

**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.

Case No. OAH 05-0249-PFD

2000-2004 Permanent Fund Dividends

DECISION & ORDER

I. Introduction

G.B. applied for a 2000-2004 permanent fund dividends (PFDs). The Permanent Fund Dividend Division (Division) originally paid, but later denied and assessed, Mr. B.'s 2000-2003 PFDs. The Division denied Mr. B.'s 2004 PFD before it was paid. The denials were upheld at the informal appeal level. Mr. B. requested a formal hearing. Administrative Law Judge, Mark T. Handley, heard the appeal on May 3, 2005. Mr. B. appeared by telephone. Susan Lutz represented the Division by telephone. The administrative law judge finds that Mr. B. does not qualify for 2000-2004 dividends.

II. Facts

Mr. B. maintains a home in Anchorage, Alaska. He and his wife also maintain a home in Texas. Mr. B. works on the North Slope on a two-weeks-on, two-weeks-off rotation schedule. At the hearing, Mr. B. explained that he splits the weeks off in his work-rotation-schedule between his home in Texas and his home in Anchorage. His wife lives at their Texas home, but comes up to their Anchorage home for about two months per year.

Mr. B. and his wife claim that they are Alaska residents for Federal and Texas income tax purposes.

Mr. B. admitted that he was in Texas for about 120 days in each of the PFD qualifying years in dispute. Mr. B. admitted that he had claimed that he had not been absent more than 90 days on his PFD applications for each of those years. Mr. B. explained that he made these false claims because he did not think the question was relevant. He asserts that he did not think the question was relevant because he was not gone more than 180 days in those years. Mr. B. admitted that not reporting his absences was a mistake.¹

¹ Recording of Hearing.

Mr. B. also admitted that he claimed a homestead exemption on his Texas home during each of the years in question. Mr. B. asserted that he has now paid back all the tax for those exemptions and has had the taxing authority remove his exemption for each of those tax years.

III. Discussion

The Division is required to disqualify PFD applicants who claim a homestead tax exemption in another state during the PFD qualifying year or provide intentionally deceptive information on their PFD applications.

Alaska Regulation 15 A A C 23.103. Application generally

* * *

(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....

Alaska Regulation 15 A A C 23.143. Establishing and maintaining Alaska residency

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

(6) claimed or maintained a claim of a homestead property tax exemption in another state or country....

At the hearing, Mr. B. admitted that he had claimed a homestead tax exemption in Texas during the 2000-2004 qualifying years and provided intentionally deceptive information on his 2000-2004 PFD applications by claiming not to have been absent more than 90 days during those years.² Based on these admitted facts, the only possible result of this case is to conclude that Mr. B.'s applications should be denied.

Mr. B. received 2000-2004 PFDs because he provided intentionally deceptive information on his applications. If he had disclosed his absences as required, he would have been required to complete his a Supplemental Schedule to all his PFD applications. He would have been asked if he was claiming a homestead exemption on the Supplemental Schedules, and he would have been disqualified if he answered the questions truthfully. Mr. B. did complete a 2000

² Recording of Hearing & Ex. 1.

PFD Supplemental Schedule because he was a first-time filer for that PFD, but he untruthfully claimed that he did not receive a homestead exemption on that form.³ Mr. B.'s assertion that his claim of a Texas homestead exemption was due to an "oversight" is not credible.⁴ Mr. B. claimed this exemption for many years while he was claiming Alaska residency. It appears that Mr. B. provided intentionally deceptive information on his PFD applications both because he knew that his Alaska residency for PFD purposes was questionable and because he wished to receive the benefits of claiming Alaska residency for income tax and PFD purposes, and Texas residency for property tax purposes.

IV. Conclusion

Mr. B. is not eligible for 2000-2004 permanent fund dividend because he claimed a homestead tax exemption in another state during the 2000-2004 PFD qualifying years and provided intentionally deceptive information on his 2000-2004 PFD applications.

V. Order

IT IS HEREBY ORDERED that the Division's decision that the application of G.B. for a 2004 permanent fund dividend be denied and that his 2000-2003 PFD applications be denied and the PFDs be assessed, is AFFIRMED.

DATED this 21st day of October, 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

³ Ex. 1, page 4

⁴ See Ex. 8, page 2, Mr. B. asserts his homestead exemption claim was an "oversight" in his request for a formal hearing. At the hearing, Mr. B. indicated that he felt the deceptions on his PFD applications were justified because the questions were not relevant. Justification of self-interested deception provides a more likely explanation for Mr. B.'s concurrent Texas Homestead and Alaska PFD claims

decision and order relating to the eligibility of G.B. 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 21st day of October, 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:

Case Parties
10/21/05