

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

IN THE MATTER OF	)	
	)	
T. L.-B.	)	
	)	
<u>2008 Permanent Fund Dividend</u>	)	OAH No. 09-0401-PFD Agency No. 2008-059-1272

**DECISION**

**I. Introduction**

T. L.-B. applied for a 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division determined that she was not eligible for a 2008 PFD because in 2002, at the formal hearing level, it was determined that she had not overcome the legal presumption of 15 AAC 23.163(f), that she was no longer a resident for purposes of the PFD program and she had not reestablished residency for purposes of the 2008 PFD. Ms. L.-B. requested a formal hearing.

After reviewing the evidence and the law, it is concluded that Ms. L.-B. is bound by the 2002 administrative determination that she did not have the requisite intent to return to Alaska. Because she is bound by that decision, she could not be eligible for a 2008 PFD unless she had physically returned to Alaska and reestablished residency prior to the beginning of the qualifying year.

**II. Facts**

Ms. L.-B. became a state resident in 1971. She married her husband in 1987. He entered the Navy and in 1993 the couple left Alaska because of his military duty. Ms. L.-B.'s husband has not been reposted to Alaska and she has continued to accompany him during his military assignments. Although they have not lived in Alaska since that time, Ms. L.-B. has made several trips back to the state and she maintains very close ties to Alaska. Before leaving the state, she had been a resident for over 20 years and has continued to maintain contact with family and friends in Alaska.

Ms. L.-B.'s 2000 PFD application was denied, along with the applications of her husband and son. As of that time, the couple had been absent from Alaska for more than five years and had not returned for a total of 30 days during the preceding five years. A formal hearing was held and the hearing officer determined that her husband's absence was due to unavoidable circumstances, but Ms. L.-B.'s was not.<sup>1</sup>

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<sup>1</sup> *IMO R. & T. B. & R. B. Jr.*, Caseload No. 010575 (March 2002).

### III. Discussion

In order to qualify for a PFD, an individual must be an Alaska resident for all of the PFD qualifying year.<sup>2</sup> An individual can remain a resident while living outside Alaska under some circumstances, such as accompanying a spouse on active-duty military service, if at all times the individual continues to have the intent to return to Alaska.<sup>3</sup>

The law imposes presumptions about an individual's intent to return to Alaska. The law also requires that, when determining whether an individual remains a resident during an absence of many years, intent is measured by certain objective criteria rather than a simple assessment of the credibility of the individual asserting that she consistently maintained that commitment.

By law, there is a presumption that a person who has been absent for more than five years is no longer an Alaska resident.<sup>4</sup> It is rare that a PFD applicant who spends the majority of each year outside for more than five consecutive years is able to overcome the presumption that she has not maintained the intent to return to Alaska at all times during her absence. The law makes it especially difficult to overcome the presumption if the individual "has not been physically present in Alaska for at least 30 cumulative days during the past five years."<sup>5</sup> This is the presumption that the hearing officer applied when ruling on Ms. L.-B.'s 2000 PFD application.

The decision on her 2000 PFD application controls the ruling in this appeal. The decision is controlling because of a doctrine called collateral estoppel, designed to prevent people from litigating issues that have already been decided. In essence, when the same parties have disputed an issue in the past, and the issue was resolved by a final decision in a proceeding that either takes place in court or offers "an adequate substitute for judicial procedure," that issue is resolved when it arises in the future between those same parties.<sup>6</sup> In this case, the formal appeal afforded to Ms. L.-B. on her 2000 PFD application gave her an opportunity to present her arguments and evidence in a proceeding commensurate with the significance of the dispute, culminating in a decision with findings of fact and conclusions of law. It provided "an adequate substitute for judicial procedure" and can fairly be used to bind those who participated in it.

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<sup>2</sup> AS 43.23.005(a)(3).

<sup>3</sup> AS 43.23.095(7), AS 01.10.055(c), & AS 43.23.008(a)(3).

<sup>4</sup> 15 AAC 23.163(f).

<sup>5</sup> 15 AAC 23.163(h)(2).

<sup>6</sup> See generally *Alaska Contracting & Consulting, Inc. v. Alaska Dep't of Labor*, 8 P.3d 340, 344-45 (Alaska 2000); *Aloha Lumber Corp. v. University of Alaska*, 994 P.2d 991, 1001-02 (Alaska 1999); *Briggs v. State, Dep't of Motor Vehicles*, 732 P.2d 1078, 1081-82 (Alaska 1987).

An administrative law judge cannot ignore, set aside, or reverse the prior finding in an earlier decision. In the decision on her 2000 PFD, the hearing officer found that Ms. L.-B. did not intend to return to Alaska and remain in Alaska indefinitely during 1999, which was the qualifying year for the 2000 PFD.<sup>7</sup> Because she was presumed to no longer intend to return to Alaska, Ms. L.-B. was no longer a state resident as defined by the PFD law.<sup>8</sup> She cannot re-establish her eligibility for a PFD until she re-establishes herself as a state resident. To do so she must, at a minimum, maintain her principal home in Alaska for at least 30 days.<sup>9</sup>

#### **IV. Conclusion**

Because a prior appeal decision established that Ms. L.-B. lost her status as an Alaska resident during 1999, and because she did not return to Alaska to reestablish residency before the qualifying year for the 2008 dividend began, she is not eligible for the 2008 PFD.

DATED this 28<sup>th</sup> day of December, 2009.

By: Signed  
Rebecca 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 10th day of February, 2010.

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

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

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<sup>7</sup> Exhibit 6, page 2.

<sup>8</sup> AS 43.23.095(7)

<sup>9</sup> AS 01.10.055.