

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

IN THE MATTER OF)
)
 E. A.)
) Case No. OAH 08-0470-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

E. A. applied for a 2007 permanent fund dividend in December, 2007, for the purpose of initiating an appeal regarding an application allegedly mailed during the 2007 application period. The Permanent Fund Dividend Division (“the division”) determined that Mr. A. was not eligible, and it denied the application initially and at the informal appeal level. Mr. A. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on October 15, 2008. Mr. A. and PFD Specialist Susan Pollard both appeared by telephone.

The division has no records on file showing that Mr. A. timely filed a dividend application. Because Mr. A. has not provided evidence of timely filing in one of the forms prescribed by law, the division’s decision to deny the application is affirmed.

II. Facts

Mr. A. testified that he completed a 2007 permanent fund dividend application and mailed it from his local post office, as he has done in prior years, at some point during the 2007 application period. Mr. A. did not obtain a mailing receipt or use certified mail to send his application. The division has searched its records and does not have any evidence on file that it received an application from Mr. A. during the 2007 application period.

H. H. is a friend and neighbor of Mr. A.’s. Mr. H. testified that he has signed Mr. A.’s PFD applications as a verifier for so many years that it has become a routine; Mr. A. fills out his application, Mr. H. and another neighbor sign it, and then Mr. A. takes the application directly to the post office to mail it. Mr. H. testified that he could not recall the specific date that he signed Mr. A.’s application, but he recalled that he did sign the application as a verifier and that Mr. A. was on his way to the post office at that time. Mr. H. candidly stated that he could not say for certain whether Mr. A. actually mailed the application, as he did not see Mr. A. actually drop the envelope into a mailbox at the post office.

Both Mr. H. and Mr. A. testified about a number of cases showing that mail service in their area does sometimes tend to be erratic and unreliable.

III. Discussion

With certain exceptions that do not apply to this case, applications for permanent fund dividends must be filed between January 2 and March 31 of the dividend year.¹ It is the applicant's responsibility to ensure that an application is timely delivered to the department.²

This case is governed specifically by 15 AAC 23.103(h), which reads:

If an individual has timely filed an application but the department does not have that application on file, the individual may submit a request to reapply on or before December 31 of the dividend year. A request to reapply must be accompanied by one of the following forms of evidence that an application was timely filed with the department:

- (1) a mailing receipt;
- (2) a mailing return receipt documenting delivery to the department or other evidence of receipt by the department; or
- (3) repealed 1/1/2006;
 - (A) repealed 1/1/99;
 - (B) repealed 1/1/99;
- (4) a copy of the computer-generated page containing the permanent fund dividend confirmation number received by the applicant after completing the online filing process.

This regulation recognizes the possibility that there are many reasons why the division might not have an application on file for someone who actually filed or mailed one on time. The Postal Service can lose envelopes, division employees can lose documents, applicants can lose envelopes they thought they had mailed, thieves and vandals can steal or destroy documents, and computer systems can fail and result in lost data. In all of these situations, the law places the responsibility for proving that applications were timely filed on the applicant, regardless of the possibility of error on the part of the division or the postal service. Further, the division will accept only the specified kinds of evidence as proof that the applicant did in fact file an application on time.

Mr. A. has a long history of timely filing applications by mail, and there is no reason to doubt his credibility in this case. Mr. A.'s conclusion that his application was lost by the postal service is as reasonable of an explanation as any for the fact that the division does not have a timely

¹ AS 43.23.011.

² 15 AAC 23.103(g).

application on file for him. However, the absence of the application in the division's files and databases does present a mystery that it is not possible to resolve with certainty.

In cases where the lack of a timely application on file cannot be explained, the law places the burden on the applicant of proving that the application was timely filed or mailed before the application deadline, and the applicant may only meet this burden by producing a mailing receipt, certified mail return receipt, other evidence that the division did actually receive the application, or a computer-generated confirmation code for online filings. While Mr. A. was a credible witness, he cannot meet the required burden of proof because he apparently mailed his application by placing it in a mailbox without obtaining a mailing receipt or other proof of mailing. In these circumstances, the law does not allow the division to reach any other decision than the one it did.

IV. Conclusion

Because Mr. A. is unable to provide proof of a timely application in one of the forms prescribed by law, the division's decision to deny the application of E. A. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 7th day of January, 2009.

By: Signed
DALE WHITNEY
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 7th day of February, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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