

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

In the Matter of	)	
	)	
T J	)	OAH No. 16-1454-PFD
	)	Agency No. 2016-067-2489
<u>2016 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

The 2016 Permanent Fund Dividend (PFD) application for T J arrived at the Department of Revenue several days after the application period had closed, bearing an illegible postmark. The Permanent Fund Dividend Division has denied the application, both initially and at the informal appeal level, on the basis of untimeliness.

Mr. J requested a formal hearing by correspondence. Wishing to explore the matter in more detail and explain to Mr. J his options to prove his case, the administrative law judge set the matter for an oral hearing. This was held on January 30, 2017, and Mr. J was then given another 45 days to supplement the evidence regarding the date his application was mailed. He submitted nothing further. After considering the limited evidence available, the undersigned must affirm the Division's denial because Mr. J did not quite meet his burden of proving the denial was in error.

**II. Facts**

Mr. J is a young man who has received dividends in the past.<sup>1</sup> He does not appear to be disabled in any way, and no claim of disability has been made on his behalf. He has not been a member of the armed forces in 2016.<sup>2</sup> He lives in Anchorage, a city with a well-developed postal system, a post office with a counter open until 11:00 p.m., and a U.S. Postal Service sort facility.

Mr. J's 2016 PFD application was mailed in, after he reportedly had difficulty with the on-line application process. In 2016, the March 31 deadline for filing for a PFD fell on a Thursday. Mr. J's application arrived at the PFD Division in Juneau on the following Monday,

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<sup>1</sup> Ex. 1, p. 4.

<sup>2</sup> Ex. 1, p. 1. Cf. AS 43.23.011(c).

April 4, 2016.<sup>3</sup> The envelope, which has been preserved for the record, has a postmark on it, but the postmark is illegible.<sup>4</sup>

Mr. J recounts that he left the envelope for pickup by his mail carrier before going to work at 8:00 a.m. on March 31.<sup>5</sup> However, there is some evidence that he may not have been as sure about this recollection in September of 2016 as he was months later, at the time of the hearing.<sup>6</sup> I find the evidence regarding the precise time of delivery to the custody of the Postal Service to be equivocal.

Circumstantial evidence regarding the date of delivery to the Postal Service does not resolve this issue. On the one hand, if Mr. J did consign the letter to his mail carrier on March 31, as he now contends, the day on which it would normally be received at the Juneau PFD facility would be Monday, April 4. This is because a two-delivery-day service standard applies to mail posted in the 995 zip codes (Anchorage) for delivery in the 998 zip codes (Juneau); if achieved, this standard would result in delivery to the PFD Division Post Office box on Saturday, April 2, and collection by the Division on their next business day, Monday, April 4.<sup>7</sup> On the other hand, if he consigned the letter to his carrier on April 1, the standard date of delivery would likewise be Monday, April 4.

It can be possible to resolve uncertainty about the date the Postal Service received a piece of mail by reading and tracing the color bar code that the Postal Service reader machine sprays onto the envelope at the time of intake. Mr. J's application envelope, when received in Juneau, displayed such a bar code. At the hearing, arrangements were made to transmit a color image of the bar code to Mr. J, and he was informed of the Postal Service contact person who might be able to help him with using the code. Initially, he was given 15 days to make this inquiry, but at his request the period was extended to 45 days. It is not known whether he ever had the code read, but he did not submit any additional information.

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<sup>3</sup> Ex. 1, p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> Testimony of Mr. J.

<sup>6</sup> Ex. 6, p. 1.

<sup>7</sup> The two-day service standard is found at 39 C.F.R § 121.1(b)(1). It overrides the alternate standard found in 39 C.F.R § 121.1(c). Neither party introduced any evidence on the degree to which the standard is achieved. The performance achievement reported by the Postal Service is very high, and is found here: <https://about.usps.com/what-we-are-doing/service-performance/fy2017-q1-single-piece-first-class-mail-quarterly-performance.pdf>.

### III. Discussion

In formal hearings regarding PFDs, the individual challenging the Division's initial decision "has the burden of proving that the action . . . is incorrect."<sup>8</sup> This has to be proven by the preponderance of the evidence,<sup>9</sup> meaning that Mr. J must show that the Division's conclusion that his application was untimely was *probably* incorrect.

Analysis of this begins with the Alaska Statute that sets the application period for dividends, AS 43.23.011. The period for applying for a dividend ends on March 31 of the dividend year. In passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant has to be both a member of the armed services and eligible for hostile fire or imminent danger pay.<sup>10</sup> Mr. J was not in the armed forces, and so the March 31 deadline was absolute for him. Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,<sup>11</sup> but again, Mr. J is not in these categories and thus must show he applied by March 31 of the dividend year.

Through regulations, the Department of Revenue has set out the details of how the March 31 deadline will be applied. Under 15 AAC 23.103(a), the application "must be received by the department or postmarked during the application period set by AS 43.23.011 to be considered timely filed." As a general rule, Mr. J can prevail if he shows that his application was "postmarked during the application period," even though the postmark was illegible.

To take a brief aside, another regulation indicates that an application is timely if it was "delivered to the post office in sufficient time to be postmarked before the end of the application period," which, in some circumstances, is slightly different from actually *being* postmarked during the application period.<sup>12</sup> That regulation goes on to provide that an application postmarked after the deadline will be denied unless the applicant produces "an official statement" from the postal authorities describing the "specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting."<sup>13</sup> Though it was the focus of much of the argument in this case, this regulation is not applicable. Mr. J's application does not bear a postmark with a date after the deadline, and there is no

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<sup>8</sup> 15 AAC 05.030(h).

<sup>9</sup> 2 AAC 64.290(c).

<sup>10</sup> AS 43.23.011(b), (c).

<sup>11</sup> See AS 43.23.055(3), (7).

<sup>12</sup> 15 AAC 23.103(g).

<sup>13</sup> *Id.*

indication that the postmark was delayed or contained an incorrect date. The problem here is simply that the postmark is illegible, and therefore we need to determine—from any other evidence available—when the postmark was applied.

On the question of when the postmark was applied, three types of evidence are available in this case. First, there is the date on which the application was received in Juneau, April 4. This receipt date is about equally consistent with mailing on March 31 (timely) or April 1 (untimely).

Second, there is Mr. J's testimony in 2017 that, on March 31, 2016, he put the application out for the postal carrier before going to work at 8:00 a.m. However, Mr. J was reported in routine PFD Division records to have said something different in September of 2016, and I do not feel I can rely on his self-serving testimony now without some corroborating evidence of timely posting.

Third, there is the opportunity presented to Mr. J to have the bar code from his application envelope read by the Postal Service. After being given 45 days to have this done, Mr. J never returned with additional information. This could indicate that he did not have the reading done because he was concerned it would not back up his account, or that he did have the reading done and did not submit the result because it was adverse to him. His failure to come back with results from the bar code permits an inference that the bar code contains information unfavorable to Mr. J.<sup>14</sup>

Based on the totality of this evidence, I find that Mr. J has not met his burden of showing by a preponderance of the evidence that his application was postmarked by March 31, 2017.

#### **IV. Conclusion**

The decision of the Permanent Fund Dividend Division to deny the 2016 dividend to T J is affirmed. This decision does not affect his ability to qualify in 2017 or future years.

Dated this 4<sup>th</sup> day of April, 2017.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

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<sup>14</sup> See *In re T.O.T.*, OAH No. 15-1204-PER (Office of Administrative Hearings 2016), at 8 (published at <http://aws.state.ak.us/officeofadminhearings/Documents/PER/PER151204.pdf>).

## 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 28<sup>th</sup> day of April, 2017.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Administrative Law Judge  
Title

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