

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

In the Matter of)	
)	
F T U)	OAH No. 17-0832-PFD
<hr style="width: 40%; margin-left: 0;"/>)	Agency No. 2016-031-9701

DECISION ON MOTION TO DISMISS

I. Introduction

F T U applied for a 2016 permanent fund dividend. On receipt of his application, the division requested additional information from Mr. U. Mr. U did not respond. The division denied the application. Mr. U requested an informal appeal. However, Mr. U's request was received 57 days after the deadline for the informal appeal.

The division has moved for dismissal of this appeal based on Mr. U's failure to meet the deadline for filing his informal appeal. Because Mr. U has not demonstrated reasonable cause for failure to meet the deadline, or demonstrated that strict adherence to the deadline would work an injustice in this case, the division's motion to dismiss is granted.

II. Facts

Mr. U lives in No Name City and works for No Name Business.¹ Mr. U applied for a 2016 permanent fund dividend. With his application, he submitted his original permanent resident card, documenting his IR2 status and residence in the United States since December 12, 1994.² He also submitted paystubs from No Name Business issued in 2007.³ Mr. U did not file for a 2015 permanent fund dividend.⁴

On August 19, 2017, the division notified Mr. U that it could not finish processing his application without proof of identity, and requested that Mr. U submit an original birth certificate, passport, or naturalization papers.⁵ The notice sent to Mr. U specifically said that this proof of identity had to be received by the division or postmarked by September 18, 2016. The division did not receive a response from Mr. U. On November 4, 2016, the

¹ Exhibit 1 at 3.
² Exhibit 1 at 6.
³ Exhibit 2.
⁴ Exhibit 1 at 5.
⁵ Exhibit 3.

division denied Mr. U' application for failure to provide all specifically requested information.⁶

The deadline for requesting an informal appeal of this decision to deny Mr. U' application was December 4, 2016.⁷ Mr. U did not request an informal appeal until January 19, 2017.⁸ With this request, he furnished his original green card, state identification card, and social security card.⁹ He provided an updated mailing address. In response to a question about whether anything in the denial notice was incorrect, he wrote: "This is the first time I received any notice."¹⁰ On May 18, 2017, for purposes of the informal appeal, the division again requested a birth certificate (original or certified copy), a passport, or naturalization papers, and set a new deadline of June 17, 2017 for receipt.¹¹

On June 21, 2017, the division issued its decision on informal appeal. It found that Mr. U had failed to respond to the division's August 19, 2016 request for additional information by the September 18, 2016 deadline. It also found that Mr. U' request for informal appeal was filed 57 days late, and that Mr. U had not shown reasonable cause for the delay. The informal appeal decision concluded that Mr. U was not eligible for a 2016 permanent fund dividend.¹²

Mr. U requested a formal hearing.¹³ The hearing in this matter was held by correspondence. The division filed a position statement and moved to dismiss based on Mr. U' untimely filing of the request for informal appeal. Mr. U responded by sending an original birth certificate, state identification card, social security card, and permanent resident card to the division and copies to the Office of Administrative Hearings. The record closed on September 22, 2017.

III. Analysis

The division argues that this appeal should be dismissed because Mr. U failed to file his request for an informal appeal before the deadline. Requests for informal appeal must be filed within 30 days after the date of the notice of assessment unless the individual

⁶ Exhibit 4 at 1.

⁷ Exhibit 5 at 1.

⁸ Exhibit 5 at 1.

⁹ Exhibit 5 at 3.

¹⁰ Exhibit 5 at 2.

¹¹ Exhibit 5 at 1.

¹² Exhibit 6 at 1.

¹³ Exhibit 7.

demonstrates a reasonable cause for the failure to file within this period.¹⁴ At the formal hearing level, the deadline may be waived if strict adherence to the deadline would work an injustice.¹⁵ However, historically the appeal deadlines have only been set aside in particularly compelling circumstances.¹⁶

Mr. U, as the party requesting the hearing, has the burden of proving that the division's action was incorrect.¹⁷ Mr. U has not demonstrated reasonable cause for failure to file his informal appeal before the deadline, for the reasons discussed below.

Mr. U did not dispute that he filed the request for informal appeal late. He wrote on the appeal form "[t]his is the first time I received any notice," which suggests that he did not receive the August 19, 2016 request for information. That may explain why he failed to provide the additional information requested in a timely fashion. However, that does not address why he filed the request for informal appeal late.

When Mr. U filed his request for informal appeal, he informed the division that his mailing address had changed.¹⁸ Although it is possible that the use of the old address resulted in Mr. U not receiving the request for additional information, it was Mr. U's responsibility to keep the division informed of his current mailing address.¹⁹ The division did not err in using the address Mr. U provided on his application until Mr. U notified the division of his new address.

Finally, in his formal appeal, Mr. U noted that "it's really difficult to receive mail to No Name City."²⁰ He did not elaborate further. No Name City is a remote community. It is understood that mail service to remote Alaskan communities may sometimes take longer than mail service between major cities, due to weather conditions, among other factors. However, Mr. U did not cite specific weather conditions or local factors that would have made it difficult for him to receive the division's notice of denial of his application within 30 days. The record in this case shows two examples where Mr. U mailed correspondence to the division, and the division received it within 30 days. Mr. U signed his PFD

¹⁴ 15 AAC 05.010(b)(5).

¹⁵ 15 AAC 05.030(k).

¹⁶ *In re V.D.*, OAH No. 14-0943-PFD at 3 (Commissioner of Revenue 2014).

¹⁷ 15 AAC 05.030(h).

¹⁸ Exhibit 5 at 2.

¹⁹ Exhibit 6 at 3 (15 AAC 23.103(c)).

²⁰ Exhibit 7 at 2.

application on January 15, 2016, and it was received by the division on January 28, 2016.²¹ Mr. U signed his request for informal appeal on January 19, 2017, and it was received by the division on January 30, 2017.²² Also, Mr. U submitted his response to OAH in this appeal dated August 24, 2017 by mail, and it was received by OAH on September 27, 2017.

Mr. U did not specify when he received the notice of denial, or offer any specific explanation of why 30 days was not a sufficient period for him to get his request for informal appeal at least postmarked. He has not demonstrated reasonable cause for his failure to file the request for informal appeal in a timely fashion.

Nor has Mr. U demonstrated that strict adherence to the deadline would work an injustice in this case. The division's request for additional information in this case was consistent with program regulations. An individual born outside Alaska who is applying for a dividend for the first time must submit "a certified copy of the individual's birth certificate issued by the official agency of the other state or country responsible for recording births, or must submit an original passport or an original United States naturalization certificate."²³ This is a separate requirement from the requirements for verification of an alien's immigration status, which Mr. U met by furnishing a copy of his green card with his application.²⁴ Mr. U did not provide his birth certificate with his application, or with his request for informal appeal. The division did not receive the required proof of identify in a timely fashion.

Previous cases involving late-filed requests for informal appeal have ended in dismissal.²⁵ In this case, Mr. U has not demonstrated reasonable cause for his failure to timely file the request for informal appeal, nor has he demonstrated that strict adherence to the deadline will work an injustice. Therefore, this case should be dismissed.

IV. Conclusion

Mr. U did not meet the deadline for requesting an informal appeal, and this is not a case

²¹ Exhibit 1 at 1.

²² Exhibit 5 at 1.

²³ 15 AAC 23.103(d).

²⁴ See 15 AAC 23.154.

²⁵ *In re G.M.H.*, OAH No. 11-0304-PFD (Commissioner of Revenue 2011); *In re V.D.*, OAH No. 14-0943-PFD (Commissioner of Revenue 2014).

where strict adherence to the deadline will work an injustice. Mr. U' appeal is dismissed, and the denial of Mr. U' 2016 permanent fund dividend application will stand.

Dated: November 3, 2017.

Signed _____
Kathryn L. Kurtz
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 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 5th day of December, 2017.

By: Signed _____
Signature
Kathryn L. Kurtz _____
Name
Administrative Law Judge _____
Title

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