

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

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|-------------------------------------|---|--------------------------|
| In the Matter of: |) | |
| |) | |
| M. E. B. |) | |
| |) | OAH No. 10-0181-PFD |
| <u>2009 Permanent Fund Dividend</u> |) | Agency No. 2009-057-7448 |

DECISION

I. Introduction

Mr. B. applied for a 2009 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application based on its view that Mr. B. had not established his residency in Alaska prior to January 1, 2008. A hearing was held on May 20, 2010. Mr. B. appeared by phone. The Division was represented by PFD Specialist Bethany Chase, who also appeared by phone.

For the reasons discussed below, Mr. B. is not eligible to receive a 2009 PFD.

II. Facts¹

Mr. B. came to Alaska in July of 2007 when he obtained a temporary job in Petersburg working for No Name Seafoods. That job ended in September, and he returned to Reno, Nevada. In October of 2007, Mr. B. returned to Petersburg. He did not intend to return to Reno and brought most of his possessions with him at that time.² He was in Petersburg for approximately two weeks. He lived in No Name Seafood's bunk house. During that time, he was responsible for paying about \$65 per week for staying in that housing. He either had to pay it directly or, if he was working for No Name Seafoods, the money was withheld from his paycheck.

Mr. B. was then offered work with No Name Seafoods in D.H. He accepted that position and worked there until the November 27, 2007. Mr. B. left D. H. to visit relatives in Maryland. Before leaving, he was told that he would have another employment contract when he returned to

¹ These factual findings are based on Mr. B.'s testimony unless otherwise stated.

² Mr. B. indicated on his application that he moved his household goods in January of 2008. He clarified this information at the hearing by stating that he did not own many possessions. He had left some items in Reno with his prior roommate. He intended to retrieve those and bring them back in January, but was unable to contact his prior roommate and never did get those possessions.

D. H. in January of 2008, and it was his intent to return to Alaska and remain here indefinitely. He has had a series of employment contracts with No Name Seafoods throughout 2008.³

Mr. B. obtained his Alaska Driver license in April of 2008.⁴

III. Discussion

To be eligible for a 2009 PFD, Mr. B. must meet all of the eligibility requirements, including that of having been an Alaska resident for all of 2008.⁵ A person is a resident of Alaska if he has the intent to remain in the state indefinitely.⁶ That intent is shown

- (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and
- (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.^[7]

Mr. B. met the principal place of abode requirement by living aboard the P/V A. S. in D. H. for more than 30 days.⁸ While living in employer provided housing is not acceptable proof of one's intent to remain in Alaska⁹ under subsection (b)(2) of AS 01.10.055, it was Mr. B.'s only home from October 23 through November 27, 2007. It is an acceptable place of abode for purposes of subsection (b)(1) of this statute.

The more difficult question is whether he has shown the "other proof of intent" required by Division regulations.

Physical presence in Alaska is not, by itself, sufficient to establish residency. Before January 1 of the qualifying year, an individual must have taken at least one step beyond physical presence in Alaska to establish residency. The department will not consider external indicators, including those listed in 15 AAC 23.173(g), established less than six months before December 31 of the qualifying year as evidence of the establishment of Alaska residency in time to qualify for the current year dividend.^[10]

Under this regulation, proof of intent to establish residency can include actions taken during the first six months of the qualifying year as well as actions taken earlier but "at least one step

³ Exhibit 6, page 5.
⁴ Exhibit 1, page 11.
⁵ Alaska Statute AS 43.23.005(a)(3).
⁶ AS 01.10.055(a).
⁷ AS 01.10.055(b).
⁸ Exhibit 6, page 5.
⁹ See 15 AAC 23.173(g)(2).
¹⁰ Alaska Regulation 15 AAC 23.143(c).

beyond physical presence” must occur before January 1. Acts that “are routinely performed by temporary residents of Alaska are not by themselves evidence of residency.”¹¹

The first question is whether prior to January 1, 2008, Mr. B. has proven he formed the intent to remain in Alaska indefinitely. Pursuant to 15 AAC 23.143(c), external indicators established more than six months before December 31 may be considered when answering this question.¹² In this case, Mr. B. testified credibly¹³ that he formed the intent to remain in Alaska indefinitely in October of 2007, and the external indicators through June of 2008 support that testimony. Mr. B. did in fact return to work in Alaska.¹⁴ He also obtained an Alaska Driver license in April of 2008. There is also no evidence that he took any action to establish or maintain residency in any other state.

The next question is whether Mr. B. took at least one step beyond physical presence prior to January 1, 2008 to establish residency. This “one step” cannot be an act routinely performed by temporary residents.¹⁵ Prior to January 1, 2008, Mr. B. worked for No Name Seafoods in Petersburg and paid to stay in the company’s bunkhouse. He then accepted a month-long job with No Name Seafoods in D.H. These acts are consistent with Mr. B.’s intent to remain in Alaska indefinitely, but they are also acts that are routinely performed by temporary residents. Thus, they cannot be counted as the “one step” beyond physical presence. Mr. B. did testify that he moved most of his possessions to Alaska. Unfortunately, he also conceded that he did not have a lot of possessions to move. This is also not sufficient to be the one step beyond physical presence. Even when considered together with all of the other evidence in this matter, these acts are not sufficient to be the one step required by regulation.

Mr. B. has the burden of proving that the Division’s decision is incorrect.¹⁶ While this is a close case, Mr. B. has not met his burden of proving that before January 1, 2008, he took one step beyond physical presence to establish his residency in Alaska.

¹¹ 15 AAC 23.143(a).

¹² By prohibiting consideration of external indicators that occur less than six months before December 31 of the qualifying year, the regulation implies that external indicators occurring earlier in the qualifying year may be considered. Eligibility still requires that the applicant be a resident for all of the qualifying year, but external indicators during the first half of the qualifying year can be considered in deciding whether the applicant has met his or her burden of proving that residency was established before January 1 of that year.

¹³ During his testimony, Mr. B. candidly conceded facts that did not support his position, and admitted that he did not know the answer to some questions rather than attempt to fabricate an answer.

¹⁴ Exhibit 6, page 5; Exhibit 7.

¹⁵ 15 AAC 23.143(a).

¹⁶ 15 AAC 05.030(h).

IV. Conclusion

Mr. B. has not proven by a preponderance of the evidence that he took one step beyond physical presence to establish his residency prior to January 1 of the qualifying year. Accordingly, the Division’s denial of his PFD application is upheld.

DATED this 21st day of May, 2010.

By: Signed
Jeffrey A. Friedman
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 18th day of June, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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