

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE ALASKA COMMISSION ON POSTSECONDARY EDUCATION**

IN THE MATTER OF)	
)	
J. B.)	Case No. OAH-08-0592-PFE
<hr/>)	ACPE Case No. 6706427554

DECISION

I. Introduction

The appellant, J. B., appeals a claim on his permanent fund dividend (PFD) by the Alaska Commission on Postsecondary Education (“the commission”). Administrative Law Judge Dale Whitney heard the appeal on November 18, 2008. Mr. B. appeared by telephone. Julie Banfield represented the ACPE by telephone. Mr. B. has not met his burden of proving that the ACPE failed to send a notice of default in compliance with the law, that the notice of default had been rescinded, or that the amount owed was less than the amount taken from the PFD.

II. Facts

The commission has claimed Mr. B.’s 2008 permanent fund dividend for application against a defaulted Alaska Education Loan. The appeal form that the commission had sent to Mr. B. contained three bases for appeal with a check box for each paragraph. The three reasons listed for appeal of a claim on a PFD are:

ACPE has not sent a Notice of Initial Default (notice that my loan(s) is 180 days or more past due) to my address of record at the time of default, as required by Alaska Statute 14.43.145(b);

The Notice of Default has been rescinded by ACPE after review under Alaska Statute 14.43.145(c) (attach copy of rescission notice); or

The amount ACPE claimed from my Alaska PFD is greater than the full accelerated unpaid balance on my loan(s).

These paragraphs are followed by a blank space for “additional information.”

Mr. B. did not check any of the boxes on the form, but wrote “see my letter of 28 Aug 08.” In the attached letter, Mr. B. raised other issues, but did not allege that the commission had failed to send a notice of default, that the default had been rescinded, or that the amount he owed was less than the accelerated unpaid balance of his loan. At the hearing, Mr. B. agreed that the commission had sent default notices as required by law, that the

notice had not been rescinded, and that amount taken from his PFD was not more than the accelerated unpaid balance.

III. Discussion

By law, the commission is allowed to take a student loan borrower's PFD when the loan is in default.¹ When the commission makes a claim against a PFD, it must provide the borrower with an opportunity for a hearing on the claim, but the grounds on which the borrower can challenge the claim are limited to just three:

1. the commission did not send a notice of default in compliance with the law;
2. the notice of default has been rescinded;
3. "the amount owed by the borrower is less than the amount claimed from the permanent fund dividend."²

At a hearing, the borrower has the burden of proving one of these three elements.³

Mr. B. concedes that he cannot prove any of the three bases for a challenge to the commission's taking of his dividend. Rather, Mr. B. takes advantage of this hearing forum to voice an opinion on other issues. In the letter of August 28, 2008, accompanying his appeal, Mr. B. wrote,

I have been disabled since 1997. I was disabled before I started my studies and was disabled while earning my degree(s). As yet I have not been able to gain employment. Please DO NOT OFFER education loans to any disabled persons. In Alaska, equal employment opportunity for the disabled, is simply a LIE, especially, individuals who have become disabled due to a work related injury as I was.

I suggest you offer disabled individuals grants, work-study, or scholarships but NO STUDENT LOANS. They simply will NOT ever be able to pay back their student loans.

At the hearing, Mr. B. portrayed the case thus:

I've been here before. I've fought the system for ten years. I cannot even hold the telephone. I am disabled. I was disabled before I started the program. I was disabled during the program. And I earned my bachelor's and my two master's degrees and I continue through to earn a Ph.D. And the blinders are still on, and I'm still disabled. This is very important to me and to hundreds of other Alaskans who are placed in this situation. I've met – we've met – your obligations. We went to school, earned our degrees, but the State of Alaska refuses – refuses – to enforce the laws of equal employment opportunity of this state. That's what this is all about. It's not a matter of money. It's a matter of principle.

¹ AS 14.43.145(a)(2); AS 43.23.067.

² AS 43.23.067(c).

³ *Id.*

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What I'm saying is that the State of Alaska has defrauded people who are disabled. We earned our degrees with the understanding that the State of Alaska was going to enforce equal employment opportunity laws. And that is just a basis of common law. We enter into a contract with one another with the understanding that we have a baseline. There is no baseline. I've met my obligations, the State of Alaska did not.

The law is clear that when the commission takes a PFD to repay defaulted student loans, the administrative hearing provided for review of the action is limited to the three issues stated above. The administrative law judge is not in a legal position to consider matters of employment law or public policy and social contract. In this context, the issues that may be considered are whether the commission sent a notice of default, whether the notice of default was rescinded, or whether the commission took more than was owed under the defaulted notes. Those issues are not in dispute.

Mr. B. expressed both acceptance and frustration with what he termed as "blindness, legal blindness." In a sense, Mr. B. is correct that the law serves as a set of blinders, limiting the administrative law judge's attention to just the three issues that are subject to consideration in a hearing arising from the taking of a dividend under AS 43.23.067(c). Matters of policy and social contract might be appropriately taken up by the legislature, and matters of labor and employment law might be considered by the courts, but in this administrative context there are only three issues: did the commission properly send a notice of default, if so did it rescind the notice, and did the commission take more than the accelerated amount due under the notes. It is undisputed that the commission did send proper notices of default, that it did not rescind those notices, and that the amount that it took was less than the accelerated amount due.

IV. Conclusion

Mr. B. has not met his burden of proving that the commission did not send a notice of default in compliance with the law, that the notice of default has been rescinded, or that the amount he owed was less than the amount claimed from his permanent fund dividend. The Alaska Commission on Postsecondary Education is entitled to maintain the claim on Mr. B.'s permanent fund dividends.

DATED this 20th day of November, 2008.

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

Adoption

The undersigned, on behalf of the Alaska Commission on Post Secondary Education 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 31st day of December, 2008.

By: Signed
Signature
Diane Barrans
Name
Executive Director
Title

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