



**U.S. Department of  
Transportation**

Office of the Secretary  
Of Transportation

Departmental Office of Civil Rights  
1200 New Jersey Avenue, S.E., W76-401  
Washington, DC 20590

October 13, 2020

Docket No. 20-0056

James Gabel  
SWATA Group, LLC  
6164 Arbor Green Dr.  
St. Louis, MO 63129

Dear Mr. Gabel:

This is in response to your appeal of the decision of the City of St. Louis to deny the application of your firm, SWATA Group, LLC (SG) for DBE certification.

As someone who is not a member of one of the groups that enjoys a presumption of social and economic disadvantage, you must prove individual disadvantage by a preponderance of the evidence. See sections 26.61(d) and 26.67(d) of, and Appendix E to, the DBE regulation found at 49 CFR Part 26. Both provisions refer to the Appendix as guidance for making and evaluating a claim of individual disadvantage.

You must prove both types of disadvantage. Thus, a failure of proof of either social or economic disadvantage renders SG ineligible. You contend that your disability has caused you to be socially disadvantaged within the meaning of the regulation, and Appendix E makes clear that one or more disabilities can be the basis of such a claim. You still must satisfy the elements that the Appendix specifies and explains. The only issue in this case is whether you met your burden with respect to social disadvantage.

Appendix E establishes a three-part test for social disadvantage. An individual must show that (1) he has at least one objective distinguishing feature that has contributed to his social disadvantage, (2) that he has personally experienced substantial chronic and substantial social disadvantage in the United States because of that distinguishing feature, and (3) that the disadvantage has negatively impacted his entry into or advancement in the business world.

Your disabilities – severe sciatica and hearing loss – meet the first part of the test. With respect to the second criterion, you referred in general terms to your inability to get work with large contractors, who you said were only interested in working with firms that were DBE- or M/WBE-certified. You also said these firms were often reluctant to engage your firm out of concern that your disabilities would prevent you from carrying out necessary tasks. However, these assertions were not, as Appendix E requires, supported by any specific details concerning incidents that could demonstrate chronic and substantial social disadvantage.

Concerning the third part of the test, you said that the time you spent in the military prevented you from completing a college degree, the lack of which later cost you a job opportunity. That you spent time in the military, however, is not evidence that your disability negatively impacted your ability to enter and advance in the business world.

On the basis of this record, the City concluded that you failed to meet your burden of proof under sections 26.61(d) and 26.67(d) and Appendix E. On appeal, you said that you believed that you did meet that burden, but you did not present additional evidence. We must conclude that the City had substantial evidence for denying SG's application on burden of proof grounds. We also conclude that LACMTA's analysis and decision are consistent with applicable provisions of the DBE regulation. By the terms of section 26.89(f)(1), we affirm the City's ineligibility determination.

This decision is administratively final.

Sincerely,

Samuel F. Brooks  
DBE Team Lead  
Disadvantaged Business Enterprise Division

cc: Amber D. Gooding

