

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

IN THE MATTER OF)	
)	
A. L. G.)	
)	
<u>2008 Permanent Fund Dividend</u>)	OAH No. 09-0288-PFD Agency No. 2008-026-5825

DECISION

I. Introduction

A. L. 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. Mr. G. requested a formal hearing which was held June 25, 2009. Mr. G. participated by telephone as did the division’s representative, PFD Specialist Peter Scott. Mr. G. has not met his burden of proving that the division’s decision was in error. Therefore, the decision to deny Mr. G.’s application is affirmed.

II. Facts

There is very little factual dispute between the parties. Mr. G. came to Alaska in 1990. He is a bicycle mechanic and there was a seasonal demand for his trade. During the winter months he would travel to Oregon and California to find work. Mr. G. moved to Oregon in 1996 and returned to Alaska in 2001 at which time he resumed his schedule of living in Alaska during the summer and elsewhere in the winter.

For years, when in Alaska he has worked for and rented a room from C. W. Mr. G. considers this room to be home and wanted to stay in Alaska year round. Hoping to change his pattern of employment to something more stable, in October 2004 Mr. G. left Alaska to take a part-time flex position with the United States Post Office in San Jose California. The position is permanent and while the employee is not guaranteed 40 hours a week it amounts to a full-time position.¹

When he left for California, Mr. G. took his bike, laptop computer, some clothing and moved into a single room with a hot plate, microwave, and toaster oven. He kept his books, CDs, stereo, television, car and desktop computer at Mr. W.’s. Mr. G. and Mr. W. had no formal

¹ Testimony of A. G.

rental agreement but Mr. G. would send him money every now and then. Mr. W. kept Mr. G.'s room as Mr. G. left it so it would be ready for his return.

Mr. G. took the position with the Post Office in California hoping that when a position became available in Alaska, he would be permitted to transfer and would have year round employment in Alaska. However, before he could transfer, he quit work because of an injury. When he quit he planned to return to Alaska in November 2006. He was unable to do so because he had sued his California landlord and was looking for an attorney to pursue a workers' compensation claim against the Post Office. Additionally, Mr. G. wanted to receive treatment for his injury from a specialist he knew in Oregon. While there, Mr. G. lived at his brother's house and slept on the floor. He has lived with his brother in the past and stores personal items at his brothers including bike tools and a truck with Alaska plates. Mr. G. considers his brother's house to be a "staging" area.

III. Discussion

In order to qualify for a permanent fund dividend, a person must be an Alaska resident all through the qualifying year and at the date of application.² The qualifying year for the 2008 PFD is 2007.³ A person establishes residency in Alaska by being physically present in the state with the intent to remain indefinitely and to make a home in the state.⁴ A person who establishes residency and then leaves the state is no longer an Alaska resident if the person establishes residency in another state or is absent under circumstances that are inconsistent with the intent to remain in the state indefinitely and to make a home in the state.⁵

The Department of Revenue has promulgated regulations that provide guidance to the division when evaluating an applicant's eligibility.⁶ Department regulation 15 AAC 23.143(d) lists 17 actions that are so typically indicative of residency in another state or country that any one of the actions renders the applicant ineligible for a PFD without a detailed inquiry into the Alaska residency criteria. One of these actions is to accept full-time permanent employment in another state except under limited circumstances that are not present here.⁷

² AS 43.23.005(a)(2),(3).

³ AS 43.23.095(6).

⁴ AS 01.10.055(a).

⁵ AS 01.10.055(c).

⁶ 15 AAC 23.143(d)

⁷ These exceptions are when on an allowable absence to receive education, military duty, and working for congress or a state field office. 15 AAC 23.143(d)(4)(A), (B).

Mr. G. left Alaska to accept full-time permanent employment in California in 2004. Although his position was identified as “flex-time,” his description of the job conditions was that of a full-time permanent position. He last worked in his in a full-time permanent position in 2006 which is the qualifying year for the 2007 PFD. At issue is the 2008 PFD. Therefore, while indicative of residency in another state, under the facts presented, Mr. G.’s full time employment does not, without further inquiry, resolve the question of his eligibility for a 2008 PFD. Accordingly, it must be determined whether Mr. G. established residency in a state other than Alaska. The division asserts that he did. Mr. G. believes he did not establish residency elsewhere because he always intended to return to Alaska and he considers Alaska to be his true home. At a formal hearing, the person requesting the hearing has the burden of proving that the division’s decision was incorrect.⁸

The term “establishes residency” is given a definite and precise meaning in AS 01.10.055(a): presence in Alaska with the intent to remain indefinitely and to make a home in the state. Under the doctrine of statutory construction *in pari materia*, a word or phrase used in one subsection of a statute is generally given the same meaning when repeated elsewhere in another subsection of the same statute. Thus, under AS 01.10.055(c), for Mr. G. to establish residency in another state, he must be physically present in that other state with the intent to remain indefinitely.

In determining residency, an important element is the definite or indefinite nature of a person’s intent to remain in Alaska. The converse is true when determining whether a person is absent under circumstances that are inconsistent with Alaska residency. This is not to say that every person who leaves the state must know their precise date of return in order to retain residency. But persons who intend to return to Alaska to remain and make their home can be expected to have at the least a general sense of when they will return, or have their returns contingent on events that can reasonably be expected to occur within an identifiable period of time such as graduation from college.

Unfortunately, Mr. G. did not establish that it was more likely than not that his return was contingent on an event that was expected to occur within an identifiable period of time or an event over which he had any control. Mr. G. left Alaska on October 27, 2004 and accepted full-time employment outside of Alaska. Mr. G. testified openly and with candor. He has

⁸ 15 AAC 05.030(h).

established that he maintained paper ties to Alaska and intended to return at some undetermined point in the future, the only question was when. In July 2005, Mr. G. was actively pursuing a reassignment to Alaska. A year later he still had not been reassigned. He did not present evidence establishing when he could reasonably expect to be reassigned or if positions were available. Furthermore, Mr. G. did not testify that he had a set time frame in which he would be returning regardless of reassignment.

Another way to look at Mr. G.'s situation is that when Mr. G. arrived in California his departure from that state was conditioned upon him obtaining a position with the Alaska District Post Office. Mr. G.'s testimony reveals that when he left Alaska he planned to return to Alaska "someday": he had no specific plan to do so and no definite or determinable date on which he would return.⁹

Mr. G. moved to California to remain for an undetermined (indefinite) period of time. By so doing he established residency in California within the meaning of AS 01.10.055(c). The evidence presented establishes that it is more likely than not Mr. G. severed his residency when he left Alaska in 2004.

IV. Conclusion

Mr. G. became a California resident when he was present in California with the intent to remain indefinitely. Therefore the decision of the division to deny A. G.'s application for a 2008 PFD should be affirmed

DATED this 2nd day of November, 2009.

By: _____
Rebecca Pauli
Administrative Law Judge

⁹ *In re A.R.*, OAH 05-0276-PFD (2005) (Return date contingent on an offer of employment is a matter beyond the applicant's immediate control.)

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 15thnd day of December, 2009.

By: Signed
Signature
Virginia Blaisdell
Name
Director, Administrative Services Division
Title

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