

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

IN THE MATTER OF)	
)	
K. M. H.)	OAH No. 09-0198-PFD
)	Agency No. 2008-015-1797
<u>2008 Permanent Fund Dividend</u>)	

DECISION

I. Introduction

Major K. M. H. of the United States Air Force timely applied for the 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division (division) denied Major H.'s application initially and at the informal appeal level because her military paystub, known as a Leave and Earnings Statement (LES), indicates her state of legal residence is Florida. Major H. requested a formal hearing which was held on May 18, 2009. Major H. participated in person and C. Y. also testified on her behalf. Pete Scott represented the division and participated by telephone.

The division's denial of Major H.'s 2008 application is affirmed because she maintained a claim of residency in another state during the qualifying year.

II. Facts

The facts in this case are not in dispute. At all times relevant to this appeal, Major H. was an Alaska resident and remains one to this day. In 2005 Major H. was transferred from Florida to Alaska. Upon moving to this state, Major H. severed her active ties to Florida and established ties with Alaska. She registered to vote, purchased a home and obtained an Alaska driver's license. One thing she did not do, however, was to change the designation from "FL" to "AK" in the "state taxes" box on her LES. Major H. was not aware she needed to make this change on her LES because state taxes are not collected in Florida or Alaska so there was no financial benefit to her of leaving the state taxes box designation as "FL".

In 2007, Major H. submitted a timely application for that year's PFD. The division denied her application on the basis that during 2006, the qualifying year for the 2007 PFD, her LES claimed residency in another state. Major H. requested a formal hearing by correspondence and the division's denial was affirmed in a Decision and Order in OAH 07-0689-PFD adopted as a final order on February 21, 2008.

Major H. timely applied for the 2008 PFD. Again, the division denied her application for the reason that during at least part of 2007, the qualifying year for the 2008 PFD, Major H.'s LES reflected Florida as her state of residence. This appeal followed.

III. Discussion

Major H. admits that it is unlikely she will receive a 2008 PFD, but she filed the appeal in order to make the point that she has been an Alaska resident since 2005 and she should be entitled to a 2008 PFD.

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." The only exceptions to this absolute disqualification are in situations where the individual has timely requested a change to the records but for some reason the request has not been timely processed by the military personnel office.¹

Such is not the case here. Major H. became aware of the issue regarding the "state tax" box on her LES after her 2007 PFD application was denied. She still does not agree that the "FL" designation in that box should disqualify her for a 2007 and now, a 2008 PFD, but in an effort to rectify the problem, she had her records changed in June 2007. As early as July 2007, Major H.'s LES now shows "AK" in the state taxes box.² Unfortunately for Major H., the existence of the claim of Florida residency in her employment personnel file during any part of 2007 automatically renders her ineligible for a PFD in 2008.

Major H. claimed at the hearing that she could produce a document – her DD Form 2058 – that proves the military does not consider the reference to a particular state in the state taxes box as a designation of state of residency. The record was left open to give her the opportunity to provide the document and she submitted it on May 19, 2009. That form is a copy of the DD Form 2058 that Major H. filled out on June 26, 2007. Unfortunately Major H.'s DD Form 2058 does not support her case. It is, in fact, entitled "State of Legal Residence Certificate," and it is the service member's designation of his or her state of legal residence.

The requirements for PFD eligibility are in most cases very specific. When they exclude an individual from eligibility, the Department of Revenue has no discretion to pay the dividend,

¹ See 15 AAC 23.143(d)(2).

² Exh. 2 at pg. 2.

regardless of the worthiness of the individual, the seeming technicality of the exclusion, or even the individual's extensive Alaska connections.

IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the application of K. M. H. for the 2008 permanent fund dividend is AFFIRMED. Major H. maintained a claim of residency in another state in her employment personnel records during 2007, so she is not eligible for the 2008 dividend. This decision does not affect Major H.'s status as a resident or her eligibility for 2009 and future dividends.

DATED this 9th day of July, 2009.

By: Signed
Kay L. Howard
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 August, 2009.

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

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