

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

In the Matter of	)	
	)	
C. F.	)	OAH No. 08-0324-PFD
	)	Agency No. 2007-063-1004
<u>2007 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

The postmark deadline to apply for a 2007 permanent fund dividend (PFD) was March 31, 2007. Midshipman C.F.' application forms were placed in the outgoing mail at the United States Naval Academy on Thursday, March 29, 2007, but did not receive a postmark until April 2, 2007. The Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis of untimeliness. Mr. F. requested a formal hearing, which took place by on August 12, 2008.

The division's denial of the F. application is reversed because Mr. F. has supplied acceptable proof through official government documentation that the delay in posting was caused by a government agency acting as a postal service.

**II. Facts**

In 2007, Alaska resident C.N.F. was a midshipman at the United States Naval Academy in Annapolis, Maryland.<sup>1</sup> There are no issues regarding his eligibility for the 2007 dividend apart from the timeliness of his application.

Mr. F. was not disabled in 2007. Although in military service at the time of his application, he was not eligible for hostile fire or imminent danger pay during the application period for the 2007 dividend.

Midshipmen are unable to drive themselves to a U.S. Post Office.<sup>2</sup> The procedure for Alaskans to apply for a PFD at the academy is to drop their applications at the registrar's office, which adds the necessary educational verification and forwards them through postal channels.<sup>3</sup> Mr. F. dropped his application off on Thursday, March 29, 2007.<sup>4</sup> Owing to a combination of factors, including the presence of a temporary in the registrar's office who was not familiar with

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<sup>1</sup> E.g., Exhibit 1, p. 4, question 2 (Education Verification Form).  
<sup>2</sup> Testimony of K.F.  
<sup>3</sup> *Id.*  
<sup>4</sup> Exhibit 4 (statement of Assistant Registrar Barbara Meeks).

the PFD routine, the application did not make its way through the Navy system quickly enough to receive a postmark by March 31.<sup>5</sup> Instead, although it was picked up as outgoing mail on the 29<sup>th</sup>, it went to a large Navy mailing facility in Virginia, arriving there on Friday the 30<sup>th</sup>. It was not processed until Monday, and it finally received its postmark at the U.S. Naval Post Office, Anacostia Annex, on April 2, 2007.<sup>6</sup> The specific circumstances that caused a delay in posting are described in a letter from the U.S. Government office that accepts midshipman PFD applications for mailing.<sup>7</sup>

The application was denied as untimely on May 23, 2007.<sup>8</sup> After an informal appeal was likewise denied, Mr. F. filed this appeal.

### III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.<sup>9</sup> The only exceptions to the deadline allowed by law are for certain disabled people when their disability prevents timely filing, for certain children when their parents or guardians do not timely apply on their behalf, and for certain military members who were eligible for imminent danger or hostile fire pay during the application period.<sup>10</sup> Whether a mailed application is considered timely posted is established by a regulation, 15 AAC 23.103(g), the relevant portion of which reads:

It is an individual's responsibility to ensure that an application is timely delivered to the department. A paper application must be timely delivered to the department during normal business hours or 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.

Mr. F.'s appeal turns on whether he has provided the kind of statement called for by this regulation.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; Exhibit 1, p. 5 (showing postmark in zip code 20373).

<sup>7</sup> Exhibit 4 (statement of Assistant Registrar Barbara Meeks).

<sup>8</sup> Exhibit 2 (2007 Denial Letter).

<sup>9</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>10</sup> AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

Mr. F. does not, strictly speaking, have an official statement from the United States Postal Service or a foreign postal service regarding “circumstances under which the postal service . . . caused a delay in posting.” Instead, like many members of the military, he must do his mailing through military channels. He has a statement from the United States Government agency responsible for posting his application—the Navy—that explains the four-day delay between that agency’s receipt of his application and the attachment of a postmark at the U.S. Navy Post Office.

This case is similar to *In re S.B.*, OAH No. 07-0380-PFD (Sept. 17, 2007). That case applied another subsection of the same regulation, one requiring “a mailing receipt” to prove that an application was mailed in the event that the application is not in the Department of Revenue’s possession.<sup>11</sup> Reversing a proposed decision issued by this office, the Office of the Commissioner construed the regulation to allow proof not only by actual mailing receipt but also by the *substantial equivalent* of such proof. It held that “contemporaneous written documentation of mailing by an unrelated third party” would qualify as the substantial equivalent. In S.B.’s particular case, a contemporaneous third-party health record supporting timely mailing provided a basis to grant the dividend.

The present case is parallel: Mr. F. lacks the exact document the regulation names, but he has proof with the same attributes the regulation seeks. An “official statement from the United States Postal Service or a foreign postal service” is desirable because it provides formal, official government documentation of a delay in posting after the applicant deposited the application. Mr. F. has provided a statement from the Navy that likewise is formal, official government documentation of a delay in posting after he deposited the application. Where the Navy functions as the agency collecting mail, this statement is the substantial equivalent of a statement from the Navy’s sister agency, the United States Postal Service.

Administrative agencies have some discretion to supply interpretations of their regulations within a reasonable range.<sup>12</sup> In keeping with *In re S.B.* and the spirit of 15 AAC 23.103(g), the Department of Revenue should allow a statement from the Navy in these circumstances to fill the role of a postal service statement.

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<sup>11</sup> 15 AAC 23.103(h)(1).

<sup>12</sup> See, e.g., *Rose v. Commercial Fisheries Entry Comm.*, 647 P.2d 154, 161 (Alaska 1982) (agency given some leeway to interpret regulation to fit its intent in promulgating the rule and/or in the formulation of fundamental policy).

**IV. Conclusion**

The application of Midshipman F. should be granted because, although the application was postmarked after the deadline, the late posting is adequately explained in an official government statement issued by the agency responsible for collecting and forwarding Mr. F.' mail.

**V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of C.N.F. for a 2007 Permanent Fund Dividend is REVERSED. The application shall be granted.

DATED this 3<sup>rd</sup> day of November, 2008.

By: Signed  
C. 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 1st day of December, 2008.

By: Signed  
Signature  
Christopher Kennedy  
Name  
[Commissioner's Delegee]  
Title

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