

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

IN THE MATTER OF)	
)	
E. G.)	
)	Case No. OAH 09-0055-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-031-4188

DECISION

I. Introduction

E. G. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. G. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. G.’s request, a formal hearing was held on March 4, 2009. Mr. G. appeared by telephone. PFD Specialist Kim Colby represented the division by telephone.

Because Mr. G. had maintained a claim of residency in another state in his employment personnel records during the qualifying year, the division’s decision to deny Mr. G.’s application for a 2008 is affirmed.

II. Facts

Mr. G. and his wife moved to Alaska in 2005. In 2006, Mr. G. and his wife considered applying for dividends, but realized they needed to wait for another year to fulfill the requirements for a full year’s residency in the qualifying year. In 2007 they had to go out of town during the application period, which they realized too late did not end at the same time as the April 15 deadline for federal income tax returns. In 2008 they did apply for dividends during the application period. There is no dispute that Mr. G. was an Alaska resident all through the qualifying year and at the date of application. Before the beginning of the qualifying year, Mr. G. registered to vote in Alaska and obtained an Alaska driver’s license.

Mr. G. serves in the military. Mr. G. testified that he believes when he first came to Alaska, he was advised that he needed to complete a form DD 2058 to change his state of legal residence in his military employment records to Alaska. Mr. G. testified that he remembered filling out the form, but he does not recall whether he ever turned it in or not. Though he couldn’t remember for certain, Mr. G. testified that he thinks it likely that he did not turn in the form. After his application for a dividend was denied, Mr. G. obtained a copy of the military legal resident certificate, filled it

out, and signed and submitted it on March 11, 2008.¹ Mr. G. testified that although his state of legal residence had been listed as Florida, that state is like Alaska in that it has no state income tax, and it was therefore never necessary for him to fill out a state tax return. Mr. G. received neither a benefit nor an added liability for having had his state of legal residence listed as Florida in his military personnel records.

III. Discussion

There are a number of requirements for permanent fund dividend eligibility listed in Alaska Statute 43.23.005, such as being an Alaska resident all through the qualifying year and citizenship and permanent resident status. Mr. G. has met these requirements. In addition, one regulation, 15 AAC 23.143(d), lists a number of actions that will, if taken during the qualifying year, make a person ineligible for a permanent fund dividend. The specific regulation that applies to this case is 15 AAC 23.143(d)(2), which reads:

An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has...claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely....

While the division does not dispute that Mr. G. met the statutory eligibility requirements during the relevant time periods, Mr. G. does not dispute that he maintained a claim of residency in his employment personnel records during the qualifying year. Many paper indicators of residency, such as a driver's license or vehicle registration, are properly considered as mere evidence of residency, to be considered along with other evidence to determine whether a person was actually an Alaska resident or not. But the regulation, 15 AAC 23.143(d)(2), is clear in stating that if a person maintains a claim of residency in another state in employment personnel records, that person will be ineligible for a dividend regardless of whether the person meets the statutory eligibility requirements.

¹ Exhibit 6.
OAH 09-0055-PFD

IV. Conclusion

Although he met the statutory eligibility requirements, Mr. G. maintained a claim of residency in another state in his employment personnel records during 2007, the qualifying year. The division was correctly applying the law when it made the decision to deny Mr. G.'s application for a 2008 dividend.

The decision of the Permanent Fund Dividend Decision to deny the application of E. G. for a 2008 Permanent Fund dividend is AFFIRMED.

DATED this 22nd day of April, 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 18th day of May, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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