

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

IN THE MATTER OF)
)
 J. E.)
) Case No. OAH 09-0336-PFD
)
2008 Permanent Fund Dividend)

DECISION

I. Introduction

J. E. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. E. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. E.’s request, a formal hearing was held on July 28, 2009. Mr. E. appeared by telephone. PFD Specialist Kim Colby represented the division by telephone.

Although he was absent for an extended period of time, in excess of a year, Mr. E. never severed his Alaska residency, and his absence during the qualifying year was allowable. Therefore, Mr. E. is eligible for a 2008 dividend.

II. Facts

In 2005, Mr. E. was in his mid 20’s, unmarried, had no children, no mortgage, and few obligations. Sensing that the level of freedom he was enjoying might not last forever, Mr. E. decided to take advantage of this period in his life by saving up some money and then going on a long trip to places he had never been. Mr. E. envisioned a period of carefree wandering, with no specific itinerary or destination, going wherever adventure and new experience beckoned. Mr. E. had considered going to Europe to start his wandering, but he had no specific plan.

Mr. E. began saving money, and he lived very frugally in Fairbanks. As 2005 waned, Mr. E. was getting close to his goal of saving \$10,000, which he considered enough to let the adventure begin. Mr. E. gave his employer several months notice of his intent to quit his job to go on an odyssey of indeterminate length. Though he was offered no promise of being rehired on his return, Mr. E. remained on good terms with his employer. By January of 2006, Mr. E. had met his savings goal. Having been preparing for the trip for some time, Mr. E. had accumulated few personal belongings; anything he could not carry with him, he gave away. Mr. E. had his mail forwarded to his parents’ house in Texas, and on January 31, 2006, Mr. E. left Alaska on a one-way ticket, and hit the road.

Though he had originally considered starting in Europe, after word of his upcoming adventure spread among his coworkers one of them let Mr. E. know that he had a vacant house in Belize and would welcome a responsible housesitter. Since the point of the trip was to let the adventure unfold how it would, Mr. E. decided to drift south instead of crossing the Atlantic. He went to Seattle, took a train to Oregon, and a week or two later somehow ended up in El Paso, where his parents live. Mr. E. spent more than two months in El Paso. Near the end of April, 2006, he went to Mexico, and traveled on to Belize. Mr. E. stayed in Belize five or six months. He traveled to Guatemala, came back through Mexico, traveled north through the United States, then through Canada and he finally returned to Alaska on March 2, 2007.

Mr. E. provided copies of his bank account statements for the entire time he was absent, with annotations pointing out relevant transactions. These records document Mr. E.'s travel and the amounts he spent as he went. The statements show that initially Mr. E. was spending about a thousand dollars a month, but as his account dwindled in the second half of 2006 he became more frugal. Near the end of the year he borrowed a little bit of money from his father as he was returning north. By the time he got back to Fairbanks, Mr. E.'s account was overdrawn by about a hundred dollars, until March 12, 2007, when his former employer rehired him and paid him an advance.

Mr. E. has consistently stated and testified that his intent was to travel until his money ran out, and then to return to Alaska. Mr. E.'s parents submitted a notarized affidavit confirming Mr. E.'s intent to the best of their knowledge, and stating that Mr. E. never said anything to them that could be considered contrary to the intent to return to Alaska after completing his travels.

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.¹ 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.² A person who establishes residency and then leaves the state is no longer an Alaska resident if the person is absent under circumstances that are inconsistent with the intent to remain in the state indefinitely and to make a home in the state.³ An absence of less than 180 days during the qualifying year is allowable, so long as it is for a reason consistent with continuing

¹ AS 43.23.005(a)(2),(3).

² AS 01.10.055(a).

³ AS 01.10.055(c).

Alaska residency.⁴ At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was incorrect.⁵

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.⁶

Mr. E.'s absence was, to some extent, of an indefinite nature. Mr. E. did not know exactly how long he would be gone. But his return was contingent on a specific, identifiable event that was within Mr. E.'s control: the depletion of his travel budget. Had Mr. E. taken a job while he was absent to prolong his tour, his absence could have been prolonged indefinitely and it would become more difficult to characterize Mr. E. as a continuing Alaska resident.

Although his absence was for a prolonged period, Mr. E.'s absence with the intent to walk the Earth until his money ran out and then to return to Alaska was not inconsistent with continuing Alaska residency. Mr. E. did not establish or claim residency in any other state or country. He was not absent under circumstances that are inconsistent with the intent to maintain Alaska residency. He did not perform any acts inconsistent with Alaska residency. He did not maintain his principal home in another state.

IV. Conclusion

During the portion of 2007 that he was absent, Mr. E. was an Alaska resident. Mr. E.'s absence of less than 180 days in 2007 was allowable under AS 43.23.008. Mr. E. is eligible for a 2008 permanent fund dividend.

DATED this 17th day of August, 2009.

By: Signed
DALE WHITNEY
Administrative Law Judge

⁴ AS 43.23.008(a)(17)(A).

⁵ 15 AAC 05.030(h).

⁶ See, e.g., *In the Matter of T.M.*, case number 08-0699-PFD (O.A.H., March, 2009)(residency severed after applicant left Alaska for indefinite period of time, even though he returned to Alaska after about a year.)

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 16th 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.]