

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

IN THE MATTER OF)
)
 R. S.)
) Case No. OAH 08-0514-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

R. S. filed an untimely application for a 2007 permanent fund dividend for the purpose of initiating an appeal regarding a previous application he claims to have filed on time. The Permanent Fund Dividend Division (“the division”) determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. Mr. S. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on October 27, 2008. Mr. S. appeared by telephone. PFD Specialist Kim Colby represented the PFD division. The division’s decision to deny Mr. S.’s application was correct according to the law.

II. Facts

There is no dispute that Mr. S. is an Alaska resident and has been for many years. Mr. S. testified that he filled out a paper application for a 2007 dividend on January 28, 2007, and put it in the mail of February 3, 2007. Mr. S. was able to provide a photocopy of the application, with a signature dated January 28, 2007, but because he did not obtain a mailing receipt or use certified mail, Mr. S. is not able to provide any evidence from the post office that he actually mailed the application.¹ When Mr. S. did not receive a dividend in October of 2007, he contacted the division and learned that there was no application on file for him. The division has searched its databases and found no evidence that it ever received Mr. S.’s original application. It cannot be conclusively determined why the division has no evidence of receiving the application; it could have been lost in the mail, the division might have lost it before entering information from it into the database, or Mr. S. may have somehow unknowingly lost the application before even mailing it. Mr. S. does appear to be sincere in his belief that he did in fact actually mail the signed application before the March 31 deadline. While doubt cannot be completely dispelled, the preponderance of evidence shows it is more likely than not that Mr. S. did in fact mail the application before the March 31, 2007, deadline.

¹ Exhibit 3, page 5.

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.² It is the applicant's responsibility to ensure that an application is timely delivered to the department.³

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 division's part. Further, the division will accept only the specified kinds of evidence as proof that the applicant did in fact file an application on time.

Because he did not apply for a dividend using the online application procedure, Mr. S. does not have the kind of evidence described in subparagraph (4) of the above regulation. Mr. S. did not send his application with a return receipt requested, nor can he produce "evidence of receipt by the department," which might include a copy of an application stamped with the division's "received" date stamp, or correspondence from the division acknowledging a timely application, or possibly even other evidence that the division actually received the applications. There is no such evidence

² AS 43.23.011.

³ 15 AAC 23.103(g).

in this case. The division has consistently denied applications in other similar cases when the applicants cannot produce one of the specified forms of evidence documenting timely mailing or filing, such as a mailing receipt, and those decisions have consistently been upheld.⁴

IV. Conclusion

The division does not have a timely application on file for Mr. S. Mr. S. has not provided documentation of timely mailing or filing in one of the forms allowed by 15 AAC 23.103(h). Because the division was correctly following the law when it made the decision, the division's decision to deny the applications of R. S. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 7th day of November, 2008.

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 3rd day of December, 2008.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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

⁴ In the following OAH cases, applications for 2006 dividends were denied in spite of evidence showing that applications were timely mailed or delivered to the division, but the evidence was not in one of the forms required by 15 AAC 23.103(h): 07-0484-PFD; 07-0446-PFD; 07-0426-PFD; 07-0441-PFD; 07-0380-PFD; 07-0222-PFD; 07-0361-PFD; 07-0362-PFD; 07-0398-PFD. 2007 dividends were denied under similar circumstances in case number 08-0393-PFD.