

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

IN THE MATTER OF )  
 )  
 S. R. )  
 ) Case No. OAH 08-0561-PFD  
2005 & 2006 Permanent Fund Dividends )

**ORDER GRANTING MOTION TO DISMISS**

**I. Introduction**

S. R. timely applied for 2005 and 2006 permanent fund dividends. For both years, the Permanent Fund Dividend Division (“the division”) requested additional information, and then denied the applications for failure to respond. The division denied Mr. R.’s requests for informal hearings for both applications for lack of timeliness. Mr. R. requested formal hearings for both years, and the division moved to dismiss the appeals. A hearing on the motion to dismiss was held on November 17, 2008. Mr. R. appeared by telephone. PFD Specialist Susan Pollard represented the PFD Division by telephone. The division’s motion to dismiss is granted.

**II. Facts**

The division’s records indicate that Mr. R. applied on time for a 2005 dividend, but the application was denied because Mr. R. did not provide additional information that had been requested. The division’s records do not contain a copy of the actual denial letter. A computerized history of events shows that Mr. R.’s application was denied on September 15, 2005.<sup>1</sup> Mr. R. requested an informal appeal on a form provided by the division.<sup>2</sup> This form bears a text box in the upper left corner reading, “This Appeal Request Will Be Denied If Received or Postmarked after NOV 14 2005.” Mr. R.’s signature is dated October 27, 2007, and a stamp on the form shows it was received on November 2, 2007.

Mr. R. applied for a 2006 dividend on March 18, 2006.<sup>3</sup> The division denied the application on July 19, 2006.<sup>4</sup> The denial letter stated that the reason for denial was that Mr. R. did not provide requested information. The denial letter stated in part that

If you disagree with our decision,

- You have until 08/18/2006 to file a Request for an Informal Appeal by completing and returning the enclosed appeal request form.

---

<sup>1</sup> Exhibit 3, page 3.

<sup>2</sup> Exhibit 4, page 1.

<sup>3</sup> Exhibit 7.

<sup>4</sup> Exhibit 8.

- You must also complete and return the form(s) we previously sent you and meet all eligibility requirements.<sup>5</sup>

Mr. R. dated his signature on the appeal form October 27, 2007, and the division received it on November 2, 2007, just as it did the 2005 appeal request. Mr. R. does not dispute that the division sent all notices to his correct address; his use of the actual appeal forms indicates that he did actually receive the division's notices for both years.

The division denied both appeal requests for lack of timeliness.

### **III. Discussion**

Appeals of decisions of the division are governed by regulations in 15 AAC 05. During the 2005 dividend year, 15 AAC 05.010(b) required that a request for an informal conference be filed within sixty days of the division's decision to deny a dividend. For the 2006 dividend year the regulation had been amended to reduce the amount of time for an appeal request to 30 days. Mr. R.'s request for an informal appeal of the decision regarding his 2005 dividend application was filed more than two years after the decision was issued, and the request for an informal appeal of the 2006 decision was filed more than one year after the decision was made. There is no dispute that the appeals are untimely.

While the division is bound by its regulations, "the hearing officer may waive any requirement or deadline established in 15 AAC 05.010 – 15 AAC 05.030 if it appears to the officer that strict adherence to the deadline would work an injustice."

Most of Mr. R.'s testimony at the hearing was directed toward the underlying eligibility issues, rather than the issue of the late appeals. When asked why it took so long to return the appeal forms, Mr. R. stated that "I'm going to tell you sir that my father will tell you one of my great faults in life is that I am dyslexic and I cannot do forms." Yet it appears that Mr. R. did in fact fill out the appeal request forms himself, using perfectly credible spelling and grammar. Mr. R. has not explained how his situation differs from that of the many people with serious language disabilities or complete illiteracy who take necessary steps to learn the meaning of the division's correspondence and to submit adequate responses within, or at least very close to, the regulatory deadlines.

This case presents one of the unusual situations in which an extraordinary delay may actually prejudice the division. The information needed to evaluate eligibility will now be stale and difficult to obtain. The passage of time may in fact explain why the division was unable to locate a copy of the 2005 denial letter. The amounts of the 2005 and 2006 dividends have been calculated

based on the number of valid applications received. Funds have been distributed, books have been closed, and personnel have moved on to work on the current year's applications. Mr. R.'s principal argument is that the weight of evidence supporting his eligibility outweighs the consideration of "technicalities" such as appeal deadlines. But in this case there is no compelling interest of justice that requires variation from the normal rules that apply to all applicants.

**IV. Conclusion**

Mr. R. did not appeal from the division's decisions to deny his applications for 2005 and 2006 dividends within the time period provided by law for an appeal. Strict adherence to the appeal deadlines will not work an injustice in this case. The division's Motion to Dismiss Appeal Request is GRANTED.

DATED this 21<sup>st</sup> 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 30th 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.]