

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

In the Matter of	)	
	)	
J. J. G. S.	)	OAH No. 09-0542-PFD
	)	Agency Nos. 2007-045-9958
<u>2007 &amp; 2008 Permanent Fund Dividends</u>	)	2008-063-4738

**DECISION**

**I. Introduction**

Staff Sergeant J. S.'s applications for a 2007 and 2008 permanent fund dividend (PFD) were on the basis that during the applicable qualifying years his Military Leave and Earnings Statement (LES) showed Illinois as his State of Legal Residence (SLR). SSgt. S. requested a formal hearing, which was held on November 24, 2009. The record remained open to provide him with an opportunity to obtain the regulatory required proof. SSgt. S. was unable to obtain the required documentation and at his request a supplemental hearing was held January 19, 2010. SSgt. S. participated in person at both hearings.

The denial is affirmed because SSgt. S. has not been able to obtain evidence of the type deemed acceptable by the PFD regulations to show that his LES was in error and that he had formally requested a change of SLR to Alaska prior to the beginning of the relevant qualifying years.

**II. Facts**

This case turns on SSgt. S.'s efforts to change residency in his military personnel records from Illinois to Alaska in 2005 and 2006. SSgt. S. arrived in Alaska on May 6, 2005. Around this same time he registered his truck and opened a bank account at a local credit union. He purchased a home in August of 2005. He registered to vote and obtained an Alaska drivers license in February 2006.

As part of SSgt. S.'s orientation when he reported to service at his Alaska base it was suggested he submit a DD Form 2058 to change his SLR from Illinois to Alaska on his LES. He testified that he completed and submitted several DD Form 2058s in 2005. As explained by SSgt. S., the finance office was in the process of moving and restaffing and it was not uncommon for forms to be lost during this time period. Eventually, SSgt. S. re-submitted a DD Form 2058 in 2007 which was then processed.

SSgt. S. did locate a copy of a DD Form 2058 which he signed and dated October 26, 2005.<sup>1</sup> However, the form contains no indication that it was ever submitted for processing. SSgt. S. requested an archival search but the only record that was located was the one submitted in 2007.<sup>2</sup> SSgt. S. did receive a 2009 PFD.

### **III. Discussion**

A relatively common source of appeals in PFD cases are disqualifying actions taken under 15 AAC 23.143(d) which render an otherwise eligible applicant ineligible for a PFD. SSgt. S. is such an applicant.

SSgt. S. was a credible witness and on the facts presented, it is more likely than not that SSgt. S. was physically present in Alaska with the intent to remain indefinitely and to make a home in the state as of December 31, 2005.<sup>3</sup> SSgt. S.'s testimony established that he maintained his principal home in Alaska and committed himself to a life in Alaska indefinitely prior to December 31, 2005. Therefore, he was an Alaska resident during 2006 and 2007, the qualifying years for the 2007 and 2008 PFDs.<sup>4</sup> A person may remain a resident for purposes of the PFD and at the same time be ineligible for the dividend. PFD regulations provide that in certain circumstances an act or omission render an otherwise eligible applicant ineligible. When this occurs, the PFD regulations are explicit and prevent the payment of a dividend.

The regulation at 15 AAC 23.143(d)(2) establishes that an individual "is not eligible" for a PFD if, during the qualifying year or during the application year up to the date of application, the individual "claimed or maintained a claim of residency in another state or country in the individual's employment personnel records." This is an absolute disqualification that is independent from the broader question of whether the individual is, on balance, a legal resident of Alaska.

There are two independently sufficient items of evidence that will overcome this absolute disqualification if they show that the existence of the residency claim in another state was due to "an error or delay . . . in processing by the personnel office." First, the applicant can show an error or delay in processing his personnel records by supplying "a certified copy of the

---

<sup>1</sup> Exhibit 5B at 1.

<sup>2</sup> November 24, 2009 SrA J. B. Memo.

<sup>3</sup> AS 43.23.095(7); AS 01.10.055.

<sup>4</sup> AS 43.23.095(6) ("qualifying year" means the year immediately preceding January 1 of the current dividend year").

individual's request to change the individual's state of legal residence."<sup>5</sup> Alternatively, the applicant can show an error or delay in processing his personnel records by supplying "a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay; the personnel officer must state . . . why the request was not processed timely."<sup>6</sup>

SSgt. S. has not provided either type of proof. He stated that any personnel officer who would have personal knowledge has since moved. A search of the available archive returned only the 2007 Form DD 2058. The Department of Revenue is bound by its own regulations. The law does not permit the division to weigh SSgt. S.'s failure to change his residency on his LES against other facts to determine that a person, on balance, is an Alaska resident and should therefore qualify for a dividend. Instead, the regulation excludes from PFD eligibility applicants, who like SSgt. S., are residents of Alaska for purposes of the PFD program but engage, through action or omission, in a disqualifying act.

The Alaska Supreme Court has upheld the authority of the Department of Revenue to create such regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility.<sup>7</sup> The regulation at issue in this case simply requires the division to ask whether the applicant claimed or maintained a claim of residency in another state or country in his employment personnel records. It is undisputed that the personnel office has no record of receiving SSgt. S.'s DD Form 2058 until 2007. Therefore, he maintained a claim of residency in another state and the division must deny the applications without further inquiry into the applicant's status as a resident. Once adopted, this bright-line rule affords the Department no choice.

The result of the absolute rule in this case is harsh but the regulation is clear; regardless of whether SSgt. S.'s testimony is credible, the department cannot pay him a dividend unless he provides one of the two types of proof enumerated in 15 AAC 23.143(d)(2). Since he does not have either of them, his 2008 PFD must be denied.

#### **IV. Conclusion**

SSgt. S. has not established through a means permissible under the regulations that, prior to the beginning of the qualifying years for the dividends at issue; he made a request to designate

---

<sup>5</sup> 15 AAC 23.143(d)(2)(A).

<sup>6</sup> 15 AAC 23.143(d)(2)(B).

<sup>7</sup> *Church v. State of Alaska; Department of Revenue*, 973 P2d 1125, 1128-9 (Alaska 1999).

Alaska as his State of Legal Residence in his personnel records. He is disqualified from a 2007 and a 2008 dividend by the status of his personnel records, which showed Illinois as his State of Legal Residence. Therefore, the decision of the Permanent Fund Dividend Division to deny the application of J. J. G. S. for a 2007 and 2008 permanent fund dividend is AFFIRMED. Nothing in this decision precludes SSgt. S. from eligibility for future PFDs.

DATED this 20<sup>th</sup> day of January, 2010.

By: Signed  
Rebecca L. Pauli  
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 22<sup>nd</sup> day of February 2010.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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