

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

In the Matter of:)	
)	
R. C. H.)	
)	OAH No. 07-0677-PFD
<u>2007 Permanent Fund Dividend</u>)	Agency No. 07578879-8

DECISION AND ORDER

I. Introduction

R. C. H. was deployed to Alaska with the Stryker Brigade in June of 2005. Two months later he was redeployed to Iraq, where he remained until late 2006. In March of 2007 he timely applied for a 2006 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied his application initially and at the informal appeal level on the basis of that he had not been an Alaska resident for 180 days before leaving on his military-related absence. At Mr. H.'s request, a formal hearing was held on December 27, 2007. The division's denial is affirmed because the law as presently framed does not permit the payment of a 2007 dividend to him.

II. Facts

The facts of this case are not in dispute. The facts set out below are based on Mr. H.'s testimony at the hearing and a small number of exhibits submitted by the division.

R. H. was assigned to the Headquarters Company of the 172d Stryker Brigade. He arrived in Alaska under military orders on June 17, 2005, where he promptly registered to vote and obtained an Alaska driver's license.¹ He changed his "State of Legal Residence" in military records to Alaska.² On August 14, 2005 he was deployed to Iraq, remaining there sixteen months and returning to Alaska on December 11 of the following year. In December of 2007 he left the military. He now lives in Fairbanks and intends to remain in Alaska. He plans to enroll in the University of Alaska-Fairbanks in late January of 2008.

III. Discussion

The requirements for PFD eligibility are, in some situations, quite exacting. When they exclude an individual from eligibility, the Department of Revenue has no discretion to pay the

¹ Exhibit 8, p. 2 (Request for Formal Hearing); Exhibit 1, p. 3 (2007 Adult Supplemental Schedule).
² Exhibit 1, p. 6 (2005 Leave and Earnings Statement).

dividend, regardless of the worthiness of the individual, the seeming technicality of the exclusion, or the individual's Alaska connections outside the context of the exclusion. The department is bound not only by the PFD statutes but also by its own regulations.³

In August of 2005, Mr. H. left Alaska for Iraq and remained there for nearly all of 2006, the qualifying year for the 2007 dividend. It is possible to retain PFD eligibility while living in another state or country during the qualifying year, but eligibility is only retained if one is absent for certain reasons listed in Alaska Statute 43.23.008. One of the permissible reasons is AS 43.23.008(a)(3): while serving in, or accompanying as spouse or dependent someone serving in, the armed forces of the United States. This is the allowable absence on which Mr. H. would have to rely to maintain eligibility through 2006. However, in order to take advantage of an allowable absence such as this one for a period exceeding 180 days, the applicant must have been "a state resident for at least 180 days immediately before departure from Alaska."⁴ The rule applies to all absences of 180 days or greater beginning fewer than 180 days after residency commenced. There is no exception for involuntary absences. Mr. H. was a state resident for at most 59 days before beginning the absence.

Although Mr. H. left Alaska too soon to be eligible for a 2007 dividend, nothing in the record established in this appeal suggests that he severed his underlying Alaska residency when he went to Iraq; only his PFD eligibility appears to have been affected. The record does not presently reveal any impediments to eligibility for 2008 and later dividends.

IV. Conclusion

R. C. H. was not an Alaska resident sufficiently in advance of their departure to Iraq to be eligible to claim an allowable absence of more than 180 days while serving in that country. Because his absence exceeded 180 days and encompassed most of the qualifying year for the 2007 dividend, he is not eligible for that dividend.

³ *E.g., Stoshs I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000).

⁴ 15 AAC 23.163.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of R. C. H. for a 2007 permanent fund dividend is AFFIRMED.

DATED this 27th 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 31st day of January, 2008.

By: Signed
Signature
Jerry Burnett
Name
Director, Admin Services
Title

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