

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

In the Matter of:)
)
 I. E. K.) OAH No. 09-0272-PFD
) Agency No. 2007-054-3261
2007 Permanent Fund Dividend)

DECISION

I. Introduction

I. E. K.'s application for a 2007 permanent fund dividend (PFD) was denied initially and at the informal appeal level by the Permanent Fund Division (division), on the basis of incarceration during the qualifying year. At Mr. K.'s request, this office held a formal hearing on June 18, 2009. Mr. K. did not appear at the hearing and, as required by regulation, the record remained open for ten days to provide Mr. K. with an opportunity to show reasonable cause for his failure to appear.¹ Before the record closed, Mr. K. contacted the Office of Administrative Hearings, showed reasonable cause for his failure to appear and requested a new hearing. The second hearing was held July 17, 2009.² Again, Mr. K. failed to appear and the record remained open for the required ten days.³ The record closed July 27, 2009 without any further participation from Mr. K. PFD Specialist Kimberly Colby represented the division. The division's denial is affirmed because Mr. K. was incarcerated during the qualifying year, 2006, as the result of a felony conviction.

II. Facts

The Alaska Department of Corrections identified Mr. K. as having been incarcerated as a result of a December 19, 2005 conviction from the date of conviction through April 10, 2006 as the result of a felony conviction in case no. 3UN-S04-00000CR.⁴ Mr. K. wrote in support of his request for a formal appeal that he had a 2007 criminal matter, 3AN-07-00000CR, which was dismissed by the prosecution November 16, 2007.⁵

¹ If a person requests a hearing and fails to appear at the hearing, the [administrative law judge] may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear. 15 AAC 05.030(j).

² Mr. K. participated in the selection of the July 17, 2007 hearing date.

³ Mr. K. was called and the number of record and a message was left informing him that the record would remain open for 10 days.

⁴ Exhibit 5 at 5

⁵ Exhibit 6 at 2.

III. Discussion

This case is governed by AS 43.23.005(d), which states:

Notwithstanding the provisions of (a) - (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when

* * * * *

(2) during all or part of the qualifying year, the individual was incarcerated as a result of the conviction in this state of a

(A) felony; or

(B) misdemeanor if the individual has been convicted of

(i) a prior felony as defined in AS 11.81.900 ; or

(ii) two or more prior misdemeanors as defined in AS 11.81.900 .

The basis for Mr. K.’s appeal is that his criminal charge in 2007 was dismissed. Mr. K. is focusing on the wrong time period. The qualifying year for the 2007 PFD was 2006.⁶ Therefore, the issue to be addressed is whether Mr. K. was incarcerated during 2006 as the result of a disqualifying criminal conviction. Mr. K. has not challenged the division’s assertion that he was incarcerated in 2006 as the result of a 2005 felony conviction. His incarceration in 2006 makes him ineligible for a 2007 PFD under AS 43.23.005(d)(2)(A).

IV. Conclusion

I. E. K.’s incarceration in 2006 as a result of a felony conviction disqualifies him from a 2007 PFD. Therefore, the decision of the Permanent Fund Dividend Division to deny the application of I. E. K. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 28th day of July, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

⁶ AS 43.23.095(6).

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 24th day of August, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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