

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

IN THE MATTER OF:

J.B.

Case No. OAH 05-0318-PFD

2004 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

J.B. timely applied for a 2004 permanent fund dividend. The Permanent Fund Dividend Division determined that Ms. B. was not eligible, and it denied the application initially and at the informal appeal level. Ms. B. requested a formal hearing by written correspondence. The administrative law judge finds Ms. B. to be eligible for a 2004 dividend.

II. Facts

Ms. B. and her husband, R.B., moved to Alaska in June, 2001. Mr. B. works for the Department of Defense, apparently as a civilian employee. In 2002, Ms. B. went to work for Wells Fargo in Fairbanks.

In July, 2003, Mr. B. was promoted and assigned to a duty station in Yokota, Japan. Ms. B. remained behind in Fairbanks, and continued to work at Wells Fargo. In their 2003 joint federal income tax return, the B.'s claimed a deduction for Mr. B.'s moving expenses. In May of 2004, Ms. B. shipped her belongings to Japan and left Alaska to join Mr. B. They now both live in Nevada.

In its evaluation of Ms. B.'s application, the division relied on information it had gathered while investigating Ms. B.'s application, some of which was obtained after Ms. B. left Alaska. It appears that Ms. B. provided all the information that was required of her when she applied, and her "date of application" for purposes of 15 A A C 23.993(b) was February 9, 2004.

III. Discussion

The division raises two issues. First, the division asserts that Ms. B. is not eligible for a dividend because Mr. B. claimed his moving expenses in their joint tax return. Second, the division asserts that Ms. B. was not an Alaska resident at the time she filed her 2004 PFD applications, because she knew at the time she would be leaving Alaska to move to Japan.

The following laws apply to this case:

* * * * *

(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

* * * * *

(10) moved from Alaska,

(A) for a reason other than one listed

(i) in AS 43.23.008 (a)(1) - (3) or (9) - (11); or

(ii) in AS 43.23.008 (a)(13), if the eligible resident whom the individual accompanies is absent for a reason listed in (i) of this subparagraph; and

(B) claiming moving expenses as a deduction on the individual's federal income tax return, unless the individual

(i) files an amended federal income tax return deleting the claimed moving expenses as a deduction; and

(ii) provides proof from the Internal Revenue Service that the individual filed an amended return;

* * * * *

(h) An individual who on the date of application knows the individual will be moving from Alaska at a specific time to a specific destination for a reason other than one allowed by AS 43.23.008 (a) does not have the intent to remain indefinitely in Alaska and is not eligible for a dividend.

The division's first argument is incorrect for two reasons. The division does not read 15 A A C 23.143(d)(10) in its entirety. The regulation disqualifies an applicant who has "moved from Alaska" for reasons that are not allowable *and* claimed moving expenses. Even if Ms. B. had claimed moving expenses on her tax return, at the time she applied for a 2004 dividend she had not moved from Alaska. The regulation, on its face, does not apply to her.

Secondly, Ms. B. did not claim moving expenses, Mr. B. did. The fact that Mr. and Ms. B. reported their income and expenses in a jointly filed return does not automatically make Mr. B.'s claims attributable to Ms. B. Mr. B. also reported income from his job on the joint return. This does not mean that Ms. B. claimed to be working for the Department of Defense in Yakota. She claimed to be working for Wells Fargo in Fairbanks, notwithstanding what her husband did, and she reported her income and expenses accordingly.

The division's second argument is not so easily dismissed. A person who, at the time of filing a dividend application, knows she will be moving from Alaska at a specific time to a specific place is not a state resident. Ms. B. left Alaska just a little over three months after applying for her 2004 dividend. The division asserts a probability that Ms. B. knew he would be leaving

Alaska at the time she applied for her 2004 dividend. The fact that Ms. B.'s husband had already moved and presumably found a place to live, and that Ms. B. joined him fairly soon after applying, is a suspicious set of circumstances. Spouses customarily live together, and when one spouse moves and the marriage is not breaking up, it is common for the other spouse to follow shortly afterwards. Of course, nobody is required to do what is typical and customary, but when a person actually does follow the usual pattern just a few months after stating intent not to in order to qualify for a dividend, some explanation is called for.

J.L. is the Wells Fargo District President for Northern Alaska. In a letter of July 25, 2005, written on his official letterhead, Mr. P. the following statement:

I received a telephone call from J.B. telling me her permanent fund dividend application for 2003 was declined because she did not intend to remain in Alaska when she filed her Application. I do not believe this is true.

J.B. was my Administrative Assistant from November 2002 through June 2004. When her husband, R., accepted a position in Yakota, Japan in July 2003 I assumed that she would go with him and discussed it with her. J. said that she had no intention of leaving as she enjoyed Fairbanks and her job too much to leave. She further said that during her husband's military career they had no choice but to be separated for long periods of times. She also felt he was unlikely to be in Yakota for more than a year or two.

In the spring of 2004 I encouraged J. to join R. in Yakota as I knew she missed him very much. She finally decided to join him in Yakota in May of 2004.

If Mr. L.'s statement is true, Ms. B. did not decide to leave Alaska until after she filed her 2004 application, and she was therefore an eligible resident at the time.

Upon reviewing the document, I can find no reason to question Mr. L.'s statement. Mr. L. is in a unique position to know Ms. B.'s actual intent at the time she applied for a 2004 dividend. He has submitted his statement in his official capacity as a bank president. I find that at the time she applied for a 2004 dividend, Ms. B. intended to remain in Alaska indefinitely.

IV. Conclusion

Ms. B. did not claim moving expenses from Alaska on her federal income tax return. At the time she applied for a 2004 dividend, Ms. B. intended to remain in Alaska indefinitely and to make her home in Alaska. Because she was an Alaska resident at the time she applied, Ms. B. is eligible for a 2004 permanent fund dividend.

V. Order

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

DATED this 28th 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.B. for a 2004 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 28th day of November, 2005.

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

Case Parties
11/28/05

By: DALE WHITNEY
Administrative Law Judge