

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

IN THE MATTER OF

OAH 05-0169-PFD

A.H.

2003 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

A.H. timely applied for a 2003 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. H. was not eligible, and it denied the application initially and at the informal appeal level. Ms. H. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on April 7, 2005. Ms. H. appeared in person and was represented by her father, attorney P.M.H. Thomas E. Cote represented the PFD Division by telephone.

This case is Ms. H.'s appeal of the Division's denial of her 2003 PFD application because she registered to vote in Oregon in 2002. Ms. H. asserts that she did not realize that the form she filled out was an Oregon voter registration form. She argues that because she did not understand that the form was a voter registration form she is not disqualified for the 2003 PFD. Having reviewed the record in this case and after due deliberation, I conclude that as a factual matter, Ms. H. did understand that the form she filled out was an Oregon voter registration application. Therefore, Ms. H. is disqualified from receiving a 2003 PFD.

II. Facts

During the qualifying year and the application period for a 2003 dividend, Ms. H. was a new student attending college in Oregon. It is undisputed that on September 25, 2002, during freshman class registration, Ms. H. registered to vote in the State of Oregon.

Ms. H. signed and dated her 2003 PFD application "1/2/2003." Ms. H. filed a 2003 Adult Supplemental Schedule with her application, as the instructions required. In response to question " M " on that form, which asks if the applicant "registered to vote in another state or

country," Ms. H. filled in the circle under the word 'yes,' put "OR" in the space for the state she registered in, and wrote in "9/25/02" for the date she registered.²

The Division denied Ms. H.'s application because she had registered to vote in Oregon. Ms. H. requested an informal appeal of this denial. On February 21, 2004, on the form she filled out to request this appeal, Ms. H. explained that while she was registering as a freshman for the first time at her university she was "talked into registering to vote in Oregon" at what she thought was an official desk in the student registration line.³

The Division later denied Ms. H.'s 2004 PFD application because she was still registered to vote in Oregon in 2003. Ms. H. requested an informal appeal of this denial. On September 30, 2004 in a letter attached to the form she filled out to request this appeal, Ms. H. explained that, while she was moving from table to table in the process of registering for classes and completing other paperwork, she came to the table with representatives for student government. Ms. H. remembered that she was asked if she had registered to vote and said: "no, without really thinking what that was all about." Ms. H. explained that she obliged the person asking her to fill out the voter registration form, feeling under the circumstances that "everyone knew more about what was happening" than she did. Ms. H. explained that she had never planned to vote in Oregon because she had interned that summer with then Senator M. and had intended to vote for him that fall with an absentee Alaska ballot. Ms. H. wrote that she realized she had made a mistake when she got her Oregon voter registration card in the mail.⁴

The Division upheld its denial of Ms. H.'s 2003 PFD in an informal appeal decision. Ms. H. then requested a formal hearing to appeal the Division's denial of her 2003 PFD. On February 19, 2005, on the form she filled out to request the formal hearing, Ms. H. explained that she was "tricked into registering" to vote, "not knowing what it was" and had not intended to register to vote anywhere but Alaska.⁵

At the hearing, Ms. H. explained that she had already registered to vote in Alaska before she went to Oregon for college. She explained that she had discussed her plans to vote in the fall in the Alaska State elections. When she went to class registration at college, she was intimidated and overwhelmed, trying to figure out what she was supposed to sign up for in addition to her

² Ex. 1, page 4.

³ Ex. 3, page 2.

⁴ Ex. 8, page 13.

⁵ Ex.10, page 2.

classes. Ms. H. stated that she was interested in participating in student government, so she went to the student government table, where she was asked if she had registered to vote. Ms. H. explained that she answered that she had not registered to vote because she thought she was being asked if she had registered to vote in student elections. Ms. H. stated that she filled out the voter registration form in the belief that she was registering to vote in student government elections.

Based on the evidence in the record, I find that it is more likely than not that Ms. H. registered to vote in Oregon September 25, 2002, and knew at the time that she was registering to vote in Oregon.

III. Discussion

The law governing this case is 15 A A C 23.143(d), which reads:

An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

(12) registered to vote in another state or country, except if the individual

(A) registered to vote in another state within 30 days of a presidential election solely for the purpose of voting in that election and voted in no other election in another state than that for president of the United States; or

(B) registered to vote in another country for which the individual was not required to claim residency of the country in order to register to vote;

Ms. H. provided examples of her ties to Alaska as evidence of her continued Alaska residency.⁶ The law disqualifying an applicant who has registered to vote in another state, 15 A A C 23.143(d)(12) is an absolute rule. It clearly states that a person is not eligible for a dividend if she registers to vote in another state between the beginning of the qualifying year and the date of application. The law does not permit the division to weigh this fact against other facts to determine whether a person is an Alaska resident and should therefore qualify for a dividend in spite of having registered to vote in another state. This regulation excludes from PFD eligibility applicants who would otherwise qualify under the statutory eligibility criteria. The Alaska Supreme Court has upheld the authority of the Department of Revenue to implement such regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility. The regulation simply requires the division to ask whether the applicant registered to vote in another

⁶ Recording of Hearing.
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state during the specified time period. If the applicant has done so, the division must deny the application without further inquiry into the applicant's status as a resident. The regulation affords the division no choice.

If, however, Ms. H. had shown that she had not known that the form she completed was an Oregon voter registration form, she would not have "registered to vote in another state" within the meaning of that term as it is used in 15 A A C 23.143(d)(12), which implicitly requires that the act of registration be intentional in order to be disqualifying. Alaskans who, for example, have been involuntarily registered to vote in another state because their "motor voter" driver's license applications were incorrectly filled out or processed, when the Alaskans did not intend to register, are not disqualified under 15 A A C 23.143(d)(12).

Ms. H. was a candid witness. She freely admitted to facts that did not cast her in the best light. She impressed me as an honest person who was telling the truth as she remembered it. However, as she admitted, the act of filling out the Oregon voter registration form was not something that she thought was particularly significant at the time it occurred. Filling out the form took place more than two years prior to the hearing. Ms. H.'s earlier recollections of the event, documented in her application and request for an informal appeal, did not contain the explanation that she thought she was registering to vote for student government. I do not believe that Ms. H. consciously made up this explanation. I think it more likely that it contains elements of what happened, which evolved in her memory over time into an unreliable reconstruction of an event she does not remember as it actually occurred. This memory now provides an explanation for an event that must have seemed somewhat inexplicable, that is, how she could have made such a mistake, but it is probably not an accurate memory in regard whether Ms. H. understood that she was registering to vote in Oregon.

It is surprising that Ms. H. made what now seems to be an obvious and serious mistake, especially since she is very intelligent, planned to participate in the Alaska elections and did not want to change her state residency. Ms. H. has, however, provided the basis of a more probable explanation for this mistake herself: She was in a situation that was intimidating. She felt unsure of herself and was inclined to rely on the advice of the officials and upper-class students serving at the sign-up tables. She probably did have some initial confusion about whether she was being asked to register to vote for student elections or register to vote in Oregon. However, once she started to fill out the form, she probably realized it was an Oregon voter registration form, but under the pressure of the moment, she did not reflect on the possible consequences. At that time, with

everything else on her mind, she did not attach particular significance to registering to vote in Oregon. Maybe she thought this a requirement for voting in student elections at a state university. She filled out the form without asking questions she knew might embarrass her in front of the student government representative whom she had been trying to impress with her interest in student government. Only later, when she got the Oregon voter registration card in the mail, did she begin to realize that she might have made a mistake.

The Division did not raise Ms. H.'s Alaska residency as an issue in its position paper, correctly taking the position that Ms. H. is ineligible for a 2003 PFD simply because she registered to vote. Ms. H. did register to vote in Oregon, but the evidence in this record does not clearly show that Ms. H. severed her Alaska residency. Ms. H. apparently did not fully realize that she was claiming residency in Oregon when she registered to vote and she continued to maintain many ties of residency to Alaska. I, therefore, will not make any findings regarding Ms. H.'s Alaska residency in this decision.

IV. Conclusion

Ms. H. registered to vote in another state during the 2003 PFD qualifying year. While she may still be an Alaska resident, she is ineligible for a 2003 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of A.H. for a 2003 permanent fund dividend be AFFIRMED.

DATED this 30th day of August, 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 A.H. for a 2003 permanent fund dividend be adopted and entered in her 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 30th day of August, 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
8/30/05