



**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

June 17, 2020

Docket No. 20-0070

Andy Schmidt  
Breakaway Construction Services  
[REDACTED]  
Lake Elsinore, CA 92530

Dear Mr. Schmidt:

This is in response to your appeal of the denial of the DBE application of Breakaway Construction Services (BCS) by the San Diego County Regional Airport Authority (the Authority). The Authority determined that you are not a socially and economically disadvantaged individual. The Authority also said that you do not meet ownership and control requirements for BCS.

As someone who is not a member of one of the groups presumed to be disadvantaged under the DBE regulation, you have the burden of proving that you are a socially and economically disadvantaged individual as provided in Appendix E of 49 CFR Part 26, the Department's DBE regulation. Your contention to the Authority, and in your appeal, is that you are an individual with a disability, namely [REDACTED]

Appendix E is drawn from regulations (13 CFR 124.103(c)) of the Small Business Administration (SBA). Both Appendix E and the SBA rule include three requirements that an applicant must meet to show social disadvantage: (1) that the applicant has at least one objective distinguishing feature that has contributed to his social disadvantage, (2) that the applicant 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 the applicant's entry into or advancement in the business world.

Following SBA precedent, the Department accepts as true assertions any evidence provided by the applicant that is not contested.<sup>1</sup> Consequently, we accept that you have [REDACTED] [REDACTED] As a disability that is recognized under the Americans with Disabilities Act (ADA), this constitutes an "objective distinguishing feature" that meets the first of the three requirements.

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<sup>1</sup> See for instance *Strategygen Co.*, SBA No. BDPE-460 (2012) at 2, and 19-0144, *Elite Performance and Learning Center*, November , 2019.

Evidence with respect to the second and third requirements, however, is scant. In the “Summary of Disorder,” you mention being terminated from two jobs in 1999 and 2001, but do not provide evidence, beyond a general allegation, that these terminations were the result of your disability. In addition, the document does not contain any specific information supporting your assertion that, in the years following through 2007, you were unable to hold a job long term because of your disability.

Assertions like these, which lack sufficient detail or merely state conclusions, are not adequate to support an application for individual disadvantage.<sup>2</sup> Moreover, your resume shows that, since 2008, you had success in responsible positions for three companies, including BCS. Under the circumstances, the Authority had a sound basis for determining that you have not sufficiently shown that you have experienced chronic social disadvantage because of your disability or that any such disadvantage has negatively impacted your entry into or advancement within the business world.

Consequently, we conclude that the authority had substantial evidence to determine that you failed to carry the burden of proof necessary to establish social disadvantage on an individual basis. This being the case, it is not necessary to address the ownership and control issues. We are therefore affirming the Authority’s decision.

This decision is administratively final.

Sincerely,

Samuel F. Brooks  
DBE Team Lead  
Disadvantaged Business Enterprise Division

cc: Maria A. Quiroz

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<sup>2</sup> See for instance *Bistreams, Inc.* SBA No BDP-122 (1999) at 9-10.

