



**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

July 20, 2020

Docket No. 20-0066

Robert Thomas II
RM Thomas II Trucking LLC
[REDACTED]
Oak Grove, MO 64075

Dear Mr. Thomas:

This is in response to your appeal of the denial of the DBE application of RM Thomas II Trucking (RTT) by the Kansas City Human Relations Department (KC). KC determined that you are not a socially and economically disadvantaged individual.

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 socially and economically disadvantaged as an individual, as provided in Appendix E of 49 CFR Part 26, the Department's DBE regulation. Your position to KC is that you meet this requirement by virtue of being an individual with a disability, as evidenced by a 100 percent disability rating from the Department of Veterans Affairs (VA), based on your service with the U.S. Army.

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 and chronic 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.

There is no dispute that you are an individual with a disability. This satisfies the first requirement of having an objective distinguishing feature contributing to social disadvantage.

With respect to the second requirement, you cited instances of what you believe is disability-related employment disadvantage. You applied for two jobs with the General Services Administration (GSA). In one case, you did not receive an interview. In the other case, you were offered an interview, though you had in the meantime accepted a position at a similar grade with the Department of Homeland Security (DHS). You later learned that the GSA position had not

been filled. After working for DHS in 2009-10, you left to take a position with GSA, where you worked during 2010-2012.

These facts, standing alone, do not demonstrate that you suffered from chronic and substantial social disadvantage related to your disability. You do not present evidence that DHS or GSA denied you an interview or employment because of your disability; in fact, both agencies employed you.

However, you and your wife's assertion that during your 2009-10 tenure, DHS gave you only limited access to telework, subjected you to unreasonable demands and harassment, and terminated your access to its network following medical leave. You filed an EEO complaint, but mediation was postponed because of your continuing medical treatment and then, for reasons unclear, never rescheduled.

These assertions, taken at face value, document one instance of social disadvantage related to your disability. However, the second requirement is for "substantial and chronic" social disadvantage, and a single instance is generally insufficient to meet this standard.

You were part-owner of a different business that operated from 2006-2015; then you founded RTT in 2016. According to KC, during the three years prior to the application for which tax returns were available, RTT progressed from income of approximately \$26,000 to \$127,000 to \$250,000. Under these circumstances, it is difficult to contend that your disability has impeded you entry into or advancement in the business world.¹

In short, substantial evidence supports KC's decision, which we find to be consistent with applicable certification rules. We affirm, as section 26.89(f)(1) prescribes.

This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Phillip Yelder

¹ We note that the one instance of social disadvantage referenced above related to government employment, as distinct from entry into or advancement in the business world.