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

In the Matter of)
)
S. S. N.) OAH No. 22-0861-PFD
)

DECISION

I. Introduction

S. S. N.applied for a 2021 Permanent Fund Dividend (PFD). Because PFD applications are due by March 31, the Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis of untimeliness. Mr. N. requested a formal hearing.

The Division's denial is affirmed because the application was filed late and did not qualify for any exception to the deadline. The law leaves no discretion to make an exception for the applicant in this case.

II. Facts

S. N. is a 47-year-old resident of Anchorage who admittedly submitted his 2021 PFD application well after the March 31, 2021 deadline. There is no evidence that he is disabled in any way, and no claim of disability has been made on his behalf. However, he is an active-duty member of the armed forces and was deployed to an Air Force base in Country A from December 1, 2020 to May 26, 2021. Because he was out of the country and fully occupied performing his mission of combating the COVID-19 pandemic at military facilities in Europe, he neglected to timely file his PFD application. He inquired via email to the Division in early April 2021, asking if he could still apply. After returning to the United States and having apparently received no response from the Division for several months,[1] he went to a Division office in September 2021, obtained a paper application form, and filled it out and submitted it by hand. Mr. N.'s application was marked as received by the Division on November 8, 2021.[2]

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[1] The exhibits submitted by the Division for this appeal include a reply email sent to Mr. N. on April 26, 2021, explaining the limited exceptions to the requirement that PFD applications be timely filed. Exh. 3, p. 1.

[2] Exh. 1.

The Division denied Mr. N.'s application because it was not filed by the March 31 deadline.[3] He filed a timely request for informal appeal, which was denied by the Division on July 16, 2022, based on the lateness of his application and the fact that he did not fall within any of the very limited exceptions to the timely filing requirement.[4]

Mr. N. then requested a formal appeal. The hearing was held on December 22, 2022. Mr. N. appeared and provided sworn testimony on his own behalf. PFD Specialist 1 Delilah Bernaldo appeared on behalf of the Division and also provided sworn testimony. The Division's exhibits 1 through 9 were admitted into evidence.

III. Discussion

The Alaska Statute that sets the application period for dividends is AS 43.23.011. Under that statute, the period for applying for a dividend ends on March 31 of the dividend year. In passing the statute, the legislature provided only two exceptions. To be eligible for either of them, the applicant has to be a member of the armed services, and during the application period they must have been eligible for "hostile fire" or "imminent danger" pay.[5] Elsewhere in the PFD statutes, there are provisions that effectively allow certain minors and disabled people to apply after the deadline,[6] but Mr. N. is not in these categories and thus must show that he falls within the exceptions for members of the armed services.

There is no dispute that Mr. N. filed his 2021 PFD application many months after the statutory deadline of March 31, 2021. Nor is there any dispute that he was a member of the armed services during the January 1 through March 31 application period. The only remaining question is whether Mr. N. was eligible to receive "hostile fire" or "imminent danger" pay for his military service during the application period. Mr. N. confirmed during the hearing, however, that he did not qualify for those categories of pay.

Mr. N. argued instead that his overseas deployment in the military to work on COVID-19 pandemic prevention tasks could be considered dangerous work, and therefore it should be deemed the functional equivalent of work that would qualify for imminent danger pay. While on the surface this argument has certain sympathetic appeal, the Department of Revenue is bound by the statutes laid down by the Legislature and by its own regulations, which set a black-

3 Exh. 5.
4 Exh. 8.
5 AS 43.23.011(b), (c).
6 *See* AS 43.23.055(3), (7).

and-white deadline. The military exceptions to the timely filing requirement are clearly written, and they can only be applied if the applicant actually has been determined by the armed services to be eligible to receive "hostile fire" or "imminent danger" pay. The Department is not allowed to make exceptions because it sympathizes with the applicant or because they were busy performing valuable work when they missed the application deadline. Under the law, the Department of Revenue has no discretion in this matter, and it cannot grant Mr. N. a dividend.

IV. Conclusion

Because his application was filed after the statutory deadline and did not qualify for any exception to the deadline, the Department of Revenue cannot grant S. N. a dividend for 2021. This decision does not affect his ability to qualify in 2022 or future years.

Dated: January 17, 2023

SIGNED
Andrew M. Lebo
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 10th day of February, 2023.

By: SIGNED
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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