

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

In the Matter of	)	
	)	
J. A. C., JR.	)	OAH No. 06-0742-PFD
	)	Agency No. 04572038_2
<u>2004 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

J. A. C., Jr. of Eagle River/Chugiak timely applied for a 2004 Permanent Fund Dividend (PFD) while serving in the military in South Dakota. The Permanent Fund Dividend Division denied the application initially and at the informal appeal level based on its belief, probably erroneous, that he had severed his Alaska residency in 2002. Mr. C.’s deadline to initiate a formal appeal was July 12, 2005. He filed this appeal more than a year later.

The division moved to dismiss the appeal as late. The motion was heard through a live hearing, with Mr. C. in attendance, on December 18, 2006. Because his appeal is untimely and he has not made out a strong enough case for a waiver of the appeal deadline, the motion is granted and Mr. C.’s appeal is dismissed.

**II. Facts**

All facts set out below are based on testimony at the hearing unless otherwise footnoted.

Mr. C. moved to Alaska in 1997 on approximately his sixteenth birthday, and graduated from Chugiak High School in 1999.<sup>1</sup> He enlisted in the Air Force shortly afterward and began a series of out-of-state and overseas postings. He retained Alaska as his state of legal residence while in the Air Force, and retained standard residency ties to Alaska such as voter registration and driver’s license.

In 2001, the first year he was responsible for filing his own dividend application, Mr. C. did not contact the division until April, learning then that he had missed the deadline.<sup>2</sup> The following year, he filed a timely application. He answered “Yes” to the question on line 4A, “Are you currently absent from or living outside of Alaska today? On the next line, 4B, he was asked, “If YES, are you returning to Alaska to remain indefinitely?” Those who respond

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<sup>1</sup> Ex. 7, p. 1 (appeal statement of James Canitz).  
<sup>2</sup> *Id.*

affirmatively to this question were then required to give a month, day, and year for their return. Mr. C. filled in the “No” circle on line 4B.<sup>3</sup>

Mr. C. has since explained consistently and quite persuasively that he misunderstood the question: He felt that since he could not supply an exact date of return owing to the uncertainty of his enlistment, he had to check “no.”<sup>4</sup> He has always intended to make Alaska his home. Unsurprisingly, however, the division denied his 2002 application on the basis of his answer on line 4B.<sup>5</sup> He corresponded with them by e-mail about the denial but did not appeal at that time.

In 2003, Mr. C. again neglected to apply for a PFD because he “did not remember to file while stationed overseas in S. Korea.”<sup>6</sup> In 2004, just before being deployed to Iraq, he filed the application at issue in this appeal.<sup>7</sup> He remained in Iraq until June of 2004, and then returned to Ellsworth Air Force Base, South Dakota.<sup>8</sup>

During the 2004-2005 winter holidays, Mr. C. visited Alaska for three weeks and contacted the PFD division.<sup>9</sup> He learned that his 2004 PFD had been denied on the theory that he had severed his residency in 2002 as evidenced by his answer on line 4B of that application.<sup>10</sup> Mr. C. timely initiated an informal appeal.<sup>11</sup> This was likewise denied on June 13, 2005, again solely on the basis of the line 4B answer in 2002.<sup>12</sup> The denial informed Mr. C. that he had 30 days to initiate a formal appeal.

Mr. C. was on a training mission and unable to receive mail during the first part of June, 2005. He returned to South Dakota on June 23, 2005 and received the informal appeal decision there on June 24, 2005.<sup>13</sup> The following day, he left South Dakota for an intensive three-week course in Langley, Virginia, returning to South Dakota on July 17, just after the deadline for appeal had passed. He did not appeal or otherwise contact the PFD division at that time.

Mr. C. continued on active military duty until his honorable discharge on November 30, 2005.<sup>14</sup> For reasons that were not explored in detail at the hearing but that were at least partly

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<sup>3</sup> Ex. 10, p. 3 (2002 Adult Supplemental Schedule).

<sup>4</sup> The first time this explanation appears is at Ex. 11, p. 4, a September 2002 e-mail to the division.

<sup>5</sup> Ex. 10, p. 6 (2002 denial letter).

<sup>6</sup> Ex. 2, p. 5 (2004 Adult Prior Year Non-Filer).

<sup>7</sup> Ex. 7, p. 1B.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; *see also* Ex. 4 (denial letter).

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 6.

<sup>13</sup> Ex. 7, p. 1B.

<sup>14</sup> Ex. A.

connected to his military service, he remained in South Dakota until June of 2006, and then returned to Alaska.

On October 18, 2006, Mr. C. wrote a letter requesting payment of his 2004 PFD.<sup>15</sup> The letter also argued for payment of several other dividends. Since only the 2004 PFD had already gone through the required informal appeal process, the letter was treated as a formal appeal only as to that dividend. The issues relating to other dividend years are being addressed in separate proceedings.<sup>16</sup>

The October 18, 2006 letter came approximately fifteen months after the deadline for initiating a formal appeal regarding the 2004 dividend. Mr. C. explains the delay as follows:

-- His receipt of the informal appeal decision was delayed until 11 days of the appeal period had passed due to a training exercise. He then departed for Langley, Va. only a day after receiving the informal appeal decision.

-- The training at Langley was intensive, putting 30 days of material into a three-week course. He had no access to the postal system there.

-- When he returned to South Dakota, the appeal deadline had already passed.

-- His regular work and training required an average of twelve hours per day.

-- He was struggling with family issues, including a divorce that became final in April of 2005.

### **III. Discussion**

By regulation, the time limit to further appeal an informal appeal decision is “within 30 days after the date the . . . decision is issued.”<sup>17</sup> There is no dispute that Mr. C. missed that deadline. However, the regulations also provide that “[t]he hearing officer may waive any . . . deadline established in [the appeal regulations] if it appears to the officer that strict adherence to the deadline . . . would work and injustice.”<sup>18</sup>

Historically, waivers of the appeal deadlines have been granted only in particularly compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

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<sup>15</sup> Ex. 7.

<sup>16</sup> Statement of Susan Lutz at hearing.

<sup>17</sup> 15 AAC 05.030(a).

<sup>18</sup> 15 AAC 05.030(k).

*In re N., OAH No. 05-0595-PFD (2006):* Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. Six-month delay in filing appeal not excused.

*In re B., Caseload No. 040286 (2004):* Division's denial had errors that may have caused confusion about appeal deadline. Delay of "a week or two" might have been excusable. One year delay in appeal not excused.

*In re G., Caseload No. 030739 (2004):* Applicant missed deadline because he failed to give division a change of address. One year delay in appeal not excused.

*In re H., Caseload No. 040315 (2004):* Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. Two-and-a-half month delay in properly initiating appeal was excused.

*In re S., Caseload No. 040154 (2004):* Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. Six-month delay in properly initiating appeal was excused.

In general, waivers have been available where the conduct of the division caused confusion that contributed to delay in starting an appeal, and even then the amount of extra time granted has not been unlimited. An applicant's busy life has is not ordinarily a basis to waive the appeal deadline. This is natural, since many Alaskans work extremely hard but are able to find the few minutes needed to fill out an appeal form.

In this case, there was nothing misleading about the PFD Division's correspondence with Mr. C. However, Mr. C. received the appeal form only a day before going into a period of military training in which he had no access to postal services. Had Mr. C. appealed soon after his return from that training--within a few weeks after the appeal deadline expired--he might well have had a persuasive case for a short waiver of the deadline. However, he did not appeal for another fifteen months after returning from the Langley training. The fact that he worked twelve-hour days during some of that period, and that he was recovering from a divorce, does not create a sufficient excuse to justify failing to get his paperwork in. The PFD formal appeal form is a simple one, requiring very little effort to fill out.

The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past. In this case, it is regrettable that Mr. C. missed the deadline, because he may well have had a strong case that the underlying denial of his PFD

was mistaken.<sup>19</sup> His delay in initiating the appeal is so great, however, that there is no injustice in preventing him from reopening this matter in late 2006.

#### **IV. Conclusion**

Because Mr. C.'s request for a formal appeal was filed after the deadline in 15 AAC 05.030(a), and because he has not established a basis for a fifteen-month waiver of the deadline under 15 AAC 05.030(k), his formal appeal of the denial of his 2004 PFD should be dismissed.

#### **V. Order**

IT IS HEREBY ORDERED that the motion of the Permanent Fund Dividend Division to dismiss the appeal of J. A. C., Jr. regarding the 2004 Permanent Fund Dividend is GRANTED.

DATED this 19<sup>th</sup> day of December, 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 31<sup>st</sup> day of January, 2007.

By: Signed  
Signature  
Jerry Burnett  
Name  
Director, Admin Services  
Title

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

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<sup>19</sup> Mr. C. will presumably apply for a 2007 PFD. The evidence received at the hearing on the motion to dismiss suggests that the division should carefully reevaluate whether the 2002 answer on line 4B, in light of Mr. C.'s explanation, genuinely severed his Alaska residency. If it did not, it is possible that he will be entitled to a 2007 dividend notwithstanding that he did not return to Alaska until June of 2006, *provided* his absence in the first part of 2006 (the qualifying year) was allowable. The hearing did not establish whether that absence was allowable.