

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

IN THE MATTER OF )  
 )  
 T. K. )  
 ) Case No. OAH 08-0507-PFD  
 2007 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

T. K. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. K. was not eligible, and it denied the application initially and at the informal appeal level. Mr. K. appeared by telephone at a formal hearing on October 22, 2008. PFD Specialist Peter Scott represented the PFD Division.

Because Mr. K. did not present proof of timely filing in one of the forms required by law, the division was correctly applying the law when it made the decision to deny Mr. K.’s application. The decision is affirmed.

**II. Facts**

Mr. K. has been applying for and receiving dividends by mail every year since 1988 without incident. Mr. K. testified that he mailed his 2007 dividend application on or about March 13, 2007. Mr. K. mailed his application by regular first class mail without receiving a mailing receipt or other evidence of mailing from the postal service. When he did not receive a dividend by November of 2007, Mr. K. contacted the PFD Division and learned that the division had no record of having received Mr. K.’s application. The division has searched its records and has not been successful in finding an application or other evidence that Mr. K. applied during the application period. Mr. K. then filed a paper application on December 13, 2007, for the purpose of initiating this appeal regarding the original application. While Mr. K. remembers mailing an application during the application period, it cannot be determined with certainty whether Mr. K.’s memory is in error, whether the postal service lost the application, whether the division lost the application after receiving it, or whether there is some other reason that the division does not have Mr. K.’s application on file.

### III. Discussion

At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.<sup>1</sup> 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.<sup>2</sup> It is the applicant's responsibility to ensure that an application is timely delivered to the department.<sup>3</sup>

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 postal service or the division. Further, the division will accept only the specified kinds of evidence as proof that the applicant did file an application on time.

Mr. K. testified that he did in fact mail an application to the division during the 2007 application period. Mr. K. was a credible witness, he has a long history of filing on time by mail, and there was no reason to doubt his testimony, but for the inexplicable lack of an application in the

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<sup>1</sup> 15 AAC 05.030(h).

<sup>2</sup> AS 43.23.011.

<sup>3</sup> 15 AAC 23.103(g).

division's records. Having used regular first class mail without obtaining a mailing receipt, Mr. K. is unfortunately unable to produce the required kind of evidence to prove the timeliness of his application. Under these circumstances, the law does not provide for any other result than the denial of Mr. K.'s application for a 2007 dividend.

Because there are no questions regarding Mr. K.'s residency or eligibility other than the lack of an application, nothing in this decision is intended to affect Mr. K.'s eligibility for 2008 and subsequent dividends.

#### **IV. Conclusion**

Because Mr. K. has not produced the required form of evidence to prove his timely filing of a dividend application in 2007, the decision of the Permanent Fund Dividend Division to deny the application of T. K. is AFFIRMED.

DATED this 29th 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 27<sup>th</sup> 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.]