

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

IN THE MATTER OF )  
 )  
 A. K. )  
 ) Case No. OAH 09-0016-PFD  
 )  
2008 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

A. K. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Ms. K. was not eligible, and it denied the application initially and at the informal appeal level. Ms. K. requested a formal hearing by written correspondence only. Review of the entire record and due deliberation support the conclusion that Ms. K. is not eligible for a 2008 dividend.

**II. Facts**

There is no dispute that Ms. K. has been and continues to be an Alaska resident. During 2007, the qualifying year for a 2008 dividend, Ms. K. did quite a bit of traveling, for a number of different reasons. During the first half of 2007, Ms. K. took a number of short trips out of Alaska for her employment, to attend one funeral, and to attend one wedding. From May 3, 2007, until August 2, 2007, Ms. K. traveled in Europe on vacation. On August 16, 2007, Ms. K. left for Australia and was she absent through the remainder of the year. The Australia trip was for the purpose of attending an MBA program at S. C. U., and it can be divided into three parts. For the first 11 days, Ms. K. was attending orientation and arranging for housing. Orientation was mandatory starting on August 24, and the university recommended arrival at least two days before orientation. For the next 109 days Ms. K. was enrolled and attending class as a full-time student. For the last 17 days of December, Ms. K. was not in school because of the break between terms. Ms. K. did not return to Alaska during this period because the cost of returning to Alaska for such a short period of time was prohibitive.

The following table shows the beginning and end dates of Ms. K.’s travel in 2007. The absences are number for reference. Absences number 10 through 12 are each parts of the same absence to Australia, which continued through the end of the year.

Absence Number	Absence Begin Date	Absence End Date	Days Absent from Alaska	Reason for Absence
1	01/08/2007	01/13/2007	5	Work trip
2	01/31/2007	02/05/2007	5	Death in family
3	02/09/2007	02/11/2007	2	Work trip
4	02/14/2007	02/18/2007	4	Work trip
5	03/06/2007	03/11/2007	5	Work trip
6	03/20/2007	03/23/2007	3	Work trip
7	04/11/2007	04/16/2007	5	Work trip
8	04/27/2007	04/29/2007	2	Wedding
9	05/03/2007	08/02/2007	91	Travel in Europe
10	08/16/2007	08/27/2007	11	School orientation
11	08/27/2007	12/14/2007	109	Enrolled in MBA program
12	12/14/2007	End of year	17	Between terms
Total Days absent in 2007			259	

### III. Discussion

In order to qualify for a permanent fund dividend, a person must be physically present in Alaska all through the entire qualifying year, except for certain types of absences allowed by AS 43.23.008.<sup>1</sup> These exceptions include an absence of up to 180 days for any reason consistent with continuing Alaska residency; this absence, however, may not be combined with any other kind of absence.<sup>2</sup> In the alternative, applicants may be absent for any number of days they are receiving postsecondary education on a full-time basis, in addition to 120 days of absence for any other reason consistent with Alaska residency.<sup>3</sup>

The parties have discussed in their statements whether it is appropriate to consider all of the time Ms. K. was in Australia as time devoted to receiving education on a full-time basis. The division agrees that time between terms is education time, but it does not appear to accept the eleven days of orientation and other activity in preparation for the school year as education time. The outcome of this decision does not turn on how these parts of the Australia trip are counted. For purposes of this decision only, the entire 137-day absence to Australia will be regarded as time spent receiving postsecondary education on a full-time basis. The remaining 122 days were absences for general reason that are consistent with Alaska residency, but not specifically allowable except under AS 43.23.008(17).

<sup>1</sup> AS 43.23.005(a)(6).

<sup>2</sup> AS 43.23.008(a)(17).

<sup>3</sup> AS 43.23.008(a)(1), (17)(B).

Ms. K.'s total cumulative absences in 2007 exceed 180 days. Therefore, the period of her absence beyond 180 days is not allowable under AS 43.23.008(a)(17)(A). Ms. K. is entitled to claim 120 days of general absence in addition to the time she was absent in Australia for education reasons. However, Ms. K. was absent for 122 days in addition to her education time. Because these absences exceed the 120 days allowable by two days, at least some portion of Ms. K.'s absences in 2007 were not allowable.

#### **IV. Conclusion**

The division was correct to conclude that Ms. K. was unallowably absent for at least some time during the qualifying year, and its decision to deny Ms. K.'s application was correct. Therefore, the decision of the Permanent Fund Dividend Division to deny the application of A. K. for a 2008 permanent fund dividend is AFFIRMED.

Because there are no issues in this case regarding Ms. K.'s Alaska residency, nothing in this decision is intended to affect Ms. K.'s eligibility for 2009 and subsequent dividends.

DATED this 10<sup>th</sup> 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.]