

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

In the Matter of	)	
	)	
E. K.	)	OAH No. 23-0051-PFD
	)	

DECISION AND ORDER

I. Introduction

E. K. was denied a 2020 Permanent Fund Dividend (PFD) because he failed to timely provide requested information to the PFD Division to prove that he met eligibility requirements. Mr. K. requested a formal appeal hearing, but he submitted his request well beyond the deadline for doing so under applicable regulations.

Based on the lateness of his appeal, the Division filed a motion to dismiss on February 6, 2023. The hearing was then held on February 21, 2023. Mr. K. appeared telephonically, represented himself and testified under oath on his own behalf. PFD Specialist I Delilah Bernaldo represented the Division and provided sworn testimony.

Because Mr. K.'s request for formal appeal was not timely filed, and he failed to make out a strong enough case for waiver of the appeal deadlines, the Division's Motion to Dismiss is granted.

II. Facts

Mr. K. received PFDs in 2000 through 2018.¹ He did not apply for the 2019 PFD. He timely applied for the 2020 PFD, and as he later explained in his testimony and appeal papers, this was the first year he applied as an adult, without his parents' assistance or sponsorship.² He indicated in his application that he had not been gone from Alaska for more than 90 days during the qualifying year of 2019. The Division, however, noted a discrepancy between that information and an Education Verification form received from University A., indicating that Mr. K. was attending college there in 2019. In June 2020, the Division requested additional information from Mr. K. regarding his absences from Alaska

¹ Division Exh. 10.

² See Division Exh. 5, p. 2.

in 2019 and his reasons for not applying for the 2019 PFD.³ Although he would much later indicate in his testimony and appeal papers that he had provided an electronic response to this information request, the Division never received it. Accordingly, his 2020 PFD application was denied on September 25, 2020.⁴

Mr. K. timely submitted an informal appeal on October 26, 2020, in which he acknowledged the discrepancy regarding absences in 2019, explained that it was an unintentional mistake due to his inexperience in applying for PFDs, pointed out that he had ensured that his college submitted the education verification, and asserted that in fact he had responded via email to the Division's request for additional information.⁵ As part of the informal appeal process, on December 2, 2020 the Division emailed Mr. K. another request for information regarding his absences but expanded the timeframe to include 2018; the deadline for his response was January 21, 2021.⁶ On February 18, 2021 the Division denied Mr. K.'s informal appeal, based on his failure to respond to its request for additional information and related failure to prove his eligibility.⁷

Mr. K. later applied for a 2022 PFD, and in the process of supporting that application, in July 2022 he provided the additional information originally requested by the Division in 2020 regarding his absences. This information confirmed that he had been attending college and absent from Alaska for more than 90 days during calendar year 2019.⁸

On January 6, 2023 Mr. K. submitted his formal appeal regarding the denial of his 2020 PFD. The Division had denied his informal appeal on February 18, 2021, so his 30-day formal appeal deadline was March 20, 2021.⁹ His formal appeal, therefore, was submitted 657 days after the deadline.

III. Discussion

The Division identifies three issues to be addressed in this matter: (1) the extreme lateness of Mr. K.'s formal appeal; (2) Mr. K.'s failure to disclose on his application his absence in excess of 90 days during the qualifying year of 2019; and (3) his failure to

³ Division Exhs. 2, 3.

⁴ Division Exh. 4.

⁵ Division Exh. 5.

⁶ Division Exh. 6.

⁷ Division Exh. 7.

⁸ Division Exh. 11.

⁹ The Division misstated this deadline as March 19, 2021 in documents submitted in this matter. *See, e.g.* Division's Exh. 8.

respond to the Division’s requests for additional information regarding his residency and absences from the state in both 2019 and 2018. The Division submitted a motion to dismiss the formal appeal based on Mr. K.’s 657-day delay in filing the appeal.

The Division’s regulations governing PFD appeals set a clear standard: a request for formal appeal must be filed within 30 days after the Division issues the decision on the applicant’s informal appeal.¹⁰ When the PFD applicant misses the deadline and files a late request for formal appeal, as occurred in this case, the person hearing the appeal on behalf of the Commissioner of Revenue can waive the deadline only if “strict adherence to the deadline ... would work an injustice[.]”¹¹

At the hearing, and in his written appeal papers, Mr. K. focused on the facts concerning his residency in Alaska and absences from Alaska during the relevant periods. He testified under oath that he didn’t file for the 2019 PFD because he was struggling with his first year of college in West Virginia, and simply forgot and missed the PFD application deadline. He later attended college in Arizona beginning in the fall of 2019.¹²

Apart from his explanations regarding his attendance at college in Arizona and his prior reliance on his parents to fill out PFD paperwork, Mr. K. did not provide any rationale for filing his formal appeal in this matter 657 days after the deadline.

In determining whether strict adherence to the filing deadlines would work an injustice in a given case, one important factor is the length of the delay.¹³ Whether strict adherence would work an injustice depends on the circumstances of the particular case and how those circumstances compare to other waiver-of-appeal-deadline cases. Another factor sometimes considered in assessing the injustice of adhering strictly to the deadline is whether the PFD applicant has a good chance of proving that he or she would be eligible for the PFD if allowed to go forward with an appeal.¹⁴ That this factor has sometimes been considered, however, does not

¹⁰ 15 AAC 05.030(b)(5).

¹¹ 15 AAC 05.030(k).

¹² Interestingly, Mr. K. states in a written narrative for his formal appeal that he was in Alaska attending Univ. A. “8/2018 – 5/2019” (Exh. 8, p. 2); whereas his additional absences form submitted in July 2022 states that he was absent from Alaska attending college “8/18 to 12/18” and “1/19 to 5/19” (Exh. 11, p. 2.) Mr. K. would do well to be very careful and deliberate in filling out PFD application documents going forward.

¹³ See *In re S.O.*, OAH No. 09-0497-PFD (Commissioner or Revenue 2010), page 2, *In re J.G.*, OAH No. 09-0363-PFD (Commissioner of Revenue 2009), page 4.

¹⁴ *Matter of B.S.*, OAH No. 05-0320-PFD at 3 (October 3, 2005) (finding no interests of justice requiring waiver of deadline, despite applicant’s health issues, because there was not a reasonable chance of applicant prevailing at a hearing).

dictate that it must be considered by taking evidence and making fact findings based on the evidence.

In this case, Mr. K. has presented some evidence regarding his attendance at college during the qualifying year of 2019. Nonetheless, one must still focus the waiver inquiry on the **reasons for the applicant's delay** in filing the appeal. In doing so, the following question is asked: even if the applicant will be denied a PFD for which he might have been proven eligible in a timely-filed appeal, would strict enforcement of the appeal deadline work an injustice? To determine whether the appeal deadline will be waived in Mr. K.'s case, therefore, it is assumed that he would succeed in proving that he maintained Alaska residency for purposes of his eligibility for the disputed 2020 PFD, and that if the deadline is not waived, he will not receive a PFD for which he would otherwise be eligible.

A key consideration in this context was summarized in another PFD appeal decision. "The deadline for initiating an appeal serves an important purpose. It prevents the unlimited revisiting of decisions long in the past."¹⁵ Historically, because of this consideration, waivers of the appeal deadlines have been granted only in particularly compelling circumstances. The following summaries of several prior cases give a sense of the showing needed to justify a waiver:

In re J.G., OAH No. 09-0363-PFD (2009): Military member was on active duty and in busy training period, and then moved several times before learning that a waiver of filing deadline might be available. **22-month delay** in filing appeal **not excused**.

In re J.C., OAH No. 06-0742-PFD (2007): Military member was on active duty and in busy training period, and had recently undergone a divorce. **15-month delay** in filing appeal **not excused**.

In re N., OAH No. 05-0595-PFD (2006): Military member was in busy preparation and training period before deploying to Iraq, and missed appeal deadline. **Six-month delay** in filing appeal **not excused**.

In re B., Caseload No. 040286 (2004): Division's denial had errors that may have caused confusion about appeal deadline; delay of "a week or two" might have been excusable. **One-year delay** in appeal **not excused**.

In re G., Caseload No. 030739 (2004): Applicant missed deadline because he failed to give Division a change of address. **One-year delay** in appeal **not excused**.

In re H., Caseload No. 040315 (2004): Military officer was misled by confusing PFD Division paperwork and mistakenly believed an appeal was already pending. **Two-and-a-half-month delay** in properly initiating appeal was **excused**.

¹⁵ *Matter of J.C., OAH No. 06-0742-PFD (2007)* at 4.

In re S., Caseload No. 040154 (2004): Division reversed itself twice, causing confusion about whether applicant needed to initiate a new appeal. **Six-month delay** in properly initiating appeal was **excused**.

These cases indicate that waiver of the deadline may be appropriate where the conduct of the Division caused confusion or otherwise contributed to delay in starting an appeal. Absent some contributory conduct by the Division, however, an applicant would have to have experienced an **extremely serious** life upheaval to justify a waiver of the appeal deadline. In none of the cases summarized above were delays similar in length to Mr. K.'s delay allowed. In addition, the cases where filing delays have been waived involved circumstances where the Division's conduct at least in part caused the late filing.¹⁶

Overall, the cases addressing late appeal filings have held that an applicant's busy or challenging life circumstances, or his neglect to inform himself about his appeal rights, are not sufficient bases to waive the appeal deadline.¹⁷ This is natural, since many Alaskans work extremely hard but are able to find the time needed to fill out an appeal form.¹⁸ In this context, it is notable that one of the cases listed above involved a deadline missed by about six months; the delay was not excused, even though the applicant was serving in the armed forces and preparing to deploy to Iraq (circumstances which might be considered fairly compelling).¹⁹ Here, in contrast, Mr. K.'s delay was just under 22 months in length, and the circumstances that prevented him from timely filing his formal appeal apparently were his state of being busy at college and possibly inexperienced at preparing form applications such as the PFD forms. These are not very compelling circumstances, and they should not have prevented Mr. K. from providing the information requested by the Division in a timely fashion or filing a request for formal appeal by the 30-day deadline, as required by the regulations.

In this case, there is no evidence that any conduct by the Division caused Mr. K. to file his formal appeal 22 months after the applicable deadline. And, as mentioned above, the deadlines for initiating and pursuing PFD appeals serve an important purpose –preventing “the unlimited revisiting of decisions long in the past.”²⁰

¹⁶ See, e.g., *In re H.*, Caseload No. 040315 (2004).

¹⁷ *In re D.S.*, OAH No. 09-0033-PFD (2009).

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

¹⁹ *In re N.*, OAH No. 05-0595-PFD (2006).

²⁰ *Matter of J.C.*, OAH No. 06-0742-PFD (2007) at 4.

It is regrettable that Mr. K. failed to ensure that the Division had the requested information regarding his absences during the qualifying year, and then missed the formal appeal deadline for the 2020 PFD. If he had avoided these missteps, he may have been able to prove his case that the underlying denial of his PFD was mistaken. This is a case, however, where the applicant simply failed to pursue his claim for the 2020 PFD with sufficient diligence. His explanation and circumstances do not meet the standard required by the Division's regulations, that strict adherence to the deadline would work an injustice.²¹ In fact, it can be argued that deviating from the deadline in this case would work an injustice as to all of the many applicants whose PFDs have been denied under far more compelling circumstances.

Mr. K.'s appeal must be viewed against previous PFD cases involving late appeals, and they 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.²² When viewed in this light, Mr. K.'s filing challenges simply do not add up to the type of circumstances that are compelling enough to justify waiving the filing deadline for a delay of 657 days beyond the deadline.

IV. Conclusion

Because Mr. K.'s request for formal appeal was filed well after the deadline set by 15 AAC 05.030(b)(5), and because he has not established a basis for a waiver of the deadline under 15 AAC 05.030(k), his formal appeal of the denial of his 2020 PFD should be dismissed.

V. Order

IT IS HEREBY ORDERED that the Division's Motion to Dismiss Mr. K.'s appeal regarding his 2020 PFD is GRANTED.

DATED: March 24, 2023.

SIGNED
Andrew M. Lebo
Administrative Law Judge

²¹ 15 AAC 05.030(k).

²² *In re J.G.*, OAH No. 09-0363-PFD (2009) at 4.

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 April, 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.]

Non-Adoption Options

A. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

- ☐ take additional evidence about _____;
- ☐ make additional findings about _____;
- ☐ conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2023

By: _____
Signature

Name

Title

B. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows, and adopts the proposed decision as revised:

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 _____ day of _____, 2023

By: _____
Signature

Name

Title

C. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

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 _____ day of _____, 2023

By: _____
Signature

Name

Title

D. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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 _____ day of _____, 2023

By: _____
Signature

Name

Title
