

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

IN THE MATTER OF)
W L. B) OAH 10-0363-PFD
)
2010 Permanent Fund Dividend)

DECISION & ORDER

I. Introduction

W L. B timely applied for a 2010 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. B was not eligible, and it denied the application initially and at the informal appeal level. Mr. B requested a formal hearing. Administrative Law Judge Mark T. Handley heard the appeal by correspondence. Mr. B filed documents with his appeal. PFD specialist Bethany Chase represented the PFD Division and filed a position paper.

This case is Mr. B's appeal of the Division's denial of his 2010 PFD application because he was absent from Alaska for more than 180 days in 2009. Having reviewed the record in this case and after due deliberation, I conclude that Mr. B is not eligible to from receive a 2010 PFD because his absence in 2009 was disqualifying.

II. Facts

Mr. B is a longtime Alaskan. He was Fire Chief of No Name Alaska and owns a home in No Name and a home in No Name. It is undisputed that, during 2009, the qualifying year for a 2010 dividend, Mr. B was absent from Alaska for 297 days for medical treatment and vacation, and that his absence for vacation exceeded 45 days.

In his request for a hearing, Mr. B explained his absence for vacation did exceed 45 days in addition to his absence for medical treatment, but that he was concerned about the Division's determination that he maintained his permanent home in Oregon in 2009.¹

In the position paper the Division filed in response to Mr. B's request for a hearing, the Division indicated that it had decided that Mr. B was an Alaska resident who had not maintained his primary residence outside Alaska in 2009, but that his absence in 2009 was disqualifying because it exceeded 180 days and exceeded 45 days in addition to his absence for medical treatment.

III. Discussion

Eligibility for permanent fund dividends requires meeting several requirements. They are listed in Alaska Statute 43.23.005(a). One of the requirements is that the applicant "was, at all

¹ Exhibit 11, page 6.

times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in Alaska Statute 43.23.008.”² Alaska Statute 43.23.008(a) lists a number of reasons a person can be absent from Alaska and still qualify for a dividend. The list includes reasons such as military service, education, serving in Congress, caring for a terminally ill family member, receiving continuous medical treatment, and a few other reasons. Reason number (14) allows absences for any reason consistent with Alaska residency, so long as the cumulative absences total fewer than 180 days, or fewer than 120 days in addition to time in school, or fewer than 45 days in addition to absences for other listed reasons.

Absences from Alaska that do not meet the requirements of Alaska Statute 43.23.008 disqualify an individual from PFD eligibility. Alaska Statute 43.23.008(a)(14)(C) disqualifies individuals absent more than 45 days in addition to absences for reasons listed under Alaska Statute 43.23.008(a)(1)-(13), if absent more than 180 days cumulatively during the PFD qualifying year. Therefore, an individual absent more than 180 total days and more than 45 days when not absent for any reason listed Alaska Statute 43.23.008(a)(1)-(13) during the qualifying year is not eligible for a PFD.

Mr. B’s 2009 absences fall into this category. No law gives the PFD Division, or the administrative law judge, the legal authority to grant PFDs to people who were absent for reasons, no matter how good, that are disqualifying under the provisions of Alaska Statute 43.23.008(a)(14)(C). Regrettably, these provisions are fairly technical, somewhat difficult to understand, and can catch even longtime Alaskans, like Mr. B, by surprise.

It is unfortunate that Mr. B misunderstood how the 45-day rule applied to his situation. The evidence in the file shows that his application was made in good faith and that he has been entirely truthful, forthcoming and cooperative with the Division. Under the law, however, he does not qualify for a dividend for 2010.

IV. Conclusion

Mr. B’s 2009 absences from Alaska do not fall within the category of absences that are allowable for the purpose of PFD eligibility. Mr. B therefore does not qualify for a 2010 PFD.

² AS 43.23.005(a)(6).
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V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of W L. B for a 2010 permanent fund dividend be AFFIRMED.

DATED this 12th day of October, 2010.

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 9th day of October, 2010.

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

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