.R. § 128.203(h)(1). Such individuals may also not have business relationships that cause such dependence that the qualifying veteran cannot exercise independent business judgment without great economic risk. 13 C.F.R. § 128.203(h)(2). Such individuals may also not receive compensation from the concern in any form that exceeds the compensation received by the qualifying veteran who holds the highest office position unless the concern demonstrates the compensation received is commercially reasonable or the qualifying veteran has elected to take lower compensation to benefit the concern. 13 C.F.R. § 128.203(h)(6).

The D/GC denied Appellant's application in part because Ms. Borek is not the most highly compensated official in the concern. Appellant thus must show that Mr. Borek's larger compensation is commercially reasonable or that Ms. Borek took lower compensation to benefit Appellant. Here, Appellant's claim of commercial reasonableness is based upon the mere unsworn and unsubstantiated assertion of Ms. Borek and is not supported by any proffer of

evidence. Consequently, Appellant has not met its burden of establishing the commercial reasonableness of Mr. Borek's salary. However, Ms. Borek does claim she is taking a lower salary to benefit Appellant, leaving more working capital in the company. Further, Ms. Borek states that she receives a higher draw of new profits during distributions as majority shareholder, and that she actually is the highest compensated shareholder. When considering compensation, SBA must consider all compensation received, from all sources, and of all forms. *CVE Protest of SouthCo Svcs.*, SBA No. CVE-275-P (2023). If Ms. Borek were found to control the company, a remand would be appropriate to consider whether Ms. Borek is actually the highest compensated officer, and if not, whether she was taking a lower salary to benefit the concern.

However, the question of Ms. Borek's control of the concern is more important here. The D/GC did err in characterizing Appellant as an LLC, when it is in fact a Subchapter S Corporation. The Qualifying Veteran must control the Board of Directors. SBA deems the Qualifying Veteran to control the Board where they own at least 51% of the stock, sit on the Board, and there are no supermajority voting requirements for shareholders to approve corporate actions, or if there are, the Qualifying Veteran owns sufficient stock to overcome them. 13 C.F.R. § 128.203(e)(1)(ii).

Here, the D/GC denied Appellant's application because Appellant's own submission showed that it is Mr. Borek, who is not a Qualifying Veteran, who is technically proficient in the concern's business. Appellant relies upon Mr. Borek's knowledge, experience, and management of construction projects. Ms. Borek performs administrative functions. Ms. Borek is, however, Appellant's President and majority shareholder. The regulation provides that the Qualifying Veteran need not have the applicable technical expertise to be found to control of the concern if the qualifying veteran can demonstrate they have ultimate managerial and supervisory control over those who possess the technical expertise. 13 C.F.R. § 128.203(b). If Ms. Borek can be found to have ultimate control over the concern, the fact that Mr. Borek is performing the field work does not mean she does not control the concern.

The D/GC further found that Ms. Borek could not exercise independent business judgement without great economic risk. But the regulation refers to the non-qualifying veteran as having business relationships which caused such dependence. Here, the D/GC was not relying upon any of Mr. Borek's business relationships, but on his technical expertise. The applicable regulation for considering Mr. Borek's technical expertise was § 128.203(b), not § 128.203(h)(2), which is applicable to cases where the non-qualifying veteran or a non-SDV firm is crucial to the SDVOSB's ability to conduct business, because of receiving financing or other aid from that concern. *CVE Protest of Blue Cord Development Group, LLC*, SBA No. CVE-179-P, at 10 (2021); *CVE Protest of Alpha4 Solutions, LLC*, SBA No. CVE-103-P, at 9 (2019).

However, the question the D/GC did not address was Ms. Borek's ability to control Appellant under its corporate documents. The terms of a concern's governing documents determine who controls the decisions of the company. *CVE Protest of Alpha4 Solutions, LLC*, SBA No. CVE-175-P (2020). Appellant's Bylaws provide that 60% of shareholders are necessary for a quorum, and 75% of shareholders are necessary to amend the Bylaws. These are supermajority requirements which Ms. Borek cannot meet with her 51% ownership. Consequently, Mr. Borek has impermissible negative control over Appellant. The regulation

requires that the Qualifying Veteran be able to meet all the supermajority voting requirements, if not, the concern is not an eligible concern. *Matter of XOTech, LLC*, SBA No. VET-277 (2018) at 7. Ms. Borek does not meet them, and she therefore does not control the company.

Accordingly, I conclude that Appellant has failed to meet its burden of showing that the denial decision was clearly erroneous, and therefore I must DENY this appeal.

IV. Conclusion

Appellant has failed to show that the D/GC's denial of its application for SDVOSB certification was in error. I therefore DENY the instant appeal. 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