

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

IN THE MATTER OF) OAH No. 08-0515-PFD
C. J. W.)
)
2007 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

C. J. W. filed a paper re-application for a 2007 permanent fund dividend (PFD) in December of 2007. The Permanent Fund Dividend Division (Division) determined that he was not eligible, and it denied the application initially and at the informal appeal level. Mr. W. requested a formal hearing. The hearing was held on October 27, 2008. Mr. W. did not appear for his hearing or file a timely request to reschedule the hearing.¹ Administrative Law Judge Mark T. Handley heard the appeal. The record closed on November 6, 2008. The administrative law judge finds the Division correctly denied Mr. W.'s 2007 PFD re-application because he did not timely file an original 2007 PFD application.

II. Facts

Mr. W. filed a paper 2007 PFD re-application. Mr. W. dated his signature on this re-application December 27, 2007.² Mr. W. indicated in his request for a formal hearing that his attempt to file a timely electronic application may have been unsuccessful.³ The Division filed an affidavit explaining the methods used to search the Division's electronic database for evidence that Mr. W. had timely filed an electronic application for himself.⁴ At the hearing, the Division explained that it had also been unable to find any evidence that Mr. W. had even partially completed an electronic application for himself.⁵

Based on the evidence in the record, I conclude that it is more likely than not that Mr. W. did not timely to file a 2007 PFD application.

¹ Mr. W. did not call in for the hearing. He was also called at his phone number of record at the time of the hearing and a message was left on his voice mail.

² Ex. 1.

³ Ex. 6, page 2.

⁴ Ex.7.

⁵ Recording of Hearing.

III. Discussion

The deadline for PFD applications is governed by 15 AAC 23.103. In order to qualify for a permanent fund dividend, a person must file an application.⁶ Applications must be filed between January 2 and March 31 of the dividend year.⁷ According to 15 AAC 23.103(g),

It is an individual's responsibility to ensure that an application is timely delivered to the department. A paper application must be timely delivered to the department during normal business hours or delivered to the post office in sufficient time to be postmarked before the end of the application period. The department will deny a paper application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting. An online application must be received electronically by the department by midnight Alaska Daylight 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.

The laws regarding permanent fund dividends do not allow the administrative law judge to make exceptions to the rules regarding filing of applications, even in particularly compelling cases. When the Division does not have a person's online application on file, the person must produce specific types of documentation such as a mailing receipt or, in the case of an electronically filed application, a confirmation number, to prove that a timely application was made.⁸ The Division does not have timely filed 2007 PFD applications for Mr. W. on file. Mr. W. has not provided the required documentation to show a timely filing. Mr. W. was not sure that he successfully filed a timely application. Having reached the finding that Mr. W. did not meet the timely filing requirements of 15 AAC 23.103, the only possible result of this case is to conclude that Mr. W.'s 2007 PFD re-application must be denied.

⁶ AS 43.23.005(a)(1).

⁷ AS 43.23.011(a). Certain exceptions to this apply to disabled Alaskans and some military personnel in hostile fire or imminent danger duty during the application period.

⁸ 15 AAC 23.103(h)(4).

V. Order

IT IS HEREBY ORDERED that the application of C. J. W. for a 2007 permanent fund dividends be DENIED.

DATED this 18th day of November, 2008.

By: Signed _____
Mark T. Handley
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 AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 16th day of December, 2008.

By: Terry L. Thurbon *for* _____
Signature
Mark T. Handley _____
Name
Administrative Law Judge
Title

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