

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

In the Matter of)	
)	
L. P.)	OAH No. 06-0214-PFD
)	Agency No. 06000999_7
<u>2005 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

L. K. P. recalls that he attempted to use the on-line filing feature for the 2005 permanent fund dividend (PFD). He did not receive a dividend. Upon learning that Permanent Fund Dividend Division had no application on file for him, he submitted a late paper application, which the division denied initially and at the informal appeal level on the basis of untimeliness. Mr. P. requested a formal hearing, and his case was heard in person on April 19, 2006.

After reviewing all of the evidence, the administrative law judge concludes that a 2005 PFD cannot be paid to Mr. P. The division's denial is affirmed.

II. Facts

Mr. P. has lived in Alaska for thirty years, and he spent 2004, the qualifying year for the 2005 dividend, in the state.¹ There are no issues regarding his eligibility for the 2005 dividend, provided he applied timely. He has routinely received PFDs in the past, using paper applications and, in 2003 and 2004, using web applications.² In 2003 he used a paper signature with his web application; in 2004 he successfully moved to electronic signature, rendering his application completely paperless.³

In October of 2005, Mr. P.'s spouse noticed that he was not listed as a 2005 dividend recipient. Mr. P. contacted the PFD Division and learned that the division had no record of an application from him. From the information gathered through the hearing process, it is now possible to deduce how this came to be.

Mr. P. remembers applying on-line on a weekend in mid-January. He testified that it is "almost inconceivable" that he would have forgotten. As he recalls, he initially encountered a

¹ Exhibit 1, p. 1 (2005 Adult Application).
² Exhibit 9 (2003 and 2004 Adult Web Applications).
³ *Id.*

notice that the network was crowded. He was subsequently able to continue, however, and he remembers that the process seemed easy.

In 2005, one could apply for a PFD on-line with an electronic signature, or apply on-line and then separately submit a paper signature page.⁴ Applying on-line with electronic signature entailed having a “myAlaska” account. Having applied with electronic signature the previous year, Mr. P. had such an account. However, he does not recall signing into it or providing a password. Instead, if he did attempt on-line filing in 2005, his testimony regarding the password would suggest that he proceeded down the website pathway to “Apply on-line without e-signature.”⁵

After entering his application data, Mr. P. would have encountered a “Review Your Information” page.⁶ If he clicked “Confirm,” he would reach a “Congratulations” page.⁷ Mr. P. recalls seeing such a page and believes he jotted down a confirmation number, although he cannot find the number now.

To complete the application without having entered a password, Mr. P. would then have needed to print a signature page and mail it to the division.⁸ It is certain that he did not take that step because he had no printer in his home (the family’s printer is with his wife in Pennsylvania, where she is completing a doctorate).

As part of this appeal, the division searched its database.⁹ There is no record of a complete or partial application from Mr. P. There is no gap in the confirmation number sequence; all confirmation numbers were assigned to identifiable applicants.

There is one additional clue to the mystery of Mr. P.’s application. As he initially described this incident in his first round of appeal, he “attempted to file on-line for the first time,” and he “remember[s] applying electronically and feeling proud that [he] went ‘paperless’ for the first time.”¹⁰

It is this last recollection that I find most telling in deducing what must have occurred. Mr. P. “went ‘paperless’ for the first time” in 2004, not 2005. If he had applied on-line in 2005 with electronic signature, it would have been his second paperless application. His detailed

⁴ Exhibit 8, p. 3 (2005 application booklet).

⁵ *See id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Exhibit 6 (Affidavit of Annette G.E. Smith).

¹⁰ Exhibit 3, p. 2 (Request for an Informal Appeal, Feb. 10, 2006).

recollection of an on-line application, and the subsequent feeling of pride, is most likely a recollection from 2004. In 2005, he likely forgot to apply, even though he finds that possibility “almost” inconceivable. This explanation is consistent with the absence of any record for a partial application by Mr. P. in 2005 and the absence of any unaccounted-for confirmation numbers.

If the above deduction is mistaken and Mr. P. did attempt to apply in 2005, his testimony suggests that he chose the paper signature pathway in the website. It is clear that he did not mail in a paper signature page, however, and so his application would have remained incomplete.

III. Discussion

To receive a dividend an individual must file an application.¹¹ Filing is accomplished when an application is either received by the department or is postmarked.¹² The filing must be accomplished by March 31 of the dividend year, except in certain very narrow circumstances that do not apply to Mr. P.¹³ Apart from these defined circumstances, the Department has been given no discretion to waive the filing deadline.

Mr. P.’s November 22 application, submitted only as a vehicle for appeal, was clearly late. The only question is whether he “filed” another application prior to March 31.

Beginning in 2006, a regulation establishes that “An applicant’s proof of timely filing an online application is a copy of the computer-generated confirmation page containing the confirmation number received by the applicant after completing the online filing process”¹⁴ This regulation was not in effect in 2005. Accordingly, the process of determining whether he filed timely entails slightly more than simply asking whether he has “a copy of the computer-generated confirmation page containing the confirmation number.”

In this case, a thorough search of the division’s database shows no record of a complete or partial application from Mr. P. and no orphan confirmation numbers. Moreover, Mr. P.’s own recollection indicates that he has applied by the paperless route only once, and that he was proud of himself for doing so. He made a paperless application in 2004. Most likely, he never went through the application process in 2005 and his recollection of the application process is transposed from 2004.

¹¹ 15 AAC 23.103(a).

¹² *See id.*

¹³ AS 43.23.011. The only potential exceptions are found in that statute and in AS 43.23.055(3) and (7).

¹⁴ 15 AAC 23.103(g).

It is therefore not possible to conclude that Mr. P. "filed" a 2005 PFD application prior to March 31 of that year.

IV. Conclusion

Because he did not file an application within the deadline, Mr. P. cannot receive a 2005 dividend. He remained an Alaska resident and otherwise qualified for a dividend, and this decision does not affect his ability to qualify in 2006 or future years.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of L. K. P. for a 2005 permanent fund dividend is AFFIRMED.

DATED this 11th day of September, 2006.

By: Signed
Christopher Kennedy
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

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 after the date of this decision.

DATED this 9th day of October, 2006.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]