



**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

November 30, 2022

Docket No. 22-0063

Ralph Taylor
Orion Insurance Group
10634 E. Riverside Dr., Suite 300
Bothell, WA 98011

Dear Ralph Taylor:

Orion Insurance Group (Orion) appeals the Washington Unified Certification Program's (WUCP) August 6, 2021, denial of its application for certification as a Disadvantaged Business Enterprise (DBE) under criteria set forth at 49 CFR Part 26 (the regulation). After carefully reviewing the full administrative record,¹ we conclude that substantial evidence supports WUCP's determination and that its decision is consistent with the regulation's certification requirements. See sections 26.5, 26.63, 26.67, 26.89, and Appendix E. See also section 26.61(b) (applicant has burden of demonstrating eligibility by a preponderance of evidence). We affirm under section 26.89(f)(1).

As was the case in Orion's 2014 and 2017 applications, you claim membership in the section 26.67(a) Black American and Native American groups. You also claim that you are socially and economically disadvantaged (SED) because you identify as non-binary. WUCP questioned your group membership claims in compliance with section 26.63 and evaluated your claim of individual SED on the case-by-case basis prescribed in section 26.67(d). WUCP followed required procedures in reaching its decision.

Group Membership

Black American

WUCP informed you, in writing, that it had a section 26.63(a) well-founded reason for questioning your claim of Black American group membership and requested that you provide

¹ The record includes Orion's appeal letter dated "10/13/17/2021" and WUCP's denial letter dated August 6, 2021. We include three letters you and your counsel sent us in 2022. See section 26.89(e). The third letter (attached) threatens litigation and bad publicity *if* the Department does not agree to certify a new company owned by Orion employees and pay you \$25 million. Orion appears to be unaware that the Department does not certify DBEs.

additional evidence of group membership.² As required by section 26.63(b), WUCP considered whether you held yourself out as Black American for a long period of time before applying for DBE certification and whether this group recognizes you as a member.

WUCP noted that you did not begin to identify as Black American until you received the results of an over-the-counter DNA test showing a low-single-digit percentage of Black ancestry. When asked about your personal racial experience, you responded “People have always said that I look multiracial...I’m assuming Caucasian would be the highest, but I’ve always been told I look multiracial.”³ WUCP concluded that “This statement clearly demonstrates that Ralph Taylor did not hold himself out as a member of the Black community, and acknowledges Ralph Taylor’s understanding that society treats them as a Caucasian person. If Ralph Taylor did not begin to identify as Black until the results of a DNA test taken later in their life, and reports that they have experienced life as a Caucasian, then Ralph Taylor did not hold himself out Black for an extended period of time prior to applying for certification.”⁴

Two prominent, influential Black Americans say that the Black community does not consider you a member. In describing your pursuit of certification as a Black American person, Huffington Post Black Voices Editor Taryn Finley says: “To tiptoe the line of oh now I’m black, now I’m white, that’s not identity. You can’t do that in reverse. My lived experience as a black woman cannot be changed.” She further described your use of DNA to prove your Black identity as a way to “weaponize the 4% [African ancestry] against those who could be eligible and were marginalized.”⁵ Mychal Denzel Smith, a Black cultural theorist, author, and NAACP Image Award Nominee, states “DNA is not telling you your race because race is not a biological fact. Race is a social and political construct. It is something that is lived.” Mr. Smith contends that culture is developed on the basis of shared experience, and he puts the question directly to

² In response, you provided an unsupported, off-point assertion and two discredited documents. The naked assertion is that you have “a suspicion” that unidentified lines of credits, cancelled at unspecified times in the past, were canceled because you purported to be Black. See On-Site Interview (July 28, 2021) at 6. The fact that you provided no evidence misses the broader point that impaired credit is not indicative of section 26.67(a) *group membership* at all. You tendered a new birth certificate, recently changed to say that your race is Black. By your own admission, however, the altered certificate has zero value as proof of group membership. You told the Seattle Times in a 2018 interview that “[i]f I wanted to game the system, I would have changed my birth certificate.” (Emphasis added.) Finally, you again provided the 2010 DNA test results which WUCP had determined in 2014 were of little to no probative value. See 14-0191 Orion Insurance Group (September 14, 2015) (affirming WUCP’s decision and noting Orion’s concession that the same test results, due to what you call “statistical noise” and we call the test’s 3.3% margin of error, may mean that your non-Black ancestry is as high as 99.3%).

³ Denial Letter at 2 (citing Sept. 19, 2019, Huffington Post filmed interview).

⁴ Id. at 6. See section 26.63(b). See also sections 26.5 (definition of SED individual) and 26.67(a) (“multiracial” is not a group, the members of which are presumed SED).

⁵ Denial Letter at 2 (citing Sept. 19, 2019, Huffington Post filmed interview).

you: “If you cannot point to your life as a shared experience with those people, how can you claim that status?”⁶ WUCP relied on Ms. Finley and Mr. Smith’s statements to conclude that the Black American community does not consider you Black American.

Your response is to criticize WUCP for producing evidence⁷ that you do not like. You provided WUCP no evidence of your own concerning whether the Black American community regards you as a member, and you provide none on appeal.⁸

Native American

WUCP questioned your claim of Native American group membership, also reprised from 2014, and asked you to provide proof of enrollment in a federally or state recognized tribe. Section 26.63 gives WUCP the authority to do both. When you provided no evidence of membership in any Native American tribe, WUCP concluded that you are not a group member. See also sections 26.5 (definition of SED individual), 26.61(b) (applicant must prove SED ownership), and 26.69 (SED individual(s) must own at least 51 percent of the applicant firm).

We conclude that WUCP properly denied your section 26.67(a) claims because you produced either no evidence (Native American) or no credible evidence (Black American) of group membership in response to its requests for documentation.

Non-binary

Non-binary individuals are not presumed to be SED under the regulation. A firm owned by a non-binary person is eligible for DBE certification if that person can satisfy the rigorous, multifaceted requirements of Appendix E, which section 26.67(d) incorporates by reference. You

⁶ Id.

⁷ While WUCP must proceed in accordance with section 26.63 when questioning group identity, it has no obligation to produce evidence. The burden of proof is entirely Orion’s. Orion’s serial failures to discharge its burden, in applications going back at least to 2014, have forced WUCP to devote disproportionate resources to what can fairly be characterized as ever more specious claims. Based on your public statements and the extensive litigation you pursued in response to WUCP’s 2014 denial—you appealed your failed group membership claim all the way up the administrative and judicial ladders, to the U.S. Supreme Court, achieving a perfect, 100 percent loss record—you should be well aware that these recycled, inadequately supported claims will fail.

We commend WUCP for its fortitude and its commitment to program integrity and suggest that it consider the section 26.73(a)(2) implications of the pattern that has emerged. See also sections 26.73(c) and 26.109(c).

⁸ You have now squandered three opportunities to provide additional evidence of group membership, including evidence of community recognition. Your failure to provide new, relevant, remotely credible evidence makes the 2021 application, your claims (including under section 26.67(d)), and this appeal as frivolous as they are meritless.

provided none of the evidence described in Appendix E. Rather, you proceeded as if non-binary were a section 26.67(a) group. When WUCP requested that you provide evidence of individual disadvantage attributable to your non-binary status, you submitted none.

We affirm WUCP's determination as consistent with applicable rules and supported by substantial evidence. See section 26.89(f)(1). Orion, again, did not prove its eligibility.

This decision is administratively final.

Sincerely,

Samuel F. Brooks
Team Lead
Disadvantaged Business Enterprise Division

cc: WUCP
FHWA

Attachment