



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 28, 2023

CBCA 7935-FEMA

In the Matter of TEARLE LEE

Tearle Lee, pro se, Charlotte, NC, Applicant.

Lynne Browning, Assistant Deputy Director, and Daniel Crothers, Public Assistance Section Chief, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Anthony Homer, 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 **LESTER**, **RUSSELL**, and **SHERIDAN**.

SHERIDAN, Board Judge, writing for the panel.

The United States Department of Homeland Security, Federal Emergency Management Agency (FEMA) moves to dismiss Mr. Tearle Lee's request for arbitration (RFA).

Background

On November 17, 2023, the applicant, Tearle Lee, filed his RFA in an attempt to resolve a dispute over his application for individual assistance (IA), FEMA application number 940765903, for damages resulting from Hurricane Katrina in 2005, disaster declaration DR-1603. FEMA asks the panel to dismiss this matter because, while Mr. Lee's RFA contains a dispute over his application for IA, it is not a dispute over a public assistance (PA) application and is therefore not eligible for review under the PA Katrina/Rita

arbitration program. *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 601, 123 Stat. 115, 164 (ARRA); 44 CFR 206.209(a)-(b) (2009).

Discussion

The ARRA created an option for applicants to dispute FEMA PA funding decisions through arbitration. This option was made available for the first time by Pub. L. No. 111-5, § 601, for major disaster declarations DR-1603 through -1607, which were related to Hurricanes Katrina and Rita. Congress specified that the arbitration option was available for “disputed public assistance applications.” 123 Stat. at 164. Similarly, the regulations promulgated under ARRA to implement the arbitration option provide: “[T]his section establishes procedures for arbitration to resolve disputed Public Assistance applications An applicant or subgrantee (hereinafter ‘applicant’ for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance.” 44 CFR 206.209(a)-(b). The Federal Register notice for the new arbitration procedure also explained that “the option for arbitration is limited to Public Assistance” matters filed under one of the disaster declarations for Hurricanes Katrina or Rita. 74 Fed. Reg. 44761, 44762 (Aug. 31, 2009).¹

FEMA’s authorities regarding PA arbitrations for Hurricanes Katrina and Rita projects only permit a Civilian Board of Contract Appeals (CBCA) arbitration panel to review “disputed public assistance applications.” 123 Stat. at 164; *see* 44 CFR 206.209(a)-(b). Mr. Lee’s RFA does not involve PA, and, therefore, in accordance with ARRA and applicable regulations, the CBCA has no authority to review this matter. More simply put, the CBCA’s authority with regard to arbitration of PA grants does not extend to IA applications. As Mr. Lee does not have an application for PA, he does not meet the statutory and regulatory criteria to be eligible for an arbitration before the CBCA.

Decision

For the reasons stated above, this matter is dismissed.

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge

¹ This authority was subsequently expanded under the Stafford Act, 42 U.S.C. § 5189a(d) (2018).

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge