

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

IN THE MATTER OF

T.C. and her children D. and C. C.

Case No. OAH 05-0296-PFD

2004 Permanent Fund Dividend

**DECISION & ORDER**

**I. Introduction**

T.C. timely applied for 2004 permanent fund dividends for herself and on behalf of her children D. and C. C. Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Ms. C. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on May 26, 2005. Ms. C. appeared by telephone. Thomas Cote represented the PFD Division by telephone. The administrative law judge finds the applicants to be eligible for 2004 dividends.

**II. Facts**

Ms. C. and her husband are both active-duty members of the military. They were transferred to Alaska on permanent change of station (PCS) orders, arriving in Alaska on December 12, 2002. When Ms. C. arrived in December, she went to the Eielson Air Force Base finance office and attempted to change her state of legal residency to Alaska. The finance office informed Ms. C. that she was in a "locked code status," and for this reason it could not change any of her personnel paperwork until she had her in-processing briefing in January. Ms. C. waited until the briefing, and then submitted a form DD 2058 State of Legal Residence Certificate on January 7, 2003, thereby changing her state of legal residence in her personnel records to Alaska. Ms. C. submitted the following letter from SMSgt B.B.:

1. This is to certify that SSgt T.C... and family arrived on station December 12 2002. Due to in-process procedures at that time she was unable to change her state of legal residency to Alaska until on or about 12 Jan 03. Despite her effort our procedures resulted in her State of Legal Residency being updated on 14 Jan 03 instead of her arrival date of 12 Dec 02.
2. This letter only certifies that this member updated her military pay records to reflect Alaska as his/her state of legal residence. It is each member's responsibility to ensure that he/she takes the appropriate actions with the state to claim residency.

### III. Discussion

The following law applies to this case:

15 A A C 23.163(d). 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

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(2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely....

According to its written statement,

It is the Division's position that Ms. C. failed to change her state of legal residence to Alaska before January 1, 2003. She maintained a claim of residency in Georgia in her employment personnel records until at least the date she submitted her DD Form 2058, January 7, 2003. Although she arrived in Alaska in December 2002, there is no evidence indicating that she completed the required paperwork necessary to request that her state of legal residence (the DD Form 2058) prior to January 1, 2003. In addition, the Air Force did not cause a delay in processing Ms. C.'s request to change her SLR to Alaska, because Ms. C.'s request was not signed until January 7, 2003.

Although 15 A A C 23.163(d)(2) appears to have been drafted to address employers such as the military who maintain a specific form for a declaration of legal residency, the regulation does not specifically require filing of a Form DD 2058 before the beginning of the qualifying year. It excludes people who maintained a claim of residency in another state. Ms. C. appeared at the finance office in December 2002 and disclaimed her Georgia residency. From there, she merely followed directions to get the proper paperwork timely filed. I find that Ms. C. did not maintain a claim of residency in another state during the qualifying year.

The division asserts that it does not remember anyone ever having tried to file a Form DD 2058 and having been sent away to file it later, stating that "it is unclear why, throughout the life of the Permanent Fund Dividend Program, this is the first time this scenario has ever arisen." The division contacted the master sergeant in charge of pay at Eielson, who stated that someone in Ms.

C.'s situation could have submitted a DD 2058 in December and it would have been accepted. The division is correct that it is not clear why Ms. C. was sent away until her debriefing, but I don't find her testimony lacking in credibility. There may have been a misunderstanding, a computer problem, an incompetent on duty, short staffing before the holidays, or a busy office that didn't want to deal with Ms. C. if it could avoid doing so for a few weeks. Whatever the reason, when Ms. C. appeared to claim Alaska residency, she was sent away. She has provided adequate written documentation of the fact.

The division's argument that the Air Force could not caused the delay in processing the paperwork because Ms. C. did not submit it on time overlooks the fact that the Air Force caused Ms. C.'s delay in submitting the paperwork by telling her she could not file it until the following January. It is probably true that had she wished to, Ms. C. could have forced the finance office to accept a DD 2058 and hold it until her employment records were "unlocked." Ms. C. chose to follow directions, as members of the military are generally encouraged to do, and she returned when it suited the Air Force finance office to process her paperwork. This is not the equivalent of continuing to maintain a claim of residency in Georgia.

#### **IV. Conclusion**

Ms. C. did not maintain a claim of residency in another state during the qualifying year. She is eligible for a 2004 dividend. Ms. C. is also a suitable sponsor for her children, D. and C. C.

#### **V. Order**

IT IS HEREBY ORDERED that the applications of T.C., D.C., and C.C. for 2004 permanent fund dividends be GRANTED.

DATED this 1st day of December, 2005.

By: DALEWHITNEY  
Administrative Law Judge

### **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 T.C., D.C., and C.C. for a 2004 permanent fund dividend be adopted and entered in their 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 1st day of December, 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:

Case Parties  
12/1/05