

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

In the Matter of:)
)
 H L. X) OAH No. 07-0667-PFD
)
2006 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

When H L. X, a merchant seaman, applied for a 2006 permanent fund dividend (PFD), the PFD division denied his application initially and at the informal appeal level on the basis that he spent more than 180 days outside the state during the qualifying year while not on an allowable absence. At Mr. X’s request, this office held a formal hearing on December 17, 2007, which he attended by telephone. The denial is reversed because Mr. X has shown that when outside the state he was serving under coastal articles of employment on an oceangoing vessel of the United States merchant marine, an allowable absence for purposes of PFD eligibility.

II. Facts

The facts of this case are essentially undisputed, with only their legal consequences at issue.

H X is a longtime Alaskan whom maintains his principal home in No Name.¹ Apart from his extended absence from the state during 2005, the division concedes that he meets all of the factual requirements to be eligible for a 2006 PFD.

In 2005 Mr. X was absent from Alaska for a total of 251 days.² For the full 251 days, he was working on an oceangoing merchant vessel owned by No Name, Inc. in coastwise trade between the Hawaiian Islands.³ His work for No Name requires, and is performed under, a merchant mariner’s “document” or license.⁴ No Name is a privately-held U.S. corporation operating American-flagged vessels.⁵

¹ Exhibit 1, pp. 1, 3 (2006 Adult Web Application).

² Exhibit 1, p. 2.

³ Testimony of Mr. X.

⁴ Exhibit 2, p. 2 (Mr. X’s U.S. Merchant Mariner’s Document); Exhibit 13, p. 20 (letter from No Name); testimony of Mr. X. A merchant mariner’s document generally is required for work on oceangoing cargo vessels over 100 gross tons. *See* 46 U.S.C. § 8701.

III. Discussion

The qualifying year for the 2006 dividend was 2005.⁶ To be eligible for a 2006 dividend, Mr. X could not be absent from Alaska for more than 180 days unless he fitted one of certain allowable absence categories listed in the PFD statutes.⁷ The single allowable absence provision at issue in this case, found in AS 43.23.008, is the following:

Subject to [certain conditions not at issue here], 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

In denying Mr. X's PFD, the division was under the impression that U.S. merchant marine vessels are government vessels and that No Name vessels are not part of the U.S. merchant marine. This is mistaken. While there are a few government-owned merchant marine vessels, the merchant marine of this country is made up primarily of private vessels, their distinguishing characteristics being that they are under U.S. registry and therefore fly the American flag.⁸ Section 902 of the Merchant Marine Act of 1936 made these vessels subject to requisition during national emergencies. The No Name vessels are "oceangoing vessels of the United States merchant marine."

The only remaining question, albeit one not directly contested at the hearing, is whether Mr. X serves on them "under foreign or coastal articles of employment." The phrase "coastal articles of employment" is not a term of art in the maritime industry; it is essentially to be found only in Alaska statutes. "Articles" is a maritime term meaning "employment contract."⁹ "Coastal articles" therefore presumably covers merchant mariners working under an employment contract for coastal (as opposed to international) voyages. Mr. X was so employed in 2005.

⁵ Maritime Catalogue, Entry for No Name. Inc. ID 28051; U.S. General Accounting Office, *Maritime Industry: Cargo Preference Laws—Estimated Costs and Effects* (1994) at 26-27 (showing that No Name receives subsidies that are available only to U.S.-flagged carriers).

⁶ AS 43.23.095(6).

⁷ See AS 43.23.008.

⁸ See, e.g., 27 U.S.C. § 1101; *In re P.O.*, PFD Caseload No. 020787 (Dep't of Revenue 2003); *In re D. & M. W.*, PFD Caseload No. 020073 (Dep't of Revenue 2002). For a general discussion of the U.S. merchant marine, see http://en.wikipedia.org/wiki/United_States_Merchant_Marine. However, that site's suggestion that there are only 465 vessels in the merchant marine is somewhat misleading; the statistic counts only vessels over 1000 gross register tons, whereas smaller vessels can also be part of the merchant marine. See also Webster's New Riverside University Dictionary (1988) at 742 (definition of "merchant marine" is "a nation's commercial ships").

⁹ *Black's Law Dictionary* (5th ed.) at 102.

IV. Conclusion

H X was absent from Alaska in 2005 solely to serve under coastal articles of employment aboard an oceangoing vessel of the United States merchant marine. This absence did not disqualify him from eligibility for a PFD. Because there are no other issues regarding his eligibility, he is entitled to receive the 2006 PFD.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of H L. X for a 2006 permanent fund dividend is REVERSED. IT IS FURTHER ORDERED that the application of H L. X for a 2006 permanent fund dividend be GRANTED.

DATED this 18th day of December, 2007.

By: Signed
Christopher Kennedy
Administrative Law Judge

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 after the date of this decision.

DATED this 14th day of January, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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