

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

In the Matter of:)
)
 R. M. P.)
) OAH No. 08-0347-PFD
 2007 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

Lieutenant Colonel R.M.P.'s application for a 2007 permanent fund dividend (PFD) was denied initially and at the informal appeal level, primarily on the basis that during the qualifying year his military Leave and Earnings Statement (LES) showed Florida as his State of Legal Residence (SLR). At Col. P.'s request, this office held a formal hearing on August 14, 2008, which he attended in person. The denial is affirmed because Col. P. has not been able to provide evidence of the type deemed acceptable by the PFD regulations to show that his LES was in error and that he had formally requested a change of SLR prior to the beginning of the qualifying year.

II. Facts

Unless otherwise attributed, the facts set out below are based on Col. P.'s testimony at the hearing.

R.P. was born and raised in Florida. He made his career in the United States Air Force. On June 26, 2005, he moved to Alaska from Korea to command a squadron at Elmendorf Air Force Base, Alaska.

At the time of his arrival, Col. P.'s State of Legal Residence (SLR) in his military personnel records was Florida. Because Florida has no personal income tax, the use of Florida as an SLR meant that no state taxes were deducted from his pay.

Col. P. promptly put down some roots in Alaska, changing his driver's license, vehicle registrations, and voter registration to Alaska in August of 2005. He subsequently purchased a home in Eagle River (approximately in March 2007¹), separated from active duty, and accepted private employment on the North Slope. He also works in Alaska as a substitute teacher, coach, and Air Force reservist. His children and his ex-wife are located here.

¹ Ex. 6, p. 2 (Request for Informal Appeal).

This case turns on Col. P.'s efforts, if any, to change residency in his personnel records shortly after his arrival in Alaska. Col. P. did his "inprocessing" to his Alaska duty station on August 5, 2005. He reports that this was a chaotic time, with the commanding officer pressed by many duties. It seems certain that Col. P. addressed his payroll status during inprocessing, changing the exemptions on his form W-4. This change apparently posted to his Master Military Pay Account on August 12, 2005.² Col. P. also reports completing a form DD 2058 at the August 5 session, designating Alaska as his SLR.³ Form DD 2058 is the military form that accomplishes SLR changes.

When Col. P. applied for a 2007 dividend in February of 2007, the PFD Division noted from paperwork he submitted that on payroll materials his SLR had been listed as Florida during 2006. Col. P. submitted a form DD 2058 at that time and successfully changed his SLR.⁴

Col. P. notes that since Florida has no personal income tax, there was no immediate financial consequence to alert him of whether his SLR had been changed in 2005 as he intended. He contends that he submitted a form DD 2058 in 2005 but that the comptroller's office "mishandled my paperwork and this change did not take place."⁵ He does not have a copy of the earlier form DD 2058. Instead, in support of this contention he has provided two types of evidence: unsworn letters from Senior Master Sergeant M.R.A., who is apparently Superintendent of the 3rd Comptroller Squadron, and sworn testimony at the hearing from Master Sergeant R.V., Chief of Military Pay at Col. P.'s base.

Sgt. A. initially provided a letter that said:

Lt Col [R. P.] attempted to change his state of legal residence to Alaska at the Elmendorf AFB finance office on 5 Aug 05. . . . His master military pay account would have been updated and reflected Alaska as his state of legal residence on his Aug 05 LES [Leave and Earnings Statement] had there not been a paperwork error.⁶

² See Ex. 12 (Statement of M.A.).

³ This is his current recollection. His earliest accounts of the steps he took in 2005 do not mention completing form DD 2058. See, e.g., Ex. 3, p. 3 and Ex. 6, p. 2 (2007 written statements indicating that he adjusted W-4 "to include what I thought was necessary to change my state of legal residency" and also attempted to change his SLR in MyPay). The first mention of Form DD 2058 appears to be May of 2008. Ex. 8 (e-mail from P. to Chase).

⁴ See Ex. 3, p. 7 (April 2007 LES).

⁵ Ex. 10, p. 2 (Request for Formal Hearing).

⁶ Ex. 11, p. 2.

The letter, dated March 25, 2008, has a subscript that has the appearance of the jurat of an affidavit, but is in fact a certification by Col. P. that he (not Sgt. A.) “certif[ies] that this information is correct.”⁷ Four months later Sgt. A. provided a second letter that says:

The original letter I signed for Lt Col P. was based on interviews and the fact his inprocessing documents posted to his Master Military Pay Account on 12 August 2005. This date coincides exactly with all accounts/claims of his visit to the Finance Office on 5 August 2005. I signed the letter because I believe, with all the circumstantial evidence and the fact that Lt Col P. is an officer in good standing with the United States Air Force Reserves, he did attempt to change his state of legal residence. The original change of state of legal residence document is no where to be found and I cannot explain what happened to it.⁸

This letter is also unsworn. There is no indication that Sgt. A. was the personnel officer connected with the 2005 paperwork, nor that his opinion is based on anything other than Col. P.’s good word coupled with the fact that Col. P.’s claim to have requested a change on August 5, 2005 coincides with a date Col. P. visited the payroll office and did other business there.

At the hearing, Col. P. offered sworn testimony from Sgt. V., who is the current chief of the financial management office that processed the payroll paperwork in 2005. Sgt. V. testified that he had done “a lot of research” regarding Col. P.’s 2005 visit. He testified that no database that would have reflected a DD 2058 had become corrupt.⁹ He was therefore able to determine that there had been no “reject”—that is, no instance of a document being processed in and rejected from the system—which is sometimes a cause of errors in adjusting SLR; instead, he could affirmatively tell that “nothing was ever input into Military Pay to show a State of Legal Residency change that we could confirm.” Beyond that, he testified that “we can neither confirm nor deny anything” regarding the existence of a DD 2058 in 2005 or that “any document was ever tried to be processed through any of our system.” He reiterated:

Never have we been able to say one way or the other. From everything we show I would go, “no, it’s not here,” very possible you could have done that, but I don’t show anything ever being processed.

He observed that although Col. P. was apparently in the office “doing things on [his] military pay account, however, 99 percent of our folks, if not more, that inprocess don’t do State of Legal Residency changes on the day that they inprocessing paperwork with us.” Sgt. V. concluded by making it clear that his office does not normally issue letters regarding abortive SLR changes to the

⁷ *Id.*

⁸ Ex. 12.

PFD Division unless there is a specific trail showing an error, indicating that Sgt. A.'s letter departs from that normal procedure. Indeed, Sgt. V. seems to have been asked to sign a letter for Col. P. by one of Col. P.'s fellow officers, but he refused.¹⁰

III. Discussion

The qualifying year for the 2007 dividend was 2006.¹¹ 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." This is an absolute disqualification that is independent from the broader question of whether the individual is, on balance, a legal resident of Alaska.

There are two independently sufficient items of evidence that will overcome this absolute disqualification if they show that the existence of the residency claim in another state was due to "an error or delay . . . in processing by the personnel office." First, the applicant can show an error or delay in processing his personnel records by supplying "a certified copy of the individual's request to change the individual's state of legal residence."¹² Alternatively, the applicant can show an error or delay in processing his personnel records by supplying "a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay; the personnel officer must state . . . why the request was not processed timely."¹³

Col. P. does not have the first type of proof. As to the second type of proof, the requisite "sworn statement" could be supplied through hearing testimony from someone in Sgt. V.'s position, but the testimony the sergeant actually gave did not demonstrate any "specific knowledge" of an error or delay, and thus did not meet the standard set in the regulation.

The Department of Revenue is bound by its own regulations. Regardless of whether Col. P.'s current recollection regarding a DD 2058 in 2005 is credible, the department cannot pay him a

⁹ Sgt. V. testified that a Customer Service Login Database, logging visits to the office, did become corrupt.

¹⁰ Testimony of Sgt. V. Col. P. pressed the sergeant hard for more positive testimony. Sgt. V.'s careful refusal to go beyond what he actually knew was both striking and commendable.

¹¹ AS 43.23.095(6).

¹² 15 AAC 23.143(d)(2)(A).

¹³ 15 AAC 23.143(d)(2)(B).

dividend unless he provides one of the two types of proof enumerated in 15 AAC 23.143(d)(2). Since he does not have either of them, his 2007 PFD must be denied.¹⁴

IV. Conclusion

Col. P. has not been able to establish through a means permissible under the regulations that, prior to the beginning of the qualifying year for the dividend at issue, he made a request to designate Alaska as his State of Legal Residence in his personnel records. He is disqualified from a 2007 dividend by the status of his personnel records, which showed Florida as his State of Legal Residence.

V. Order

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

DATED this 10th day of November, 2008.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹⁴ Because of this outcome, it is unnecessary to evaluate the division's further argument that Col. P. did not form the intent to remain indefinitely in Alaska until sometime after the beginning of the qualifying year for the 2007 dividend.

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 9th day of December, 2008.

By: Signed
Signature

Christopher Kennedy
Name

[Commissioner's Delegee]
Title

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