

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

In the Matter of)	
K. D.)	
)	OAH No. 09-0014-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-023-9555

DECISION

I. Introduction

K. D. is a resident of the State of Alaska who was deployed to Iraq for most of 2007 as a civilian Department of Defense employee. She timely applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied the application initially and at the informal appeal level on the basis that Ms. D. was absent from Alaska for an unallowable reason for more than 180 days of the qualifying year. At Ms. D.'s request, a formal hearing took place on February 23, 2008. The division's denial is affirmed because, although the Ms. D. continued to maintain Alaska residency, her absence did not fall within one of the categories sanctioned by the legislature and therefore disqualifies her from the 2008 PFD.

II. Facts

Ms. D. was required to deploy to Iraq in a civilian capacity for the Department of Defense to support the U.S. Army. She described how she lived under the same conditions and was exposed to the same dangers as enlisted soldiers.¹ Because D.'s duty assignment was extended she was required to stay in Iraq. She did not *choose* to stay. Ms. D. was absent from Alaska for a total of 245 days (April 21, 2007 through December 22, 2007). On January 25, 2008, Ms. D. filed her 2008 PFD application.

The division determined her absence in Iraq was not allowable under AS 43.23.008 and denied her application. Ms. D. has appealed based on what she has characterized as the discriminatory nature of the allowable absences. Specifically that she is no longer eligible for a PFD because she was deployed in a civilian capacity in support of U.S. Troops. Ms. D. acknowledged that her absence was not allowable under the statute as written.

At the time of her hearing a bill had been introduced in the legislature, HB 65, "An Act relating to an allowable absence for certain military civilian employees and civilian contractors for purposes of determining eligibility for permanent fund dividends; and providing for an

¹ D. Testimony; Exhibit 4, at 3.

effective date," which, had it passed, may have addressed Ms. D.'s situation. However, the bill has not passed and the law regarding whether Ms. D.'s absence would be allowable for purposes of PFD eligibility has not changed.

III. Discussion

The qualifying year for the 2008 dividend was 2007.² To be eligible for a 2008 dividend, Ms. D. could not be absent from Alaska for more than 180 days unless she fell within one of the allowable absence categories listed in the PFD statutes.³ In order to make the program predictable and easy to administer, the legislature has set certain black and white rules regarding eligibility for a PFD. The law, as set by the legislature, is binding on the Department of Revenue. The Department can pay dividends only to those who qualify under the rules set by the legislature.

It is undisputed that Ms. D. spent the great majority of 2007, the qualifying year for the 2008 PFD, in a place other than Alaska. Alaska Statute 43.23.005 sets seven criteria for eligibility for a PFD. One of them is that the applicant "was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008." Thus it is possible to receive a PFD after spending part or all of the qualifying year in another state or country, but only while absent for certain reasons listed in Alaska Statute 43.23.008.

One of the permissible reasons to spend part or all of the qualifying year in another state or country is found in AS 43.23.008(a)(3): while serving, or accompanying as spouse or dependent someone serving, "on active duty as a member of the armed forces of the United States." Title 10 of the United States Code, which governs the "Armed Forces," defines "armed forces" to mean "the Army, Navy, Air Force, Marine Corps, and Coast Guard." Contractors are not part of the armed forces.

There is also a catchall provision in AS 43.23.008, whereby an individual can, in most circumstances, spend up to 180 days outside the state "for any reason consistent with the individual's intent to remain a state resident."⁴ This provision would apply to Ms. D. except that her absence was, unfortunately, much longer than 180 days.

The legislature's list of allowable absences includes a number of other categories, such as Peace Corps volunteers, Congressional aides, and members of the Olympic team. Ms. D.

² AS 43.23.095(6).

³ See AS 43.23.008.

⁴ AS 43.23.008(16).

observes that the service she was providing was as important and worthy of encouragement as some of the absences that are currently listed as allowable. The remedy, if she is correct, would be a statutory change, such as one covering civilians posted overseas in direct support of combat operations. As the law is currently written, she cannot be paid a 2008 PFD.

IV. Conclusion

Because Ms. D. was absent from Alaska for more than 180 days in 2007 to serve as a military contractor in the Iraq theater, and because such service is not an allowable reason for so long an absence under the PFD program, she is not eligible for a 2008 permanent fund dividend. The decision of the Permanent Fund Dividend Division to deny the application of K. D. for a 2008 permanent fund dividend is AFFIRMED. This decision does not affect her status as a resident of Alaska or her eligibility for 2009 and future dividends.

DATED this 4th day of June, 2009.

By: Signed
Rebecca L. Pauli
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of July, 2009.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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