

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

IN THE MATTER OF
G.C.

Case No. OAH 06-0747-PFD

2006 Permanent Fund Dividend

DECISION & ORDER

I. Introduction

G.C. timely applied for a 2006 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. C. was not eligible, and it denied the application initially and at the informal appeal level. Mr. C. requested a formal hearing by written correspondence only. Upon review of the written record, the administrative law judge finds the applicant to be eligible for a 2006 dividend.

II. Facts

Mr. C. moved from California to Alaska in December of 2002. Upon arriving in Alaska and taking a job as a police officer for the City of Klawock, Mr. C. remained an inactive member of the California Army National Guard. In October of 2004 Mr. C. was called to active duty by the Guard, and he served in Kosovo with the United Nations and NATO. In January, 2006, Mr. C. returned to Alaska and went back to work in Klawock. There is no dispute that Mr. C. has remained an Alaska resident since his arrival in 2002.

When he left California, Mr. C. apparently made no effort to try to change the state of legal residence listed in his military records. The record does not indicate whether Mr. C. received any leave and earning statements (LES) while he was inactive. After he was called to active duty in October of 2004, Mr. C.'s statements have shown California as his state of legal residency from the end of 2004 at least through November 2005. There is no dispute that the state of legal residence shown on Mr. C.'s leave and earnings statements does not reflect his true intent or residency. It is unclear whether Mr. C. is aware that the State of California has apparently been withholding money from his military pay, over \$200 in 2003, or whether Mr. C. has filed a California nonresident tax return to recover this money.¹

III. Discussion

The division has denied Mr. C.'s application based on the following regulation:

¹ Exhibit 3, page 4 appears to indicate that as of December 30, 2004 California had withheld \$202.23 from Mr. C.'s military pay for that year.

An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has...⁽²⁾ claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely....²

While obviously related to the goal of limiting dividends to Alaska residents, this rule also serves the interests of administrative efficiency by allowing the division to limit its inquiry into an applicant's residency when it is clear the applicant is actively maintaining a clear residency claim in the person's employment records. Thus, even a person who can prove beyond any doubt that he is an Alaska resident may be made ineligible by this rule.

Regulatory limits on eligibility may be permissible even if in some cases they exclude an applicant who would otherwise qualify under the statutory eligibility requirements.³ Nevertheless, the exclusion must still be consistent with the statutory purpose, and may not be arbitrary or unreasonable.⁴

There is no suggestion that Mr. C. claimed to be a California resident after leaving that state. The issue in this case is whether, in his "employment personnel records," he maintained a previously stated claim during the qualifying year.

During the time that Mr. C. was an inactive member of the Guard, his employment personnel records were maintained by his employer, the City of Klawock. His earlier claim to California residency can be fairly considered to have been abandoned while Mr. C. was inactive. While the military may have assigned Mr. C. a state of legal residence based on old records, it would be unfair in this case to consider Mr. C. to have affirmatively resurrected a previous claim of California residency that he had abandoned years ago.

It could be argued that any applicant with a state of legal residence other than Alaska listed on a military LES is ineligible under the regulation if the person cannot show that somebody else

² 15 Alaska Administrative Code 23.143(d).

³ *Cosio v. State*, 858 P.2d at 621, 624-25 (Alaska 1993); *Church v. State*, 973 P.2d 1125 (Alaska 1999).

⁴ *Id.*

erred in recordkeeping. This approach would serve the legitimate state interests of efficiency and limiting eligibility to state residents, but only to a point. Regulations must be applied uniformly and fairly, but if they are adhered to with absolute inflexibility in all cases there is likely to be a point reached at which the regulation would be considered arbitrary or unreasonable in its application.

In order to become ineligible under this regulation, the applicant must affirmatively do something to make himself ineligible. Affirmatively claiming to be a resident of another state is such an action. Actively maintaining an earlier claim to residency in another state, while somewhat more passive, still constitutes a positive action. Failing to notice that a new employer has erroneously assigned an employee an incorrect state of legal residency is not an affirmative act, and cannot make a person ineligible.

In this case, when Mr. C. was unexpectedly called to service overseas, the Guard is fairly regarded as a new employer. When Mr. C. started up active duty, he made no claim to residency in any state. The leave and earning statements that Mr. C. received each pay period while he was on active duty contained eighty-eight separate boxes containing various bits of information.⁵ Mr. C.'s failure to observe and recognize the import of the fact that one of these eighty-eight boxes contained the letters "St C A" is not enough to constitute active maintenance of a claim to residency in another state during the qualifying year. This case is distinguishable from a case in which this box on an LES reflects the fact that a service member, upon arriving from another state while on active duty, has failed to take any action to change a continuous claim of residency made in the previous state.

IV. Conclusion

Mr. C. did not maintain a claim of residency in another state during the qualifying year, and there is no dispute that he is an otherwise eligible Alaska resident. His application for a 2006 dividend should be granted.

V. Order

IT IS HEREBY ORDERED that the application of G.C. for a 2006 permanent fund dividend be GRANTED.

DATED this 23rd day of April, 2007.

By: DALE WHITNEY
Administrative Law Judge

⁵ Exhibit 3, page 4.

Adoption

This Order is issued under the authority of AS 43.05.010 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 23rd day of May, 2007.

By: Dale Whitney
Administrative Law Judge

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

PFD Division
5/23/07