

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

In the Matter of:)
)
 J W)
) OAH No. 11-0327-PFD
2010 Permanent Fund Dividend) Agency No. 2010-064-5601

ORDER DISMISSING APPEAL

I. INTRODUCTION

J W applied for a 2010 Permanent Fund Dividend (PFD). His application was denied as untimely by the Permanent Fund Dividend Division (Division). Mr. W filed an informal appeal of that decision, but his informal appeal was dismissed by the Division as untimely as well. Mr. W then requested a formal appeal. In response, the Division moved to dismiss his appeal because the underlying informal appeal was filed late.

A hearing was held by telephone on August 19, 2011. Mr. W represented himself. The Division was represented by PFD Specialist Peter Scott. Based on the evidence in the record, Mr. W's appeal is dismissed, and the Division's decision to deny his application is upheld.

II. FACTS

Mr. W obtained and completed an application for a 2010 PFD on March 31, 2010.¹ His friend drove him to the post office and Mr. W deposited the application in an outside mailbox. This occurred around 3:00 p.m. of that afternoon. The envelope containing his application was not actually postmarked until the next day, April 1, 2010.²

Mr. W's application was denied on July 30, 2010.³ Mr. W did not receive this denial. He testified that during this period of time, his mailbox was in a set of outdoor boxes that had been vandalized and not repaired for a long time. Because there was no door on his mailbox, he often did not receive mail directed to him.

Mr. W did visit the Division's Anchorage office on November 2, 2010. At that time he picked up a copy of his denial and a copy of the appeal form. Mr. W did not file for an informal appeal until March 22, 2011.⁴

¹ Unless otherwise noted, factual findings are based on Mr. W's testimony.

² Exhibit 1, page 4.

³ Exhibit 2.

⁴ Exhibit 3.

III. DISCUSSION

The request for an informal appeal must be filed within 30 days after notice that the PFD has been denied unless “the individual demonstrates a reasonable cause for the failure to file within this period[. ⁵]” Even if the applicant has not demonstrated reasonable cause, a hearing officer may still waive this deadline if adherence to the deadline would “work an injustice[. ⁶]”

Mr. W has not established reasonable cause for delaying his appeal after receiving notice in November that his application was denied.⁷ Mr. W explained that he thought his PFD would be garnished so there was no point in appealing. He only decided to appeal after learning that his PFD was not garnished. This is not reasonable cause for failure to file an appeal. A person who believes he or she is eligible for a PFD needs to file an appeal regardless of whether the PFD will subsequently be garnished.⁸ While Mr. W may not have fully understood the garnishment process, he could have requested more information from the Division before deciding not to appeal.

Mr. W has also not established that strict adherence to the appeal deadline would work an injustice. In determining whether adherence to the deadline would be unjust, one factor to consider is whether the applicant would have a good chance of prevailing if the appeal is allowed to go forward.⁹ Mr. W testified that he deposited his application in an outside mailbox at the post office on March 31. This was the last day of the application period.¹⁰ There is no dispute that the application was not postmarked until the next day, April 1, 2010.

The Division is required to deny a paper application if the postmark is after the filing period unless the applicant provides a letter from the United States Postal Service indicating why the envelope was incorrectly postmarked or why there was a delay in posting the envelope.¹¹ If the Division did not rely on the actual postmark, it would have to decide on a case-by-case basis whether an applicant was telling the truth when he or she claimed to have mailed an application on a particular date. This would be time consuming, expensive, and difficult to do accurately.

⁵ 15 AAC 05.010(b)(5).

⁶ 15 AAC 05.030(k).

⁷ It is not necessary to rule on whether there was reasonable cause for delay prior to November, 2010.

⁸ When a PFD is garnished, the money is used to pay a debt owed by the applicant. That debt exists until it is paid by the applicant, either with a garnished PFD or with other funds.

⁹ *In re H.W.B.*, OAH No. 10-0578-PFD (Dept of Revenue 2011), page 2.

¹⁰ AS 43.23.011(a).

¹¹ 15 AAC 23.103(g); *In re V.C.H.*, OAH No. 09-0264-PFD (Dept of Revenue 2009), page 2 (Post Office letter stating Post Office was unable to determine whether there was a delay was insufficient to support approval of late application).

While there is no reason to believe Mr. W is not telling the truth about when he mailed his application, the Division does not have the authority to ignore its regulations.

In this case, there is no explanation as to why the envelope was not postmarked the same day it was deposited in the outside collection box. Other PFD applicants have similarly found that mail deposited in an outside mailbox is not always postmarked that same day or even the following day.¹² Because Mr. W's application was not postmarked on or before March 31, it is unlikely that he would prevail even if his appeal was allowed. Accordingly, it would not work an injustice to hold him to the strict requirements of the appeal deadlines.

IV. CONCLUSION

Mr. W did not file his appeal within the applicable time limits and he has not established a basis for waiving the appeal deadline. Accordingly, Mr. W's formal appeal is DISMISSED.

Dated this 20th day of September, 2011.

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 17th day of October, 2011.

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

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

¹² E.g., *In re C.S.D.*, OAH No. 09-0191-PFD (Dept of Revenue 2009); *In re C.E.R.*, OAH No. 09-0483-PFD (Dept of Revenue 2009).