

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF  
THE DEPARTMENT OF REVENUE**

IN THE MATTER OF

Z. and C. B.  
and their children A. and K. B.

Case No. OAH 05-0011-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

Z. and C. B. timely applied for 2004 permanent fund dividends for themselves and on behalf of their children A. and K. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. The B.'s requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on April 5, 2005. C.B. appeared by telephone. Susan Lutz represented the PFD Division by telephone. The administrative law judge affirms the division's decision.

**II. Facts**

On March 30, 2004, Ms. B. took the envelope containing her entire family's applications to the office where she works. Ms. B. took the envelope to the front desk of her office and handed it to the receptionist, with enough money to pay for the postage. The receptionist stated that she would have the purchasing agent stamp the envelope and deliver it to the post office. This is a customary procedure in Ms. B.'s workplace.

In a sworn affidavit, the receptionist stated that she did not remember Ms. B. coming to her desk on the morning of March 30, but she did have a stack of pennies Ms. B. had given her. The receptionist stated that it was normal practice for the receptionist to put employees' personal mail in with company mail and have the purchasing agent stamp it. The file also contains an affidavit from the purchasing agent, who stated that he did pick up the mail from the receptionist's desk on March 30. The purchasing agent stated that he did not notice any unstamped mail, but that it is not unusual for employees to put personal mail in with company mail.

On April 12, 2005, Ms. B. found her family's application envelope back in her own personal mailbox, bearing a stamp reading "returned for postage" and no postage stamp. Ms. B. then took the application into the Dividend Information Office in Anchorage on April 14, 2005.

### **III. Discussion**

In order to be timely, an application for a permanent fund dividend must be filed during the period that begins January 2 and ends March 31 of that dividend year.<sup>1</sup> According to 15 A A C 23.103(g),

It is an individual's responsibility to ensure that an application is timely delivered to the department during normal business hours or is delivered to the post office in sufficient time to be postmarked before the end of the application period. The department will deny an application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service that describes the specific circumstances under which it incorrectly posted the individual's application or caused a delay in posting.

Ms. B. argues that she diligently attempted in good faith to apply on time. The evidence does support this assertion, and it also supports Ms. B.'s assertion that she and her family are long-time Alaska residents who have applied for dividends since 1982.

Even with a good-faith effort, the law places the burden of getting an application actually postmarked or delivered on time on the applicant. Under this law, it is not necessarily enough to drop an application envelope in a mailbox. The applicant has the responsibility of making sure that an application is delivered to the department before the close of business on March 31, or that the application is not merely mailed, but actually postmarked on or before March 31.

Under postal regulations, unstamped mail is returned to the sender without a postmark.<sup>2</sup> For this reason, many applicants take their application envelopes into a post office during business hours and obtain a mailing receipt to prove timely mailing. Unless the postal service provides a written statement describing the specific circumstances of a postal error, the division must deny an application that is postmarked April 1 or later. In this case, the postal service provided a letter saying that it properly followed its internal regulations when it returned Ms. B.'s envelope without a postmark.

Applicants also take a risk when they entrust friends or coworkers to mail their applications for them. Whether to trust a friend with an important task is a personal decision, but if the friend

<sup>1</sup> AS 43.23.011

<sup>2</sup> Exhibit 6, p. 5. The Postal Service cites the Domestic Mail Manual (DMM) P011, §1.2.

does not follow through, it is the applicant and not the division that must bear the consequences. In this case the receptionist still has a stack of 37 pennies for mail she does not remember, the purchasing agent apparently never noticed there was an envelope in the office mail without postage, and the application deadline has come and gone. Though she intended to have the envelope mailed on time, Ms. B. assumed the risk of this situation when she elected to have her coworkers mail the envelope for her less than 48 hours before the application deadline.

A. and K. may still apply for their 2004 dividends when they become legal adults at the age of eighteen, if they apply within one year of becoming adults. Their parents should remember this and remind the children to apply immediately after reaching the age of eighteen.

#### **IV. Conclusion**

The applicants did not meet their burden of ensuring that their applications were delivered to the post office in sufficient time to be postmarked before the end of the application period. The division was correctly following the law when it made the decision to deny the applications.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of Z., C., K., and A. B. for 2004 permanent fund dividends be AFFIRMED.

DATED this 21st day of October, 2005.

By: DALEWHITNEY  
Administrative Law Judge

### Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of Z., C., K., and A. B. for 2004 permanent fund dividends be adopted and entered in their file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 A A C 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 21st day of October, 2005.

By: DALE WHITNEY  
Administrative Law Judge

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

PFD Division  
10/21/05