

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

In the Matter of:)	
)	
J. C., III)	
)	OAH No. 09-0022-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-033-9718

DECISION AND ORDER

I. Introduction

Staff Sergeant¹ J. C., III's application for a 2008 permanent fund dividend (PFD) was denied initially and at the informal appeal level, on the basis that during the qualifying year his Military Leave and Earnings Statement (LES) showed Florida as his State of Legal Residence (SLR). SSgt. C. requested a formal hearing, which was held on February 17, 2009. PFD Specialist Kimberly Colby represented the division. SSgt. C. did not participate.² Following the hearing, the record was left open until February 27, 2009, to provide SSgt. C. with an opportunity to show reasonable cause for his failure to participate.³ The record closed without further participation by SSgt. C. The denial is affirmed because SSgt. C. has not been able to provide evidence of the type deemed acceptable by the PFD regulations to show that his LES was in error and that he had formally requested a change of SLR prior to the beginning of the qualifying year.

II. Facts

This case turns on SSgt. C.'s efforts, if any, to change residency in his military personnel records from Florida to Alaska in 2006. J. C. is a member of the United States Air Force. He claims that his Alaska residency commenced May 25, 2006. When SSgt. C. applied for a 2008 PFD on January 24, 2008, the division noted from paperwork he submitted that on payroll materials his SLR had been listed as Florida during 2006. On his appeal forms he wrote that his LES was in error because he completed the DD Form 2058 changing his state of residency for tax purposes to Alaska in 2008. Form DD 2058 is the military form that accomplishes SLR changes. SSgt. C. has since

¹ The LES found at Exhibit 1, p. 5 identifies J. C.'s pay grade as an E5 in the Air Force. This is the pay grade for a Staff Sergeant - <http://www.defenselink.mil/specials/insignias/enlisted.html>. Therefore, while not directly identified as such, it is reasonable to conclude that Mr. C. has earned the rank of Staff Sergeant.

² SSgt. C. was called at his phone numbers of record and a voice mail message was left informing him that the record would remain open for ten days.

³ "If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j).

completed a DD Form 2058 to list Alaska as his SLR.⁴ However, there is no record of SSgt. C.’s filing a DD Form 2058 in 2006. As explained on his appeal forms, he completed the form during the Air Force’s transition to a virtual records system and believes it was lost in the transition. As further evidence of his Alaska residency, SSgt. C. wrote that he obtained an Alaska Driver’s license and registered to vote in fall of 2006.

III. Discussion

The qualifying year for the 2008 dividend was 2007.⁵ The regulation at 15 AAC 23.143(d)(2) establishes that an individual “is not eligible” for a PFD if, during the qualifying year or during the application year up to the date of application, the individual “claimed or maintained a claim of residency in another state or country in the individual’s employment personnel records.” This is an absolute disqualification that is independent from the broader question of whether the individual is, on balance, a legal resident of Alaska.

There are two independently sufficient items of evidence that will overcome this absolute disqualification if they show that the existence of the residency claim in another state was due to “an error or delay . . . in processing by the personnel office.” First, the applicant can show an error or delay in processing his personnel records by supplying “a certified copy of the individual’s request to change the individual’s state of legal residence.”⁶ Alternatively, the applicant can show an error or delay in processing his personnel records by supplying “a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay; the personnel officer must state . . . why the request was not processed timely.”⁷

SSgt. C. has not provided either type of proof. The Department of Revenue is bound by its own regulations. Regardless of whether SSgt. C.’s current recollection regarding a DD 2058 in 2006 is credible, the department cannot pay him a dividend unless he provides one of the two types of proof enumerated in 15 AAC 23.143(d)(2). Since he does not have either of them, his 2008 PFD must be denied.

IV. Conclusion

SSgt. C. has not been able to establish through a means permissible under the regulations that, prior to the beginning of the qualifying year for the dividend at issue, he made a request to

⁴ Exhibit 3 at 3.

⁵ AS 43.23.095(6).

⁶ 15 AAC 23.143(d)(2)(A).

⁷ 15 AAC 23.143(d)(2)(B).

designate Alaska as his State of Legal Residence in his personnel records. He is disqualified from a 2008 dividend by the status of his personnel records, which showed Florida as his State of Legal Residence. Therefore, the decision of the Permanent Fund Dividend Division to deny the application of J. C., III for a 2008 permanent fund dividend is AFFIRMED.

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.]