

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

IN THE MATTER OF

R.B.

Case No. OAH 05-0136-PFD

2004 Permanent Fund Dividend

ORDER GRANTING SUMMARY ADJUDICATION

I. Introduction

R.B. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. B. was not eligible, and it denied the application initially and at an informal conference. Mr. B. requested a formal hearing by teleconference. The PFD Division moved for summary adjudication. Administrative Law Judge Dale Whitney grants the motion and finds that Mr. B. does not qualify for a 2004 dividend.

II. Facts

Mr. B. does not dispute that he took two trips out of Alaska for a total absence from the state of 221 days in 2003. Mr. B. agrees that the reason he was absent was for temporary employment. The division does not dispute that Mr. B. has remained an Alaska resident at all relevant times and that he continues to be an Alaska resident.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or absent only for one of the reasons listed in AS 43.23.008.¹ This statute lists a number of reasons a person can be absent from Alaska and still qualify for a dividend; the reasons include such things as continuous medical treatment, education and military service.² Absences are allowed for any reason consistent with Alaska residency so long as the total absences in the qualifying year do not exceed 180 days.³ Employment outside the state is not one of the listed allowable reasons for an absence.

In his formal hearing request, Mr. B. writes,

Fact is that I'm more a resident than any transient military personnel in Alaska that receives a PFD. Fact is I've been a resident since 1954. Fact is when I get layed off of work I go to

¹ AS 43.23.005(a)(6).

² AS 43.23.008(a)(5), (1), (3), respectively.

³ AS 43.23.008(a)(14)(A).

the bottom of the out-of-work list on the A list through Ironworkers' Local 751. I've have two children that I'm trying to get through college. I have to keep working. Sometimes I have to leave the state to work. Fact is I'm a resident of A K.

There is no reason to doubt the truth of any of the facts that Mr. B. has alleged. But even if all of Mr. B.'s facts are true, and the case is viewed in the late most favorable to Mr. B., he still would not qualify for a 2004 dividend; although he is a resident, he was absent from Alaska for more than 180 days in 2003 for employment reasons.

This does not mean that Mr. B.'s continuing residency is not important. If he remains an Alaska resident and meets all of the other eligibility criteria, Mr. B. should be able to qualify for a 2005 dividend. Unlike people who have left Alaska and severed their residency, Mr. B. should not have to forgo a second dividend while waiting a full calendar year to restore his residency.

Mr. B. has requested a hearing by telephone. The Alaska Supreme Court has held that "there is no right to an evidentiary hearing in the absence of a factual dispute." Under the undisputed facts of this case, there is no way that the division could legally grant Mr. B.'s application. Mr. B. has not alleged any facts that, if proven true at a hearing, would result in his eligibility for a 2004 dividend.

IV. Conclusion

The division is correct that there are no disputed factual issues in this case, and that Mr. B. is ineligible for a 2004 dividend as a matter of law. The division's motion for summary adjudication should be granted, and its decision to deny Mr. B.'s application for a 2004 dividend should be affirmed.

V. Order

IT IS HEREBY ORDERED that the Permanent Fund Dividend Division's Motion for Summary Adjudication be GRANTED, and that no further proceedings be scheduled in this matter.

IT IS FURTHER ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of R.B. for a 2004 permanent fund dividend be AFFIRMED.

DATED this 23rd day of September, 2005.

By: DALE WHITNEY
Administrative Law Judge

⁴ *Church v. State of Alaska, Department of Revenue*, 973 P.2d 1125 (Alaska 1999), citing *Human Resources Co. v. Alaska*, 946 P.2d 441, 445 n.7 (Alaska 1997), *Douglas v. State*, 880 P.2d 113, 117 (Alaska 1994) and *Smith v. State*, 790 P.2d 1352, 1353 (Alaska 1990).

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010.1, Dale Whitney, Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of RB. 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:

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 23rd day of September, 2005.

By: DALE WHITNEY
Administrative Law Judge

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

PFD Division
9/23/05