

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

IN THE MATTER OF)
A. R.) OAH 09-0250-PFD
)
2008 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

A. R. timely applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Mr. R. was not eligible, and it denied the application initially and at the informal appeal level. Mr. R. requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed and decided the appeal. Peter Scott represented the PFD Division. The Division timely filed the agency record and a position paper.

This case is Mr. R.'s appeal of the Division's denial of his 2008 PFD application because he was on disqualifying absences from Alaska in 2007. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Mr. R. is disqualified from receiving a 2008 PFD.

II. Facts

The evidence in the record shows that it is more likely than not that, during 2007, the qualifying year for a 2008 dividend, Mr. R. was absent from Alaska for over 180 days to be a part-time and full-time student at the University of Colorado and Pikes Peak Community College, and that for more than 120 days of his absences in 2007, he was not a full-time student.¹

In his request for a formal hearing, Mr. R. explained that he thought he should be eligible for a 2008 PFD because he returned to Alaska twice in 2007, has been a resident of Alaska since birth, and because he was enrolled as a full-time student for the first half of his absence in 2007, and enrolled for 13 total credit hours divided between the University of Colorado and Pikes Peak Community College for the second half of his absence which is the equivalent of full-time student status at one institution.²

Mr. R. provided his transcripts in response to the Division's request prior to the hearing.³ These transcripts show that Mr. R. did enroll in a total of 13 credit hours in the fall of 2007, which

¹ Ex. 7-9, and the calculations in Division's position statement at page 3.

² Ex. 6, page 3 & 4.

³ Ex. 9.

included 6 credit hours at Pikes Peak Community College and 7 credit hours at the University of Colorado.⁴ These records also show that Mr. R. did not stay enrolled for 6 credit hours at Pikes Peak Community College for all of the semester.⁵ The Division provided an email from Karen Baker at Pikes Peak Community College confirming that Mr. R. withdrew from his Math 122 class on October 29, 2007.⁶

Mr. R. did not respond to the Division's position statement or the new evidence provided with that position paper. Although the Division may have incorrectly counted 15 days in January of 2007, which could have been part of a term break between two terms of full-time enrollment, even excluding these days, the evidence shows that Mr. R. was absent more than 180 days and more than 120 days when he was not a full-time student in 2007.⁷

III. Discussion

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in Alaska Statute 43.23.005. One of the requirements 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 Alaska Statute 43.23.008."⁸

Alaska Statute 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons. Reason number (17) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time as a full-time student, or fewer than 45 days in addition to absences for other listed reasons.

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(17)(B) disqualifies individuals absent more than 120 days in addition to absences for the full-time educational reasons listed under Alaska Statute 43.23.008(a)(1)-(2), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, a college student absent more than 180 total days and more than 120 days with less than full-time student status during the qualifying year is not eligible for a PFD.

⁴ Ex. 9.

⁵ Ex. 9, page 3.

⁶ Ex. 9, page 6.

⁷ See the calculations in the Division's position statement at page 3.

Mr. R.'s 2007 absences fall into this category. No law gives the PFD Division, or the administrative law judge, the legal authority to grant PFDs to people who were absent for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a)(17).

It would be unfortunate if Mr. R. did not understand that dropping a class to take less than a full-time course load in 2007 would make him ineligible for a 2008 PFD. Under the law, however, he does not qualify for a 2008 PFD.

IV. Conclusion

Mr. R.'s 2007 absences from Alaska fell within a category of absences that are disqualifying for the purpose of PFD eligibility. Mr. R. therefore does not qualify for a 2008 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of A. R. for a 2008 permanent fund dividend be AFFIRMED.

DATED this 13th day of July, 2009.

By: Signed
MARK T. HANDLEY
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 11th day of August, 2009.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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