

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

In the Matter of)	
)	
I. R. K.)	OAH No. 06-0314-PFD
)	Agency No. 06001305-6
<u>2005 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

I. R. K. applied for a 2005 permanent fund dividend on November 9, 2005, in order to replace an application she claimed she submitted in February 2005, during the application period. The Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis of untimeliness. Ms. K. requested a formal hearing, which was held on August 25, 2006. The administrative law judge affirms the division's denial because the application was filed late and she did not qualify for any exception to the deadline.

II. Facts

Ms. K. filled out her 2005 dividend application at work during the second week of February 2005. She worked at the Alaska Department of Labor at the time, so her co-workers R. B. and R. G. signed her application as verifiers. Another co-worker, J. B., an administrative clerk, was preparing the mail so she volunteered to put Ms. K.'s application in interoffice mail. Ms. K. gave her the application to mail, but Ms. K. did not keep a copy, nor did she affix any postage to the envelope.

Ms. K. did not receive her 2005 dividend, so she called the division and learned her application had not been received. She submitted a second application on November 9, 2005, which set the appeal process in motion.

Prior to the hearing, R. B. and R. G., Ms. K.'s co-workers who signed her 2005 application, both submitted statements saying they verified her application in February 2005.¹ At the formal hearing, Ms. K. was accompanied by her friend and former supervisor, L. K., who testified Ms. K. had routinely used interoffice mail over the years to file for permanent fund dividends. After the hearing, Ms. K. was given extra time to obtain a notarized statement from J. B. as to the events surrounding Ms. K.'s 2005 PFD application. She filed a letter on September

¹ Exh. 4 at pgs. 4-5.

25, 2006, that states she was not able to locate Ms. B. R. B. submitted a notarized statement that says she spoke with Ms. B., who remembers mailing Ms. K.'s application in February 2005. Ms. B. said she would be willing to file a statement to that effect, but she left her employment with the Department of Labor before preparing the statement, and now no one can locate her.

III. Discussion

At the broadest level, this case turns on the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year. In passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services and eligible for hostile fire or imminent danger pay.² Ms. K. was not in the armed forces, and so the March 31 deadline was absolute for her.

The way the deadline is calculated is established by a regulation. Under 15 AAC 23.103(a), the application "must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." There is a related regulation, 15 AAC 23.103(g), that deals with the problem of applications postmarked after the deadline. It reads:

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 or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting.

The Department of Revenue is bound by these regulations, as is the administrative law judge. Exceptions to these regulations cannot be made because an individual's situation is compelling, as Ms. K.'s certainly is. There is little question that Ms. K. filled out the 2005 PFD application in early February 2005 and gave it to J. B. to deposit in interoffice mail. Unfortunately, for some unknown reason, the application did not arrive at the division. As a result, Ms. K. is not entitled to the 2005 dividend. As the regulation states, it was her responsibility to ensure that the application was delivered either to the department or the post office in a timely manner. While she may have successfully relied on interoffice mail in the past, that method of delivery has

² AS 43.23.011(b), (c).

proven unreliable for the 2005 permanent fund dividend. The result is harsh for Ms. K., but hopefully she will use a method of delivery in the future that can be documented.

IV. Conclusion

Because she applied too late, Ms. K. cannot receive a 2005 dividend. This decision does not affect her 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 I. R. K. for a 2005 permanent fund dividend is affirmed.

DATED this 29th day of September, 2006.

By: Signed
Kay L. Howard
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 AS 25.27.210 within 30 days after the date of this decision.

DATED this 25th day of October, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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