

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

IN THE MATTER OF

G.B., Jr.

Case No. OAH 05-0065-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

G.B., Jr. applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division (division) determined that Mr. B. was not eligible. The division then denied the application and affirmed its decision at the informal conference level of appeal. Mr. B. requested a formal hearing. The hearing was held on March 8, 2005. The record closed on March 18, 2005. The administrative law judge affirms the division's decision.

**II. Facts**

The qualifying year for the 2004 dividend that is at issue in this case was 2003. Mr. B. was absent from Alaska for at least 186 days in 2003. On his 2004 application, Mr. B. indicated that he had not been absent from Alaska for more than 90 days in 2003.'

The division became suspicious about whether Mr. B. had fraudulently filled out his 2004 PFD application because he stated on the on-line application that he was present in Alaska when it was completed, but his signature page was mailed from outside Alaska. The division asked Mr. B. to provide a number of documents, including documentation of his physical presence in Alaska during 2003. He initially failed to respond to this request and his application was denied. When he appealed the denial, he provided documentation showing that he was absent for at least 186 days in 2003. He was absent 39 days for training, and 147 days working on a vessel that registered in Majuro, in the Marshall Islands.

Based on the evidence in the record I find that it is more likely than not that:

1. Mr. B. was absent more than 180 days in 2003.
2. Mr. B. was absent more than 120 days in 2003 in order to work on a foreign flagged vessel.

3. Mr. B. provided intentionally deceptive information on his 2004 PFD application.

### III. Discussion

The division and Mr. B. agree that he was absent at least 186 days in 2003. This is much more than the 90 days per year that triggers the reporting requirement of 15 A A C 23.103(e). Mr. B.'s testimony at the hearing regarding his state of mind when he indicated on his application that he was not absent more than 90 days was not credible. He did not adequately explain why he indicated that he had been absent fewer than 90 and fewer than 180 days on his application, when he had been absent at least 186 days. Mr. B. merely asserted that he understood from his union that his absence was allowable.

Mr. B. had apparently thought a lot about his 2004 PFD eligibility. This indicates that he knew that the Division might raise questions about his absence and chose not to disclose it in the hope that his application would be accepted without knowledge of his absence and that he would not have to provide more documentation. At the hearing, Mr. B. seemed to want to gloss over the glaring issue of how he could have unintentionally provided such patently false and self-serving information under oath on his PFD application. He understandably chose to focus on his theory about why he might be eligible despite his extended absence in 2003. Mr. B. argued that his absence working on a foreign flagged vessel should be treated as work on a U. S. flagged vessel for PFD eligibility purposes because the ship was still under contract with a U.S. Merchant Marine union, even though the registry had been changed due to terrorist concerns.

In addition to being disqualified because he provided intentionally deceptive information on his 2004 PFD application,<sup>3</sup> Mr. B. is disqualified because of his absence.<sup>4</sup> The statute that allows an absence for Merchant Marine only protects those who are serving on U.S. flagged vessels.<sup>5</sup>

<sup>2</sup> Alaska Regulation 15 A A C 23.103 provides in pertinent part:

(e) Absences that total 90 days or more during the qualifying year must be disclosed on the application. Any absence since January 1 of the qualifying year must be disclosed upon request of the department.

\*\*\*\*\*

(j) the department will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department.

<sup>3</sup> Alaska Regulation 15 A A C 23.103(j).

<sup>4</sup> Alaska Statute 43.23.008.

<sup>5</sup> Alaska Statute 43.23.008 provides in pertinent part: Allowable absences.

\*\*\*\*\*

(a) Subject to (b) and (c) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent

#### **IV. Conclusion**

At a formal hearing, the applicant has the burden of proving that the division's actions were in error.<sup>6</sup> The division determined that Mr. B. provided intentionally deceptive information on his 2004 PFD application and that he was on a disqualifying absence during the qualifying year. Mr. B. did not provide adequate evidence to prove that the division's findings are in error.

#### **V. Order**

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of G.B., Jr. for a 2004 permanent fund dividend is affirmed.

DATED this 7th day of September, 2005.

By: Mark T. Handley  
Administrative Law Judge

#### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Mark T. Handley, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of G.B., Jr. for a 2004 permanent fund dividend be adopted and entered in his file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 A A C 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to:

(4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine

(14) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (13) of this subsection;

(B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (13) of this subsection but is claiming an absence under (1) or (2) of this subsection; or

(C) 45 days in addition to any absence or cumulative absences claimed under (1) - (13) of this subsection if the individual is claiming an absence under (4) - (13) of this subsection.

Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 7th day of September, 2005

By: Mark T. Handley  
Administrative Law Judge

The undersigned certifies that this date an exact copy of the foregoing was provided to the following Individuals:

PFD Division  
9/7/05