

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

In the Matter of:

I.H.

2006 Alaska Permanent Fund dividend

OAH No. 07-0556-PFD

DOR No. 06628018-8

DECISION and ORDER

I. Introduction

I.H., a resident of Alaska, filled out and signed his application for a 2006 Alaska Permanent Fund dividend on March 21, 2006. His application was postmarked April 3, 2006. The Permanent Fund Division denied the application as untimely. Mr. H. filed a timely appeal and requested a hearing by correspondence. The division's decision is affirmed.

II. Facts

I.H. moved to Alaska in 2004, at age 17. After he turned 18, he enlisted in the Marines in Anchorage and reported to boot camp in California on January 3, 2006.¹

While in boot camp, recruits do not have direct access to a post office; outgoing mail is deposited in a mailbox on base and incoming mail is delivered to recruits at the discretion of their drill instructor. Mr. H. received an application form for the 2006 dividend in March, 2006; he completed the form on March 21, 2006, and deposited it in a mailbox on base well in advance of March 31, 2006. The application was postmarked in San Diego on Monday, April 3, 2006, and was received on April 7, 2006.

III. Discussion

An application for a permanent fund dividend must be filed during the period beginning January 1 and ending March 31 of the dividend year.² The department has authority to prescribe application procedures by regulation.³ The department's regulations state that "[a]n application must be received by the department or postmarked during the application period...to be considered timely.... An application mailed before, but postmarked after, the end of the

¹ Ex. 5, pp. 2-3.

² AS 43.23.011(a).

³ AS 43.23.055(2).

application period is not timely filed." The department will deny an application postmarked after March 31 of the dividend year unless the applicant "provides the department with an official statement from the United States Postal Service...that describes the specific circumstances under which the postal service incorrectly posted the...application or caused a delay in posting."⁴

In this case, the preponderance of the evidence is that Mr. H. exercised reasonable care to ensure that his written application was timely filed. Mr. H. attempted but was unable to obtain an application before leaving Alaska because the application period had not commenced; his receipt of the application form mailed to him was at the discretion of his drill instructor; he completed the application as soon as he received it; he did not have access to a post office to ensure a timely postmark; and he deposited the application in a mailbox on base well in advance of the statutory filing deadline.

However, Mr. H. has not established that the postal service "caused a delay in posting" the application. Rather, Mr. H. attributes the delay in postmarking the application to the inherent delay associated with mailing from a military base: it appears that mail collected on the base is delivered to a postal facility in San Diego before it is postmarked, and that there may be a substantial delay between the date a letter is deposited in a mailbox on the base and the date it is postmarked. Mr. H. has not shown that he deposited his application into a postal service mailbox in advance of the posted collection time for that mailbox, and he has not provided an official statement from the postal service showing specific circumstances why a letter deposited into that mailbox might not have been postmarked until a date after the date of deposit. Absent such evidence, the division's regulations mandate denial of his application.

IV. Conclusion

Mr. H.'s application was untimely and the late filing was not caused by postal service delay in posting.

V. Order

1. The division's denial of the application I.H. for a 2006 Alaska Permanent Fund dividend is AFFIRMED.

DATED January 7, 2008.
Andrew M. Hemenway, Administrative Law Judge

⁴ 15 A A C 23.103(a).

⁵ 15 A A C 23.103(g).

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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of February, 2008.

By: Andrew M. Hemenway

Administrative Law Judge

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

PFD Division
2/8/08