

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

IN THE MATTER OF)
J. G. G.) OAH 09-0266-PFD
)
2008 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

J. G. G. timely applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division (Division) determined that Lt. G. was not eligible, and it denied the application initially and at the informal appeal level. Lt. G. requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed and decided the appeal. Lt. G. did not file any additional arguments or evidence. Kimberly Colby represented the PFD Division. The Division timely filed the agency record and a position paper.

This case is Lt. G.'s appeal of the Division's denial of his 2008 PFD application because he did not return to Alaska for 72 hours from 2006 through 2007. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Lt. G. is disqualified from receiving a 2008 PFD.

II. Facts

Lt. G. admits that he was not present in Alaska in 2006 or 2007. Lt. G. has not claimed that he received imminent danger or hostile fire pay in 2007.¹

In his request for a formal hearing, Lt. G. provided a letter from the Commander of his Squadron, W. C. K., Lt. Col., USAF, who explains why the demands of the Air Force prevented Lt. G.'s return to Alaska in 2006 and 2007.² Lt. G. was not able to return to Alaska because he was an Undergraduate Pilot Training student, who was not allowed personal leave until August of 2006, and then had five permanent changes of duty station.³

III. Discussion

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in AS 43.23.005(a). In order to qualify for a permanent fund dividend under number (4) of

¹ Ex. 9.

² Ex. 9, page 3.

³ Ex. 9, page 3.

this list, the applicant must have been physically present in Alaska for at least 72 consecutive hours in the prior two years.⁴ Lt. G. does not meet this requirement.

The Alaska Commissioner of Revenue does have the authority to waive this requirement during times of national emergency.⁵ Pursuant to that authority, the Commissioner has issued a policy statement providing a waiver for certain military members and their dependents and setting out the requirements for receiving a waiver.⁶

Unfortunately, this waiver does not apply to all members of the military whose service prevents them from returning to Alaska. One of the requirements for this waiver is that the military member requesting the waiver provides “a 2007 Leave and Earnings Statement showing receipt of imminent danger or hostile fire pay.” Lt. G. did not provide a 2007 Leave and Earnings Statement showing receipt of imminent danger or hostile fire pay, because he does not claim that he received imminent danger or hostile fire pay.

IV. Conclusion

Lt. G. does not meet the requirements for a Commissioner’s waiver of the 72-hour rule, even though his military service prevented his return to Alaska. Lt. G. 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 J. G. G. for a 2008 permanent fund dividend be AFFIRMED.

DATED this 14th day of July, 2009.

By: *Signed* _____
MARK T. HANDLEY
Administrative Law Judge

⁴ AS 43.23.005(a)(4).

⁵ AS 43.23.005(f).

⁶ Exhibit A.

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 17th day of August, 2009.

By: Terry L. Thurbon for
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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