

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

IN THE MATTER OF )  
J. B. P. ) Case No. OAH 08-0370-PFD  
)  
2007 Permanent Fund Dividend )

**DECISION & ORDER ON REMAND**

**I. Introduction**

This case is J. B. P.' appeal of the denial of his application for a 2007 a permanent fund dividend (PFD) by the Alaska Permanent Fund Dividend Division (Division). After a formal hearing, a proposed decision was issued overturning that denial. The Division filed a proposal for action by email, which pointed out some clerical errors in the proposed decision. The Commissioner returned the case to the administrative law judge under AS 44.64.060(e)(2) to revise the decision by correcting these clerical errors.<sup>1</sup> This Decision and Order on Remand incorporates those revisions.

Mr. P. applied for 2007 a PFD. The Division denied his application initially and at the informal appeal level. Mr. P. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on September 4, 2008. The administrative law judge finds Mr. P.' 2007 PFD application should be granted because he met the requirements for showing that his application was incorrectly postmarked after the filing deadline.

**II. Facts**

Mr. P.' 2007 PFD was delivered to the Division in an envelope that was received on April 9, 2007.<sup>2</sup> The envelope was postmarked with an April date.<sup>3</sup> In a letter dated May 20, 2008, U.S. Postal Service Post Manager for the City of K. Post Office, A. H., wrote on plain stationary that she knew for a fact that Mr. P. mailed his 2007 PFD application between March 15<sup>th</sup> and March 25<sup>th</sup> of 2007.<sup>4</sup> Post Manager H. explained that during that time the former Post Manager, B. C., was on medical leave, and she did not return until just before March 31<sup>st</sup>. Post Manager H. wrote that, since

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<sup>1</sup> December 19, 2008 Order.

<sup>2</sup> Ex. 1, page 1.

<sup>3</sup> Ex. 1, page 3. The exact date is unreadable.

<sup>4</sup> The dates of mailing in Post Manager H. are somewhat inconsistent with Mr. P.' testimony and the date that he put after his signature on his application, which indicate that he probably mailed the application on March 26, 2007, rather than March 25, 2007. This inconsistency, however, does not significantly reduce the likelihood that the problems at the City of K. Post Office described in Mr. P.s' testimony and admitted to in Post Manager H.'s letter caused the Mr. P.s' 2007 PFD application to be improperly postmarked with a date after the PFD filing deadline.

there is only mail delivery twice per week,<sup>5</sup> Post Manager, B. C., would not have postmarked Mr. P.' application on time.<sup>6</sup> Post Manager H. identified herself as the U.S. Postal Service Post Manager for the City of K. Post Office in this letter.<sup>7</sup>

At the hearing, Mr. P. explained that he was working at K. when he mailed his application. Mr. P. stated that he believes that he mailed his application the day that he dated it, March 26, 2007.<sup>8</sup> Mr. P. explained that the K. Post Office was just a six by eight foot room in the city office building, and that the Post Manager at the time, B. C., worked part-time for the city manager as a clerk in the same small building, and that B. C. kept the post office open only for a couple of hours a day, but when it was not open, mail that would not fit in the mail box could be dropped off at her desk at the city office.<sup>9</sup> Mr. P.' memory was that during periods when Post Manager C. was not in town because her husband was receiving medical treatment out of state, the city manager would try to fill in for her at the post office by trying to get the mail together whenever a plane came in.<sup>10</sup> There were post office boxes outside the post office room.<sup>11</sup> Many people had problems getting their mail out and receiving it during the periods when Post Manager C. was out of town in the spring of 2007.<sup>12</sup>

When the Division received the letter from Post Manager H., it sent an email to U.S. Postal Service Address Management Systems Manager Joshua C. McCoy in Anchorage, Alaska, who is apparently the Division's primary contact at the postal service.<sup>13</sup> This email draws Mr. McCoy's attention to the fact that the letter was not on Post Office stationary and asks for more information about basis of Post Manager H.'s knowledge for the facts she asserts in her letter.<sup>14</sup>

Mr. McCoy responded to the Division in an email by asserting that "the Postal Service considers" the postmark on Mr. P.' application envelope accurate.<sup>15</sup>

Mr. McCoy also copied the Division with a letter that he sent to Post Manager H., in which he points out that that she took office after the events she describes in the admission of postal error occurred. Mr. McCoy reminds Post Manager H. of a policy not to provide such admissions unless

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<sup>5</sup> Ex. 4, page 3.

<sup>6</sup> Ex. 4, page 3.

<sup>7</sup> Ex. 4, page 3.

<sup>8</sup> Recording of Hearing- Testimony of Mr. P. & Ex. 1, page 1.

<sup>9</sup> Recording of Hearing- Testimony of Mr. P.

<sup>10</sup> Recording of Hearing- Testimony of Mr. P.

<sup>11</sup> Recording of Hearing- Testimony of Mr. P.

<sup>12</sup> Recording of Hearing- Testimony of Mr. P.

<sup>13</sup> Ex. 7.

<sup>14</sup> Ex. 7.

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

postal employees have “personal knowledge” of the postal error.<sup>16</sup> Mr. McCoy also directs Post Manager H. to refer all requests for letters about late postmarked PFD applications to him as “PFD Complaint Coordinator” for an appeals process within the postal service.<sup>17</sup>

Based on the record I find that it is more likely than not that:

1. Mr. P. filed a paper 2007 PFD application during the 2007 PFD application period with the U. S. Postal Service.<sup>18</sup>
2. Mr. P.’ 2007 PFD application was postmarked after the 2007 PFD application period due to postal error.<sup>19</sup>
3. Mr. P. provided a letter from the local Post Manager with the U. S. Postal Service admitting to specific circumstances under which the postal service caused a delay in postmarking his application.<sup>20</sup>

### **III. Discussion**

The Division argues that the admission of postal error provided by Mr. P. does not allow the Division to accept Mr. P.’ application as a late application that was incorrectly postmarked because Mr. McCoy advised the Division not to treat Post Manager H.’s admission as “official” for the purposes of determining Mr. P.’ eligibility for a PFD.

When an application is postmarked after the deadline, the PFD applicant must provide an official admission of postal error in order to have the PFD application treated as timely. The deadline for PFD applications is governed by 15 AAC 23.103. Subsection (a) of this regulation reads in part, “an application must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed.” Subsection (g) of the regulation 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 a paper 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. An online application must be received electronically by the department by midnight Alaska Daylight Time on the last day of the application period. An applicant's proof of timely filing an online application is a copy of the

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<sup>16</sup> Ex. 8.

<sup>17</sup> Ex. 8.

<sup>18</sup> Ex. 5.

<sup>19</sup> Ex. 5.

<sup>20</sup> Ex. 5, page 4.

computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process that shows that the online application was timely delivered to the department.

Mr. P.' 2007 PFD application was postmarked after the deadline. The evidence shows that his application was probably delivered to the post office on March 26, 2007.<sup>21</sup> This was in sufficient time to be postmarked before the end of the application period, but due to a postal error, that is the postal service's failure to find someone to process mail and run the post office during the postal manager's absence, that application was not postmarked until a week after it was mailed, in April of 2007. Mr. P. provided the Division with a statement from the United States Postal Service employee that described the specific circumstances under which the postal error caused a delay in postmarking his application, or incorrectly postmarking the application, with a date that was several days after it was delivered to the post office.

The Division determined that the "official statement" provisions of 15 AAC 23.103(g) do not apply to Mr. P.' situation because when the Division asked its contact in the postal service whether this letter was official, the Division's contact, Mr. McCoy, responded that the letter should not be treated as official for PFD eligibility purposes. The Division's position is understandable, but the Commissioner of Revenue, through adoption of a decision or order, rather than Mr. McCoy, has the final say in how Department of Revenue regulations should be interpreted in an administrative appeal of a denial of a PFD.

Post Manager H.'s letter was an official statement. Post Manager H. identified herself as the local Post Manager in the letter and used her official title under her printed name under her signature. Mr. McCoy's letter to Post Manager H. confirms that Post Manager H.'s letter was official. Mr. McCoy letter is a criticism of Post Manager H.'s action in writing the letter is criticism of her official action as Post Manager, not of her private behavior. Once an official statement has been made, the requirements of 15 AAC 23.103(g) have been met.

Furthermore, Post Manager H. is exactly the person who was best qualified to make the statement of postal error required by 15 AAC 23.103(g). The post official who makes the statement must cite the specific circumstances surrounding the error. Post Manager H. is the local postmaster in a remote bush post office. She was in a position to investigate Mr. P.' assertions and issue a statement based on the specific circumstances that caused the error that she learned of as a result of her inquiries. Post Manager H. also had adequate knowledge to speak to the specific circumstances

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<sup>21</sup> Recording of Hearing- Testimony of Mr. P. & Ex. 1, page 1.  
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under which the postal error was made. She lives in the small community and works in the post office where the error occurred and she was probably familiar with the circumstance that caused the error without having to make an extensive inquiry. Former Post Manager B. C. could not provide an official statement because she is no longer the Post Manager.<sup>22</sup>

Mr. P. provided an official statement. Mr. P. is otherwise eligible for a 2007 PFD. He mailed his application a week before the deadline.

#### **IV. Conclusion**

There being no other eligibility issues, having reached the finding that Mr. P.' 2007 PFD application was filed before the deadline and that he provided an official statement from the postal service describing the circumstances that resulted in the error that caused his late postmark, Mr. P.' 2007 PFD application must be granted.

#### **V. Order**

IT IS HEREBY ORDERED that the application of J. B. P. for a 2007 permanent fund dividend be GRANTED.

DATED this 29th day of December, 2008.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>22</sup> Because Mr. McCoy letter and email are focused on internal issues of policy and authority within the postal service, rather than providing specific information on the circumstances surrounding the processing and postmarking of the envelope containing Mr. P.' 2007 PFD application, Mr. McCoy' letter and email were not afforded much weight in determining whether Post Manager H.'s letter met the requirements of 15 AAC 23.103(g), but there could be circumstances under which the Division would be justified in relying on an official retraction of an official admission of postal error. An example might be a case where, as a result of subsequent investigation, the postal service determines that the admission was issued as the result of fraud by the applicant or the official who issued the admission.

## 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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 29th day of December, 2008.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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