

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

IN THE MATTER OF)
)
 D. F.)
)
2008 Permanent Fund Dividend)

Case No. OAH 09-0300-PFD
Agency No. 2008-054-6639

DECISION

I. Introduction

D. F. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. F. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. F.’s request, a formal hearing was held on August 13, 2009. Mr. F. appeared by telephone. PFD Specialist Peter Scott represented the division.

II. Facts

The facts are not in dispute. Mr. F. lives in Kodiak. He has been an Alaska resident for thirty-eight years, and he intends to remain an Alaska resident. Mr. F. owns a business in Kodiak, and he also owns two businesses in other states. Mr. F. travels extensively to manage his three businesses. During 2007 Mr. F. was absent from Alaska for 182 days for the purpose of tending his businesses.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must meet all of the requirements of Alaska Statute 43.23.005, which states in part:

An individual is eligible to receive one permanent fund dividend each year...if the individual

- (1) applies to the department;
- (2) is a state resident on the date of application;
- (3) was a state resident during the entire qualifying year;
- (4) has been physically present in the state for at least 72 consecutive hours at some time during the prior two years before the current dividend year;
- (5) is
 - (A) a citizen of the United States;
 - (B) an alien lawfully admitted for permanent residence in the United States;

(C) an alien with refugee status under federal law; or

(D) an alien that has been granted asylum under federal law;

(6) was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008; and

(7) was in compliance during the qualifying year with the military selective service registration requirements imposed under 50 U.S.C. App. 453 (Military Selective Service Act), if those requirements were applicable to the individual, or has come into compliance after being notified of the lack of compliance.

There is no dispute that Mr. F. meets numbers (1) through (5) of the requirements and also number (7). The issue in Mr. F.'s case is requirement number (6), that he "was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008."

Alaska Statute 43.23.008 lists a number of reasons a person may be absent from Alaska during the qualifying year and still be eligible for a permanent fund dividend. This list includes a number of reasons that do not apply to this case, such as college education, military service, congressional service, continuous medical treatment, and a few others. Alaska Statute 43.23.17(a)(17)(A) provides that a person may be absent up to 180 days during the qualifying year for "for any reason consistent with the individual's intent to remain a state resident."

Mr. F. presented an appealing argument that in the case of an applicant who has been an Alaska resident for 38 years and who contributes to the state's economy by running a business, the fact that the applicant happened to be absent for 182 days instead of 180 days during the qualifying year should not affect the applicant's eligibility. While an extra two days of absence might seem of little relevance, the legislature has passed a law that is clear and easy to apply uniformly to all applicants. Generally, so long as the absence is consistent with continuing Alaska residency, applicants may be absent up to 180 days for any reason at all. Alaskans who are absent for general reasons for more than 180 days during the qualifying year for general reasons will not be eligible for a dividend the following year.

IV. Conclusion

Mr. F. was absent for more than 180 days during the qualifying year for reasons that are not specifically allowable under AS 43.23.008. Because the division was correctly applying the law in this case, the division’s decision to deny the application of D. F. for a 2009 permanent fund dividend is AFFIRMED.

DATED this 24th day of August, 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 22nd day of September, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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