

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

IN THE MATTER OF)
)
 D. F.)
) Case No. OAH 08-0502-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

D. F. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. F. was not eligible, and it denied the application initially and at the informal appeal level. Mr. F. appeared by telephone at a formal hearing on October 21, 2008. PFD Specialist Kim Colby represented the PFD Division by telephone.

Because Mr. F. was incarcerated during part of the qualifying year and had been convicted of two prior misdemeanors, the division was correctly applying the law when it denied Mr. F.’s application for a 2007 dividend.

II. Facts

The Department of Corrections (DOC) asserts that Mr. F. was incarcerated on two occasions in 2006; once for a day from April 27 to April 28, and again for a longer period from October 14 to November 18, 2006.¹ According to DOC’s printed records, Mr. F. was arrested on April 27 and released on bail on April 28.² The records show that Mr. F. was arrested or remanded to Fairbanks Correctional Center on October 14, 2006, and that on October 31, 2006, he was moved to the North Star Center, and then released on November 18, 2006, having served all of his time.³

Mr. F.’s testimony does not appear to contradict the DOC’s records. Mr. F. testified that at one point he was in jail overnight, and then he was released the next day. Mr. F. testified that when he appeared in court the day after his arrest, he told the judge he had work available on the North Slope, and the court released him that day to go to work. Mr. F. testified that he did receive credit for the one day he had spent in jail.

Mr. F. also testified that during 2006 he was incarcerated for a period of forty days. He stated that there had been two counts and he received a sentence of thirty days for each one, but also

¹ Exhibit 5, page 5.

² Exhibit 5, page 12.

³ Exhibit 5, page 14.

was given “good time” credit of ten days for each count, resulting in forty days to serve. Mr. F. testified that he served his time at the North Star Center.

III. Discussion

For a 2007 dividend, the qualifying year was 2006. If a person was incarcerated at any time in the qualifying year for conviction of a misdemeanor, and the person has previously been convicted of two or more misdemeanors at any time since 1996, that person will not be eligible for a 2007 dividend.⁴ Mr. F. admits that he was incarcerated for part of 2006, once for forty days and another time for just one day. There is no dispute that Mr. F. has previously been convicted of at least two misdemeanors between 1996 and 2006.

The basis of Mr. F.’s appeal is not entirely clear. In his testimony Mr. F. objected to statements that he had been in jail for two years, and that he had been convicted of two charges in 2006. In the informal appeal decision, the division wrote, “The Alaska Department of Corrections verified you were incarcerated at some time during 2006 because of a misdemeanor conviction in this state after being convicted of a prior felony or two or more prior misdemeanors.” This statement does not mean that Mr. F. was convicted of a felony or two prior misdemeanors in 2006. Mr. F. appears to be correct that he was only charged with one new offense during 2006, and that he successfully served his time for that charge. But because he served some time in 2006, and had been convicted of at least two misdemeanors in earlier years *before* 2006, the division is correct that Mr. F. is not eligible for a dividend in 2007.

IV. Conclusion

The division was correct to conclude that Mr. F. was incarcerated for some time during 2006 as the result of a misdemeanor conviction, and that before 2006 he had been convicted of two or more misdemeanors. Mr. F. is therefore not eligible for a 2007 dividend. The division’s decision to deny the application of D. F. for a 2007 permanent fund dividend is **AFFIRMED**.

DATED this 21st day of January, 2009.

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

⁴ AS 43.23.005(d)(2).
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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 20th 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.]