

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

IN THE MATTER OF )  
 )  
S. P. S. )  
 )  
2008 Permanent Fund Dividend ) Case No. OAH 09-0512-PFD

**DECISION & ORDER**

**I. Introduction**

S. P. S. timely applied for a 2008 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. Mr. S. requested a formal hearing by correspondence. Administrative Law Judge Mark T. Handley reviewed the appeal. The administrative law judge finds that Mr. S. does qualify for a 2008 dividend.

**II. Facts**

Mr. S. lived in Alaska and received PFDs prior to 2007. He attended Oregon State University from 2003 through 2007 and received a 2007 PFD. In May of 2007, Mr. S. enlisted as an active-duty member of the Navy in Oregon. Mr. S.’s return address on his request for an informal conference is in Minnesota. Mr. S.’s current address is in California.<sup>1</sup>

Upon reviewing Mr. S.’s military leave and earning statement (LES), the Division found that Mr. S.’s state of legal residence was listed first as Minnesota, then Arizona, before it was finally changed to Alaska. In his request for an informal appeal, Mr. S. explained that due to personnel office errors, the Navy first listed to Minnesota as his state of legal residence, and then when he first filed a request to correct this error, the Navy mistakenly changed his state of legal residence to Arizona instead of Alaska. Mr. S. explained that he had never claimed to be a Minnesota or Arizona resident with the Navy. Mr. S. Explained he had enlisted in Oregon and that Oregon is listed as his home of record on his enlistment papers. Mr. S. explained that he has never paid taxes to Minnesota or Arizona. In his request for a formal hearing, Mr. S. explained that although he requested a letter from the Navy to explain to the Division how these errors were made, he never received one.<sup>2</sup>

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<sup>1</sup> See Exhibits 6.

<sup>2</sup> See Exhibits 6 & 14.

Rather than showing that Mr. S. claimed to be resident of Minnesota and Arizona, the evidence in the record shows that the Navy probably erred when it listed him as a resident of Minnesota and Arizona. The evidence shows that the Navy probably listed Minnesota on Mr. S.'s LES because that was the state he was stationed in. The evidence shows that the Navy probably listed Arizona on Mr. S.'s LES because someone in the personnel office typed "AZ" instead of AK into the computer.

### **III. Discussion**

A person cannot be eligible for a 2008 Alaska PFD while maintaining a claim of residency in another state in their employment records during the qualifying year, 2007. This requirement is found in Alaska Regulation 15 AAC 23.143(d)(2).

There are two very closely related, but distinct, concepts that come into play in this case: "residency" and "eligibility." A person can be a resident but not eligible for a dividend. This is the case when a resident travels for unallowable reasons for more than 180 days in the qualifying year, but has every intent to return to Alaska and establishes no ties to any other state. The person remains an Alaska resident, but is not eligible for a dividend. On the other hand, nobody can be eligible without being an Alaska resident.

15 AAC 23.143 has a number of subsections, most of them dealing with residency. However, subsection (d) of 15 AAC 23.143 does not mention "residency," only "eligibility." While one might interpret the context to mean that the two concepts are interchangeable, when one looks at the PFD statute it is clear they are not, as the example of the resident traveling for 181 days illustrates. Subsection (d) identifies fifteen situations in which the division need not even inquire whether a person is a resident, because he is simply not eligible. Most of these situations involve obtaining benefits from other states that are only available to residents of those states. Many parts of subsection (d) seem to be aimed as much at preventing "double dipping" as determining residency. The regulation makes clear that Alaska will not allow a person claiming residency somewhere else when it is beneficial, to claim Alaska PFD eligibility. The regulation, for example, prohibits the Division from even considering a person's claim to be an Alaskan when he or she is voting somewhere else or invoking the jurisdiction of other courts based on residency in other states.

One can determine the effect of 15 AAC 23.143(d)(2) on this case by simply applying the plain language of the regulation. No interpretation or stretch of the imagination is required to understand the mechanics involved:

(d) An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

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(2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely;

The Division asserts that Mr. S. “maintained a claim of residency in Minnesota and Arizona in his employment personnel records during a portion of calendar year 2007, the qualifying year for a 2008 dividend, and before the date of application. The Division also argues that Mr. S. did not meet the definition of “state resident” as it applies to the Permanent Fund Dividend Program during a portion of the qualifying year and on the date of application.

A “state resident” is someone who is physically present in the state 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 she establishes or claims residency somewhere else, or performs acts that are inconsistent with the intent to remain a resident.

The evidence in the file supports Mr. S.’s assertion that he intends to return to Alaska and that he has not taken action inconsistent with the intent to remain a resident. Mr. S.’s decision to enlist in Oregon rather than Alaska does not show that he is not an Alaska resident. The evidence shows that Mr. S. is an Alaska resident. The remaining issue is whether Mr. S. is ineligible because he claimed or maintained a claim of residency in his employment personnel records.

A sailor’s “state of legal residence” is the state which the Navy uses for state income tax withholding purposes in the sailor’s payroll records.<sup>3</sup> A sailor’s “state of legal residence” is the

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<sup>3</sup> See Form DD 2058.  
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state that appears on a service member's LES. Usually this is the state that the sailor has declared to be his "state of legal residence" on the proper form, a DD 2058. State of legal residence can be easily changed by filling out and submitting this form. If, however, the sailor has never claimed a "state of legal residence" by filing a DD 2058, or the Navy does not have such a form on file when it sets up the sailor's payroll information and issues his first LES, the Navy uses the state of the soldier's "home of record" for state tax withholding purpose and indicate this with the abbreviation of the state in a box in the LES.<sup>4</sup>

Neither of these procedures appears to have been followed in Mr. S.'s case before his state of legal residence was changed to Alaska. Instead of Alaska being first listed because Mr. S. filed a DD 2058 when he enlisted, or Oregon being listed because he did not, first Minnesota and then Arizona were listed due to the Navy's clerical errors.

State of legal residence is particularly relevant to a person's PFD claim, because there are sometimes tax or other economic advantages associated with having a person's legal residence in another state. In this case there is no indication that Mr. S. received any benefit for having "MN" and "AZ" listed as his state of legal residence on his payroll records.

Mr. S. asserts he that never claimed to be a resident of Minnesota and Arizona. The fact that both these states were listed on his LES as his states of legal residence is evidence that he did. However, Mr. S.'s assertion that he did not is supported by the lack of persuasive evidence in the record that he established residency in these states.

In addition to losing his PFD, Mr. S. would also incur liability for state income tax if he had purposely claimed either Minnesota or Arizona as his state of legal residence. Mr. S. asserts that he never paid either Minnesota or Arizona state taxes. This further indicates that Mr. S. probably did not claim Minnesota and Arizona residency.

Mr. S. successfully maintained his PFD eligibility while attending college in Oregon at a state university. This indicates that Mr. S. possesses a level of sophistication in meeting the requirements for maintaining Alaska residency during extended allowable absences from Alaska that would be somewhat inconsistent with thoughtlessly filing a DD 2058 claiming both Minnesota and Arizona residency. On the other hand, the fact that the personnel offices of the U.S. Navy are quite capable of making clerical errors in sailors' personnel records is implicitly recognized by the Division's regulation 15 AAC 23.143(d)(2).

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<sup>4</sup> See Form DD 2058.  
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Mr. S. need not provide a written statement from the Navy acknowledging that it erred when it listed Mr. S.'s state of legal residence to be Minnesota and Arizona instead of Alaska. The language of 15 AAC 23.143(2)(A) and (B), clearly apply only to situations in which a person claims to have changed his claimed residency to Alaska from claimed residency in some other state. Subparagraph (A) requires production of a "copy of the individual's request to change the individual's state of legal residence."

If Mr. S. had at one time claimed to be an Minnesota and Arizona resident and the question was when he changed his claimed residency to Alaska, 15 AAC 23.143(d)(2) would require Mr. S. to demonstrate when he changed his claimed residency, and to specifically document any error or delay in processing the change. In this case, Mr. S. has never changed his claimed residency because he never claimed any state other than Alaska as his state of legal residence. Because Mr. S. did not claim to be a resident of Minnesota and Arizona, and his diligent efforts to correct the errors in his payroll records show that he did not passively adopt or maintain a claim of residency that the Navy made for him, he does not need to show that he timely requested that his state of legal residence be changed to Alaska.

#### **IV. Conclusion**

While the Navy based its records for the state of legal residence it listed on Mr. S.'s LES due to clerical errors, Mr. S. never claimed to be a resident of another state, nor did he maintain a claim of residency in another state. Mr. S. has remained an Alaska resident at all relevant times. There are no other obstacles to Mr. S.'s eligibility for a 2008 dividend.

#### **V. Order**

IT IS HEREBY ORDERED that the application of S. P. S. for a 2008 permanent fund dividend be GRANTED.

DATED this 16<sup>th</sup> of December, 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 12th day of January, 2010.

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

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