

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

In the Matter of)	
)	
F. G.)	OAH No. 08-0376-PFD
)	Agency No. 2007-063-3178
<u>2007 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

F. G. seeks to establish that he timely applied for a 2007 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application on file, denied his application initially and at the informal appeal level. Mr. G. requested a formal hearing, which was held on September 10, 2008. He attended the hearing by telephone. He and one witness, S. E., testified at the hearing.

The division’s denial is affirmed because the only application on file was submitted late. Even if Mr. G. is correct in asserting that he submitted a timely online application, Department of Revenue regulations provide no discretion to grant him a dividend.

II. Facts¹

F. G. is a long-time Alaskan who has received dividends in past years.² He remained an Alaska resident at all times relevant to the 2007 dividend, and – apart from the question of the timeliness of his application – the division does not contest that he met the eligibility requirements for that dividend.

Mr. G. recalls that on January 1st or 2nd of 2007, he went online from his home computer to submit his PFD application, as it is his practice to file early.³ When he was finished, Mr. G. did not print out a confirmation page, but he remembers getting a “congratulations” message after completing the application. On January 2nd, his sister C. emailed to remind him that the enrollment period was open and he responded “I already registered on-line.”⁴ At the time he applied, Mr. G.

¹ Unless otherwise attributed, all factual findings are drawn from the testimony of Mr. G.

² Exh. 1 at pg. 1 (2007 Adult Application).

³ In 2006, Mr. G. successfully completed an online application for that year’s PFD.

⁴ Exh. 4 at pg. 3.

was in his mid fifties. He is not mentally disabled and he was not serving on active duty as a member of the armed forces of the United States in 2007.⁵

When Mr. G. did not receive a 2007 PFD, he contacted the division and was told to submit another application in order to initiate an appeal.⁶ Mr. G. then submitted a late paper application, which the division received on October 22, 2007.⁷

The division denied Mr. G.'s October application because it was not filed by the March 31, 2007 deadline and he did not qualify for any exception to the filing deadline. The division checked its records by social security number, address, birth date, and name and found that for 2007 the only application it had for Mr. G. was the October application.⁸ This was quite a thorough search: for example, every application was checked that had the same birth date as Mr. G. The division also checked the "first page data trap," which would have made a record had Mr. G. entered identifying information and reached the end of the first application screen; it found no trace of online activity by Mr. G.⁹ One application did contain an address the same as Mr. G.'s, but it was his sister Carol's application that named him as a verifier and listed his address.¹⁰

III. Discussion

By law, Mr. G. has the burden of proof in this appeal.¹¹ He must demonstrate by a preponderance of the evidence that the decision to deny his dividend was incorrect.

In order to qualify for a permanent fund dividend, a person must file an application.¹² PFD applications must be received or postmarked between January 1 and March 31 of the dividend year.¹³ The only exceptions to the filing 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.¹⁴ Mr. G. has not alleged he was entitled to file under any of these exceptions, so the March 31 deadline was absolute for him.

⁵ See Mr. G.'s acknowledgment in Exh. 3 at pg. 4.

⁶ See Exh. 6 at pg. 2 (statement with Request for Formal Hearing).

⁷ Exh. 1.

⁸ Exh. 7 and testimony of S. E., PFD Analyst/Programmer II.

⁹ Exh. 10 (post-hearing affidavit of S. E.).

¹⁰ Testimony of . E.

¹¹ 15 AAC 05.030(h).

¹² AS 43.23.005(a)(1).

¹³ AS 43.23.011(a); 15 AAC 23.103(a).

¹⁴ AS 43.23.011(b) – (c); 15 AAC 23.103(a); 15 AAC 23.133.

Whether an application is considered timely delivered is established by a regulation, 15 AAC 23.103(g), the relevant portion of which, in 2007, read:

It is an individual's responsibility to ensure that an application is timely delivered to the department. . . . An online application must be received electronically by the department by midnight Alaska Standard Time on the last day of the application period. An applicant's proof of timely filing an online application is a copy of the 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.

Under 15 AAC 23.103(h), if an online application was timely filed but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year. The request to reapply "must be accompanied" by a copy of the computer-generated confirmation number page the applicant received after completing the online filing process.¹⁵

Upon request of the administrative law judge, the division performed a search of the 2007 online database after the hearing. It did find one missing confirmation number that occurred at approximately 10:32 a.m. on January 2, 2007.¹⁶ Mr. G. claims in a post-hearing submission that the missing confirmation number from that day must be his:

This missing confirmation number indicates that *somebody* begun (sic) or completed their 2007 PFD application at that time and there is no evidence to suggest that the missing confirmation number is associated with any PFD application other than mine.^[17]

For the administrative law judge to find that the missing confirmation number belongs to Mr. G.'s application would be pure conjecture. Mr. G. was a credible witness and his testimony was supported by the copy of the email message he sent to his sister Carol in response to her email reminder that the PFD application period was open. Mr. G., however, does not have the required confirmation number and there is also no trace of him in the online database.

The Department of Revenue is bound by its own regulations. Since the department does not have the online application – for whatever reason – the dividend can be paid only if Mr. G. produces the specified kind of evidence, which he does not have. The regulations do not permit any discretion in this situation and Mr. G.'s 2007 PFD application cannot be considered timely.

¹⁵ 15 AAC 23.103(h)(4).

¹⁶ Exh. 10 at pg. 1.

¹⁷ Letter received on September 22, 2008 (emphasis in the original).

Therefore, Mr. G. has not met his burden of proving that denial of his late paper application for a 2007 PFD was incorrect.

IV. Conclusion

Because Mr. G.'s only application on file was submitted after the filing deadline and he did not meet any of the exceptions to the deadline, his application has been properly denied.

The decision of the Permanent Fund Dividend Division to deny the application of F. G. for a 2007 permanent fund dividend is AFFIRMED. This decision does not affect his status as a resident or his eligibility for 2008 and future dividends.

DATED this 6th day of February, 2009.

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

DATED this 17th day of March, 2009.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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