

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

In the Matter of :)
)
J. L. O.)
) OAH No. 08-0633-PFD
2007 Alaska Permanent Fund dividend) DOR No. 2007-020-3837

DECISION

I. Introduction

J. L. O. filed a timely application for a 2007 Alaska Permanent Fund dividend. Following an informal conference, the Permanent Fund Dividend Division denied the application on the ground that she had taken actions inconsistent with eligibility, and inconsistent with the intent to remain in Alaska indefinitely.¹ Ms. O. filed a timely appeal and the administrative law judge conducted a hearing on December 29, 2008.

Ms. O. established that during her absence from Alaska she maintained the intent to return to Alaska and remain indefinitely. However, because she accepted employment in a permanent position during the qualifying year, she is ineligible for the 2007 dividend. Therefore, the division's decision is affirmed.

II. Facts

J. L. O. was raised in Juneau. She is a graduate of Juneau-Douglas High School (1998), and she attended college in California, paying non-resident tuition. Ms. O. graduated from college in December, 2002 with a degree in criminology.² In 2003, Ms. O. returned to Juneau, where she found work with a courier service.³ Ms. O. and her husband, an employee of the City and Borough of Juneau, have maintained a residence in Juneau since their marriage.⁴

Ms. O. is interested in making a career in the field of forensic pathology. Juneau affords little opportunity to obtain training and experience in that field. Accordingly, Ms. O. decided that she would look for employment in the field elsewhere, in order to obtain training and experience that would enable her to pursue her chosen career in Alaska. In 2006, Ms. O. applied for and was accepted for a position as a forensic autopsy technician in Fresno, California.⁵ The position was a permanent one; however, Ms. O. intended to remain in it for no more than one

¹ Ex. 8, p. 1.
² Ex. 11, p. 15
³ Ex. 11, p. 15.
⁴ Ex. 6, p.2; Ex. 9, p. 3.

year. Ms. O. began work on November 13, 2006.⁶ She resigned her position in California effective June 1, 2007.⁷ Thereafter, she returned to her home in Juneau, where she and her husband continue to reside.

III. Discussion

The division's position on appeal is that Ms. O. severed her Alaska residency. The division asserted that Ms. O. did not retain the intent to return to Alaska throughout the time she was in California, noting that she gave "serious consideration" to accepting career opportunities available to her in California.⁸

That Ms. O. gave "serious consideration" to remaining in California indefinitely does not mean that she decided to do so. In fact, she returned to Alaska, where she was born and had lived her entire life, and where her husband was employed. To sever residency in Alaska, an Alaska resident generally must establish residency elsewhere, or engage in acts that are inconsistent with the intent to return to Alaska and remain indefinitely.⁹ That Ms. O. seriously considered a permanent move to California does not mean that she formed the intent to do so. That she took a permanent, full-time position in another state is not necessarily inconsistent with an intent return to Alaska and remain indefinitely. In this case, Ms. O. took a permanent out-of-state position to obtain training and experience in her chosen field of work, with the intention of returning to Alaska and using the skills and experience she had acquired elsewhere. As has been observed:

Leaving Alaska for an extended but determinate period of time to obtain skills, education and training that will enhance job prospects in Alaska is not inconsistent with an intent to return to Alaska and remain indefinitely: to the contrary, such reasons tend to establish an intent to return to Alaska and remain indefinitely.¹⁰

However, regardless of a person's reasons for accepting out-of-state employment, 15 AAC 23. 143(d)(4) provides that a person who accepts full-time, permanent employment in another state during the qualifying year is generally ineligible for a dividend. While Ms. O. did not intend to remain in her position for an indefinite period, the job itself was a permanent one:

⁵ Ex. 11.

⁶ Ex. 11, p. 16.

⁷ Ex. 9, p. 6.

⁸ Position Statement at 6.

⁹ AS 01.10.055(c).

¹⁰ In Re N.C., OAH No. 07-0138-PFD at 4 (Department of Revenue, August 15, 2007).

her subjective intent to keep it for only a limited time does not mean that her employment was not “permanent” for purposes of 15 AAC 23.143(d)(4).

Although 15 AAC 23.143(d)(4) provides for some limited exceptions to the general rule, the only exception that even arguably might apply to Ms. O. is AS 43.23.008(a)(2), which excuses an absence while “receiving vocational, professional, or other specific education on a full time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state.” This exception, by its plain terms, applies to education, not full-time employment. It does not apply to Ms. O.

IV. Conclusion

Ms. O. is ineligible for the 2007 dividend because she accepted full-time, permanent employment in another state during the qualifying year. The division’s decision to deny her dividend is therefore AFFIRMED.

DATED March 11, 2009.

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 8th day of April, 2009.

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

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