



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 19, 2021

CBCA 7011-FEMA

In the Matter of VILLAGE OF PINECREST, FLORIDA

Justin D. Luger and Roger C. Pou of Weiss Serota Helfman Cole & Bierman, P.L., Coral Gables, FL, counsel for Applicant.

Sherin Joseph, Appeals Officer, and Allison McLeary, Recovery Bureau Chief, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Maureen Dimino and Christiana Cooley, 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 **SHERIDAN**, **ZISCHKAU**, and **SULLIVAN**.

The Federal Emergency Management Agency (FEMA) determined that the appeal submitted by claimant, Village of Pinecrest, Florida (Pinecrest), on a Monday, following a Sunday deadline, was untimely filed. Pinecrest sought to arbitrate that determination. Because we construe FEMA's regulations to include the usual rule that allows deadlines that fall on a Sunday to rollover to the next Monday, we grant Pinecrest's appeal.

Background

Pinecrest requested public assistance to address damage caused by Hurricane Irma in 2017. FEMA determined that the work for which Pinecrest requested funds was ineligible. Pinecrest received this determination on August 7, 2019.

On Monday, October 7, 2019, Pinecrest submitted to the Florida Department of Emergency Management (FDEM) an appeal of FEMA's determination. On December 2, 2019, FDEM forwarded Pinecrest's appeal to FEMA.

On November 3, 2020, FEMA denied Pinecrest's appeal as untimely. Because the sixty-day period for appeals expired on Sunday, October 6, 2019, FEMA determined that Pinecrest's appeal, filed on Monday, October 7, 2019, was untimely.

Pinecrest timely submitted its request for arbitration, to challenge FEMA's decision that its appeal was untimely, and waived its right to a hearing. The panel decides this matter based upon the parties' submissions.

Discussion

The Stafford Act provides that “[a]ny decision regarding eligibility for, from, or amount of assistance . . . may be appealed within [sixty] days after the date on which the applicant for such assistance is notified of the award or denial of award of such assistance.” 42 U.S.C. § 5189a(a) (2018). The Act further provides that FEMA “shall issue rules which provide for the fair and impartial consideration of appeals under this section.” *Id.* § 5189a(c). The Act is silent as to what happens when the sixtieth day falls on Sunday.

FEMA's regulations provide that claimants may appeal any determination and the appeal must be submitted to the grant recipient who will then submit it to FEMA. 44 CFR 206.206(a) (2019). The claimant “must file [an] appeal[] within 60 days after receipt of a notice of the action that is being appealed.” *Id.* 206.206(c)(1). Grantees then have sixty days to submit the appeal to FEMA. *Id.* 206.206(c)(2). FEMA's regulations and the applicable policy guide provide no rule or guidance as to what happens when the sixtieth day falls on a Sunday.¹

The issue presented in this arbitration is what happens when the deadline for an appeal falls on a Sunday. As noted, both the Stafford Act and FEMA's regulations are silent as to how to address this situation. In the absence of specific statutory guidance to the contrary, courts and administrative bodies have held that, if the last day of a period falls on a Sunday, the due date is the following business day. *Street v. United States*, 133 U.S. 299, 306 (1890) (applied to military benefits statute); *Sherwood Bros., Inc. v. District of Columbia*, 113 F.2d

¹ The 2017 Public Assistance Program and Policy Guide (PAPPG) is the guide applicable to Pinecrest's request. In the 2020 PAPPG, FEMA clarified that references to “days” in regulation and policy means “calendar days.” However, this clarification does not address the issue in this arbitration.

162, 163 (D.C. Cir. 1940) (statutory deadline for filing tax appeal); *Wood-Ivey Systems Corp. v. United States*, 4 F.3d 961, 962 (Fed. Cir. 1993) (Contract Disputes Act); *Krajci v. Provident Consumer Discount Co.*, 525 F. Supp. 145, 150 (E.D. Pa. 1981) (Truth in Lending Act); *Bledsoe v. Department of Housing & Urban Development*, 398 F. Supp. 315, 319 (E.D. Pa. 1975) (Federal Tort Claims Act); *Theresa A. Almada*, CBCA 3594-RELO, 14-1 BCA ¶ 35,721 (applying what is described as “federal common law rule” in interpreting deadlines in federal employee relocation reimbursement regulations); 50 Comp. Gen. 108 (1970) (federal personnel statute). We apply this rule in this arbitration and find Pinecrest’s appeal to be timely.

FEMA asks that the panel construe the deadline strictly and find that Pinecrest’s appeal was untimely. FEMA asserts that Pinecrest could have submitted its appeal on Sunday. In support of this assertion, FEMA offers the declaration of the Branch Chief of the Public Assistance Appeals and Audits Branch, in which the Branch Chief declares: “Applicants may submit their appeals before the due date or submit them through a mechanism that will ensure weekend delivery.” FEMA Response, Exhibit 8, ¶ 5. While FEMA does not explain the “mechanism that will ensure weekend delivery,” this statement suggests that Pinecrest had to either submit its appeal on Friday or make arrangements to submit its appeal on the weekend. If accurate, FEMA’s enforcement of the sixty-day deadline in this case either shortens the appeal period to fifty-eight days in the case of a Friday submission, or further burdens Pinecrest with employing “a mechanism” to file over the weekend. These requirements conflict with the Stafford Act mandate that claimants have sixty days to appeal a determination. 42 U.S.C. § 5198a(a). Moreover, construing a roll-over rule for the Stafford Act is in keeping with the direction of the Act that FEMA promulgate regulations for the “fair and impartial consideration” of appeals. *Id.* § 5189a(c).

FEMA also asserts that finding for the applicant in this case would be unfair to other claimants, whose appeals have been denied on timeliness grounds. Despite the panel’s request, FEMA did not provide an example in which it has found an appeal filed on the sixty-first day as untimely. Instead, FEMA provided an appeal deemed untimely in which the appeal was filed two days late on a Tuesday. FEMA Response, Exhibit 3. The issue here is narrow and confined to those situations in which an appeal deadline falls on Sunday. Finding that Pinecrest’s appeal is timely in this case does not diminish FEMA’s ability to find that applicants’ appeals submitted two or more days late are untimely.

The panel considered FEMA’s other arguments and found them to be either inapplicable or unpersuasive.

Decision

Pinecrest timely filed its appeal of FEMA's determination on its request for public assistance funds. This matter is returned to FEMA for an evaluation of the merits of that appeal.

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Board Judge