

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

In the Matter of	)	
	)	
E. H. H.	)	OAH No. 23-0459-PFD
	)	
<u>2022 Permanent Fund Dividend</u>	)	

DECISION

I. Introduction

E. H. timely applied for a 2022 Permanent Fund Dividend (PFD). After receipt of his application, the Permanent Fund Dividend Division (Division) denied his application because Mr. H.’s cumulative absences from Alaska exceeded 180 days and did not fall within the exceptions permitted by statute.¹ Mr. H. initiated an informal appeal 250 days after the informal appeal deadline had passed, with no explanation for the delay. The Division denied his informal appeal as it was untimely, and because his cumulative absences from Alaska exceeded 180 days. Mr. H. timely requested a formal hearing on the denial of his informal appeal.

As Mr. H.’s request for an informal appeal was not timely filed, and his cumulative absences from Alaska exceeded 180 days, the denial of his application for the 2022 PFD is **AFFIRMED**.

II. Facts

Mr. H. is a long-time resident of Alaska and he timely applied for the 2022 PFD. However, in his application he asserted that he had been absent from the state for 181 days for an Aircraft Restoration Project.²

On March 25, 2022 the Division sent Mr. H. a notice denying his application because he was “...absent from Alaska 181 days for employment during 2021.”³ The notice informed him that “[i]f either the facts or the application of the law is incorrect, the enclosed Request for Informal Appeal form must be completed and postmarked or received by the Division by April 24, 2022...”⁴ An informal appeal form was included with the notice. The appeal form informed

¹ Ex. 2.
² Ex. 1, p.4
³ Ex. 2.
⁴ *Id.*

Mr. H. of the appeal filing deadline, clearly stating on the first page: “This Appeal Request Will Be Denied if Received or Postmarked after April 24, 2022.”⁵

In his request for an informal appeal, Mr. H. crossed out the April 24th date and placed an asterisk beside it.⁶ Further down on the first page, after a bold section titled “Late Appeals” the form read: “Be sure the appeal is postmarked or received on or before the date in the upper right-hand corner of this form. Late filed appeals will be denied.”⁷ Mr. H. added an asterisk and the text “deadline extended for this appeal” next to this section.⁸ Mr. H. dated his informal appeal December 31, 2022.⁹

The Division received Mr. H.’s informal appeal on January 5, 2023 approximately 255 days, or more than eight months, after the deadline.¹⁰ His appeal documents did not provide any explanation for why he had filed late.

The Division denied Mr. H.’s informal appeal by letter dated June 1, 2022.¹¹ The letter stated the denial was based on two issues: that his cumulative absences exceeded 180 days, and that his appeal was not timely.¹² The denial letter included a “request for formal hearing” appeal form, and Mr. H. timely filed a request for a formal hearing. A formal appeal hearing was held on August 28, 2023. Mr. H. and the Delilah Bernaldo, a PFD Specialist I with the Division, both testified at the hearing.

Ms. Bernaldo’s testimony established that Mr. H. had received mailed and emailed notices of his PFD denial, and that both notices included a request for informal appeal form. Additionally, Ms. Bernaldo’s testimony established, that despite being in contact with the Division through email, mail, and in person visits, Mr. H. failed to file an informal appeal request until December 31, 2022, 250 days after the appeal deadline.¹³

Mr. H.’s testimony did not challenge that his cumulative absences exceeded 180 days, or that his informal appeal was mailed on December 31, 2022.

III. Discussion

⁵ Ex. 4, p.1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Ex. 5, p. 1.

¹¹ Ex. 6, p. 1.

¹² Ex. 6, p. 1.

¹³ Testimony of Delilah Bernaldo.

A request for an informal appeal must be filed within 30 days after notice that the PFD has been denied.¹⁴ There is no dispute that Mr. H. missed that deadline. The 30-day appeal window does not apply if the applicant “demonstrates a reasonable cause for the failure to file within this period.”¹⁵ Similarly, the administrative law judge may waive the appeal deadline if, “strict adherence to the deadline ... would work an injustice[.]”¹⁶

The length of the delay is an important factor when deciding whether strict adherence to the filing deadlines would work an injustice.¹⁷ Other decisions have held that, “[t]he deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past.”¹⁸ Historically, because of this consideration, waivers of the appeal deadlines have been granted only in particularly compelling circumstances. In general, more lengthy delays are not waived, absent extremely compelling circumstances. Here, however, Mr. H. has provided no compelling explanation for why his informal appeal was filed over eight months past the deadline.

When asked to explain the delay in filing his appeal, Mr. H.’s justifications were that: he was busy working and that he believes his mail was not being timely forwarded.¹⁹ Mr. H. was unable to recall if he had set up mail forwarding, or when he received his initial denial notice, but he believes he acted “..timely, as soon as I could when I got back.”²⁰ Mr. H. testified that when he found out about the denial, he went to the PFD office in Anchorage and was given the informal request for appeal form.²¹ That visit was on October 4, 2022.²² However, even if a postal issue were the cause of some of the delay, it would not explain all of the delay in this case.

Ms. Bernaldo testified that Mr. H. emailed the PFD office on September 27, 2022 about the status of his PFD and he was informed, that same day, that his PFD application had been denied and he was provided with a digital copy of the informal appeal form.²³ Any delay after September 27, 2022 was not the result of a postal issue. Even if there had been some delay with

¹⁴ 15 AAC 05.010(b)(5).

¹⁵ 15 AAC 05.010(b)(5).

¹⁶ 15 AAC 05.030(k).

¹⁷ See *In re S.O.*, OAH No. 09-0497-PFD (Commissioner of Revenue 2010), page 2, *In re J.G.*, OAH No. 09-0363-PFD (Commissioner of Revenue 2009), page 4.

¹⁸ *Matter of J.C.*, OAH No. 06-0742-PFD (2007) at 4.

¹⁹ Testimony of E. H.

²⁰ *Id.*

²¹ Testimony of E. H.

²² Testimony of Delilah Bernaldo.

²³ Testimony of Delilah Bernaldo.

the mail, Mr. H. was communicating with the PFD office by mail, sending “An Affidavit of Citizenship Evidence” to the Division on October 4th, 2022.^{24 25} That same day, Mr. H. was also physically handed an informal appeal form at the Division’s Anchorage office.

The record is clear that Mr. H. had been in direct communication with Division staff, and that he was aware of his denial and the steps required to appeal, no later than September 27, 2023. Despite clear notice, Mr. H. did not submit a request for an informal appeal until December 31, 2022, over three months after he received the emailed denial and appeal form from the Division. Mr. H. presented no argument to explain the 95 days of delay between receiving the emailed notice and filing an informal appeal request.

An applicant’s busy or challenging life is not ordinarily a basis to waive the appeal deadline. This is natural, as many Alaskans work extremely hard but are able to find the time needed to fill out an appeal form.²⁶ In this case, Mr. H. argued the appeal deadline should be waived because he filed “..timely, as soon as I could when I got back.”²⁷ This argument is not compelling, nor does it explain the delay after he received emailed notice.

This explanation must be viewed against previous PFD cases involving late appeals, and it must be weighed against the Division’s legitimate interest in not having to look back and attempt to address stale eligibility issues many months or years after the fact.²⁸ When viewed in this light, Mr. H.’s argument simply does not add up to the type of circumstances that are compelling enough to justify waiving the filing deadline for an over eight-month delay.

While the Division’s denial is affirmed because Mr. H.’s appeal was untimely, the Division also denied Mr. H.’s appeal because his cumulative absences exceeded 180 days. At the hearing, Mr. H. held the burden of showing that the Division incorrectly found that ineligible on that basis.²⁹

In order to qualify for a PFD, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” in AS 43.23.008. In general, these

²⁴ Ex. 3, pp 1-5.

²⁵ Mr. H. testified he provided this document to clarify his citizenship status, not to address any of the issues raised in the 2022 denial.

²⁶ *Matter of J.C.*, OAH No. 06-0742-PFD (2007) at 4.

²⁷ *Id.*

²⁸ *In re J.G.*, OAH No. 09-0363-PFD (2009) at 4.

²⁹ 15 AAC 05.030(h).

cover absences for military orders, absences to care for a terminally ill family member, absences as part of the United States Olympic team, among other listed reasons.

The qualifying year for the 2022 dividend was 2021.³⁰ In this case, it is uncontested that Mr. H. was absent from Alaska for a total of 181 days during 2021.³¹ At the hearing Mr. H. confirmed that the dates he provided on his application were accurate to “the best of my knowledge and recollection”.³² During that period of absence, Mr. H. asserts that he was working on an aircraft restoration project.

Only one of the allowable absences in AS 43.23.008 applies to Mr. H. It is the so-called catchall provision, covering absences for “any reason consistent” with Alaska residency. Vacations, business trips, funeral trips, family visits, and the like fit under this absence. However, absences for this open-ended reason cannot have exceeded 180 days under any circumstances.³³

At the hearing, Mr. H. appealed to the Division’s discretion. However, the Division is bound by the statutes laid down by the Legislature and by its own regulations, which require the Division to deny an application for a dividend if an applicant is absent from the state for more than 180 days, unless they meet very specific exemptions. The Division has no discretion in this matter. Therefore, the Division also correctly denied Mr. H.’s informal appeal on the basis that his cumulative absences exceeded 180 days.

³⁰ AS 43.23.095(6).

³¹ Exhibit 1, p. 4.

³² Testimony of E. H.

³³ AS 43.23.008(a)(17)(A).

IV. Conclusion

As Mr. H.'s cumulative absences exceeded 180 days and because he has not established a basis for a more than eight-month waiver of the deadline under 15 AAC 05.030(k), the Division's denial his 2022 PFD application is affirmed. This decision does not affect his ability to qualify in 2023 or future years.

DATED: September 11, 2023.

Signed

Eric M. Salinger
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 17th day of October, 2023.

By: Signed
Adam Crum
Commissioner of Revenue

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