

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

In the Matter of:)
)
T. A. P.)
)
2009 Permanent Fund Dividend) OAH No. 09-0652-PFD
) Agency No. 2009-064-2217

DECISION AND ORDER

I. Introduction

T. P. applied for a 2009 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application. Mr. P. has now requested a formal appeal of that decision.

Mr. P.'s appeal hearing was originally set for January 14, 2010. He requested that the hearing be delayed until late April or early May, and that request was granted. Mr. P. also changed the hearing from a Hearing by Correspondence to an In Person hearing. A new hearing date was set for April 29, 2010. Mr. P. did not appear in person for the hearing. He was reached at a contact phone number, and Mr. P. requested that the hearing date be put off. A new hearing was scheduled for May 14, 2010.

On May 14, 2010, Mr. P. did not appear in person and was not available at the phone number he had provided. A message was left for him, asking him to contact the Office of Administrative Hearings. No contact was made. Pursuant to 15 AAC 05.030(j), this decision is issued based on the evidence in the record.

The decision to deny Mr. P.'s application is upheld because he was incarcerated as a result of a felony conviction during the 2008 qualifying year.

II. Facts

Mr. P. signed his 2009 PFD application on March 30, 2009.¹ The envelope containing his application had the Anchorage Correctional Complex East as a return address, and it was postmarked on April 1, 2009.² This application was denied because it was postmarked after the filing deadline.³

¹ Exhibit 1, page 1.

² Exhibit 1, page 3.

³ Exhibit 2, page 1.

Mr. P. was incarcerated as a result of a felony conviction during some portion of 2008.⁴

III. Discussion

A. *Timeliness of application*

With some exceptions that do not apply here, a PFD application must be filed during the application period which ends on March 31 of each dividend year.⁵ It is the responsibility of the individual applicant to ensure that applications are delivered to the PFD office or postmarked on or before March 31.⁶ Alaska regulations require the Division to deny an application postmarked after March 31 unless

the individual provides the department with an official statement from the United States Postal Service or 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.^[7]

Mr. P. stated under oath that as an inmate he is required to deposit outgoing mail in a locked box. He also described how that mail has been frequently mishandled by the correctional facility.⁸ Mr. P. submitted a statement signed by a correctional officer confirming that "mail is frequently mishandled and or could go unprocessed for several days."⁹

Individuals who file their PFD applications shortly before the deadline sometimes find they have in fact missed the deadline because of unexpected circumstances beyond their control. For example, in one case applications were placed in a postal service mailbox on March 30th. The envelopes were not postmarked until April 1st.¹⁰ The denial of these applications was upheld.¹¹ There are many other published decisions on the Office of Administrative Hearings website that uphold the denial of PFD applications because they were not timely postmarked and because the applicant did not have a statement from the postal service describing the manner in which the application had been mishandled.

One case that does provide some support for Mr. P., however, is *In the matter of C.F.*, OAH Case No. 08-0324-PFD. In *C.F.*, a Naval Academy Midshipman was not allowed to take his mail to the post office himself. Instead, he was required to drop his application at the

⁴ Exhibit 8, page 3.

⁵ Alaska Statute AS 43.23.011(a).

⁶ Alaska Regulation 15 AAC 23.103(g).

⁷ 15 AAC 23.103(g).

⁸ Exhibit 3, pages 3 – 5.

⁹ Exhibit 5, page 3.

¹⁰ *In the matter of R.D.G. and A.Z.G.*, OAH NO. 09-0277-PFD.

¹¹ *Id.*

registrar's office which then processed it and submitted the application to another office for mailing. Because of delays at the Academy and further delays at the Navy mailing facility, C.F.'s application was postmarked on April 2. C.F. was able to provide a statement from the government agency responsible for posting his application, the U.S. Navy, which explained the delays in having his application postmarked. That statement was deemed to be the substantial equivalent of a statement by the postal service and was, therefore, acceptable proof that C.F.'s application was timely despite the late postmark.

In this case, Mr. P. has a statement¹² from a correctional officer who is employed by the government agency responsible for ensuring that inmate mail is delivered to the post office in a timely manner. This statement confirms that mail at the facility is frequently mishandled. While somewhat ambiguous, the statement could also be read as confirming that Mr. P.'s 2009 PFD application was mishandled and delayed by the correctional facility.

The question of whether a correctional officer's statement of the kind Mr. P. has obtained meets the requirements of the regulation is a close one. It need not be decided in this case, because there is an independent basis on which Mr. P.'s application clearly must be denied.

B. Incarceration during qualifying year.

An otherwise eligible individual is not entitled to receive a PFD if

- (1) during the qualifying year, the individual was sentenced as a result of conviction in this state of a felony;
- (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.^[13]

During the appeal process, the Division learned that Mr. P. had been incarcerated at some time during the qualifying year.¹⁴ The Division also confirmed that he was incarcerated as the result of a felony conviction.¹⁵ Mr. P. has the burden of proving that the Division's decision to

¹² Exhibit 5, page 3.

¹³ AS 43.23.005(d).

¹⁴ Formal Hearing Position Statement, page 2.

¹⁵ Exhibit 8, page 3. This document can be relied on under the standard set out in 15 AAC 05.030(h).

deny his application was incorrect.¹⁶ He has not shown that his incarceration was not as a result of a felony conviction. Accordingly, he has not met his burden of proving that the Division's decision was incorrect.

IV. Conclusion

Mr. P. was incarcerated as a result of a felony conviction at some time during the 2008 qualifying year. Accordingly, the decision to deny his application is upheld.

DATED this 25th day of May, 2010.

By: Signed
Jeffrey A. Friedman
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 21st day of June, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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

¹⁶ 15 AAC 05.030(h).