

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

In the Matter of:)	
)	
B J U IV)	OAH No. 13-1856-PFD
)	Agency No. 2013-066-9652
_____)	

ORDER GRANTING MOTION TO DISMISS

I. Introduction

The Department of Revenue, Permanent Fund Division (Division) received B U’ permanent fund dividend (PFD) application April 3, 2013. It was post-marked April 1, 2013, one day after the filing deadline. The Division denied Mr. U’ PFD application as untimely. Mr. U appealed. The Division, through its internal, informal appeal process, upheld its denial. Mr. U filed a request for formal appeal, after the 30-day deadline. On January 24, 2013, the Division filed a Motion to Dismiss Late Appeal Request. After a full hearing, the Division’s Motion to Dismiss is granted. Mr. U did not provide reasonable cause for the delay in filing his formal appeal. Likewise, adhering to the filing deadlines would not appear to cause any injustice.

II. Facts

Mr. U’ PFD application was post marked April 1, 2013, one day after the March 31st deadline.¹ On May 17, 2013, the Division sent notice to Mr. U that his PFD application was denied.² Mr. U requested an informal appeal on June 4, 2013.³ On October 8, 2013, the Division sent notice upholding its denial.⁴ Mr. U’ formal appeal rights were clearly stated in the denial notice.⁵ On November 14, 2013, Mr. U sent an email to the Division with an attachment from the No Name Post Office Customer Service Manager.⁶ The letter from the post office states that a substitute mail courier was assigned to Mr. U’ address on March 30, 2013 and there is a possibility that the outgoing mail did not get picked up that day.⁷ The email states, in part, “I will also send the appropriate appeal form by mail, along with a hard copy of the attached

¹ Division Exhibit 1.
² Division Exhibit 2.
³ Division Exhibit 3.
⁴ *Id.* p. 3.
⁵ *Id.* p. 4.
⁶ Exhibit 8. The Division received Mr. U’ email past the November 7th appeal deadline.
⁷ Exhibit 8.

document.”⁸ The Division received Mr. U’ formal appeal request on December 12, 2013, thirty-five days after the formal appeal deadline.⁹

Mr. U’ formal appeal request and testimony identified the delay in filing the appeal request was due to his inability to contact the mail carrier until November 12, 2013. A letter accompanying the formal appeal request states:

Though a deadline was detailed in the letter I received, I was unable to contact the mail carrier until November 12, 2013. I have been seeking employment regularly and the mail is delivered during the hours I devote to my job search activities at various times. Without knowing a time the carrier would be available, I was reluctant to attempt to wait out in the cold Alaskan weather for a period of time what could have been hours and potentially miss them while warming up, only to have to wait again on another date.¹⁰

A hearing was held on January 27, 2014. Mr. U represented himself and the Division was represented by Bethany Thorsteinson. Testimony and evidence presented addressed both the motion to dismiss and the underlying PFD application filing.

III. Discussion

A request for appeal, “must be filed with the permanent fund dividend division within 30 days after the date of the notice of assessment or disallowance, unless the individual demonstrates a reasonable cause for the failure to file within this period...”¹¹ A hearing officer may waive a deadline if strict adherence to the deadline would create an injustice.¹²

Mr. U lives in Anchorage, where the mail is delivered six days per week. The No Name Post Office is less than 2 miles from his home. Mr. U could have visited or phoned the post office to inquire about postal delivery and post marking processes prior to November 12, 2013. Mr. U’ testimony and evidence is insufficient to meet the reasonable cause requirement for missing the formal appeal filing deadline. Furthermore, nothing in the record indicates that strict adherence to the deadline would work an injustice. No disability or circumstance beyond Mr. U’ control exists which prevented him from filing in a timely manner.

As to the merits of the underlying claim, Mr. U’ letter from the No Name Post Office would not overcome the strict PFD application filing guidelines. It was Mr. U’ responsibility to

⁸ Exhibit 8.

⁹ Exhibit 9.

¹⁰ Exhibit 9.

¹¹ 15 Alaska Administrative Code 05.010(b)(5).

¹² 15 AAC 05.030(k).

ensure that his PFD application was timely delivered.¹³ The Customer Service Manager explained that “there is a possibility that the outgoing mail did not get picked up until the following Monday, April 1, 2013.”¹⁴ The mere possibility of a late pick up does not describe the specific circumstances under which the postal service incorrectly posted Mr. U’ application or caused a delay in posting.¹⁵

III. Conclusion

Mr. U failed to demonstrate a reasonable cause for his failure to timely file his formal appeal. The Division’s Motion to Dismiss Late Appeal is therefore GRANTED.

DATED: January 28, 2014

Signed
Bride Seifert
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 25th day of February, 2014.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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

¹³ See 15 AAC 23.103(g).

¹⁴ Exhibit 9.

¹⁵ See 15 AAC 23.103(g).