

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

In the Matter of :)
)
C. R. K., J. L. C.-K,)
and C. O. K. (minor))
) OAH No. 08-0497-PFD
2007 Alaska Permanent Fund dividend) DOR No. 2007-060-0425

DECISION

I. Introduction

C. R. K. and his wife, J. L. C.-K., filed timely applications for 2007 Alaska Permanent Fund dividends for themselves and their minor child, C. O. K. Because Mr. K. had been listed as a resident of another state on his military leave and earnings statement, the Permanent Fund Division (Division) denied his application; because his application was denied the other family members' applications were denied as well.

Mr. K. filed an appeal and the K. was referred to the Office of Administrative Hearings for a hearing by correspondence.

Because the preponderance of the evidence establishes that Mr. K. did not intentionally claim residence in another state, and he submitted the evidence required by the Division's regulations to support his application, the Division's decision is reversed.

II. Facts

C. R. K. grew up in Alaska from the age of nine. At age 17, in June, 2005, Mr. K. moved from Kodiak to Kentucky with his father when his father, a member of the military, was transferred to Kentucky.¹ Mr. K. turned 18 on January XX, 2006. In February, he flew back to Kodiak for the birth of his son, C. O. K., to J. C.-K.² After returning to Kentucky, Mr. K. enlisted in the United States Coast Guard, listing Kentucky as his home of record.

Following his enlistment, Mr. K.'s leave and earnings statements initially listed him as a resident of Kentucky. This was a mistake: Mr. K. never had an intent to make a permanent home in Kentucky. Mr. K. submitted a request to list his official state of residence as Alaska, and by December, 2006, the Coast Guard had corrected its records effective September, 2006.³

¹ See Ex. 1, p. 2.

² Ex. 1, p. 2; Ex. 1A, p. 7.

³ Ex. 10.

Ms. C.-K. moved from Kodiak with her infant son and joined her husband at his duty station in the Lower 48 on June 4, 2006. She and her son have continued living with him since then.

III. Discussion

Mr. K.'s application for a dividend answers "yes" to the question: "At any time since December 31, 2005, have you...[c]laimed residency in another state or country in your employment records, including leave and earnings statements if you are a member of the U.S. Armed Forces?"⁴ Because under the Division's regulations a claim of residency in another state during the qualifying year generally disqualifies the applicant from eligibility for a dividend for that year, the Division correctly denied the application.⁵

However, the Division's regulations also provide that if an applicant asserts that the claim of residency was the result of "an error or a delay...in processing by the personnel office" then the applicant must submit "from the personnel office, a certified copy of the individual's request to change...the state of residence."⁶ In this K., Mr. K. submitted the necessary form, but the Division rejected it.

Under the facts of this K., the form submitted by Mr. K. should have been accepted as sufficient. There is no evidence that Mr. K. ever claimed that his state of residence was Kentucky, much less that he did so intentionally. The undisputed evidence is that when he enlisted, he claimed that Kentucky was his home of record. But, as the federal form makes clear, an individual's home of record is not necessarily the place of legal residence. In this particular K., Mr. K. grew up in Alaska and his son was born there. His wife, it appears, had also been an Alaska resident for some time.⁷ The undisputed evidence is that Mr. K. corrected his leave and earnings statement before he submitted his application, yet he admitted on that application that those statements had shown him as a resident of Kentucky during part of the qualifying year. In light of his candor and the undisputed evidence, there is no reason to doubt the reliability of the form submitted by Mr. K. or the veracity of his assertion that he maintained the intent to remain a resident of Alaska throughout the qualifying period. Therefore, his application should be

⁴ Ex. 1, p. 4.

⁵ 15 AAC 23.143(d)(2).

⁶ 15 AAC 23.143(d)(2)(A).

⁷ In addition to giving birth to her son there, it appears that Ms. C.-K has family in Alaska (assuming that C. D. C, Senior, who vouched for the family's residency, is Ms. C.-K's father). See Ex. 1, pp. 1, 8.

granted. Having granted his application, both his wife's and his son's applications should also be granted.

IV. Conclusion

C. R. K. did not intentionally claim residence in another state during the qualifying period. He submitted acceptable documentation for purposes of 15 AAC 23.143(d)(2)(A). The preponderance of the evidence is that he retained the intent to remain a resident of Alaska throughout the qualifying period. His application is therefore granted. Because he is eligible, his wife's and son's applications are also granted.

DATED December 30, 2008.

Signed _____
Andrew M. Hemenway
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 27th day of January, 2009.

By: Signed _____
Signature
Andrew M. Hemenway _____
Name
Administrative Law Judge _____
Title

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