

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

IN THE MATTER OF)
)
 E. & B. H.)
) Case No. OAH 08-0706-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

E. and B. H. timely applied for 2008 permanent fund dividends. The Permanent Fund Dividend Division (“the division”) determined that the applicants were not eligible, and it denied the application initially and at the informal appeal level. At the H.s’ request, a formal hearing was held on February 3, 2009. Mr. and Ms. H. appeared by telephone; PFD Specialist Kim Colby represented the PFD Division.

Because Mr. and Ms. H. were unallowably absent during the qualifying year, the division’s decision is affirmed.

II. Facts

There is no dispute that Mr. and Ms. H. are long-time Alaska residents, and that they continue to be Alaska residents. The H.s were absent on vacation from January 5, 2007, through April 5, 2007. The H.s left again and were vacationing from September 7, 2007, until December 5, 2007. The H.s had planned to return to Alaska on December 6, but on December 5 Mr. H. suffered a broken hip that required emergency surgery. Mr. H. was released from the hospital on December 13, 2007, and both he and Ms. H. returned to Alaska that day.

The total time that the H.s had planned to be absent from Alaska in 2007 was 179 days. Because Mr. H. fell and broke his hip the day before their return, the total time out of the state in 2007 turned out to be 187 days. Of this time, 178 days were for vacation, and 8 days were because of Mr. H.’s need for emergency medical treatment.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have either been present in Alaska all through the qualifying year, or only absent for reasons listed in AS 43.23.008.¹ There are sixteen reasons listed that a person may be absent from Alaska and still qualify for a dividend the next year. Reason number (5) is an absence for someone who is “receiving continuous

¹ AS 43.23.005(a)(6).

medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change.”² It is clear that the portion of Mr. H.’s absence after December 5, 2007, would be allowable under this provision. Reason number (13) includes an absence for a spouse who is accompanying someone absent under (5). Ms. H.’s absence after December 5, 2007, is allowable under this provision.

The difficult and somewhat counterintuitive part of this case is the first portion of the H.s’ absence of 178 days for vacation. Vacationing is not necessarily an allowable absence, but it can fall within three kinds of allowable absence for any reason at all, so long as the absence is consistent with continuing state residency. These three absence types are listed together in the statute as reason number 16:

(16) for any reason consistent with the individual's intent to remain a state resident, provided the absence or cumulative absences do not exceed

(A) 180 days in addition to any absence or cumulative absences claimed under (3) of this subsection if the individual is not claiming an absence under (1), (2), or (4) - (13) of this subsection;

(B) 120 days in addition to any absence or cumulative absences claimed under (1) - (3) of this subsection if the individual is not claiming an absence under (4) - (15) of this subsection but is claiming an absence under (1) or (2) of this subsection; or

(C) 45 days in addition to any absence or cumulative absences claimed under (1) - (15) of this subsection if the individual is claiming an absence under (4) - (15) of this subsection.

It should be noted that these three choices are conjoined with the word “or” at the end of subparagraph (B). This means that an applicant may choose an absence under any one of these choices, but they may not be combined. Applicants must decide under which one of these three subparagraphs they will claim an absence for vacationing or general reasons: (A), (B), or (C).

Subparagraph (A) allows a person up to 180 days for any reason in addition to any days the person may have claimed for a military absence, so long as no other kind of absence is claimed. Since the H.s were not in the military, this option allows them up to 180 days during the year for any reason, but not in combination with a medical absence under (5). Since the H.s were absent for 187 days in the qualifying year, claiming absences under this option will not make them eligible for dividends the next year.

² AS 43.23.008(a)(5).
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Subparagraph (B) allows the applicant up to 120 for any reason in addition to any time the person was absent for educational reasons under (1) or (2), so long as the person is not claiming any other kind of absence. Since the H.s were not absent for educational reasons, this choice allows only 120 days, and is less favorable than choice (A).

Subparagraph (C) allows absences of up to 45 days in addition to any other claimed absences, including medical absences claimed under (5). Because the H.s' vacation time comes to 178 days in addition to the medical absence time, their vacation absence is not allowable under this provision either. However one looks at the case, some portion of the H.s' absence in 2007 is not allowable.

Although they did not intend to be absent from Alaska longer than the statute allows and were detained by unfortunate circumstances beyond their control, the H.s run afoul of a provision of the PFD laws that many people find surprising and counterintuitive. Under the law, a person could be absent from the state on vacation for 180 days, and the entire absence would be allowable. A person could be absent from the state for 365 days for medical reasons, and the absence would be allowable. But a person who takes a 46-day vacation early in the year, and then suffers an unforeseen accident or illness requiring an absence of more than 135 days later in the same year would not be eligible. The total absence in that case would be 181 days, and 46 days in addition to the medical absence. A person who has been absent vacationing for 178 days in one year, as the H.s were, can only afford to be absent from Alaska for two more days for medical or any other reasons but military service and still be eligible for the following year's dividend.

Because this case does not concern the H.s' status as state residents, there is no need for them to go through the long process of reestablishing Alaska residency before they can qualify for subsequent dividends. Nothing in this decision is intended to affect the applicants' eligibility for 2009 and subsequent dividends.

IV. Conclusion

Mr. and Ms. H. were absent for more than 180 days in 2007. They were absent for more than 45 days in addition to the time they were absent for medical reasons. Because there is no possible way to calculate the absences in this case that would make them allowable under AS 43.23.008, the division was correctly applying the law when it made the decision to deny the

applications. The decision of the Permanent Fund Dividend Division to deny the applications of E. and B. H. for 2008 dividends is AFFIRMED.

DATED this 6th day of March, 2009.

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 7th day of April, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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