

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

IN THE MATTER OF

R.T. and his child C.T.

Case No. OAH 05-409-PFD

2004 Permanent Fund Dividends

DECISION & ORDER

I. Introduction

R.T. timely applied for 2004 permanent fund dividends for himself and his child, C.T. The Permanent Fund Dividend Division determined that Mr. T. and his child were not eligible, and it denied the applications initially and at the informal appeal level. Mr. T. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on July 5, 2005. Mr. T. appeared by telephone. Tom Cote' represented the PFD Division by telephone. The administrative law judge finds Mr. T. and his child to be eligible for 2004 dividends.

II. Facts

Mr. T. first lived in Alaska 1989. As a child, Mr. T. moved up to Alaska with his father, but moved back and forth between his mother and his father. Mr. T.'s mother lived outside Alaska. Mr. T. and his father built a home in Fairbanks, which his father still owns. Mr. T. became an adult Alaska resident 1995. Mr. T. joined the military one year and five months later. He was stationed outside Alaska for eight years, before he moved back to Alaska. In 2004, the year he moved back to Alaska, Mr. T. was in the state for 28 days.

In the five years preceding the time he filed his application for a 2004 PFD, Mr. T. was in the state only a cumulative total of 17 days. In 1999, Mr. T. began a two-year tour in Guam. In 2001, Mr. T. began a three-year tour in Italy. He had a new child during these five years.

The September 11, 2001 attacks made it more difficult for Mr. T. to return to Alaska. Mr. T. had planned a return to Alaska, between his Guam and Italy tours, but that plan was canceled due to the September 11, 2001 attacks.

In 2004, Mr. T. was suppose to be assigned to Turkey, but this assignment was cancelled on short notice. Because this sudden cancellation was viewed as a hardship, the military let Mr. T. chosose his next assignment. Mr. T. chose Alaska.

Mr. T. has maintained Alaska as his state of legal residence during his absence. He remained a registered voter in Alaska and maintained an Alaska driver's license. Mr. T. owns a house in Alaska as well as a separate parcel of land. He will inherit the house that he and his father built.

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 decision²:

- (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

¹ 15 A A C 23.163(f).

² 15 A A C 23.163(g).

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

In weighing evidence of residency, the law directs that more weight be given to applicants who have made frequent voluntary return trips to Alaska. The law offers thirty days in five years as a yardstick of what constitutes frequent returns. Mr. T. misses this measure by 13 days in the five years before he applied, but he then returned for a two-year tour a few months after filing his application.

Mr. T. was a credible witness. Mr. T. missed the 30-day measure due to the national emergency. The policy signed by the Commissioner of Revenue on February 2, 2005 requires that this circumstance be considered in the application of the 30-day return rule.

There is sufficient evidence in the record to find that unavoidable circumstances prevented Mr. T. from returning to Alaska more often than the 17 days he was in Alaska. His planned return to Alaska between tours was cancelled.

Mr. T. has not established any significant ties to any other state. During the five years in question, he was stationed overseas. It is rare that a PFD applicant who is absent from Alaska for more than five years would have had so little opportunity to establish residency ties outside Alaska. Unlike an applicant who has been living in another state during an extended absence, Mr. T.'s absence overseas is unlikely to weaken his intent to return to Alaska. Mr. T. was unlikely to think of either Italy or Guam as his new home while he lived there.

Furthermore Mr. T. did move back to Alaska in 2004. This is strong evidence, of his intent to return during his absence, which falls within the category of "other factors demonstrating the individual's intent."⁶

³ 15 A A C 23.163(h)(1).

⁴ 15 A A C 23.163(h)(2).

⁵ 15 A A C 05.030(h).

⁶ 15 A A C 05.030(h)(7).

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.

Mr. T.'s child's eligibility was dependent on Mr. T.'s

IV. Conclusion

Considering all of the evidence in this case, I find that Mr. T. has rebutted the presumption that he no longer has the intent to return to Alaska to remain indefinitely. Despite a lengthy absence, Mr. T. remained an Alaska resident and his absence was allowable for active duty in the armed forces. Mr. T. and his child are eligible for 2004 permanent fund dividends.

V. Order

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

DATED this 18th day of November, 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 decision and order relating to the eligibility of R.T. and C.T. for 2004 permanent fund dividends be adopted and entered in their files 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 18th day of November, 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:

PFD Division
11/18/05