

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

IN THE MATTER OF)
)
 J. C.)
) Case No. OAH 09-0307-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

J. C. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. C. was not eligible, and it denied the application initially and at the informal appeal level.

Because he was absent for more than 45 days in addition to allowable absence time in the qualifying year, Mr. C. is not eligible for a 2008 dividend.

II. Facts

Mr. C. is a mariner who works as a civilian for the Department of Defense. The Navy’s General Counsel has provided a letter describing Mr. C.’s status and activities during 2007, the qualifying year for a 2008 dividend:

Mr. C. is a civil servant, civilian marine employee (CIVMAR) of the Military Sealift Fleet Support Command (MSFSC), a subordinate of the U.S. Navy's Military Sealift Command (MSC). MSFSC is responsible for manning, training, equipping and supplying MSC United States Naval (USNS) ships that are crewed by civil service mariners. (CIVMARS). These ships provide logistical support throughout the world to the fleet. The agency's ships sail from both the East and West Coast. Mr. C. serves as an Able Seaman and is currently assigned to the West Coast.

The agency maintains a Civilian Marine Support Unit commonly referred to as the "pool" in Norfolk, VA and in San Diego, CA. The pool serves as a central location for those mariners who are reporting for a ship assignment or undergoing a medical screening. In addition, for administrative purposes, those Civmars who are enrolled in a training course are identified as being in the pool.

In support of his appeal, Mr. C. has requested that we confirm his ship assignment history and pool time for tax year 2007. A review of the Agency's records indicates that Mr. C. was assigned to USNS TIPPECANOE from 10 August 2006 until 16 January 2007. Thereafter, following a period of approved leave, Mr. C. reported to the pool on 28 February 2007 and remained in the pool seeking a ship assignment until 09 March 2007. Mr. C. then reported to USNS PECOS and remained onboard from 10 March 2007 until 30 April 2007. Following another period of approved leave, Mr. C. again reported to the pool on 26 September 2007 and remained there awaiting a ship assignment until 24 October 2007. Mr. C. then reported

to USNS TIPPECANOE on 25 October 2007 and remained aboard throughout the remainder of the year.^[1]

Mr. C. was absent from Alaska for 204 days in 2007. For 136 of these days he was working aboard a ship. For 19 days he was on leave, for 6 days he was in training, and for 4 days he was traveling to or from ports. For 39 days he was in the pool.

Mr. C.'s time in the pool was not mere idle time. While he was in the pool, Mr. C. was engaged in "one thing or the other" related to his service, including training, receiving medical checkups and immunizations, and meeting with various Navy and Department of Defense officials regarding possible upcoming ship assignments. Mr. C.'s time in the pool was not optional, but was a paid part of his employment with the Department of Defense. Mr. C. attributes nine days of his time in the pool to medical activity. Three days were at "the Navy Clinic to clear Medical by undergoing blood, ear, eye, EKG, etc. testing." On four other days he also went back to the clinic to receive vaccinations and immunizations. 9 of the 39 days in the pool were devoted to professional training, in addition to the six days of training he received earlier in the year.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been physically present in Alaska all through the qualifying year, or only absent for reasons specifically allowed by AS 43.23.008.² Allowable absence reasons that could apply to this case include:

- Serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine;³
- Receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonable available in the state;⁴
- Receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician that treated the illness if the treatment or convalescence is not based on a need for climatic change;⁵
- Up to 45 days in addition to time absent for any of the above reasons for any reason consistent with Alaska residency.⁶

As a civilian employee aboard a naval vessel, Mr. C. did not serve under foreign articles of employment under 10 U.S.C. §10302 or coastal articles of employment under 10 U.S.C. §10502.

¹ Exhibit 3, page 3.

² AS 43.23.005(a)(6).

³ AS 43.23.008(a)(4).

⁴ AS 43.23.008(a)(2).

⁵ AS 43.23.008(a)(5).

⁶ AS 43.23.008(a)(17)(C).

For the 136 days that Mr. C. was aboard a vessel, the division has agreed that Mr. C.'s service is allowable under AS 43.23.008(a)(4). Because that issue is not in dispute, it is not addressed here.

Mr. C. has asserted that the day in which he received some kind of medical attention, including immunizations or checkups, are allowable as days of continuous medical treatment. The principal reason for Mr. C.'s absence on these days was for his employment. The fact that a healthy person went to an appointment to get an immunization or have cholesterol checked on a given day does not mean that that day's absence was for continuous medical treatment or convalescence. It is questionable whether testing, such as testing to prove compliance with an employer's health and fitness requirements could be considered treatment at all. All of the medical appointments Mr. C. attended were required by his employer, not because he was sick or injured, and it appears that he was getting paid to appear at these appointments. This is not comparable to someone who is out of Alaska because they need to be treated at an Outside hospital. These days were for purposes of employment, which is not a specifically allowable absence under AS 43.23.008.

The remaining issue is whether the days that Mr. C. was in the pool are allowable as time "serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine." A previous case concerning a merchant mariner, *In the Matter of T.W.*, involved a merchant mariner who spent more than 45 days out of the state waiting for a ship to sign on to. During this time the sailor reported each day to a port city union hall to check for available positions. The case held as follows:

[The applicant] incorrectly argues that the legislature's rejection of an amendment requiring dispatch from within Alaska implies that time in ports outside of Alaska is allowable. The logical implication is that the legislature decided that all time spent aboard ship would be allowable, regardless of whether the ship departed from an Alaska port or a port outside of Alaska. Thus, under the legislature's decision, [the applicant's] time that he spent aboard a ship departing from Jacksonville was allowable, even though Jacksonville is in Florida not Alaska. But this does not mean that the legislature intended the time [the applicant] spent on land in Jacksonville to be allowable. [The applicant] is correct that a merchant mariner need not return to Alaska between voyages to qualify for a dividend the next year. But if the time spent on land in another state exceeds the 45 days allowed for general reasons in AS 43.23.008(a)(14)(C), the person will not qualify for a dividend unless that time is for the purpose of some other allowable absence reason.

This result is not absurd, and does not defeat the usefulness of the enactment. An absence for service in the merchant marine is one of the rare instances in which a person may be absent from Alaska for reasons of employment and still qualify for a dividend. Most Alaskans leaving the state for employment reasons, including many pilots and flight attendants, do not receive the same special treatment as merchant mariners, and they lose their dividends if their absence times exceed 180 days, even if they are working the entire time. In some cases merchant mariners support national efforts, as [the applicant] has done

in making a voyage into the Persian Gulf to deliver supplies needed for the war in Iraq. But this is also true of many civilian employees, including civilians working directly for the Department of Defense in war zones, employees of firms contracting to the military, and members of commercial flight crews airlifting supplies and personnel for war efforts. In times of national emergency, merchant mariners and their ships are subject to be pressed into the service of the nation. But again, this is also true for aircraft, pilots, and members of flight crews, whose absences are not allowable. The provision allowing absences for time spent aboard ship as a merchant mariner is generous, and it is not absurd to think that the legislature intended to exclude time spent on land in ports outside of Alaska when a person was not under articles of employment.

While he was in the pool, Mr. C. was not serving aboard a ship under articles of employment.

While his daily attendance at the pool was a required part of his job, this portion of Mr. C.'s absence cannot be distinguished from any other kind of land-based employment. Generally, absences for employment reasons are not specifically allowable.

Mr. C. was in the pool for 39 days and absent from the state on leave for 19 days. Even if nine of the pool days were considered time spent in allowable professional education, Mr. C. still would have been absent 49 days in addition to allowable time spent aboard a ship under articles of employment or receiving professional education on a full-time basis.

IV. Conclusion

Mr. C. did not receive continuous medical treatment while he was absent from Alaska in 2007. Mr. C. was absent from Alaska for 49 days in addition to time spent aboard a ship under articles of employment or receiving professional education on a full-time basis. Because this portion of the absence exceeds 45 days, Mr. C. is not eligible for a 2008 permanent fund dividend.

DATED this 11th day of September, 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 15th day of October, 2009.

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

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