

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

IN THE MATTER OF)
)
 C. W.)
) Case No. OAH 09-0430-PFD
)
2007 Permanent Fund Dividend)

DECISION

I. Introduction

C. W. timely applied for a 2007 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. W. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. W.’ request, a formal hearing was held on September 28, 2009. Mr. W. appeared by telephone with counsel Maureen Dey. PFD Specialist Peter Scott represented the PFD Division.

Because he had reestablished his Alaska residency before the beginning of the qualifying year, Mr. W. is eligible for a 2007 dividend.

II. Facts

Mr. W. works in the electric trade and is certified in various capacities as a lineman and welder. As is common in the trades and construction industries, Mr. W. has worked in a number of places on various projects. Although he has lived and worked all over Alaska, Mr. W. has owned a five-acre piece of property in the Fairbanks area since 1980. This property contains two residences, one a house and one a smaller log cabin. There are also two conex containers on the property that are used for storage. At various times Mr. W. has rented out the larger house on the property, but he has always kept the smaller building vacant for his own personal use.

From 2000 through most of 2002 Mr. W. had been a single father of two daughters, living in Anchorage but working out of Healy. Because of the needs of his daughters, Mr. W. left Alaska in October of 2002 and moved to San Diego to work as a lineman. At this time Mr. W. moved the bulk of his personal belongings into the storage containers and the cabin on his Fairbanks property. When the San Diego job did not work out after a several-month probationary period, Mr. W. worked briefly in the Los Angeles area and then returned to Alaska in the summer of 2003 to work on temporary jobs. In October of 2003 Mr. W. secured a job in the San Diego area that lasted until February of 2005.

In January of 2005 Mr. W.' older daughter N., having graduated from high school, decided to return to Fairbanks to make her home. Shortly afterwards, Mr. W. made a decision that, regardless of the job market, he too was going to return to Alaska to stay for good. Mr. W. placed his younger daughter to live with her uncle while she finished high school. In March of 2005 Mr. W. gave up the rental house he had been occupying in California, and put some of the personal effects he had accumulated in California into storage there. Around April of 2005 Mr. W. returned to his property near Fairbanks. He took up residence in the cabin, and after his tenant moved out he occupied the larger home as well. Mr. W. worked for a while on a temporary project for the Golden Valley Electrical Association, and he spent a considerable amount of time cleaning up and repairing his house.

In August of 2005 Mr. W. went back to California, bought a pickup truck and a trailer, and collected the remainder of his belongings there. Mr. W. did some temporary work in California to pay for the trip and the truck, and to replenish the funds he had spent upgrading his house. During this time Mr. W. stayed in motels, and for a time he rented a room in a house on a weekly basis. Mr. W. flew back to Alaska in March of 2006, leaving the truck and trailer in storage with his belongings. Although he was somewhat unclear on the timeline, to the best of his recollection Mr. W. went back to California for about a week around Christmas of 2006 and drove the truck and trailer to his parents' place in Seattle. The truck remained unlicensed in his parents' garage for a number of years until one of Mr. W.' daughters drove it to Alaska in 2009.

III. Discussion

In order to qualify for a permanent fund dividend, the applicant must have been an Alaska resident all through the qualifying year.¹ There is no dispute that Mr. W. severed his Alaska residency in 2002 when he moved to California, and there is no dispute that Mr. W. has since reestablished Alaska residency. The issue in this case is whether Mr. W. reestablished Alaska residency in 2005, in which case he is eligible for a 2007 dividend, or whether he reestablished residency in 2006, in which case he would not be eligible.

A person establishes residency in Alaska by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.² A person demonstrates this intent by maintaining a principal place of abode in the state for at least thirty days and by

¹ AS 42.23.005(a)(3).

² AS 01.10.055(a).

providing other proof required by law or regulation, including proof that the person is not claiming residency outside the state.³ For purposes of PFD eligibility,

An individual's intent to establish residency, remain indefinitely in Alaska, or to return to Alaska and remain indefinitely is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:

- (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
- (2) ties to another state or country that indicate continued residency in the other state or country; and
- (3) taken other action during the qualifying year, through the date of application, that is inconsistent with an intent to remain in Alaska indefinitely.^[4]

The division argues that although Mr. W. was back in Alaska in 2005 working and living in his house, the fact that he returned to California again in August and stayed there until March of 2006, and that he still had items stored in California, indicate that Mr. W. had not severed his California residency until he again returned to Alaska in 2006.

Mr. W.' testimony was credible and persuasive that when he returned to Alaska in 2005 and took up residency, he intended to make his home in Alaska and remain indefinitely. Although he had items stored in California and had previously rented out his Fairbanks house, it is clear that when Mr. W. evicted the tenant, occupied the home, and began doing extensive maintenance in 2005, Mr. W. was living in the home as a resident. At this point in time, Mr. W. did not have any specific intent to live again in California, although he did intend to go back at some point to retrieve his belongings. It was only later in the summer of 2005 that Mr. W. decided not only to retrieve his belongings, but to pick up a little temporary work while he was in California, as there was not much going on in Alaska at the time and he had spent a lot of money fixing up his Fairbanks house.

The division is correct that, considering the temporary nature of Mr. W.' jobs and the number of times he went back and forth between California and Alaska, it is difficult in this case to pin down exactly when Mr. W. reestablished his Alaska residency. However, in light of the fact that he owned a home in Alaska at all times that he kept partially vacant for his eventual return to the state, Mr. W. needed to do less than most people to quickly reestablish himself as an Alaskan.

³ AS 01.10.055(b).

⁴ 15 AAC 23.143(a).

The fact that Mr. W. would need to return to California to retrieve some of his belongings is not enough to show that his ties to California were so great that Mr. W. could still be considered a resident there. His return to California for about seven months and temporary employment there is certainly enough to raise questions about where his residency would properly lie in 2005, and the division's position in this case is not surprising. The evidence shows, however, that Mr. W. reestablished his Alaska residency in 2005.

IV. Conclusion

Because Mr. W. established Alaska residency in 2005 and was an Alaska resident all through the 2006 qualifying year, he is eligible for a 2007 permanent fund dividend.

DATED this 16th day of November, 2009.

By: Signed
DALE WHITNEY
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 17th day of December, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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