



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 4, 2010

CBCA 1787-FEMA

In the Matter of SABINE PASS PORT AUTHORITY

Carl Snider, President; Charles Adkins, Vice President; Sherri Droddy, Port Manager; Kathleen Hicks, Disaster Recovery Specialist; and Scott Morris, Consultant, Sabine Pass Port Authority, Sabine Pass, TX, appearing for Applicant.

Ben Patterson, State Coordinating Officer, and Philip Anders, Alternate State Coordinating Officer, Texas Division of Emergency Management, Houston, TX, appearing for Grantee.

Barbara D. Montoya, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **GILMORE**, **VERGILIO**, and **GOODMAN**.

This arbitration matter is brought pursuant to the authority of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 601, 123 Stat. 115, 164 (2009), and regulation, 44 CFR 206.209 (2009) (74 Fed. Reg. 44,769 (Aug. 31, 2009)). The parties are the applicant, Sabine Pass Port Authority; the grantee, the State of Texas, represented by its Division of Emergency Management; and the Federal Emergency Management Agency (FEMA). The applicant appeals the determinations by FEMA declining to provide public assistance.

The task of the panel is to determine if either (1) the applicant or grantee submitted a timely request for public assistance, or (2) extenuating circumstances exist to permit the applicant and grantee to proceed with an untimely application. The record consists of submissions by the parties and a hearing held on January 27, 2010, in which the applicant and FEMA participated and made presentations to the panel.

Regulations describe the procedures to be followed in applying for public assistance. A grantee is required to send a request for public assistance to a Regional Director within thirty days after designation of the area where the damage occurred. 44 CFR 206.202(c) (2006). Regulations provide exceptions to the time limitation; in particular, a Regional Director may extend the time limitation when a grantee justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the grantee's or subgrantee's (applicant's) control. 44 CFR 206.202(f)(2).

The underlying request for public assistance arose in Jefferson County, Texas, relating to the effects of Hurricane Rita. On September 23, 2005, the President issued a major disaster declaration for Jefferson County, among other areas, thereby making certain funds available under the Stafford Act, 42 U.S.C. §§ 5121 *et seq.* (2006). At the request of the grantee, FEMA extended through November 23, 2005, the deadline for the grantee to submit requests for public assistance arising under Hurricane Rita for damage in Jefferson County. The grantee did not request or obtain an additional extension for the county.

Shortly after the hurricane, the applicant, through an employee, contacted FEMA through a toll-free number seeking assistance for the applicant. The toll-free number that the employee called was solely for individuals seeking assistance, and not for public assistance for entities such as the applicant. The individual assistance program is distinct from the public assistance program. 42 U.S.C. §§ 5174, 5172. By letter dated October 10, 2005, FEMA, through its Individuals and Households Program Officer, provided the employee with a copy of the application for disaster assistance as had been entered into the system at the employee's request. Through the application, the individual certifies that it is the only application for her family. By letter dated March 30, 2006, FEMA, through its Individuals and Households Program Officer, informed the employee that requested relief was not available--the identified personal property was not a primary residence and was ineligible.

By submission dated September 6, 2007, the applicant made a request to the grantee seeking relief under the public assistance program. The applicant did not seek such relief from the grantee prior to this submission. By letter dated December 28, 2007, the grantee requested that FEMA review the application for public assistance. FEMA denied relief; it deemed the application to be untimely and concluded that extenuating circumstances had not been established. FEMA made similar conclusions in denying a first and a second appeal.

Under regulation, as noted above, an application for public assistance is provided to FEMA through a grantee, not an applicant. The applicant's telephone communications with FEMA shortly after the hurricane did not create an application for public assistance. The FEMA responses relate to individual assistance; FEMA consistently has not treated the information received directly from the applicant's employee as a request for public

assistance. The applicant's inquiries did not constitute an application on behalf of the grantee.

A request for public assistance occurred with the grantee's letter dated December 28, 2007, well beyond the November 23, 2005, date for a timely application. Accordingly, this request was untimely. Therefore, the panel must determine if there exist extenuating circumstances beyond the control of the grantee or applicant.

The record does not explain satisfactorily, so as to excuse, the grantee's and applicant's inability to provide an application to FEMA until December 2007. The entire period has not been accounted for and addressed. Applications for relief under the public assistance program were submitted timely for other entities in Jefferson County. The record does not distinguish this applicant from others who timely pursued relief. The actions of the one employee resulted in a request to the grantee no earlier than September 2007. The record does not demonstrate the actions, if any, of the applicant's president, vice president, other employees, and counsel, during the interval without an application. Taking into consideration the entire record, the panel concludes that the explanations do not amount to acceptable extenuating circumstances.

The panel denies the request of the applicant for relief.

JOSEPH A. VERGILIO
Board Judge

BERYL S. GILMORE
Board Judge

ALLAN H. GOODMAN
Board Judge