

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

IN THE MATTER OF)	OAH No. 11-0125-PFD
D H)	Agency No. 2007-062-1966
)	
<u>2007 Permanent Fund Dividend</u>)	

ORDER GRANTING MOTION TO DISMISS

I. Introduction

D H’s timely applied for a 2007 permanent fund dividend (PFD). The Permanent Fund Dividend Division (“the division”) determined that Mr. H was not eligible, and it denied the application initially and then upheld the denial in an informal appeal decision. Mr. H filed a late request for a formal hearing. The hearing was held on April 21, 2011. Mr. H appeared in person. PFD specialist Pete Scott represented the division in person. The division moved to dismiss the case. The administrative law judge grants the motion.

II. Facts

Mr. H testified that he filed his 2007 PFD application electronically from a library in Pennsylvania just before the library closed on March 31, 2007.¹ On the application, Mr. H certified that he was present in Alaska at the time. Mr. H admitted at the hearing that this was not true. Mr. H testified at the hearing that he did not try to file electronically until the last day of the application period, and would not have had time to complete the application before the library closed if he admitted that he was not in Alaska when he filed.² Mr. H did not assert that he had filed a correction to his application before the division questioned him.³

After he filed his application, the division sent Mr. H a request for information asking him to explain why he filed the application from outside Alaska and a list of his 2006 absences.⁴ Mr. H did not timely respond and his application was denied.⁵ Mr. H filed a timely request for an informal appeal in which he asserted that he was out of state temporarily for business and asserted that he did not receive the request for information. In contrast to his explanation at the hearing, on his request for an informal appeal, Mr. H claimed that he had misunderstood the question about being present in Alaska on his PFD application.⁶

¹ Ex. 1, page 1.

² Ex. 1, page 1 & 3.

³ Recording of Hearing- Testimony of Mr. H.

⁴ Ex. 3.

⁵ Ex. 4.

⁶ Ex. 5.

The division issued an informal appeal decision on July 18, 2008, which upheld the denial of Mr. H's 2007 PFD, based on the division's determination that Mr. H had provided intentionally deceptive information on his 2007 PFD application and was on an absence in 2006 that was inconsistent with his claim of continued Alaska residency. The informal appeal decision informed Mr. H that he had 30 days from the date of the informal appeal decision to file a request for formal hearing. Enclosed with the informal appeal decision was a form to request a formal hearing, which also explicitly provided notice that the deadline to return the form was August 17, 2008. Mr. H did not file a request for formal hearing to appeal the denial of his 2007 PFD application until March 25, 2011, more than two years after the deadline.⁷

In the formal hearing request, Mr. H argued that his appeal was not late because he filed it less than thirty days after he actually received notice of the informal appeal decision. Mr. H argues that he was qualified for the 2007 PFD even though he lived outside Alaska from 2006 to 2011.⁸ At the hearing, Mr. H explained that he stopped paying for his Alaska mailbox to save money. Mr. H did not assert that he suffered from any disability that caused his late appeal.⁹

III. Discussion

A person who wishes to appeal the denial of a permanent fund dividend that was upheld in an informal appeal decision must file a request for a formal hearing within thirty days of the day the division issues the informal appeal decision.¹⁰ This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.¹¹

Mr. H's request for a formal hearing was not filed until more than two years after the passing of the 30-day deadline. Mr. H did not provide a reasonable excuse for the delay or credible evidence that the Division's finding that Mr. H is not eligible for a 2007 PFD was incorrect. The deadline runs from the date that the informal appeal decision is issued, not 30 days from when the applicant receives actual notice of the informal appeal decision as argued by Mr. H. Mr. H provided his old Alaska address on his request for an informal appeal. He did not timely file a change of address with the Division. Mr. H waited years to follow up on his request for an informal appeal. Under these circumstances, there is no apparent injustice that would result from strict adherence to the normal appeal deadline.

⁷ Recording of Hearing & Exhibits 6 & 7.

⁸ Ex. 7.

⁹ Recording of Hearing.

¹⁰ 15 AAC 05.030(a).

¹¹ 15 AAC 05.030(k).

IV. Conclusion

Mr. H did not request a formal hearing to appeal the denial of his application for his 2007 permanent fund dividend within the appeal period established by law. Normal application of the appeal deadline will not work an injustice in this case. The division’s motion to dismiss the appeal should be granted.

V. Order

IT IS HEREBY ORDERED that the motion of the Permanent Fund Dividend Division to dismiss this case be GRANTED, and that no further proceedings be scheduled in this matter. The division’s denial of Mr. H’s application for a 2007 permanent fund dividend will stand.

DATED this 3rd day of June, 2011.

By: Signed
Mark T. Handley
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 June, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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