

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

In the Matter of)	
)	
ESTATE OF E N)	OAH No. 18-0544-PFD
)	Agency No. 2017-017-5602

DECISION AND ORDER

I. Introduction

E N filed an online application for the 2017 PFD in January 2017, time when he was visiting his nephew in Washington state. In his application he falsely stated that he was physically present in Alaska when he filed. The Division denied Mr. N’s application initially, and he requested an informal appeal. Unfortunately, Mr. N passed away in December 2017 during the pendency of the informal appeal process. The Division upheld the denial of his 2017 PFD in its informal decision on the grounds that Mr. N had failed to provide requested information. His widow timely filed a request for formal appeal by correspondence. In her request she argued the Mr. N was a long time Alaska resident who was only gone for 10 days when he filed his application and made a mistake.

At the formal hearing the Division maintains that Mr. N was properly found ineligible for the 2017 PFD under 15 AAC 23.103(j) because he intentionally, recklessly or negligently provided false information on his application.

Absent the false statement on his application, Mr. N was eligible for the 2017 PFD. The Division correctly applied the wording of 15 AAC 23.103(j) in finding that Mr. N falsely stated that he was in Alaska when he filed his PFD application. However, under the unique facts of this case, I find that Mr. N’s actions in checking the present in Alaska box, while wrong, amounted to a di minimus violation of the regulation that did not overcome his clear eligibility. For that reason, the decision of the Division to deny the estate of E N the 2017 PFD is reversed.

II. Facts

E N was a 37-year resident of Alaska. He applied for and received the PFD from 1982 through 2016.¹ Prior to his death he was employed as a tug boat captain working for

¹ Exhibit 1 p. 2.

Employer A. In 2016, the qualifying year for the 2017 PFD, Mr. N was out of state for vacation on three occasions for a total of approximately 46 days.² In January 2017, Mr. N travelled to Washington state to help his nephew restore an antique car. He submitted a 2017 PFD online application on January 23, 2017, while he was still in Washington.³

Question 2 on the PFD application asks the applicant if they are physically present in Alaska on the date of filing. Mr. N answered yes even though he was in Washington state at the time. After his application was filed the Division received information, from an analysis of the IP address from which his application was filed, that he had filed from out of state. In correspondence dated June 23, 2017, the Division notified Mr. N that it had received information that his online application was filed from a computer located outside Alaska. The correspondence stated that the Division could not finish processing his application unless it received further information including a list of absences, an explanation for his false statement and certain records showing proof of his physical presence in Alaska.⁴

In response to the question concerning why he had stated “yes” to being physically present in Alaska, Mr. N wrote:

I originally answered no, but then all the questions that were asked, I didn’t have all the information I needed to answer them. Plus, it shouldn’t matter where I am while I fill out form. I was not out of state more than 90 days. I spend 6 months on the boat.⁵

The Division initially denied Mr. N the 2017 PFD stating that he was ineligible because he failed to disclose his absence from Alaska at the time his application was filed and had not provided all the requested information within 30 days of the request.⁶

Mr. N filed a request for informal appeal. In his request he stated that he was not absent from Alaska for over 90 days. He listed three absences for vacation totaling approximately 46 days. He further stated “It should not make any difference where I was at when I filed. I just forgot to file before I left to visit my nephew.” Finally, in response to the question asking him to explain why he was eligible, Mr. N stated:

² Request for Informal Appeal, Exh.4 p. 2.

³ Exhibit 1 p. 2.

⁴ Exhibit 2.

⁵ Exhibit 2, p. 2. The PFD form requires the applicant to answer a number of further questions and provide further information if the applicant answers yes to the question whether they are out of state when applying.

⁶ Exhibit 3.

I have lived in the state for 37 years. I still work here. I work with Employee A as Captain in Cook Inlet. I work 4 Wks. on 4 Wks. off. I have 2 houses I own. I live in one my daughter lives in the other. I know of no way to prove I have not been gone over 90 days. I originally put yes, I was out of state on Electronic form but then saw all the question and back around and put I was in state. I served jury duty even this is not right.⁷

The matter was assigned to an appeal technician who sent Mr. N correspondence dated December 1, 2017, requesting that he submit a completed Out of State IP Questionnaire disclosing his dates of absence at the time of filing and a completed Audit form. The correspondence required a response by December 31, 2017.⁸ Unfortunately Mr. N passed away on December 23, 2017.⁹

On February 26, 2018, the Division issued its informal appeal decision upholding the prior finding of ineligibility. In that decision, the Division dropped the reference to providing false information but upheld the denial of Mr. N's PFD based on a failure to provide requested information.¹⁰ Ms. N, as the widow and successor to Mr. N, requested a formal hearing. In her request, Ms. N explained Mr. N's incorrect statement of his location, writing:

Mr. N read the statement incorrectly. He was visiting his nephew helping him rebuild an antique car in Washington when he filed the application. Gone from Alaska for 10 days 2/18/17 – 2/28/17 – Then he returned to Palmer-and his job with Employer A as caption of the ship.¹¹

In its position statement on formal appeal, the Division drops the claim of failure to supply requested information but maintains that Mr. N is ineligible for the 2017 PFD because he intentionally, recklessly, or negligently provided false information or omitted material facts in violation of 15 AAC 23.103(j).

III. Discussion

⁷ Exhibit 4 p. 2.

⁸ Exhibit 5.

⁹ Exhibit 7 p. 5.

¹⁰ Exhibit 6. Fact 2 of the denial did cite to Mr. N's failure to provide information clarifying his location at the time the application was filed and his failure to disclose his absence at the time the application was filed. However, the regulations cited and the basis for denial all refer to failure to provide information or definitions of Alaska resident.

¹¹ Exhibit 7 p. 3. Ms. N listed Mr. N's dates of absence as February 2017. However, it appears that the actual dates must have been January. The confusion concerning which month is not material to this decision.

The applicant bears the burden of proving that the Division wrongly denied a PFD.¹² It is important to the integrity of the PFD program that answers given on PFD applications be accurate. The application asks about the applicant's current location and about absences totaling more than 90 days so that the Division can evaluate circumstances that may affect residence or eligibility. Those who do not accurately report their location, or their absences, interfere with the Division's ability to perform this task. That being said, this case presents a unique set of circumstances concerning the application of 15 AAC 23.103(j) to an applicant who clearly falsely stated he was present in Alaska when he submitted his application, but also clearly was eligible for the PFD and made no other false or misleading representations.

15 AAC 23.103(j), as applicable to Mr. N's 2017 PFD application, provides as follows;

The department will deny an application if the department determines that an individual intentionally, recklessly, or negligently provided false information or omitted material facts, including failure to disclose a reportable absence to the department.¹³

There is no question that Mr. N was in Washington state when he submitted his application. He candidly acknowledged that he changed his original answer on the form "yes" he was physically present in Alaska to "no" in order to avoid the inconvenience of having to fill out the lengthier questionnaire and because he did not have the paperwork with him to provide all of the information necessary.¹⁴ There is also no question that Mr. N was a long time Alaska resident, who was outside of Alaska for less than 90 days in 2016 and would clearly have been eligible for the 2017 PFD if he had simply waited three days to file when he was back in Alaska. It further seems likely that the Division might have found Mr. N eligible for the 2017 PFD if he had lived and provided the requested information. This appears from the fact that the Division did not cite 15 AAC 23.103(j) as a basis for denying his PFD in its informal decision, instead referring to the need for further information.

¹² 15 AAC 23.113(b)(1).

¹³ 15 AAC 23.103(j) was revised effective May 22, 2016. The previous version was narrower providing for denial of the PFD: "if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department."

¹⁴ Exhibit 2 p. 2.

The Division correctly points out that numerous OAH decisions have upheld the denial of PFDs where the applicant has submitted false information.¹⁵ However, in each of the cases upholding the denial of a PFD for providing false information that the undersigned has been able to find, either there was more than one reason to support the denial, or the applicant falsely answered more than just the question concerning whether they were physically present in Alaska when they submitted their application.

For example, in S & D W the applicants were ineligible because they had established a principal home in another state. The applicants were also properly found ineligible because they falsely stated that they were physically present in Alaska on the day they submitted their applications. However, the decision notes that if the applicants had answered this question correctly and filled out the long form of the application, their honest answers would have disclosed the information that made them ineligible for the PFD.¹⁶

L & K N presents a closer case as the applicants believed, and likely were, eligible for the PFDs at issue. However, like in S & D W, the applicants also responded falsely to the question concerning whether they had been outside the state for more than 90 days.¹⁷ In that case, as in S & D W the denial of the application was upheld.

In researching previous OAH decisions concerning this regulation, the undersigned was unable to find any case in which an applicant, who was otherwise eligible for a PFD, was denied solely for falsely stating that they were present in Alaska when filing, with no other misrepresentations. Indeed, in this case itself, the Division in its informal decision, denied the application for failure to provide requested documentation, but *did not* reference 15 AAC 23.103(j). In this formal appeal, the Division does not rely on failure to provide information, acknowledging the unfortunate circumstance that Mr. N passed away during the pendency of the informal appeal process. The Division relies solely on the false answer that was part of the initial denial, but not a basis of the denial on informal appeal

This case presents a close question because of the need to uphold the importance to the Division and the PFD program of requiring accurate answers on applications. On the other hand, there must be some level of materiality requirement for a case such as this where the false

¹⁵ See e.g., In the Matter of S & D W, OAH no. 11-0089-PFD and In the Matter of L & K N, OAH No. 16-0590-PFD.

¹⁶ Exhibit 8 p. 5.

¹⁷ L & K N, p. 4.

information did not go in any way toward determining eligibility. On balance, under the unique facts of this case, in which the applicant passed away before the deadline for providing all the requested information required for the informal appeal, I find 15 AAC 23.103(j) does not require the Division to deny Mr. N's PFD.

IV. Conclusion

Mr. N made a mistake in stating he was present in Alaska when he filed when he was not. However, the Division focused on the requirement that he remedy his mistake by providing all the information necessary to make a determination concerning eligibility in its informal decision, and it was the unfortunate circumstance of his death that made it impossible for him to comply. Because he was clearly eligible and made only the one correctable misrepresentation the decision of the Division to deny the estate of E N the 2017 PFD is REVERSED.

Dated: September 4, 2018.

By: Signed
Name: Karen L. Loeffler
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 1st day of October, 20 18.

By: Signed
Name: Karen L. Loeffler
Title: Administrative Law Judge

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