

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IAN and PEGGY HARROD,)
)
 Appellants,)
)
 vs.)
)
 STATE OF ALASKA,)
 DEPARTMENT OF REVENUE,)
)
 Appellee.)

Appeal Case No. 4FA-10-1184 CI

DECISION ON APPEAL

I. Introduction

This matter is before this court on appeal from the State of Alaska Department of Revenue (DOR). Appellants Ian and Peggy Harrod (Harrods) applied for Permanent Fund Dividends (PFDs) for themselves and their four children in 2005 and 2006. The DOR denied the Harrods' applications. The Harrods appealed the denial and the DOR affirmed their decision. The Harrods appealed this decision and Administrative Law Judge Kennedy (ALJ Kennedy) was appointed. ALJ Kennedy upheld the decision of the DOR and the DOR adopted ALJ Kennedy's decision.

Appellants, the Harrods, appeal the DOR's decision, arguing two points on appeal: (1) whether the DOR has the authority to revoke Alaskan citizenship of any individual previously recognized as being an Alaskan citizen, and (2) whether Administrative Law Judge Pauli (ALJ Pauli) abused her discretion by refusing to compel

the DOR to provide information requested by the appellants?¹ Appellee, DOR, argues that the Harrods were not eligible for the PFDs in 2006 or 2007 because they did not reestablish residency in Alaska until June 2006. DOR also argues that the Harrods did not cite any authority in support for their argument that that DOR does not have the authority to revoke their residency. DOR also contends that the ALJ Pauli did not abuse her discretion in regards to discovery.

II. Background²

Ian and Peggy Harrod moved to Adak in 1987 in conjunction with Ian's military service. In 1992 Ian was reassigned to a location outside of Alaska but the Harrods continued receiving PFDs for the years 1993 through 1996 pursuant to the active duty "allowable absence" provision of AS 43.23.008(a)(3). This statute permits active duty members of the military, and their families, to receive PFDs while stationed out of state as long as other conditions are met.

From 1997 through 2000, the Harrods continued to reside outside of Alaska and they did not apply for PFDs. In 2001, the Harrods applied for PFDs but their applications were denied. Because the Harrods had been absent from Alaska for more than five years, a presumption arose under 15 Alaska Administrative Code (AAC) 23.163(f) (2010) that the Harrods did not intend to return to Alaska and remain here. DOR applied this presumption, determined the evidence the Harrods offered did not rebut it, and denied

¹ In the Harrods' appellant brief they argue for the first time that AS 01.10.055(c) violates the Equal Protection Clause of both the Alaska State and Federal Constitutions. The court finds that the Harrods waived this argument by failing to raise it in their points on appeal and in their failure to adequately brief the issue.

² This background section is taken directly from *Harrod v. State, Dept. of Revenue*, 255 P.3d 991, 994-996 (Alaska 2011).

their 2001 PFD applications. The Harrods pursued an informal appeal and DOR changed course. After a hearing, DOR decided that the Harrods did have the requisite intent to return to Alaska and it distributed PFDs to them for 2001.

The Harrods applied for PFDs in 2002 and 2003 but their applications were denied because DOR determined they failed to rebut the presumption that they did not intend to return to Alaska and remain in the state indefinitely. In arriving at this determination, DOR relied on evidence showing the Harrods had not moved back to Alaska since leaving in 1992 and that they made only infrequent and short return trips here in the five previous years. The Harrods pursued an informal administrative appeal of the 2002 denial under 15 AAC 05.010(b)(5) (2010) but DOR upheld its decision. The Harrods did not seek further review of the 2002 denial, did not appeal the 2003 administrative denial, and did not apply for PFDs in 2004.

The Harrods were absent from Alaska for 358 days in 2004, but they applied for PFDs in March 2005. They again claimed eligibility under the military and accompanying spouse “allowable absence provision” of AS 43.23.008(a)(3). DOR denied the Harrods' 2005 applications relying on the following facts: (1) the Harrods were denied PFDs in 2002 and 2003 because they failed to overcome the presumption that they no longer intended to return to and remain in Alaska; (2) the Harrods had not returned to Alaska to establish residency after their 2002 and 2003 applications were administratively denied; and (3) the Harrods had only spent a total of 14 days in Alaska over two visits in the five years prior to 2005. DOR cited these facts as support for its conclusion that the Harrods were not Alaska residents for PFD eligibility purposes because they did not have the requisite intent to return to Alaska and remain in the state.

The Harrods filed an informal administrative appeal of the 2005 denial. To rebut the presumption in 15 AAC 23.163(f), they claimed they maintained “paper ties” to Alaska during their absence and that DOR had previously awarded them dividends under similar circumstances. DOR considered the Harrods' arguments, but it upheld its denial of the 2005 applications, concluding the Harrods severed their residency in Alaska prior to the qualifying year (2004) and failed to reestablish their residency for PFD eligibility purposes. DOR's decision was based on: (1) the 2002 and 2003 denials of the Harrods' PFD applications; (2) the Harrods' extended absence from Alaska for more than five years; (3) the failure to rebut the presumption that, after a five-year absence, they did not intend to return to and remain in Alaska; and (4) the failure to file applications for PFDs in 2004. DOR observed that even if the Harrods had applied for dividends in 2004, their applications likely would have been denied.

The Harrods appealed to the Office of Administrative Hearings, where an Administrative Law Judge (ALJ) affirmed DOR's decision. The ALJ reasoned that DOR's denial of the Harrods' 2002 PFD applications established that they were not Alaska residents for PFD purposes after 2001 and that they had not reestablished Alaska residency since that time. The ALJ relied on the doctrine of collateral estoppel to establish the Harrods' ineligibility for PFDs in 2002 and 2003, without relitigation of that issue. The ALJ ruled that the Harrods would have had to reestablish residency to obtain PFDs after that time. The Commissioner of DOR adopted the ALJ's decision and order in January 2007 and the superior court affirmed the Commissioner's decision in March 2009. In doing so, the superior court only reached the ALJ's rulings that the 2002 and

2003 denials were binding, the Harrods had not reestablished residency, and the denial of the Harrods' request for a second administrative hearing before the ALJ.

The ALJ granted a hearing on the appeal, but the Harrods later requested a second hearing to question DOR's representative. The request for a second hearing was denied.

The Harrods appealed to the Alaska Supreme Court and argued that the previous denials of their 2005 applications were in error. The Alaska Supreme Court affirmed the denial of the Harrods' 2005 PFD applications on 22 July 2011.

III. Facts

The Harrods moved back to Alaska in June of 2006. The Harrods subsequently applied for PFDs in 2006 and 2007. DOR denied these applications because the Harrods had not reestablished residency in time to be eligible.³ The Harrods filed an informal appeal.⁴ The informal conference decision affirmed the denial of the Harrods' applications.⁵ The Harrods subsequently requested a formal hearing.⁶ The appeal was assigned to ALJ Kennedy. The appeal proceedings were stayed pending the outcome of the superior court's decision regarding the 2005 PFD.⁷

On 13 March 2009 the superior court issued a decision affirming the denial of the 2005 pfd applications.⁸ On 13 March 2009 ALJ Kennedy ordered that the law established in the superior court's decision would govern the current appeal, unless the

³ Appellee's Excerpt of Record, p 128.

⁴ Appellee's Excerpt of Record, p 147.

⁵ Appellee's Excerpt of Record, p 161.

⁶ Appellee's Excerpt of Record, p 235.

⁷ Appellee's Excerpt of Record, p 267.

⁸ Appellee's Excerpt of Record, p 127.

decision was overturned by the Alaska Supreme Court.⁹ The Alaska Supreme Court affirmed the denial of the Harrods' 2005 PFD applications on 22 July 2011.

On 13 August 2009 the Harrods requested certain discovery materials.¹⁰ A status conference was held on 17 August 2009 to discuss the Harrods' request for production. ALJ Pauli presided over the hearing and issued a discovery order on 18 August 2009.¹¹

A formal hearing was held on 20 September 2009 in front of ALJ Kennedy.¹² ALJ Kennedy upheld the decision of the DOR to deny the Harrods' PFD applications for 2006 and 2007 on 20 November 2009.¹³ The DOR adopted ALJ Kennedy's decision on 4 January 2010.¹⁴ The Harrods filed their statement of points on appeal on 3 February 2011.

IV. Standard of Review

Courts review an administrative agency's factual findings under the substantial evidence test.¹⁵ "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"¹⁶ An agency's decision "need not be the only possible solution to the problem, for it is not the function of the court to reweigh the evidence or choose between competing inferences, but only determine whether such evidence exists."¹⁷

⁹ Appellee's Excerpt of Record, p 268.

¹⁰ Appellee's Excerpt of Record, p 269-270.

¹¹ Appellee's Excerpt of Record, p 271-272.

¹² Appellee's Excerpt of Record, p 1.

¹³ Appellee's Excerpt of Record, p 9.

¹⁴ Appellee's Excerpt of Record, p 10.

¹⁵ *Robertson v. American Mechanical, Inc.*, 54 P.3d 777, 779 (Alaska 2002).

¹⁶ *Lindhag v. State, Dept. of Nat. Resources* 123 P.3d 948, 952 (Alaska 2005)(citing *Bradbury v. Chugach Elec. Assoc.*, 71 P.3d 901, 905 (Alaska 2003)).

¹⁷ *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974).

V. Discussion

It is undisputed that the Harrods returned to Alaska in June of 2006. In order to qualify for a PFD, an individual must be an Alaska resident for all of the PFD qualifying year.¹⁸ The qualifying year for the 2006 dividend was 2005, and the qualifying year for the 2007 dividend was 2006.¹⁹ There is no dispute that the Harrods did not live in Alaska for all of 2005 and 2006. ALJ Kennedy found that the 2003 appeal decision established that the Harrods were not Alaska residents after 2001 and that the Harrods did not return to Alaska for the requisite 30 day period needed to reestablish residency before the qualifying years for 2006 and 2007. This court therefore finds that substantial evidence supports the DOR's denial of the Harrods' 2006 and 2007 PFD applications.

While the Harrods' do not argue that they meet the PFD eligibility requirements, they argue that the DOR does not have the authority to revoke Alaskan citizenship of any individual previously recognized as being an Alaskan citizen. The Harrods do not cite any authority to support this argument. Additionally it is well established that DOR has broad authority to determine the factors that define a permanent resident for purposes of PFD eligibility.²⁰ Harrods' argument is therefore without merit.

The Harrods have not explained how ALJ Pauli abused her discretion, other than the fact that she did not order the entirety of the discovery requested by the Harrods. Although the courts "hold the pleadings of *pro se* litigants to less stringent standards than those of lawyers,"²¹ a *pro se* litigant has an obligation to attempt to brief the issues and

¹⁸ AS 43.23.005(a)(3).

¹⁹ AS 43.23.095(6).

²⁰ *Harrod v. State, Dept. of Revenue*, 255 P.3d 991, 997-998 (Alaska 2011).

²¹ *Wright v. Shorten*, 964 P.2d 441, 444 (Alaska 1998) (internal quotation and citation omitted).

cite authority in support.²² The court therefore finds that ALJ Pauli did not abuse her discretion by refusing to compel the DOR to provide certain information requested by the Harrods.

VI. Conclusion

The Court having reviewed the Administrative Record holds: The determination of the DOR is **AFFIRMED**.

Dated at Fairbanks, Alaska this 11 day of July, 2012.



Michael P. McConahy
Superior Court Judge

I certify that on 7/13/12
copies of this form were sent to:
CLERK: DS I. Harrod - mail
P. Harrod - mail
AGC/Anch - mail
AGC/Juneau - ma
Agency

²² See *A.H. v. W.P.*, 896 P.2d 240, 243-44 (Alaska 1995).