

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

IN THE MATTER OF)
)
 R. & J. K.)
) Case No. OAH 08-0569-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

Mr. and Ms. K. timely applied for 2007 permanent fund dividends. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. The applicants requested a formal hearing. Administrative Law Judge Dale Whitney heard the appeal on November 24, 2008. Mr. and Ms. K. appeared by telephone. PFD Specialist Kim Colby represented the division. Because the applicants were unallowably absent during the qualifying year, the division’s decision is affirmed.

II. Facts

The facts are not in dispute. Mr. K. accepted a three-year civil service job in Belgium, and Mr. and Ms. K. left Alaska on February 19, 2005. In their absence, Mr. and Ms. K. stored their belongings in Alaska, maintained their vehicle registration in Alaska, remained registered to vote in Alaska, and voted absentee in the 2008 election. The division does not dispute that the K.s were Alaska residents all through the 2006 qualifying year and up to their dates of application.

Mr. and Ms. K. had planned to return to Alaska in the fall of 2006. Unfortunately, Ms. K. was diagnosed with cancer in August of 2006, and she underwent surgery in September, 2006. After the surgery, Ms. K. was not able to travel for six weeks, and she required Mr. K.’s assistance while she was out of state. Ultimately, Mr. and Ms. K. returned to Virginia instead of Alaska, because their son was deploying to Iraq and their daughter-in-law needed help with her three small children. Mr. and Ms. K. were absent from Alaska for the entire year of 2006.

III. Discussion

This case is governed by the following law:

Alaska Statute 43.23.005 Eligibility

(a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined...if the individual...(6) was, at all times during the qualifying year, present in the state or, if absent, was absent only as allowed by AS 43.23.008.

The applicants were not present in Alaska at all during the qualifying year. Therefore, it is necessary to determine whether their absence was allowed by AS 43.23.008.

The allowable absence statute, AS 43.23.008, lists a number of reasons a person may be absent from Alaska during the qualifying year and still be eligible for a permanent fund dividend. Most of the absence categories listed, such as for higher education, congressional service, Peace Corps service, or training as an Olympic athlete, do not apply to this case.¹ Active duty military service is one allowable absence.² While Mr. K.'s absence was apparently to work for the military, Mr. K. was a civilian employee and not an active duty member of the armed forces.

An absence for continuous medical treatment and recuperation is allowable³, and Ms. K. was clearly receiving medical treatment after she was diagnosed with cancer. For the majority of the year, however, the absence had nothing to do with medical considerations. An absence of up to 180 days for any reason is allowable, but it cannot be combined with another type of absence such as a medical absence.⁴ An absence of up to 45 days for any reason may be combined with a medical absence.⁵ The time during 2006 that Ms. K. was absent from Alaska for non-medical reasons, from the beginning of January until some time in August or September, far exceeds 45 days. Thus, while some of the absence might be allowable for medical reasons and an additional 45 days would be allowable for general, non-medical reasons, there remains a substantial portion of the absence that would not be allowable for any reason.

Careful examination of the allowable absence statute does not reveal a category of absence under which the K.s' absences could be considered allowable. Ms. K. argues that an exception to the law should be made due to circumstances beyond her control, specifically her unforeseen medical needs. There is no provision of law that grants the division, the commissioner of revenue, or the administrative law judge the authority to make exceptions to the PFD laws on a case-by-case basis. In order to establish eligibility, applicants must show that they meet the eligibility requirements provided by law. The division may not issue dividends to applicants who do not meet the eligibility requirements, even in cases involving extenuating circumstances beyond the applicant's control. Further, it should be noted that the applicants would not be eligible even if they had returned to Alaska in August or September as they had planned before the diagnosis. By that time, Mr. and Ms. K. had already been absent from Alaska for more than 180 days in 2006. Even if

¹ AS 43.23.008(a)(1), (9), (14), (15).

² AS 43.23.008(a)(3).

³ AS 43.23.008(a)(5).

⁴ AS 43.23.008(a)(16)(A).

Ms. K. had not been diagnosed and had returned to Alaska as planned, neither she nor Mr. K. would qualify for 2007 dividends.

IV. Conclusion

The applicants were absent from Alaska during the qualifying year for reasons not specifically listed in AS 43.23.008. The division was correctly applying the law when it made the decision to deny the applications. The division's decision to deny the applications of R. K. and J. K. for 2007 permanent fund dividends is AFFIRMED.

DATED this 12th day of December, 2008.

By: Signed
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 12th day of January, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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