

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

In the Matter of)	
)	
K T)	OAH No. 18-0865-PFD
)	Agency Nos. 2017-037-2082
_____)	

DECISION

I. Introduction

K T appeals the denial of her 2017 Permanent Fund Dividends (PFD). She initiated the appeal six months after the denial notice was sent to her. After the PFD Division rejected her appeal as untimely at the informal conference level, she requested a formal hearing with this office, receiving one on September 28, 2018.

Prior to the hearing, the Division filed a motion to dismiss on the basis that the appeal was untimely. At the hearing, Ms. T was able to respond to the motion through testimony.² Exhibits 1-10, submitted by the Division, were taken into evidence. Ms. T did not provide any documentary evidence.

This decision concludes that because Ms. T did not present a reasonable cause for her failure to file within the time frame, and because dismissing the matter did not work an injustice, the appeal must be dismissed.

II. Facts

On February 23, 2017, Ms. T applied for her PFD. She answered affirmatively to Question 2 of the online application, which asks, “Are you physically present in Alaska today?” It is accompanied by a special warning that reads:

Answer **No** if you are completing this application from someplace other than within Alaska. Failure to disclose a reportable absence constitutes fraud.⁵

After the Division was advised Ms. T was out of Alaska when she applied for her PFD, it contacted Ms. T about the discrepancy.⁷ On July 31, 2017, Ms. T admitted to the Division she had erroneously checked the wrong box. On September 14, 2017 the Division issued a Notice of

² Ms. T was asked to address the motion to dismiss on the untimely informal appeal, before challenging the substantive denial. If she had presented evidence supporting a denial of the Division’s motion to dismiss, the hearing then would have addressed the substantive appeal.

⁵ Exhibit 11, page 1.

⁷ Exhibit 10.

Denial based on the failure to disclose the absence. The notice was mailed and emailed to Ms. T on the same date.⁸ On September 20, 2017, Ms. T began an extended trip, returning sometime around Thanksgiving.¹⁰ Ms. T did not file her informal appeal before she left on her trip.¹¹ She did not file her informal appeal from November 2017 until March 12, 2018, when her Request for Informal Appeal as postmarked.¹²

The PFD Division rejected the informal appeal as untimely in a decision dated July 19, 2018. This formal appeal followed.

III. Discussion

On appeal, Ms. T has the burden to show, by preponderance of the evidence, that she was eligible for the 2017 PFD. However, before that could be addressed, Ms. T needed to address why her informal appeal was not timely filed.

The window to file an appeal from the denial of a PFD is 30 days from the denial notice.¹³ The denial notice specifically noted this deadline in bold print.¹⁴ An exception to the 30-day appeal window applies if the applicant demonstrates a reasonable cause for failure to file within this period.¹⁵ Similarly, the Administrative Law Judge may waive the appeal deadline if the adherence would “work an injustice.”¹⁶

The deadline for Ms. T to file her appeal was October 14, 2017, because she was notified that her PFD was denied on September 14, 2018.¹⁷ Ms. T does not deny receiving the notice. Ms. T was given several opportunities to explain why she waited until March 12, 2018.

Her first explanation, in her request for a hearing, was to say that “appeals not sent in because I figured it wouldn’t do any good, and I have no fight in me .” Six months later at the formal appeal hearing, she testified she was busy preparing for a trip in September 2017, which was why she did not file timely. When asked why she waited until March 2018 after returning for her trip in November 2017, she said, “It was winter.” This is not a reasonable explanation for waiting 149 days to file her appeal.

⁸ Exhibit 2; Exhibit 4.

¹⁰ Ms. T testimony.

¹¹ Ms. T testimony.

¹² Ms. T testimony.

¹³ 15 AAC 05.010 (b)(5).

¹⁴ Exhibit 3, page 2.

¹⁵ *Id.*

¹⁶ *In re VD*, OAH No. 14-0943-PFD (Dep’t of Revenue 2014) (published at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD140943.pdf>).

¹⁷ 15 AAC 05.010 (b)(5); Exhibit 4.

Deadlines for initiating appeals serve an important purpose. They prevent unlimited revisiting of decisions long past. Historically, the appeal deadlines have been set aside in particularly compelling circumstances, but none were presented in this case.¹⁸ Ms. T was solely responsible for filing her informal PFD appeal and her explanation for why she did not do so within the time regulatory time frame is not reasonable to explain a delay of 149 days.

IV. Conclusion

Ms. T did not provide any reasonable justification for why she missed the deadline to initiate the appeal process by 149 days. The motion to dismiss is granted and this appeal is dismissed.

Dated: October 4, 2018

Signed _____
Hanna Sebold
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 30th day of October, 2018.

By: *Signed* _____
Signature
Hanna Sebold _____
Name
Administrative Law Judge _____
Title

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

¹⁸ Prior decisions regarding the enforcement or waiver of PFD appeal deadlines can be found at <http://doa.alaska.gov/oah/decisions/pfd.html>.