

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

In the Matter of)	
)	
P. T.)	
)	
<u>2008 Permanent Fund Dividend</u>)	OAH No. 10-0386-PFD Agency No. 2008-032-4246

DECISION AND ORDER

I. Introduction

The Permanent Fund Dividend Division denied P. D. T.'s application for a 2008 permanent fund dividend (PFD) initially and at the informal appeal level. The primary basis for the denial was the Division's belief that T., who was then a member of the armed forces, did not have 180 days of residency before beginning an overseas deployment that continued through the majority of the qualifying year. The Division reasoned that this prevented his absence from being allowable and rendered him ineligible. At Mr. T.'s request, this office held a formal hearing on September 10, 2010, in which Mr. T.'s spouse appeared for him under a power of attorney. Based on the evidence gathered at the hearing, the denial is overturned because, notwithstanding the date of the adjustment to his personnel records, Mr. T. did have 180 days of legal residency prior to beginning his overseas deployment.

II. Facts

Unless otherwise attributed, the facts set out below are based on J. P.-T.'s testimony at the hearing.

P. T. was born and raised in the state of Washington. In 2004, he enlisted in the army. At that time he filled out a form W-4 designating Washington as his state of residence.

Mr. T. moved to Alaska under military orders in June of 2005. He did not have the intent to remain in Alaska at that time, nor did he consider himself an Alaska resident.

In March of 2006, Mr. T. became engaged to J. P.¹ Ms. P. was a firmly-rooted Alaskan. She owned a home here and had three children. By committing to marry Ms. P., Mr. T. was committing to live with her in Alaska for the indefinite future.

¹ In addition to Ms. P.-T.'s testimony, the timing of the engagement is independently confirmed at Exhibit 11, p. 5 (letter of Rev. C. Jones).

Mr. T. did marry Ms. P. on September 13, 2006² and adopted her children.³ At the time of the marriage, the couple addressed financial issues. Mr. T. executed a will making his wife and her children beneficiaries of his estate, reciting that he was “a resident of the State of Alaska.”⁴ The military required Mr. T. to fill out a form DD 2058 at the time of marriage, designating a state of legal residence “for the purpose of determining the State for which income taxes are to be withheld.”⁵ Mr. T. designated Alaska as his state of legal residence (SLR). Because neither Alaska nor Washington has a personal income tax, there had been no occasion for Mr. T. to be concerned with his SLR prior to being required to revisit it by the military.

The military failed to process Mr. T.’s DD 2058 and did not change his SLR until 2008. This was a paperwork error on the part of the Fort Richardson Finance Office.⁶

Mr. T. acquired title to a vehicle on approximately the date of his marriage,⁷ and registered it in Alaska two days after the wedding.⁸ Mr. T. registered to vote in Alaska the following year.⁹ There is no evidence that he maintained voter registration or other ties to Washington after March of 2006.

On October 6, 2006, Mr. T. was deployed to Iraq. He received one R&R from Iraq, which occurred nine months later, from July 8 to 24, 2007. He spent the R&R in Alaska. He then returned to overseas deployment until November of 2007.

Mr. T. subsequently left the military and has remained in Alaska.

III. Discussion

A. State of Legal Residence in Personnel Records

The qualifying year for the 2008 dividend was 2007.¹⁰ As a preliminary matter, one must evaluate the status of Mr. T.’s personnel records during the qualifying year. A 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

² Exhibit 4, p. 16 (Certificate of Marriage).

³ See Exhibit 7, p. 16 (Last Will and Testament) (three P. children referred to as “my children”).

⁴ Exhibit 7, p. 16 (Last Will and Testament).

⁵ Exhibit 6, p. 3 (Form DD 2058); see also Exhibit 6, p. 5 (Affidavit of Military Lead Pay Technician).

⁶ Exhibit 6, p. 5 (Affidavit of Military Lead Pay Technician).

⁷ Exhibit 11, p. 6 (Affidavit of C. Berry).

⁸ Exhibit 4, p. 24 (Vehicle Registration).

⁹ Exhibit 7, p. 1 (Voter Information printout).

¹⁰ AS 43.23.095(6).

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.

This absolute disqualification can be overcome if certain specified kinds of evidence show that the existence of the residency claim in another state was due to “an error or delay . . . in processing by the personnel office.” In this case, the parties agree that Mr. T. did prove an error or delay by the personnel office, and that Mr. T. should be credited with having requested a change in SLR in September of 2006, before the qualifying year began. Therefore, Mr. T. did not maintain “a claim of residency in another state” in his personnel records “at any time from January 1 of the qualifying year through the date of application,” and he is not automatically disqualified from receiving a dividend on account of his personnel records.

B. Residency

The Division’s challenge to Mr. T.’s eligibility turns fundamentally on his residency rather than on the above regulation. The Division has two positions: first, that Mr. T. did not become an Alaska resident until after the qualifying year began, and second, that even if he became a resident prior to the qualifying year, he did so so close to the time of his departure for Iraq that his absence there was not allowable.

1. Residency During Qualifying Year

The first argument is easily disposed of. It can hardly be doubted that a person who lives in Alaska, has married a firmly-rooted Alaskan, and has just adopted three Alaska children has shown strong evidence of being “physically present in the state with the intent to remain indefinitely.”¹¹ This is all that is required to become a state resident. Mr. T. had done these things by September of 2006—before the qualifying year began. When he was then ordered overseas, he still met the definition of a continuing resident. Once a resident, a person remains a resident when “not physically present in the state [if the person] intends to return to the state and remain indefinitely under the requirements of AS 01.10.055.”¹² Alaska Statute 01.10.055 requires only that such an absent person not establish or claim residency elsewhere or perform other acts inconsistent with intent to make the state his indefinite home.

The Division seems to contend that notwithstanding this overwhelming evidence of intent as of September 2006, a person cannot become a state resident unless the person spends 180 days in

¹¹ Alaska Statute 43.23.095(7).

¹² *Id.*

the state before leaving on an extended absence. There is simply nothing *in the law of residency* that imposes this requirement. There is a 180-day requirement that relates to the *allowability* of subsequent absences—it will be discussed in the next section—and this may result in the person, even though still a state resident, being ineligible for a dividend for a time. But nothing in the law says that a person who meets the statutory requirements of residency on a given date automatically forfeits that residency retroactively if the person departs on a deployment or other extended absence before 180 days have gone by.

2. Length of Residency Before Deployment

The more difficult problem for Mr. T. is a provision of the Department of Revenue regulation on “Allowable Absences.” 15 AAC 23.163(b) provides:

An individual who was absent from Alaska for more than 180 days is not eligible for a dividend if the individual . . . was not a state resident for at least 180 days immediately before departure from Alaska.

Mr. T. was absent from Alaska for 188 consecutive days (January 1 to July 8) at the beginning of the qualifying year for the dividend in question. Moreover, this absence began on October 6, 2006. Under the regulation, his absence was not allowable unless he had been a state resident 180 or more days before that departure, that is, on or before April 9, 2006.

Although the issue is a close one, I find that Mr. T. became a resident of Alaska in March of 2006, sufficiently in advance of his departure to make his later absence allowable. It was in March that Mr. T. entered into an engagement with his future wife. This entailed a promise to marry a person who was not going to leave Alaska. It was a commitment to make Alaska his indefinite home. This evidence of intent outweighs the fact that Mr. T. did not immediately change his SLR of record in his military personnel file. Mr. T. had no reason to be concerned with his SLR, which existed for tax purposes that were irrelevant to him. His failure to rectify his paperwork was passive negligence, not an active or conscious effort to claim the benefits of residence in another state. It is weaker evidence of his intent to live in and remain in Alaska than his deliberate, formal engagement to Ms. P.

Because he had been an Alaska resident for 180 days beforehand, Mr. T.’s deployment to Iraq was not barred by regulation from being an allowable absence. Therefore, his prolonged absence during the qualifying year fell under the general provision for allowable absences, Alaska

Statute 43.23.008, which permits an otherwise eligible individual to remain eligible even if absent if the person was “serving on active duty as a member of the armed forces.”¹³

IV. Conclusion

Mr. T. has established that he became an Alaska resident in March of 2006. He was an Alaska resident throughout 2007, the qualifying year for the 2008 dividend, and his absence during that year was an allowable one. He is entitled to the 2008 dividend.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of P. T. for a 2008 permanent fund dividend is REVERSED.

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

DATED this 14th day of September, 2010.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹³ Alaska Statute 43.23.008(a)(3).

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 4th day of October, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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