

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

IN THE MATTER OF)
)
 G. S.)
) Case No. OAH 10-0018-PFD
)
2009 Permanent Fund Dividend)

DECISION

I. Introduction

G. S. timely applied for a 2009 permanent fund dividend. The Permanent Fund Dividend Division (“the division”) determined that Mr. S. was not eligible, and it denied the application initially and at the informal appeal level. At Mr. S.’s request, a formal hearing was held on February 23, 2010. Mr. S. appeared by telephone. PFD Specialist Bethany Chase represented the division by telephone.

Mr. S. was absent from Alaska for more than 180 days during the qualifying year receiving postsecondary education, but not on a full-time basis. The division was therefore correctly applying the law when it made the decision to deny Mr. S.’s application.

II. Facts

There is no dispute that Mr. S. is a long-time Alaska resident. During 2008, the qualifying year for a 2009 dividend, Mr. S. was working on a Ph.D. program at Texas Tech University. During part of this time Mr. S. was in Tennessee where he had the opportunity to work with a renowned professor.

At Texas Tech, nine credits is considered full-time enrollment for graduate students, as opposed to twelve hours for undergrads. As is common for graduate students who have completed the required coursework for their degree, Mr. S. was only enrolled and paying tuition for one credit at Texas Tech while he worked on his degree and prepared to defend his thesis. Regardless of how much credit he was enrolled for in the eyes of the registrar, Mr. S.’s work on his degree took up all of his time. For doctorate-level work at Texas Tech University, particularly in the later stages of study, the number of credits a student is enrolled for and completes is not as important as the successful production and defense of a dissertation. This is the case at many universities in a variety of academic fields.

As he had planned, Mr. S. returned to Alaska, where he always maintained a residence, on June 5, 2009. While he was out of state Mr. S. left most of his belongings in Alaska, carrying with him only two suitcases of essentials.

During the time he was working on his dissertation Mr. S. probably could have enrolled for nine credits of “dissertation,” but it was not required and would have cost him approximately another \$9,000. Enrolling for this credit would not have afforded Mr. S. any benefit, and in fact may have looked somewhat peculiar on a résumé or transcript to his professional peers.

III. Discussion

The following laws govern this case:

AS 43.23.005 Eligibility.

(a) an individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if the individual... (6) was at all times during the qualifying year physically present in the state or, if absent, was absent only as allowed by AS 43.23.008....

AS 43.23.008 Allowable absences.

(a) Subject to (b) and (c) of this section, an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent (1) receiving secondary or postsecondary education on a full-time basis....

15 AAC 23.163 Allowable absences.

* * * * *

(c) For purposes of (1) AS 43.23.008(a)(1), receiving secondary or postsecondary education on a full-time basis means... (B) enrollment and attendance in good standing, for the purpose of pursuing an associate, baccalaureate, or graduate degree, as a full-time student at a college, university, or junior or community college, accredited by the accreditation association for the region in which the college or university is located, or full-time participation in an internship program if the internship is required for graduation by the college or university; for the purposes of this subparagraph, an individual in the last academic year before graduation who was carrying enough credits to graduate, but fewer than full-time credits for any one term, semester, or quarter, is considered to have been a full-time student at that time....

In addition to these laws, AS 43.23.008(a)(14) allows an absence from the state for any reason for up to 180 days, or in the alternative, up to 120 days in addition to any time that is allowable for full-time education.

While enrolled for only one credit, Mr. S. was technically enrolled as a part-time student from the perspective of the institution he was attending.¹ Mr. S. is correct that there is little financial sense in full-time enrollment, even for students who are working long hours every day on their research or dissertations. The division is not required to evaluate the work actually done by graduate students in advanced levels of study. While many students put in very long hours while enrolled as part-time students, there are probably some graduate students that put in less than full-time effort on their degree, perhaps working in their field or pursuing other interests part-time and extending the amount of time needed to complete the degree.

Rather than requiring the division to devote the resources and expertise to evaluate every student's academic program, the regulation requires the division to rely on the official status of students as reported by their accredited or otherwise officially recognized institutions. Mr. S.'s institution officially considered him a part-time student during the qualifying year. Mr. S. raises a number of issues regarding the ways graduate students might be unfairly disqualified under this regulation. The division, however, must apply the rules in their current form. It has done so in this case.

IV. Conclusion

Mr. S. was absent from Alaska for more than 180 days during the qualifying year. He was enrolled as a part-time student during this time, notwithstanding the fact that his academic pursuits actually took up most of his time. There are no other allowable absence provisions that would apply to Mr. S.'s case. The division was correctly applying the law when it made the decision to deny Mr. S.'s application for a 2009 permanent fund dividend.

DATED this 2nd day of March, 2010.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

¹ Mr. S's case is very similar to *In The Matter of C.C. & B.K.*, OAH case number 05-0684-PFD(April 26, 2006): "Mr. C. had completed the bulk of his coursework by the end of spring 2004 and had originally intended to graduate at that time. With more work to do before receiving his master's degree, he enrolled in the fall of 2004 for one credit and continued working on analyzing data, writing his thesis, and working as a volunteer research assistant. These are typical activities for graduate students in biology and many other sciences, who seldom actually finish a graduate degree within the official two-year schedule." (available online at <http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD050684.pdf>)

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 2nd day of April, 2010.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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