

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

IN THE MATTER OF)
)
 T. W.)
) Case No. OAH 06-0094-PFD
 2005 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

T. W. timely applied for a 2005 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. W. was not eligible, and it denied the application initially and at the informal appeal level. Mr. W. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on March 3, 2006. Mr. W. appeared in person in Juneau. Susan Lutz represented the PFD Division. The administrative law judge affirms the division's decision.

II. Facts

The facts in this case are not in dispute. Mr. W. is an Alaska resident who makes his living as a merchant mariner, an occupation that takes him all over the world. When Mr. W. is not sailing, he shows up daily at the union hall of whatever port he happens to be in until he is able to secure articles of employment for another ship. Beyond each individual voyage, Mr. W. is not guaranteed work, and when a voyage ends he is sometimes required to wait for months at a time in distant ports to gain a position with the crew of another ship. As a union member, Mr. W. holds a relatively junior position; for this reason he must often wait longer for a ship than more senior sailors do.

In 2004, Mr. W. was absent from Alaska for the entire year. For 171 days during that year he was employed aboard ships. For most of the remaining 195 days, Mr. W. was in a union hall on land waiting for a ship, except for about 28 days when he went to visit his brother upon the death of his brother's son. The four periods of unemployment on land varied in length from sixteen to ninety-three days.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the allowable reasons listed in AS 43.23.008.¹ One of the specifically allowable absences is listed in AS

¹ AS 43.23.005(a)(6).

43.23.008(a)(4): “serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine.”

Mr. W. argues that time spent outside of Alaska between voyages should be counted as allowable time. In his informal appeal request, Mr. W. wrote,

In 1999 when the legislature passed HB 157 exempting stints Merchant Mariners did at sea, it considered the very question of whether non-sailing days had to be in state. An amendment to the bill was proposed and withdrawn in the House Finance Committee in April of 1999. The amendment would have required that mariners be dispatched from within Alaska to qualify for the exemption. The fact that the Legislature specifically considered the question, but decided not to put it in the law, shows legislative intent that a merchant mariner need not return to Alaska when he is off the ship. The PFD division misread the law in denying my PFD.²

The Alaska Supreme Court has explained how to interpret statutes and when reference to legislative history is appropriate:

in interpreting a statute, we consider its language, its purpose, and its legislative history, in an attempt to give effect to the legislature’s intent, with due regard for the meaning the statutory language conveys to others. The plainer the language of the statute, the more convincing the evidence of contrary legislative intent must be. We will ignore the plain meaning of an enactment...where that meaning leads to absurd results or defeats the usefulness of the enactment.³

The language of the statute is quite plain in this case. It says,

an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent...(4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine.

The language of the law specifically says the individual must be serving under articles of employment and that the person must be *aboard* a vessel for the time to be allowable. The legislature could have crafted the law more broadly to allow all time that a person was absent in ports outside Alaska between voyages. It did not do so.

Mr. W. incorrectly argues that the legislature’s rejection of an amendment requiring dispatch from within Alaska implies that time in ports outside of Alaska is allowable. The logical implication is that the legislature decided that all time spent aboard ship would be allowable, regardless of whether the ship departed from an Alaska port or a port outside of Alaska. Thus, under the legislature’s decision, Mr. W.’ time that he spent aboard a ship departing from

² Exhibit 5, p. 3.

³ *Martinez v. Cape Fox Corporation*, 113 P.3d 1226 (Alaska 2005)(cites omitted).

Jacksonville was allowable, even though Jacksonville is in Florida not Alaska. But this does not mean that the legislature intended the time Mr. W. spent on land in Jacksonville to be allowable. Mr. W. is correct that a merchant mariner need not return to Alaska between voyages to qualify for a dividend the next year. But if the time spent on land in another state exceeds the 45 days allowed for general reasons in AS 43.23.008(a)(14)(C), the person will not qualify for a dividend unless that time is for the purpose of some other allowable absence reason.

This result is not absurd, and does not defeat the usefulness of the enactment. An absence for service in the merchant marine is one of the rare instances in which a person may be absent from Alaska for reasons of employment and still qualify for a dividend. Most Alaskans leaving the state for employment reasons, including many pilots and flight attendants, do not receive the same special treatment as merchant mariners, and they lose their dividends if their absence times exceed 180 days, even if they are working the entire time. In some cases merchant mariners support national efforts, as Mr. W. has done in making a voyage into the Persian Gulf to deliver supplies needed for the war in Iraq. But this is also true of many civilian employees, including civilians working directly for the Department of Defense in war zones, employees of firms contracting to the military, and members of commercial flight crews airlifting supplies and personnel for war efforts. In times of national emergency, merchant mariners and their ships are subject to be pressed into the service of the nation. But again, this is also true for aircraft, pilots, and members of flight crews, whose absences are not allowable. The provision allowing absences for time spent aboard ship as a merchant mariner is generous, and it is not absurd to think that the legislature intended to exclude time spent on land in ports outside of Alaska when a person was not under articles of employment.

IV. Conclusion

Mr. W. was absent from Alaska for more than 180 days in 2004. The number of days that he was absent and not employed under articles of employment aboard an oceangoing vessel of the United States merchant marine exceeds 45. Although Mr. W. remains an Alaska resident, the division was correctly applying the law when it determined that Mr. W. is not eligible for a 2005 dividend.

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V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of T. W. for a 2005 permanent fund dividend be AFFIRMED.

DATED this 23rd day of May, 2006.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 44.33.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 21st day of June, 2006.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

[This document has been modified to conform to technical standards for publication.]