

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

IN THE MATTER OF)
)
 L. O.)
) Case No. OAH 09-0091-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

L. O. applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. O. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. O.’s request, a formal hearing was held on March 24, 2009. Mr. O. appeared by telephone. PFD Specialist Peter Scott represented the division by telephone.

Although Mr. O. presented credible evidence that he actually mailed his 2008 PFD application, the evidence was not in the form required by regulation. Under the law, it is not possible to grant Mr. O.’s application.

II. Facts

Mr. O. is a long-time Alaskan who has been successfully mailing PFD applications and receiving dividends for many years. Mr. O. filled a 2008 PFD application form and signed it on February 16, 2008. He made a photocopy of the application for his records, put the original in a stamped envelope, and placed the envelope on the dashboard of his truck to be mailed. A short time later, Mr. O. saw his regular U.S. Postal Service mail carrier coming on the regular mail route. Mr. O. took the envelope from his truck and personally handed it the mail carrier, a person that Mr. O. knew and recognized. Mr. O. did not receive any kind of documentation of mailing from the carrier, such a mailing receipt or certified mail service.

What happened to the envelope after that point is unknown. When Mr. O. did not receive a dividend in October of 2008, he made inquiries and found that the division did not have a copy of his application on file. The division has checked its files and records and found no evidence of having received Mr. O.’s application. After years on the same route, the mail carrier moved away from Alaska and Mr. O. cannot contact him.

There is no dispute that Mr. O. is an Alaska resident and would be eligible for a dividend if his application had been filed on time.

III. Discussion

At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.¹ 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 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.

Resolution of this case is not as easy as one might expect. Mr. O. was a credible witness with a long history of filing timely applications. It is not uncommon for applicants to testify, credibly so, that they actually did mail an application even though the division does not have a

¹ 15 AAC 05.030(h).

² AS 43.23.011.

³ 15 AAC 23.103(g).

record of receiving it. But Mr. O. actually made a photocopy of his application and produced it in support of his testimony. This is extraordinarily strong evidence that a timely filing was actually made.

What makes this case difficult is the specific language of 15 AAC 23.103(h):

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... (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.

While Mr. O. has produced a photocopy of what appears to be a timely application, he has not produced a mailing receipt, a return receipt, or a computer-generated confirmation page. While there is nothing necessarily deficient with Mr. O.'s evidence, it is not the kind of evidence that the rule requires to be submitted with a request to reapply when the division does not have an application on file for a person who actually mailed one during the application period.

While denying Mr. O.'s application is not a pleasant task, the rules are very clear for this particular situation. If the division does not have a person's timely application on file, the person must produce a mailing receipt, mailing return receipt or evidence of receipt by the department, or a computerized confirmation page. Mr. O. does not have this kind of evidence. There is no provision for waiving or bending the rule in this situation, even though Mr. O. was not aware he would need this kind of evidence and was a credible witness. The rule must be applied uniformly to all applicants in order to be fair. Unfortunately, this means that Mr. O.'s application must be denied.

IV. Conclusion

The division does not have an application for a 2008 permanent fund dividend on file for Mr. O. Mr. O. has not presented evidence of timely filing in one of the forms required by law. The division was correctly following the law when it made the decision to deny Mr. O.'s application. The decision of the Permanent Fund Dividend Division to deny the application of L. O. for a 2008 permanent fund dividend is AFFIRMED.

DATED this 20th day of April, 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 18th day of May, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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