

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

In the Matter of:)	
)	
C. A. S.)	
)	OAH No. 09-0400-PFD
<u>2008 Permanent Fund Dividend</u>)	Agency No. 2008-064-3006

DECISION

I. Introduction

C. A. S. timely applied for a 2008 permanent fund dividend (PFD). In 2006 and 2007 Ms. S. was active duty military and did not return for at least 72 hours during this period as required by AS 43.23.005(a)(4).¹ For this reason, the Permanent Fund Dividend Division denied her application initially and at the informal appeal level. At Ms. S.'s request, a formal hearing was held on June 30, 2009. The division's denial is affirmed because Ms. S.'s deployment status did not qualify her for a waiver of the 72 hour return requirement under the National Emergency Military Absence Policy for the 2008 PFD.

II. Facts

The facts of this case are not in dispute, the sole issue being their legal significance. Unless otherwise attributed, the facts set out below are based on testimony at the hearing and the exhibits in the file.

Ms. S. was born in Alaska and, with the exception of her military service, has always lived in Alaska. Ms. S. joined the Navy in December 1999 and separated from service in February 2008. Upon separation she returned to Alaska where she presently resides.

In 2006 Ms. S. was deployed in the Persian Gulf and received imminent danger or hostile fire pay. In January 2007 she was deployed to the Western Pacific Theater. Under this deployment she was no longer eligible for imminent danger or hostile fire pay. In April 2007, Ms. S. received an alcohol related discipline and was unable to take leave. She received treatment and upon her graduation from treatment she was deployed at sea and could not take leave.² Ms. S. did not return to Alaska for 72 consecutive hours in the two years prior to the 2008 PFD, 2006 and 2007.

¹ An Alaska resident is eligible to receive a PFD if the person "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." AS 43.23.005(a)(4).

² Exhibit 9.

III. Discussion

The Department of Revenue (“Department”) supports an individual’s choice to serve in the military and does not believe a person should be forced to choose between service to their country and maintaining their Alaska residency for PFD eligibility purposes. The applicable statutes and the Department’s regulations addressing physical presence in Alaska balance an individual’s choice to serve with objective indicia of the individual’s intent to remain an Alaska resident.

An otherwise eligible individual remains eligible for a PFD if that person was absent serving on active duty as a member of the armed forces or accompanying that person as a spouse or dependent.³ Ms. S. was absent while on active duty so her absence was allowable.

Most allowable absences are not without limits. One such limit is the requirement that a person who is allowably absent must return “for at least 72 consecutive hours at some time during the prior two years before the current dividend year.”⁴ Recognizing that there are times when circumstances may not permit members of the armed forces and their families to return for 72 consecutive hours, the law permits the Commissioner of Revenue to waive the 72 hour requirement in a time of national military emergency.⁵ On January 8, 2008, the Commissioner of Revenue exercised his discretion and signed the National Emergency Military Absence Policy for the 2008 PFD waiving the 72 hour requirement if the military member 1) requests a waiver and 2) provides a 2007 Leave and Earning Statement (LES) showing receipt of imminent danger or hostile fire pay.⁶

Ms. S. acknowledged that she does not meet the latter requirement. She appealed because she believes that the criteria should be that she was deployed, not whether her deployment was eligible for imminent danger or hostile fire pay. However, the language of the policy is clear and leaves no room for discretion. Accordingly, Ms. S. is not eligible for a waiver of the 72 hour requirement and is thus not eligible for a 2008 PFD. The PFD division correctly applied the law when it concluded Ms. S. was not eligible for a waiver and it denied Ms. S.’s application for a 2008 permanent fund dividend. This decision does not affect her status as an Alaska resident or her eligibility for 2009 and future dividends.

³ AS 43.23.008(a)(3).

⁴ AS 42.23.005(a)(4).

⁵ AS 43.23.005(f).

⁶ Exhibit 11 at 5.

IV. Conclusion

Ms. S. is not eligible for a waiver of the 72 hour rule because she did not receive imminent danger or hostile fire pay in 2007. Therefore, to be eligible for a 2008 PFD Ms. S. must have returned to Alaska for at least 72 consecutive hours during 2006 or 2007. She did not. The division correctly denied C. A. S.'s application for a 2008 PFD.

DATED this 23rd day of November, 2009.

By: Signed
Rebecca L. Pauli
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 29th day of December, 2009.

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

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