

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

IN THE MATTER OF

E.L. and her children W. and J.

2007 Permanent Fund Dividend

Case No. OAH08-0072-PFD

DECISION

I. Introduction

E.L. timely applied for 2007 permanent fund dividends for herself and on behalf of her children W. and J. L. The Permanent Fund Dividend Division ("division") determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. Ms. L. requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on March 20, 2008. Ms. L. did not appear.¹ PFD Specialist Kim Colby represented the PFD Division. The division's decision is affirmed.

II. Facts

Ms. L.'s husband, M.L., serves in the Air Force and had been stationed at Eielson Air Force Base. In 2006, Ms. L. and her family had been living in Alaska. Mr. L. received Permanent Change of Station orders for an accompanied twelve-month tour in Korea, effective December 10, 2006. The orders listed Ms. L., W., and J. as dependents.² Instead of going to Korea with her husband or staying in Alaska, Ms. L. decided to stay with her sister and other relatives in Missouri while Mr. L. was in Korea. Ms. L. left Alaska with her children on November 1, 2006. The Air Force paid to ship the household belongings to Missouri, where they were put in storage.

In Alaska, the L.'s had been living in military housing. Ms. L. and the children did not have the option of remaining in military housing while Mr. L. was stationed in Korea. The Air Force would have shipped the family's household belongings to

¹ On her hearing request, Ms. L. checked boxes indicating both that she wished to have a telephonic hearing and that she wanted the hearing conducted by correspondence only. Instructions on the form state that if both boxes are checked, the hearing will be by correspondence only. To afford Ms. L. every possible opportunity to present her case, the OAH scheduled a hearing by telephone. Ms. L.'s husband contacted the OAH prior to the hearing and stated that Ms. L. would not be appearing and wanted the hearing to be based on the written record only.

² Exhibit 7, page 6.

wherever Ms. L. moved, whether to an address in Alaska or somewhere out of state, but it would not pay for storage at either location. The L.'s elected to have their belongings shipped to Missouri.

In September of 2007 the family learned that after Mr. L. finished his tour in Korea, he would receive "follow on" orders to Minot Air Force Base in North Dakota. Upon Mr. L.'s arrival in North Dakota, the entire family ultimately reunited and they continue to live in North Dakota. The L.'s have maintained paper ties with Alaska, including driver's licenses, vehicle registrations, and voter registration. Ms. L. has written that she and her husband "plan on retiring in the Anderson area" upon Mr. L.'s retirement. The record does not reflect when Mr. L. is eligible for retirement or when he intends to retire. Ms. L. has stated that the family hopes for an assignment back to Alaska either at Eielson or Elmendorf Air Force Bases, but she has not provided any indication of the likelihood of such an assignment. It is thus unknown when the L.'s might be returning to Alaska.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must be an Alaska resident. A resident is a person who is either in Alaska with the intent to remain indefinitely and make a home in the state, or if the person is not in Alaska to return to Alaska to remain indefinitely and to make a home.⁴ According to 15 A A C 23.143(a), "an individual's intent...to return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere."

A second requirement for eligibility is that the applicant have been physically present in Alaska all through the qualifying year, or only absent for one of the allowable reasons listed in AS 43.23.008.⁵ An absence of less than 180 days is allowable, but only if the absence is for a reason consistent with the individual's intent to remain an Alaska resident.⁶ According to 15 A A C 23.173(i), "the burden of proof rests on an individual claiming an allowable absence to prove that the individual has maintained, at all times during the absence, the intent to return and remain indefinitely in Alaska." At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was in error.⁷

³ AS 43.23.005(a)(2)-(3).

⁴ AS 43.23.095(7).

⁵ AS 43.23.005(a)(6).

⁶ AS 43.23.008(a)(16).

⁷ 15 A A C 05.030(h).

Because intent is a subjective state of mind, one must look at external evidence to determine what an applicant's intent may be. In this case, there are a number of written statements regarding Ms. L.'s intent, but there is no sworn testimony nor are there any sworn affidavits in the record. This leaves the L.'s paper ties, i.e. their driver's licenses, vehicle registration, and voter registration as the only connection they appear to have maintained to the state. It is also true that the L.'s have maintained an account in an Alaska-based credit union, and it is most likely that Mr. L. keeps Alaska as his state of legal residence in his military employee records. While these connections are not meaningless, they are not connections that are difficult for someone to maintain after leaving Alaska, particularly for a military family that can be expected to move frequently. In comparison, the fact that Ms. L. immediately left Alaska and took all of her household belongings with her as soon as Mr. L.'s assignment in Alaska ended is significant. Ms. L. argues that her departure to Missouri was more in the nature of a trip to visit relatives than a move, and the fact that she obtained a post office box and shipped all of her belongings there, leaving nothing in Alaska, were merely acts of convenience. This may be true, but on the face of it this "trip" has more of the appearance of a change of residence. Ms. L. has not presented sufficient evidence to prove that the division was in error in viewing the travel as a move. When considered with the fact that Ms. L. has not provided even an estimate of when she and her family might return to Alaska, other than when her husband decides to retire, it cannot be said that Ms. L. has met her burden of proving that she remained an Alaska resident when she departed from the state.

IV. Conclusion

Ms. L. has not met her burden of proving that the division's decision was in error. The decision of the Permanent Fund Dividend Division to deny the applications of E.L., W.L., and J.L. for 2007 permanent fund dividends is AFFIRMED.

DATED this 25th day of April, 2008.

BY: DALE WHITNEY
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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of May, 2008.

By: Dale Whitney
Administrative Law Judge

This undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

PFD Division
5/22/08