

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

In the Matter of	)	
	)	
N Q	)	OAH No. 19-0617-PFD
_____	)	Agency No. 2018-067-0736

**DECISION**

**I. Introduction**

N Q applied for the 2018 PFD on December 17, 2018. The Permanent Fund Division denied the application because it was not mailed until after the statutory application deadline of March 31, 2018. Mr. Q filed an appeal with the Division. The Division upheld the denial. Mr. Q requested a formal hearing.

The hearing occurred August 14, 2019. Mr. Q appeared telephonically on his own behalf. PFD Specialist Bethany Thorsteinson appeared telephonically on behalf of the Division.

This decision concludes Mr. Q failed to establish he fell within an exception to the filing deadline. Accordingly, the denial of his 2018 PFD is upheld.

**II. Facts<sup>1</sup>**

On October 4, 2018 N Q called the PFD office to enquire regarding the status of his 2018 PFD.<sup>2</sup> He was informed the Division had no record an application had been filed. Mr. Q ultimately submitted a 2018 PFD application dated December 17, 2018<sup>3</sup> after speaking with the Ombudsman’s office and others regarding his circumstances.

The Division issued a denial of the application on January 11, 2019.<sup>4</sup> Mr. Q filed a request for informal conference on January 18, 2019.<sup>5</sup> He informed the Division he believed his application had been submitted electronically prior to March 31, 2018. He explained he believed the application had been automatically filed on his behalf based on information he received during a computer assistance training program at a legislative affairs office in City A.<sup>6</sup>

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<sup>1</sup> All factual findings in this section are based on the testimony provided at the hearing as well as the position statement and exhibits filed by the Division.

<sup>2</sup> Ex. 6 at 4; Ex. 7.

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

<sup>4</sup> Ex. 2.

<sup>5</sup> Ex. 3.

<sup>6</sup> Ex. 3 at 2.

Mr. Q attended a computer training session in 2016 where he was assisted to file that year's PFD application electronically. He returned to the City A legislative affairs office in 2017 where he was again assisted in electronically filing his 2017 PFD.<sup>7</sup> At that time, one of the workers told him that he would "never have to file paperwork again."<sup>8</sup> He interpreted that statement to mean the application would be automatically generated and submitted on his behalf each year.

Mr. Q remained living in City A from January 1, 2018 through October 8, 2018.<sup>9</sup> He did not return to the legislative affairs office to electronically file a PFD application prior to March 31, 2018. Nor did he file a paper application. In October, he moved to Wisconsin to live near family. He is no longer a resident of Alaska.

The Division affirmed denial of his PFD in an Informal Appeal Decision dated May 21, 2019.<sup>10</sup>

Mr. Q appealed.<sup>11</sup>

### III. Discussion

The person challenging the Division's initial decision has the burden of proof to demonstrate it was made in error.<sup>12</sup> The preponderance of evidence standard applies to this burden.<sup>13</sup> A preponderance of the evidence means "having more evidence for than against," i.e. the conclusion is "probable."<sup>14</sup>

A PFD application must be received postmarked on or before March 31 of the application year.<sup>15</sup> There are only two exceptions to the deadline for filing the application: for people on active duty military and eligible for hostile fire or imminent danger pay, and for people who are prevented from timely filing by a physical or mental disability.<sup>16</sup> Mr. Q did not make a claim for either of these exemptions.

Instead, he argued was fundamentally unfair not to provide him the dividend because he failed to file on time due to incorrect advice from an employee at the legislative affairs office in City A. Having heard the testimony on this point at the hearing, it appears likely a miscommunication occurred due to Mr. Q's lack of familiarity with computers. The program assistant probably meant the statement

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<sup>7</sup> Ex. 10 at 1.

<sup>8</sup> Ex. 6 at 2; Ex. 9 at 2; hearing testimony of M. Q.

<sup>9</sup> Ex. 3 at 4, 7; hearing testimony of M. Q.

<sup>10</sup> Ex. 5.

<sup>11</sup> Ex. 6.

<sup>12</sup> 1 AAC 05.030(h).

<sup>13</sup> 2AAC 64.290(c).

<sup>14</sup> *In the Matter of E.S.*, 586 P.2d 607, 612 (Alaska 1978).

<sup>15</sup> AS 43.23.011(a); 15 AAC 23.103(a).

<sup>16</sup> AS 43.23.011(b)-(c); 15 AAC 23.133(d).

literally: Mr. Q would not have to do paperwork again because electronic filing could be substituted. Mr. Q would still be required to submit proof of annual eligibility.<sup>17</sup>

It is a general principle of law that a person's ignorance or misunderstanding of the law is not a defense for failure to comply. When a person seeks to avoid the consequences of such a mistake, Alaskan courts have recognized only a very limited number of exceptions. There is an exception for reasonable reliance on an official pronouncement or formal interpretation of law issued by the relevant agency or a chief enforcement officer for the law.<sup>18</sup> But this limited exception is not available to people who rely on mistaken statements or interpretation of the law received from employees of the agency or officers who apply the law in the field.<sup>19</sup> And, of course, this excuse is not available to people who form their own mistaken opinion about the law.<sup>20</sup>

In this case Mr. Q cannot demonstrate he relied on a formal interpretation of law issued by the Division or even words or conduct by a Division employee which might prompt a determination of whether the Division should be equitably estopped from denying his request.<sup>21</sup> Mr. Q relied on a statement made to him by a third-party with no ties to the Division nor apparent specialized expertise in the area.

This, while unfortunate, does not establish an exception to the requirement the PFD be filed prior to March 31. As a result, the Division was legally required to deny his application. Mr. Q has failed to show, by a preponderance of the evidence, that the Division denial was in error.

#### **IV. Conclusion**

The Division's denial of Mr. Q's application for the 2018 PFD is affirmed.

Dated: August 20, 2019

Signed  
Carmen E. Clark  
Administrative Law Judge

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<sup>17</sup> It should be noted the PFD representative did contact the City A legislative affairs office to investigate this claim and alert the office of Mr. Q's experience to reduce the likelihood of future miscommunication of a similar nature. Ex. 9 at 1.

<sup>18</sup> *E.g. Stevens v. State*, 135 P.3d 688, 695 (Alaska App. 2006); *Ostrosky v. State*, 704 P.2d 786, 791 (Alaska App. 1985)

<sup>19</sup> *E.g. Haggren v. State*, 829 P.2d 842, 844 (Alaska App. 1992).

<sup>20</sup> *Stevens*, 135 P.3d at 695; *Busby v. State*, 40 P.3d 807, 816-17 (Alaska App. 2002).

<sup>21</sup> Equitable estoppel applies against the government in favor of a private if four elements are present in a case: 1) the governmental body asserts a position by conduct or words; 2) the private party acts in reasonable reliance thereon; 3) the private party suffers resulting prejudice; and 4) estoppel serves the interest of justice to limit public injury. *Crum v. Stalaker*, 936 P.2d 1254, 1256 I (Alaska 1997) *Anchorage v. Schneider*, 695 P.2d 94, 97 (Alaska 1984). *See also Nelson v State of Alaska, Commercial Fisheries Entry Comm'n*, 186 P.3d 582, 585 (2008). Because Mr. Q cannot establish the first factor, this decision declines to consider the remaining factors.

## 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 16<sup>th</sup> day of September, 2019.

By: Signed  
Signature  
Carmen Clark  
Name  
Administrative Law Judge  
Title

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