

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

IN THE MATTER OF

J.R.

Case No. OAH 05-05-0299-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.R. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. R. was not eligible, and it denied the application initially and at the informal appeal level. Mr. R. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on May 26, 2005. Mr. R. appeared by telephone. Susan Lutz represented the PFD Division by telephone. The administrative law judge finds Mr. R. to be eligible for a 2004 dividend.

II. Facts

Mr. R. lived in Alaska from the time he was three years old. In 1998 he joined the Air Force at the age of 20, and he has been out of Alaska since then. In the five years preceding the time he filed his application in January, 2004, Mr. R. had been back to Alaska twice for a cumulative total of 28 days; in July of 2004 he returned again for approximately three weeks. In 1999, Mr. R. was in the Middle East for four months; within a month of the September 11, 2001, attacks Mr. R. was back in the Middle East for another six months. After coming back to the United States, Mr. R. was trained as a handler for explosive-sniffing dogs. Military dog handlers must maintain steady contact with their animals, and for this reason Mr. R. may not be away from his duty station for more than thirty days.

Mr. R. has kept Elmendorf and Eielson Air Force bases as his first choices for assignment on his military "dream sheet." He has maintained Alaska as his state of legal residence. He is a registered voter in Alaska and maintains an Alaska driver's license. Mr. R. keeps a number of personal belongings at his parents' home in Chugiak, including his Honda fourwheeler, a twelve-foot jon boat, clothing, firearms, hockey gear, and other items. Mr. R. has not established any significant ties to any other state.

III. Discussion

A person who has been allowably absent for more than five years is, by law, presumably not an Alaska resident anymore.¹ If an applicant attempts to overcome this presumption, the division may rely on the following factors when making a decision:²

- (1) the length of the individual's absence compared to the time the individual spent in Alaska before departing on the absence;
- (2) the frequency and duration of return trips to Alaska during the absence; the fact that the individual has returned to Alaska in order to meet the physical presence requirement of AS 43.23.005 (a)(4) is not sufficient in itself to rebut the presumption of ineligibility;
- (3) whether the individual's intent to return or remain is conditioned upon future events beyond the individual's control, such as economics or finding a job in Alaska;
- (4) any ties the individual has established outside Alaska, such as maintenance of homes, payment of resident taxes, vehicle registrations, voter registration, driver's licenses, or receipt of benefits under a claim of residency in another state;
- (5) the priority the individual gave Alaska on an employment assignment preference list, such as those used by military personnel;
- (6) whether the individual made a career choice or chose a career path that does not allow the individual to reside in Alaska or return to Alaska; and
- (7) any ties the individual has maintained in Alaska, such as ownership of real and personal property, voter registration, professional and business licenses, and any other factors demonstrating the individual's intent.

When considering these factors, the division must "give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual's absence than to the claim of an individual who does not."³ In considering what constitutes "frequent" return trips, thirty days in five years serves as a kind of guideline. Unless unavoidable circumstances have prevented return trips, the division must "generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption" that he is no longer an Alaska resident.⁴ The final rule governing this

¹ 15 AAC 23.163(f).

² 15 AAC 23.163(g).

³ 15 AAC 23.163(h)(1).

⁴ 15 AAC 23.163(h)(2).

case is that a person requesting a formal hearing has the burden of proving that the division's decision was in error.⁵

There is sufficient evidence in the record to find that unavoidable circumstances prevented Mr. R. from returning to Alaska more often than the 28 days he did make it back. These include his trips to the Middle East and the requirements of his position as a dog handler. But even if one could not make out an argument that unavoidable circumstances prevented more frequent returns, this case qualifies as a very rare exception to the rule requiring the department to "generally" consider that a person who has not returned to Alaska for more than thirty days in five years has not rebutted the presumption that he is no longer an Alaska resident.

This case stands out for the unusual quality of Mr. R.'s testimony. Mr. R. was a particularly credible witness. He spoke at length of his ties to Alaska, and described the ideas he is considering for a career upon his separation from the military. Mr. R. hopes to one day secure a position as a K-9 officer with the Anchorage Police Department. He has made genuine efforts to be assigned to Elmendorf, because he is aware that Elmendorf's military police and K-9 officers train with the Anchorage Police Department. Mr. R. could not say with certainty what the chances are of actually being assigned to Elmendorf. But unlike many who list Alaska assignments on their dream sheets to create evidence of PFD eligibility, Mr. R. really has been trying to get an Alaska assignment both for career reasons and to be close to his family. Currently, Mr. R. is contemplating volunteering for a year of service in Korea in exchange for a follow-through assignment to Alaska.

Mr. R. missed the 30-day measure by just two days, and he followed the five-year period with a three-week visit to Alaska. Unaware of the 30-day standard, Mr. R. does not appear to have been returning to Alaska merely to preserve his PFD eligibility, but rather because he sincerely wanted to spend his free time in Alaska. Mr. R. testified that if he is not able to secure an assignment to Elmendorf or Eielson, he will return to Alaska after the end of his second enlistment in 2008. While still a few years off, 2008 is within the range of time for which people can reasonably predict their plans; in this way, Mr. R.'s case differs from an applicant who intends to return to Alaska after retiring from a twenty-year or longer career in the military.

IV. Conclusion

After considering all of the evidence in this case, I find that Mr. R. has rebutted the presumption that he no longer has the intent to return to Alaska to remain indefinitely. Despite a lengthy absence, Mr. R. remains an Alaska resident and his absence was allowable for active duty in the armed forces. Mr. R. is eligible for a 2004 permanent fund dividend.

V. Order

IT IS HEREBY ORDERED that the application of J.R. for a 2004 permanent fund dividend be GRANTED.

DATED this 17th day of November, 2005.

By: DALE WHITNEY
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 J.R. 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 17th day of November, 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
11/17/05