

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

IN THE MATTER OF)
)
C. T. J.)
)
) Case No. OAH 09-0422-PFD
2008 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

C. T. J. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. J. was not eligible, and it denied the application initially and at the informal appeal level. Mr. J. requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal on September 23, 2009. Mr. J. participated. Peter F. Scott represented the Division by telephone.

The administrative law judge concludes that the Division correctly denied Mr. J.'s 2008 PFD application. Mr. J. does not qualify for a 2008 dividend because he has not lived in Alaska as an Alaska resident for six consecutive months since he severed his Alaska residency in 2002.

II. Facts

Mr. J. was very helpful in explaining his absences and his history during the hearing. Mr. J. was raised in Alaska and his mother still lives here.¹ Mr. J. joined the military in 1999.² Since he left in 1999, Mr. J. has never lived in Alaska for six consecutive months, but except for his move to Okalahoma in 2002, he has been in Alaska or serving in the military since 1999.³ Mr. J. frequently returned to Alaska for extended visits with his relatives.⁴ Mr. J. moved to Okalahoma on November 15, 2002 to live with his fiancée.⁵ From November 15, 2002 to December of 2003, except for a month long visit to his relatives in Alaska, Mr. J. was living in Okalahoma with his fiancée and attending college part-time.⁶ He then he re-joined the military.⁷ The longest period of time that Mr. J. has lived in Alaska since 1999 was from August 16, 2004 through February 2, 2005,

¹ Recording of Hearing & Exhibit 6, p. 1.

² Recording of Hearing.

³ Recording of Hearing & Exhibit 6, p. 1.

⁴ Exhibit 6, p. 1.

⁵ Recording of Hearing.

⁶ Recording of Hearing & Exhibit 6, p. 1.

⁷ Recording of Hearing & Exhibit 6, p. 1.

a period of less than 180 days.⁸ On February 2, 2005, Mr. J. left Alaska again for active duty military service.⁹ Mr. J. is still living outside Alaska as an active duty member of the military.¹⁰

Based on the evidence in the record, I find that J. became a resident of Oklahoma in 2002 and that he did not live in Alaska for more than 180 days in 2002.¹¹

III. Discussion

A person cannot be eligible for a 2008 Alaska PFD while living outside Alaska. This requirement is found in Alaska Regulation 15 AAC 23.143(b).

A person can be a resident but not eligible for a dividend. A “state resident” is someone who is physically present in the Alaska with the intent to remain indefinitely under the requirements of AS 01.10.055 or, if the individual is not physically present in the state, intends to return to the state and remain indefinitely in the state under the requirements of AS 01.10.055. Under AS 01.10.055, a person becomes an Alaska resident by being physically present in the state with the intent to remain indefinitely and to make a home in the state. Having established residency, a person remains a resident while absent unless he establishes or claims residency somewhere else, or performs acts that are inconsistent with the intent to remain a resident.

Mr. J. moved to another state in 2002. The evidence shows that Mr. J. moved from Alaska in 2002 under circumstances that were not consistent with the intent to remain a resident. Mr. J.’s move from Alaska in 2002 to live his fiancée for what was at that time an indefinitely long and extended absence means that he was not an Alaska resident after that move.

After a break in Alaska residency, a person cannot be eligible for a PFD without re-establishing Alaska residency and remaining in Alaska as an Alaska resident for at least six consecutive months before leaving on an extended absence. This requirement is found in Alaska Statute 43.23.008(b). Mr. J. moved back to Alaska on August 16, 2004, but even if he re-established his Alaska residency on that date, he did live in Alaska as an Alaska resident for six consecutive months before he moved out of Alaska again. Mr. J. has not lived in Alaska as an Alaska resident for six consecutive months since he severed his Alaska residency in 2002. His application for a 2008 dividend was correctly denied.

⁸ Exhibit 6, p. 1.

⁹ Exhibit 6, p. 1.

¹⁰ Recording of Hearing & Exhibit 6, p. 1.

¹¹ Recording of Hearing & Exhibit 6, p. 1.

IV. Order

IT IS HEREBY ORDERED that the application of C. T. J. for a 2008 permanent fund dividend be DENIED.

DATED this 29th day of September, 2009.

By: Signed _____
Mark T. Handley
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 3rd day of November, 2009.

By: Signed _____
Signature
Mark T. Handley _____
Name
Administrative Law Judge _____
Title

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