

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

IN THE MATTER OF

G.S.

Case No. OAH 05-0356-PFD

2005 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

G.S. timely applied for a 2005 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. Mr. S. requested a formal hearing by written correspondence. The administrative law judge affirms the division's decision.

II. Facts

Mr. S. asserts that he used his parents' computer to file an online PFD application during the 2004 application period. Mr. S. states that he saved a copy of the confirmation number on the computer, but when the computer became infected with viruses the confirmation number was lost. Mr. S. states that he gave his signature page to his girlfriend, T.B.,

to mail at the time she mailed her own application, but he did not keep a copy of the form.

Ms. B. submitted a letter in which she states that she did in fact mail Mr. S.'s signature page at the same time she mailed her own application. Ms. B. provided confirmation numbers for herself and her children, and stated that Mr. S.'s signature page was in a separate envelope. Ms. B. stated that she mailed all of these pages before January 30, 2004.

Finally, Mr. S.'s mother, P.S., also submitted a letter in which she stated in part,

He [Mr. S.] came to our house in early January 2004 and filed for his dividend on our computer. I remember receiving an email confirmation and putting it in his file on our computer. Later in 2004 we had to have the computer rebuilt due to having our computer crash due to viruses. The repairs were done at the North Pole Computer Store. We were limited as to what could be salvaged from that hard drive.

On the advice of the division, Mr. S. filed a paper application on November 1, 2004. There is no dispute that this paper application was not timely, and was filed only for the purpose of initiating the appeal process.

The division states that it did not receive a signature page from Mr. S., and that it has no evidence that Mr. S. filed an online application in 2004. In preparation for this case, the division again examined its 2004 database of online PFD applications for traces of Mr. S. application. The division submitted an affidavit from its Data Processing Manager that reads in part,

I searched the 2004 database for online applicants with the last name "S"; search criteria were used which would have identified any names containing the name "S." Two S.'s were found; neither had a first name of "G" or a middle initial of "A."

I then searched the 2004 database for online applicants with a last name that started with "S." The same 2 entries were found as noted above.

I then searched the 2004 database for online applicants with a last name that started with "s." Three applicants were found, the above mentioned two, and one additional applicant who had neither a first name of "****" or a middle initial of "*."

I searched the 2004 database for online applicants with Mr. S.'s social security number.... There were none.

I searched the 2004 online database for Mr. S.'s date of birth, May 24, 1981. 11 individuals were found to have the same date of birth; no individuals with this date of birth had the first name "G" and no individuals with this date of birth had the last name

I searched the 2004 database for all applicants in the 99705 zip code with a 555 in the address, and found one applicant. This applicant does not have the first name " G ." or the last name "S."

I searched the 2004 database for all online applicants in the 99705 zip code with a first name starting with "G." Eleven applicants were found; none of these applicants had the last name "S."

Online filing confirmation numbers are serial, and are assigned automatically by the database at the time an on-line application is successfully written to the database. A confirmation number is not assigned unless the "write to the database" is successful. A search of the 2004 on-line filing confirmation numbers reveals that there are no missing confirmation numbers. If an on-line filing had been deleted, there would be a gap in the confirmation numbers.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must apply during the period from January 2 through March 31 of the qualifying year.¹ At a formal hearing, the person who has requested the hearing has the burden of proving that the division's action was in error.²

This case presents inexplicably conflicting evidence of equal credibility. The letters submitted by Mr. S., his mother, and Ms. B. present a consistent and believable story. There is no particular reason to doubt the credibility of these people. There is also no reason to doubt the division or question its assertion that it has diligently attempted to find a record of Mr. S.'s filing. The division successfully processes a significant number of online applications, and it does not typically lose records of these filings. The division asserts that its online system assigns confirmation numbers in numerical order, and that there are no missing numbers and no applications containing information matching Mr. S.'s identity. Further, the division does not have any record that it received a signature page in the mail from Mr. S.

When two equally credible bodies of evidence cannot be reconciled, the case must be decided based on which party has the burden of proof. Mr. S. has the burden of proving that he actually did file online. It appears that he did not save a printed copy of his confirmation number, nor has he been able to produce a photocopy of the printed signature page he claims to have mailed to the division. Had he done so, as the division's website urges applicants to do, Mr. S. would almost certainly prevail. However, although there is no evidence that Mr. S. has been in any way dishonest or deceptive, under these circumstances I find that he has not met his burden of proving that he actually did file electronically during the application period.

IV. Conclusion

Mr. S. has not met his burden of proving that he did in fact file an application for a permanent fund dividend during the 2004 application period. The division's decision to deny Mr. S.'s later application should be affirmed.

¹ AS 43.23.005(a)(1); AS 43.23.011.

² 15 A A C 05.030(h).

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of G.S. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 23rd day of February, 2006.

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 G.S. 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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 23rd day of February, 2006.

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

Case Parties
2/23/06

By: DALE WHITNEY
Administrative Law Judge