

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

IN THE MATTER OF

N.J.

Case No. OAH 05-0330-PFD

2003 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

N.J. timely applied for a 2003 permanent fund dividend. The Permanent Fund Dividend Division initially granted the application, but later determined that Ms. J. was not eligible. The division then denied the application and assessed the dividend. Ms. J. requested a formal hearing by teleconference. The division moved for summary adjudication. The administrative law judge grants the motion for summary adjudication and affirms the division's decision.

II. Facts

Ms. J. was in Arizona as a full-time student in 2002. She was eighteen years old at the time, in her first year of college. When she applied for a 2003 dividend, Ms. J. checked a box on her supplemental schedule indicating that she had not registered to vote in another state at any time since December 31, 2001.¹ After verifying her educational status, the division granted the application. When she applied for a 2004 dividend, Ms. J. checked a box indicating that she had registered to vote in another in state at some time after December 31, 2002. In the space provided, she listed the state as Arizona, and for the date she registered she wrote, "2002." In a letter answering an inquiry from the division, Ms. J. wrote,

I really don't have a legitimate reason for registering to vote in Arizona. It was my first year at College and people were asking me if I registered to vote in Arizona and I said no and then filled out a registration form. I have not voted in Arizona and I do not plan on voting this coming election in Arizona.

III. Discussion

Ms. J. requested a hearing by telephone. The division moved for summary adjudication, which is a decision made without the benefit of an evidentiary hearing in person or by teleconference. The purpose of an evidentiary hearing is to resolve disputed facts. When facts are

¹ Exhibit 1, p. 4.

in dispute, a hearing is necessary in order to question the witnesses and evaluate their credibility. When facts are not in dispute, but legal issues are, an evidentiary hearing is generally not necessary. Legal issues can be adequately argued in writing, and they are resolved by reference to the law and application of the law to the known facts. The Alaska Supreme Court has held that "there is no right to an evidentiary hearing in the absence of a factual dispute."² If Ms. J. could not qualify for a dividend even if all the undisputed facts were viewed in the light most favorable to her, she would not be entitled to a hearing.

The law governing this case is 15 A A C 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....

For purposes of the division's summary adjudication motion, I accept as true the following:

1. Ms. J. registered to vote, but did not actually vote in Arizona;
2. Ms. J. did not know registering to vote would disqualify her for a dividend;
3. Ms. J. is a lifelong Alaska resident, she was allowably absent to attend school, she intends to return to Alaska and she is still an Alaska resident.

Even if all the above is true, Ms. J. would not be eligible for a 2003 dividend. Ms. J. argues that she is eligible because she did not actually vote in Arizona, but the law quoted above clearly states that registering in another state will disqualify an applicant. A different rule excludes applicants who have actually voted in another state.³ If the facts as Ms. J. has presented them are true, there is no evidence that could make Ms. J. eligible or a dividend. The division's motion for summary adjudication should be granted, and the decision to deny Ms. J.'s 2003 applications should be affirmed.

² *Church v. State of Alaska, Department of Revenue*, 973 P.2d 1125 (Alaska 1999), citing *Human Resources Co. v. Alaska*, 946 P.2d 441, 445 n.7 (Alaska 1997), *Douglas v. State*, 880 P.2d 113,117 (Alaska 1994) and *Smith v. State*, 790 P.2d 1352, 1353 (Alaska 1990).

³ 15 AAC23.143(d)(13).

In its motion, the division asserts that "it is clear that Ms. J. was deceptive when completing her 2003 supplemental schedule as she did not disclose the fact that she registered to vote in Arizona during calendar year 2002...." On this point I disagree with the division. It appears far more likely that Ms. J. either didn't understand the question on the form or that she merely forgot she had registered when she completed the 2003 application. Had she intended to deceive the division, it is unlikely Ms. J. would have disclosed the information on the following year's supplemental schedule. The fact that Ms. J. mentioned the registration in 2002 when the 2004 form asked for actions she had taken after December 31, 2002, shows that Ms. J. misunderstood the time frames the forms were inquiring about. Ms. J.'s apparently sincere argument on appeal shows that she may not have realized the significance of registering to vote in another state when she never actually cast a vote, and she may have forgotten about the registration for that reason. Because Ms. J. did not intend to deceive the Department of Revenue, nothing in this decision is intended to affect her eligibility for subsequent dividends.⁴

IV. Conclusion

The material facts are not in dispute. Ms. J. would not qualify for a 2003 dividend even if all the facts were viewed in the light most favorable to her. The division's motion for summary adjudication should be granted, and its decision to deny Ms. J.'s 2003 application should be affirmed.

V. Order

IT IS HEREBY ORDERED the PFD Division's Motion for Summary Adjudication be GRANTED, and that no further proceedings be scheduled in this matter.

IT IS FURTHER ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of N.J. for a 2003 permanent fund dividend be AFFIRMED.

DATED this 28th day of November, 2005.

By: DALE WHITNEY
Administrative Law Judge

⁴ See AS 43.23.035(c) (a person who willfully misrepresents a material fact regarding eligibility forfeits the dividend, is subject to a civil penalty of up to \$5000, loses eligibility for the next five dividends, and may also be subject to criminal prosecution).

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 N.J. 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 28th 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
11/28/05