

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

IN THE MATTER OF

V.R.

Case No. OAH 05-0068-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

V.R. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. R. was not eligible, and it denied the application initially and at the informal appeal level. Mr. R. requested a formal hearing by written correspondence. The administrative law judge finds that Mr. R. is eligible for a 2004 dividend.

**II. Facts**

The division has presented a one-page form that it received from the Department of Corrections. The form has a box checked next to a pre-printed paragraph that reads,

The Department of Corrections **correctly** identified this individual as being incarcerated during all or part of calendar year 2003 as a result of a misdemeanor conviction in this state after being convicted of a prior felony or two or more prior misdemeanors as defined in AS 11.81.900 during the period of January 1, 1997 through December 31, 2003 [emphasis in original].

On a portion of the form titled "Additional Information" is the following handwritten notation:

6/22 - 6/30/03

DisCond 8/03 M  
Drink in Publ. 6/03 M  
ViolCond 7/03 M

The division does not specify whether it believes Mr. R. has previously been convicted of a felony or of at least two prior misdemeanors. It does not identify the cases it relies on to support its conclusion that Mr. R. has been convicted of any offenses.

Evidence from Mr. R. is limited to two written statements, the first in his informal conference request:

I was sleeping on the lawn by the Chena river. I was not drinking or drugging. I was tired from a long walk. 3 or 4 officers rudely woke me up by man handling me I did not know

what was going on. All charges were dismissed. The judge told me there was no law against sleeping on the lawn, and told me to just go home.

Mr. R.'s second statement, in his formal hearing request, reads:

Fact, on my first arrest is because I chose not to pay a fine. Chose to go to jail instead. On my other arrest the judge told me to go home. The police were wrong arrested me for napping one the lawn by the Chena river [*sic*].

### **III. Discussion**

A person is not eligible for a permanent fund dividend if, during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a misdemeanor if the person has been convicted of a prior felony or at least two prior misdemeanors in this state.<sup>1</sup>

The only evidence that Mr. R. has ever been convicted of any offense is the Department of Corrections' form, and Mr. R.'s statement that on his first arrest he chose to go to jail instead of paying a fine. The information on the Department of Corrections form is vague, to the degree that it would be difficult at best for Mr. R. to effectively respond to the division's broad allegation. There is no case number on the form, and the information that might lead to investigation of when and why the division believes Mr. R. was incarcerated is vague at best.

Information that is on the Corrections form includes "6/22 - 6/30/03" handwritten in the "other information" section without explanation. Presumably, these dates represent the days Mr. R. was incarcerated. There are three offenses listed, followed by the dates "8/03," "6/03" and "7/03" respectively, without explanation. The form does not indicate whether these handwritten months are dates of an offense, charging dates, conviction dates, sentencing dates, or dates Mr. R. may have been in jail. The difference this information might make could be determinative of the outcome of the case. The form does not indicate which offense the division believes Mr. R. was incarcerated for, which makes it particularly difficult for Mr. R. to respond to the allegation that he was incarcerated for one of them. The reader must assume that the "M" next to the date means "misdemeanor." The form does not indicate to which court Mr. R. should go to look for files that might contain the evidence showing he was not convicted of a particular charge.

Mr. R. stated that although he may have been incarcerated, a judge somewhere dismissed the charge and he was not convicted of the offense for which he was incarcerated. This evidence is also not very specific, and not entitled to enormous weight. But the explanation is not impossible. It is not unheard of for a defendant to spend a week in jail before having a case dismissed for lack of

<sup>1</sup> AS 43.23.005(d).  
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probable cause. The Department of Corrections in such a case would still have a record of the incarceration and the charge, but it is conceivable that the department only received the release order and not the dismissal. Though not all that likely, Mr. R.'s explanation is enough to shift the burden of proof to the division to show that Mr. R. was in fact convicted and incarcerated of a particular offense in the qualifying year. The division has not offered any further evidence.

Examination of the form submitted by Corrections suggests that that department may be in error. The only specific information on the form is the handwritten notes in the "other information" section, which read:

6/22 - 6/30/03

DisCond 8/03 M  
Drink in Publ. 6/03 M  
ViolCond 7/03 M

If the first line represents the dates that Mr. R. was incarcerated, it would appear that Mr. R. was incarcerated for a drinking in public charge from sometime in June, 2003. The only other charges listed appear to be subsequent to the incarceration, not prior. Thus, to the extent this evidence shows the basis for the division's decision, it shows that the decision was incorrect; when he was incarcerated, Mr. R. had not been convicted of any prior offenses.

#### **IV. Conclusion**

Mr. R. denies that he was incarcerated in 2003 as the result of conviction of a misdemeanor after being convicted of a felony or two or more prior misdemeanors. The division has not produced any specific evidence to the contrary. There is no reliable evidence in the record showing that Mr. R. is ineligible for 2004 dividend.

#### **V. Order**

IT IS HEREBY ORDERED that the application of V.R. for a 2004 permanent fund dividend be GRANTED.

DATED this 4th day of October, 2005.

By: DALE WHITNEY  
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 V.R. for a 2004 permanent fund dividend be adopted and entered in his 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 4th 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  
10/4/05