

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

In the Matter of:)
)
K. M. H.)
) OAH No. 07-0689-PFD
2007 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

United States Air Force Captain K. M. H. timely applied for a 2007 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied her application initially and at the informal appeal level, primarily on the basis that her military leave and earnings statement reflected a claim of Florida as her state of legal residence. Captain H. requested a formal hearing by correspondence.

The division's denial is affirmed because Captain H. maintained a claim of residency in another state during the qualifying year, and the claim was not the result of an error or delay by her personnel office. This is a disqualifying circumstance.

II. Facts

The facts of this case are not in dispute; the sole issue is their legal significance.

Captain H. received her commission from the Air Force in Florida in 1994.¹ She subsequently moved to Texas. Neither Florida nor Texas has an income tax that applies to military personnel, so that state taxes are not deducted from the pay of service people who are residents of those states. In mid-2005, the Air Force changed her duty station to Alaska.² She moved to the state in October of that year and established ties, including the registration of vehicles and purchase of a home.³ She remained in Alaska without significant absences through the date of her application for her first PFD, January 1, 2007.⁴ Nothing in the record suggests she retained any active ties to Florida or Texas.

¹ Exhibit 7, p. 3 (formal appeal statement of K. H.).
² Exhibit 2, p. 3 (Request and Authorization for Permanent Change of Station).
³ Exhibit 1, pp. 1-2 (2007 Adult Web Application); Exhibit 7, p. 10 (deed).
⁴ Exhibit 1, p. 2 (2007 Adult Web Application).

One passive tie to Florida remained. Until sometime between April and September, 2007, Captain H.'s "legal residence/domicile" in her military personnel record remained Florida.⁵ The issue of changing the personnel record did not arise for her because there were no financial consequences: she was exempt from Florida income tax regardless of the state residency shown in her records, and her pay rate in Alaska was the same regardless of the residency shown in her records.⁶ In 2007 she apparently filed a Form DD 2058 to change her state of legal residence to Alaska.

The division denied Captain H. a dividend on the basis that her leave and earnings statement reflected a claim of residency in another state during the qualifying year, and it held to that position through an informal appeal. This formal appeal followed.

By notice dated December 7, 2007, the Office of Administrative Hearings gave Captain H. until January 7, 2008 to send any additional documents or correspondence for consideration in this formal appeal. The division was given the same deadline. Both were given until January 17, 2008 to respond to any documents received from the other. The division filed a position statement. Captain H. filed nothing further.

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 dividend, regardless of the worthiness of the individual, the seeming technicality of the exclusion, or even the individual's extensive Alaska connections outside the context of the exclusion.

The regulation at 15 AAC 23.143(d)(2) establishes that an individual "is not eligible" for a PFD if, during the qualifying year or during the application year up to the date of application, the individual "claimed or maintained a claim of residency in another state or country in the individual's employment personnel records." The only exceptions to this absolute disqualification are in situations where the individual has timely and unsuccessfully requested a change to the records.⁷ During the year 2006, Captain H. passively allowed her employment personnel record to reflect a claim of residency in Florida. Outside the context of PFD eligibility, there were no financial benefits or costs to Captain H. from this circumstance; it was essentially irrelevant.

⁵ Exhibit 3, p. 2 (Leave and Earnings Statement (LES), 1/31/07, showing Florida as state of legal residence); Exhibit 5, p. 2 (Request for Informal Appeal, stating in future tense, "I will change my LES . . . if required"); Exhibit 7, p. 6 (LES, 9/30/07, showing Alaska as state of legal residence).

⁶ Compare Exhibit 3, p. 2 (LES, 1/31/07) with Exhibit 7, p. 6 (LES, 9/30/07).

⁷ See 15 AAC 23.143(d)(2).

Nonetheless, since Captain H. cannot show that she attempted to have the record changed before the qualifying year began, the existence of the claim of Florida residency in her employment personnel file automatically renders her ineligible for a PFD in 2007, the dividend for which 2006 was the qualifying year.

So that Captain H. will understand her status for future dividends and other dealings with the State of Alaska, it will be worthwhile to explore the extent of the consequences of her error. By failing to alter her personnel record until sometime in the middle of 2007, Captain H. has disqualified herself from eligibility for a dividend for which 2006 (or, in all likelihood, 2007) is the qualifying year. However, disqualification from PFD eligibility does not equate to residency. 15 AAC 23.143 does not say that someone who permitted her personnel records to show residency in another state “is not a state resident;” it says only that such a person “is not eligible for a dividend.” Residency is a broader and more flexible inquiry. Accordingly, Captain H. can still maintain, should it be relevant in any context, that her Alaska residency began in 2005.⁸ This decision does not establish when Captain H. became an Alaska resident.

IV. Conclusion

Because, during the qualifying year for the 2007 dividend, K. H. maintained a claim of residency in another state in her employment personnel records, she is not eligible for the 2007 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of K. M. H. for a 2007 Permanent Fund Dividend is AFFIRMED.

DATED this 23rd day of January, 2008.

By: *Signed* _____
Christopher Kennedy
Administrative Law Judge

⁸ This might be relevant in connection with Ms. H.’s 2009 PFD. See *In re W.M.H.*, OAH No. 06-0356-PFD (2006), at pp. 3-4.

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 after the date of this decision.

DATED this 21st day of March, 2008.

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

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