

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

In the Matter of:)	
)	
P. R. R.)	OAH No. 09-0429-PFD
_____)	Agency No. 2008-047-8347

DECISION

I. Introduction

P. R. R. was transferred to Alaska in September of 2006. He was deployed to Iraq on January 28, 2007. On January 31, 2008, he filed a timely application for his 2008 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied his application on the basis that he had not been an Alaska resident for 180 days before leaving for his military-related absence. At Mr. R.' request, a formal hearing was held on September 25, 2009. The division's denial is affirmed because the law as presently framed does not permit the payment of a 2008 dividend to Mr. R.

II. Facts

The relevant facts of this case are not in dispute. The facts set out here are based on Mr. R.' testimony and the exhibits submitted by the parties.

In December of 2005, Mr. R. was informed that he would be transferred to Alaska the following year. He started looking for a house in February of 2006 and signed paperwork to purchase a home in May of that year. Mr. R. and his family arrived in Alaska on September 1, 2006 with the intent to stay in Alaska indefinitely. Their household goods were delivered to them on September 14, 2006. The purchase of the home they had intended to buy was not completed because of a price change, but they did find another home which they moved to in October of 2006. In November Mr. R. signed paperwork with the military to change his state of residency in the military's records, and that change became effective in December. Mr. R. obtained his Alaska Drivers License and registered to vote in December. In December of 2006, he was notified that he would be deployed to Iraq. Mr. R. left for Iraq on January 28, 2007 while his family remained in their new home in Alaska. Mr. R. did not return to Alaska until October

5, 2007. Accordingly, he was absent from the state for more than 180 days during 2007, which is the qualifying year for the 2008 PFD.

III. Discussion

In some situations, the requirements for PFD eligibility are inflexible and provide no discretion to the Department of Revenue. The Department is bound by the technical requirements regardless of mitigating factors that might otherwise justify granting an exception. The Department is bound by both the PFD statutes and its own regulations.¹

A state resident is defined as an individual

who is physically present in the state with the intent to remain indefinitely in the state under the requirements of AS 1.10.055 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 01.10.055.²

AS 01.10.055 requires, at a minimum, that the individual maintain a principal place of abode for 30 days in order to become a resident.

The Department argues that Mr. R. became a state resident in December when his Leave and Earnings Statement (LES) from the military first reflected his new state of residency. Relying on *Heller v. State, Dept of Revenue*³, the Department asserts that Mr. R. is not eligible because he was not a state resident for 180 days before being deployed.

Mr. R. distinguishes his situation from *Heller* because he did in fact return to Alaska during the qualifying year. He also asserts that his military orders assigning him to Alaska are a definitive statement of his residency because he is required to comply with these orders and once assigned to a location, members of the military will almost always remain in that assignment for several years.

Mr. R. met his burden of proof in establishing that he was physically present in Alaska on September 1, 2006, and that he had the requisite intent to remain indefinitely. He maintained his principal place of abode since that date and therefore became a state resident on October 1. That he did not change his state residency in his employer's records and did not register to vote immediately is some evidence against this finding, but does not outweigh the other actions he took beginning with his house hunting as early as February of 2006. He made significant efforts

¹ E.g., *Stoshs I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000).

² AS 43.23.095.

³ 4FA-08-01193 CI (May 11, 2009).

to purchase his home even before September, had his household goods shipped to Alaska, and his military orders assigned him to the state on a long term basis. In addition, his family remained in Alaska even after he was deployed.

As a state resident, Mr. R. would have been eligible to receive the 2007 PFD if he met the other eligibility requirements. The relevant requirement here is that he be physically present in Alaska during the year unless his absence from the state meets one of the reasons listed in AS 43.23.008. One of the permissible reasons is service in the armed forces of the United States.⁴ Mr. R. may only claim this exception, however, if he was a resident of Alaska for at least six consecutive months before leaving the state.⁵ To meet this requirement, Mr. R. would have had to become a resident on or before July 28, 2006. Mr. R. did not become a resident until after that date, so he did not meet the requirement of being a resident for at least six months before he was deployed to Iraq. Although he did return to Alaska during the qualifying year, which distinguishes his factual situation from *Heller*, that is not helpful in establishing the six-month residency period prior to his deployment.

Accordingly, the Department correctly determined that he was not eligible to receive his 2008 PFD. Although not eligible for his 2008 PFD, as long as he maintained his residency in Alaska during his deployment and subsequent to his return, Mr. R. would appear to qualify to claim any of the eligible absences listed in AS 43.23.008 for his 2009 and later PFDs.

IV. Conclusion

Although a resident for purposes of the PFD program, P. R. R. is not eligible to receive a 2008 PFD because he did not qualify to claim an allowable absence under AS 4.23.008.

DATED this 28th day of December, 2009.

By: _____
Rebecca L. Pauli
Administrative Law Judge

⁴ AS 43.23.008(a)(3).

⁵ AS 43.23.008(b).

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 25th day of January, 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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