

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

In the Matter of)	
)	
T L. J)	OAH No. 11-0338-PFD
)	Agency Nos. 1990-045-7792
<u>1990 & 2007 Permanent Fund Dividends</u>)	2007-041-4340

DECISION

I. Introduction

T L. J contends the Permanent Fund Division’s decision that it would not waive the 30 day filing requirement is in error. Mr. J seeks an opportunity to appeal the division’s denials of his 1990 and 2007 PFDs for failure to respond to the division’s requests for additional information.¹ Mr. J’s request for informal appeal of the denial of his 1990 PFD was filed 6,642 days late and the denial of his 2007 PFD was filed 1,385 days late. The division filed a motion to dismiss contending that Mr. J’s requests for informal appeal were filed well after the filing deadline in 15 AAC 05.010(b), and that he had not established a basis for a waiver of that filing deadline under 15 AAC 05.030(k). The motion was heard on October 6, 2011. Both parties attended by telephone. Because he initiated the appeal processes too late and he has not made a strong enough case for a waiver of the appeal deadlines, the motion is granted and Mr. J’s entire appeal is dismissed.

II. Facts

All facts set out below are based on Mr. J’s testimony at the hearing and the division’s exhibits 1 - 15 unless otherwise footnoted.

Mr. J timely applied for the 1990 PFD. At that time the PFD residency requirement was challenged and making its way through the court system. The division held applications that could be affected by the lawsuit, and Mr. J’s 1990 application was one of them. At some point the division requested additional information from Mr. J. The record does not reflect when the request was made or what information it sought. Regardless, it is clear that Mr. J did not provide the information requested and for that reason, on February 12, 1993, his 1990 PFD application was denied. The request for additional information and notice of denial were sent to the address provided by Mr. J on his 1990 application. No further applications were filed by Mr. J until 2007.

¹ The denials are at Exhibits 1 at 5, 9 at 1.

Like his 1990 PFD application, Ms. J's 2007 PFD application was timely filed but denied for failure to provide additional information requested by the division. The 2007 application was denied August 16, 2007. The notice of denial was sent to the address provided by Mr. J on his 2007 application.

Mr. J testified that he did not receive any correspondence from the division regarding requests for additional information or notices that his dividends were denied which he could appeal.

Mr. J moved to an isolated cabin "off the grid" in the early 1990s. The denials were sent to the correct address. Mr. J explained that he would have his mail sent to a friend's house, who would hang on to it until Mr. J could travel the 200+ miles to town. He moved to Fairbanks in 2007. In 2010, Mr. J started applying for veterans' benefits and social security. It was not until he went to the social security office to apply that he realized the federal government identified him as deceased. Mr. J believes this is why he had not received any correspondence from the division. He reasons that it was only after he went to a PFD office in April 2011 and told them that social security had him as deceased that he started to get information from the division. During this same time period, Mr. J had been in contact with the Ombudsman's office. The Ombudsman contacted the division on Mr. J's behalf and the division sent Mr. J the informal appeal forms for 1990 and 2007. Upon receipt, Mr. J promptly requested an informal appeal indicating that he had not received any of the prior correspondence and that he did not know he was carried as deceased on government records until 2010. The division denied the two informal appeals on the grounds that his appeal rights had expired several years previously. Mr. J submitted a request for formal appeal encompassing the two informal appeal denials.

The division contends that its decision to deny Mr. J's appeals is correct because the appeals are untimely and Mr. J has failed to establish that the deadline for filing should be waived. Mr. J asserts that there is cause to waive the filing deadline because he has been a resident since 1987, has not been out of state since 1991, and did not realize the federal government had him listed as deceased.

III. Discussion

The regulatory appeal process for a PFD must be initiated by a request for an informal appeal, which can then be followed, if necessary, by a formal appeal.² For the 1990 dividend

² 15 AAC 05.010(h).

year, the time limit to initiate an informal appeal decision was “within 60 days after the date of the notice of . . . disallowance.”³ For the 2007 dividend year this time limit had since been shortened to 30 days. Mr. J missed the 60-day deadline by 18 years with respect to the 1990 denial and the 30 day deadline by well over 4 years. However, the regulations also provide that “[t]he hearing officer may waive any . . . deadline established in [the informal and formal appeal regulations] if it appears to the officer that strict adherence to the deadline . . . would work an injustice.”⁴

Historically, waivers of the appeal deadlines have been granted only in particularly compelling circumstances. The following summaries of prior cases give a sense of the showing needed to justify a waiver:

In re N., OAH No. 05-0595-PFD (2006): Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. Six-month delay in filing appeal not excused.

In re B., Caseload No. 040286 (2004): Division’s denial had errors that may have caused confusion about appeal deadline. Delay of “a week or two” might have been excusable. One year delay in appeal not excused.

In re G., Caseload No. 030739 (2004): Applicant missed deadline because he failed to give division a change of address. One year delay in appeal not excused.

In re H., Caseload No. 040315 (2004): Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. Two-and-a-half month delay in properly initiating appeal was excused.

In re S., Caseload No. 040154 (2004): Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. Six-month delay in properly initiating appeal was excused.

*In re C.D.M., OAH No. 05-0412-PFD (2005):*⁵ Applicant was one month late in initiating his informal appeal of a denial of his 2004 PFD, and had no explanation. Delay not excused.

*In re S.Z., OAH No. 05-0281-PFD (2005):*⁶ Applicant was eleven months late in initiating her informal appeal of a denial of her 2003 PFD. She had not seen the denial letter and had not noticed anything was amiss. Delay not excused because “applicants have some responsibility to keep informed.”

*In re D.S., OAH No. 09-0033-PFD (2009).*⁷ Applicant was six to nine years late in initiating his informal appeal of denials of his 2003 – 2005 PFD applications. Applicant was unaware of his right to appeal. Although it appeared Applicant may have

³ 15 AAC 05.010(b)(5) [prior to 2006 amendment].

⁴ 15 AAC 05.030(k).

⁵ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

⁶ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>.

⁷ This case may be viewed at <http://www.state.ak.us/local/akpages/ADMIN/oah/pfd.html>

had a strong case that the underlying denial of his PFD was mistaken, his “delay in initiating the appeal is so great . . . that there is no injustice . . .”

In general, waivers have been available where the conduct of the division caused confusion that contributed to a delay in starting an appeal, and even then the amount of extra time granted has not been unlimited.

The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past. In this case, it is regrettable that Mr. J missed the appeal deadlines, because had he timely provided the information requested he may well have been eligible for the 1990 and 2007 PFDs. Like the applicant in *In re D.S.*, Mr. J’s delay in initiating the appeals is so great that there is no injustice in preventing him from reopening these matters in 2011.

Mr. J may argue that the division did cause the confusion because he never received the notice of denial and he was considered deceased by the federal government. He has provided no evidence that the PFD program failed to send applications or notices because it believed he was deceased. The belief that the two are linked because the PFD office started to correspond with him around the same time Mr. J informed the division that he was alive is more likely than not due to his contacting the Ombudsman and filing his informal appeal documents.

An applicant’s busy life, living off the grid, or his neglect to inform himself about his appeal rights is not ordinarily a basis to waive the appeal deadline. In this case, Mr. J believes he was not mailed the denial notices or subsequent correspondence. In each case the division mailed the notices of denial to the addresses Mr. J provided. It is the applicant’s responsibility to provide a current mailing address and notify the division in writing if there is a change.

IV. Conclusion

Because Mr. J’s requests for informal appeal were filed after the deadline in 15 AAC 05.010(b), and because he has not established a basis for a multi-year waiver of the deadline under 15 AAC 05.030(k), his appeal of the denial of his 1990 and 2007 PFDs is dismissed.

DATED this 20th day of December, 2011.

By: Signed
Rebecca L. Pauli
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of January, 2012.

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

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