

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

In the Matter of:)	
)	
S. A.)	OAH No. 09-0421-PFD
)	Agency No. 2008-044-5048
<u>2008 Permanent Fund Dividend</u>)	

DECISION AND ORDER

I. Introduction

Mr. A. submitted a timely application for his 2008 Permanent Fund Dividend (PFD). His application was denied because he had submitted a Maryland Resident Income Tax Return jointly with his wife. This decision was upheld at the informal appeal level. Mr. A. subsequently submitted evidence to show that he had corrected the Maryland tax return to remove his name. The Department's Formal Hearing Position Statement acknowledges that this is no longer a valid reason for denying Mr. A.'s 2008 PFD but asserts that Mr. A. is not eligible for a PFD because he did not demonstrate the required intent to return to Alaska during his extended absence from the state.

II. Facts

Mr. A. is on active duty in the military. He lived in Alaska from 1999 through September 27, 2002.¹

In response to the Extended Absence Questionnaire, Mr. A. stated

My occupation does not allow me to leave and return to Alaska until retirement. Requests for duty assignment relocation are not always approved. I also want to use my military career to travel extensively before ultimately returning to Alaska for/after retirement for my military career.²

Mr. A. intends to retire in Alaska and has maintained his Alaska voter registration, driver's license, and car registration.³

Mr. A. was present in Alaska for four days in January of 2005⁴ and for four days in 2007.⁵ As of September 8, 2009, Mr. A. had requested an assignment in Alaska.⁶ Based on his

¹ Exhibit 4, page 2.
² Exhibit 4, page 4.
³ *Id.*
⁴ Exhibit 12, page 3.
⁵ Exhibit 4, page 2.
⁶ Exhibit 14, page 2.

statements during the application and appeal process in 2008, however, it appears that Mr. A. had not made a request for an Alaska assignment in 2007 or before, which is the relevant time period for consideration here.

III. Discussion

A person requesting a formal hearing has the burden of proving that the division's decision was incorrect.⁷ Alaska statutes and regulations specifically support an individual's choice to serve in the military and they attempt to strike a balance between acknowledging the restrictions inherent to military service with the State interest of paying PFDs only to Alaska residents. Active duty service is an allowable absence from the state, even for extended periods of time.⁸ This allowance is not unlimited, however.

There is a presumption that a person absent from the state for more than five years no longer has the intent to return to Alaska and remain indefinitely.⁹ The Department considers various factors in determining whether that presumption has been rebutted.¹⁰ A person who has not returned for at least 30 days during the five year period is presumed not to have met his burden of rebutting the initial presumption.¹¹ This is, in effect, a presumption within a presumption.

Mr. A. has been absent from Alaska for more than five years and is therefore presumed not to have the intent to return and remain indefinitely.¹² In this situation,

the department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department's satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.¹³

Mr. A. has not shown that unavoidable circumstances have kept him from returning to Alaska for at least 30 days. The cost of travel or the need to use leave time to return can create hard choices, but do not constitute unavoidable circumstances. Extended deployment overseas or medical emergencies might constitute unavoidable circumstances, especially where the applicant has come close to meeting the 30 day requirement. In this case, nothing in the record suggests

⁷ 15 AAC 05.030(h)

⁸ AS 43.23.008(a)(3).

⁹ 15 AAC 23.163(f).

¹⁰ 15 AAC 23.163(g).

¹¹ 15 AAC 23.163(h).

¹² 15.AAC 23.163(f).

¹³ 15. AAC 23.163(h)(2).

that Mr. A. was prevented from returning to Alaska more often, or for longer periods of time on the trips he did make. Accordingly, Mr. A. has not rebutted the presumption that he no longer intends to return to Alaska and remain indefinitely.

IV. Conclusion

Because he did not return to Alaska for at least a total of 30 days during the past five years, there is a presumption that Mr. A. did not have the required intent to return to Alaska and remain indefinitely. Therefore, the Department correctly denied Mr. A.'s PFD application.

DATED this 18th day of December, 2009.

By: Signed
Jeffrey A. Friedman
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 January, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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