

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

In the Matter of:)
)
C. J. A.)
)
2009 Permanent Fund Dividend) OAH No. 10-0041-PFD
) Agency No. 2009-063-5577

DECISION

I. Introduction

C. A. filed an application for a 2009 Permanent Fund Dividend (PFD). His application was denied by the Permanent Fund Dividend Division (Division) because he had registered to vote in another state. Mr. A. completed the informal appeal process and requested a formal appeal.

A hearing was held on March 2, 2010. Both parties appeared by phone. The division was represented by PFD Specialist Bethany Chase. Because Mr. A. registered to vote in another state more than 30 days before a presidential election, he is not eligible to receive a 2009 PFD.

II. Facts

Mr. A. has been attending college out of state.¹ He testified that he returns to Alaska twice a year. At least as of the date of his application, he has not taken any action that would call into question his eligibility to receive a PFD, other than registering to vote and voting.² Mr. A. did indicate on his Adult Supplemental Schedule that he registered to vote in California, and that he did in fact vote in a local or state election there.³ He testified, however, that while he did register to vote, he actually only voted in the presidential election.⁴ This testimony was credible, and it is more likely true than not true that he only voted in the presidential election.

Mr. A. also testified that before registering he called the Division and asked whether he could vote without jeopardizing his PFD eligibility. He says he was told that this was permitted as long as he only voted in the presidential election. He was not told that he could only register within 30 days of the election.⁵

¹ Exhibit 1, page 2.
² Exhibit 1, page 4.
³ Exhibit 1, page 4.
⁴ See also, Exhibit 6, page 3.
⁵ See also, Exhibit 6, pages 3 & 4.

III. Discussion

At the informal appeal level, Mr. A.' application was denied because he had registered to vote in another state more than 30 days before the presidential election and because he voted in a state or local election in California.⁶

An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has

* * *

(13) voted in another state's or country's state, country, or local election, except if the individual voted in an election described in this paragraph and the individual was not required to claim residency in order to vote.⁷

As discussed in section II above, Mr. A.' application indicated that he had voted in a state or local election. Based on his testimony, however, he has met his burden of proving that his application was filled out incorrectly and he that he actually only voted in the presidential election.

The second reason for denying Mr. A.' application was based on the date he registered to vote for the presidential election. An individual is not eligible to receive a PFD if he or she

(12) registered to vote in another state or country, except if the individual

(A) registered to vote in another state within 30 days of a presidential election solely for the purpose of voting in that election and voted in no other election in another state than that for president of the United States.⁸

Mr. A. registered to vote in California on Sept 23, 2008.⁹ This was more than 30 days prior to the November presidential election.¹⁰ Although he only missed the 30 day time period by a few days, this regulation does not allow for any discretion to vary that requirement for any reason.

Mr. A. raises two concerns about the Division's determination. First, that the basis for his denial changed over time, and second that he was given incomplete information when he called the Division and asked about his right to vote in a presidential election.

The first reason given for denying Mr. A.' application was that he had voted in a local or state election in another state.¹¹ This decision was dated on November 6, 2009, and occurred

⁶ Exhibit 5, page 1.

⁷ 15 AAC 23.143(d)(13).

⁸ 15 AAC 23.143(d)(12).

⁹ Exhibit 3, page 1.

¹⁰ Exhibit 3, page 2.

¹¹ Exhibit 2, page 1; 15 AAC 23.143(d)(13).

before the Division received the information from the San Mateo County, California Chief Elections Officer indicating that Mr. A. registered on September 23, 2009.¹²

When Mr. A. appealed the original denial, he asserted that he had only voted in the presidential election.¹³ When that appeal was denied, the Division added as an additional reason for denial that Mr. A. had registered to vote more than 30 days before the presidential election.¹⁴ It can be frustrating to have the reason for denial change during the appeal process, but the Division must make decisions based on the information it has at the time. If there is a legally sufficient reason to deny an application, there is no need to spend time and money looking for additional reasons unless the denial is contested. By the time the Division ruled on his informal appeal, it had learned that Mr. A. had registered more than 30 days before the election, so it was proper to include this additional reason in the informal appeal ruling.

Mr. A.' second concern is that he was not given complete information when he called the Division to ask whether he was allowed to register to vote. He testified that he did ask about voting in the presidential election and was told that he was allowed to do that. He was not told that there was a 30 day window in which to register and that if he registered in another state more than 30 days before the election, he would lose his eligibility. Mr. A.' credibly testified that the Division gave him an incomplete answer to his question. Unfortunately, the law does not permit waiving the 30 day time period based on providing an incomplete answer. A different result might be required if the Division had affirmatively stated that there was no applicable time period or that the time period was longer, but silence in this situation is not an affirmative action.¹⁵

¹² Exhibit 3, page 1.

¹³ Exhibit 4, page 2.

¹⁴ Exhibit 5, page 1.

¹⁵ The Division does maintain a Student's Guide on its website to help out of state students avoid inadvertently losing their PFD eligibility.

IV. Conclusion

Mr. A. registered to vote in California more than 30 days before the presidential election. This action is sufficient to make him ineligible to receive a PFD. Accordingly, the Division’s decision is upheld.

DATED as the 4th day of March, 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 5th day of April, 2010.

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

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