

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

In the Matter of: )  
 )  
C. & K. Z. III )  
and B. Z. (MINOR) )  
 ) OAH No. 10-0450-PFD  
2010 Permanent Fund Dividend ) Agency No. 2010-022-4799

**DECISION**

**I. INTRODUCTION**

C. Z. III and K. Z. submitted applications for a 2010 Permanent Fund Dividend (PFD).<sup>1</sup> Mr. Z. also submitted an application on behalf of their minor daughter, B.<sup>2</sup> The Permanent Fund Dividend Division (Division) denied their applications because Mr. Z.<sup>3</sup> had been absent for more than five years and had not rebutted the presumption that a person absent for five years or more no longer has the intent to return to Alaska.<sup>4</sup>

The Z.s' filed informal appeals, and submitted additional information in support of those appeals.<sup>5</sup> Their informal appeals were denied, and the Z.s requested a formal hearing. A formal hearing was held on October 11, 2010. Mr. Z. appeared and testified by telephone. PFD Specialist Bethany Chase appeared by telephone on behalf of the Division. As discussed below, the Division's decision denying these applications is affirmed.

**II. FACTS**

Mr. Z. is on active duty with the US Coast Guard, and is currently stationed in Washington DC.<sup>6</sup> During the last five years, Mr. Z. has returned to Alaska three times. He was present in Alaska for four days in August of 2005,<sup>7</sup> four days in August of 2006,<sup>8</sup> and four days in September of 2008.<sup>9</sup>

---

<sup>1</sup> Exhibit 1, page 1; Exhibit 1, page 4.

<sup>2</sup> Exhibit 1, page 7.

<sup>3</sup> Mr. Z. is serving in the Coast Guard. The eligibility for both his wife and his daughter are dependent on his eligibility.

<sup>4</sup> Exhibit 5.

<sup>5</sup> Exhibit 6, pages 5 – 11.

<sup>6</sup> Exhibit 1, page 2.

<sup>7</sup> Exhibit 10, page 1.

<sup>8</sup> Exhibit 10, page 2.

<sup>9</sup> Exhibit 3, page 10.

Mr. Z. testified credibly about his military assignments and use of leave over the last year. These issues were also addressed in his written appeal.<sup>10</sup> Mr. Z. earns 30 days of leave each year. During 2009, Mr. Z. was on a seven month deployment to the Persian Gulf. Upon his return in July, he had to complete administrative work and also begin preparing to move to Washington DC for his next assignment. He was only able to use 2 days of leave that year, and he lost 13 days of leave because of limits to the amount he is allowed to carryover each year.

In 2008, his ship had two deployments off the coast of Central America, three dry-docking maintenance periods, and several training exercises. As second in command, Mr. Z. was expected to be present during the dry docking periods. He was only able to use 18 days of leave that year.

In 2007, his ship was deployed for five months to Russia and the Far East. He was able to use 12 days of leave, but lost 16 days of earned leave because of carryover limits. In 2006 he was able to use 12 days of leave, but lost 6 days, and in 2005 he used 6 days of leave, but lost 54 days of accrued leave.

Mr. Z. also testified that when he has a new job assignment he tries not to take any leave for the first six months while learning the job. He also does not request leave for times when, because of the needs of the service, he knows that his leave will be denied or that it is not practical for him to take that leave.

### **III. DISCUSSION**

To be eligible to receive a PFD, an applicant must be a resident of Alaska<sup>11</sup> and be present during the entire year or absent for an allowable reason.<sup>12</sup> The relevant allowable absence in this case is

- (3) serving on active duty as a member of the armed forces of the United States or accompanying, as that individual's spouse, minor dependent, or disabled dependent, an individual who is
  - (A) serving on active duty as a member of the armed forces of the United States; and
  - (B) eligible for a current year dividend.<sup>[13]</sup>

---

<sup>10</sup> Exhibit 8, pages 3 – 4.

<sup>11</sup> Alaska Statute 43.23.005(a)(2).

<sup>12</sup> AS 43.23.005(a)(6).

<sup>13</sup> AS 43.23.008(a).

A person may remain a resident of Alaska while absent from the state as long as he or she is not absent under circumstances that are inconsistent with the intent to remain in Alaska indefinitely and to make a home in Alaska.<sup>14</sup>

It is undisputed that Mr. Z. is on an allowable absence as an active duty member of the Coast Guard, and that Mrs. Z. is on an allowable absence as his accompanying spouse. The only question in dispute is whether the Z.s have the requisite intent to remain in Alaska indefinitely.

The Department of Revenue has adopted regulations to assist the Division in determining whether an individual continues to have the intent to remain in Alaska indefinitely. An individual who has been absent from Alaska for more than five years is presumed to no longer have the intent to remain indefinitely in Alaska.<sup>15</sup> This presumption is rebuttable, and the Division considers several factors in deciding whether the individual has in fact shown that he maintains the required intent.<sup>16</sup> In applying those factors, greater weight is given to the claim of an individual who makes frequent return trips to Alaska.<sup>17</sup> The Division will generally

consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department's satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.<sup>[18]</sup>

This last provision establishes a double presumption against eligibility. Only if an applicant can show that unavoidable circumstances prevented him from returning for at least 30 days does the Division then look at the other factors to determine whether the applicant has the required intent to remain in Alaska indefinitely.

Because Mr. Z. has not been in Alaska for at least 30 cumulative days during the past five years, it is necessary to determine whether there have been unavoidable circumstances preventing him from returning for that amount of time. Prior decisions demonstrate it is difficult, even for members of the military, to overcome the presumption that someone who does not return for at least 30 days maintains the required intent.

---

<sup>14</sup> AS 01.10.055.

<sup>15</sup> 15 AAC 23.163(f).

<sup>16</sup> 15 AAC 23.163(f)(1) – (7).

<sup>17</sup> 15 AAC 23.163(h)(1).

<sup>18</sup> 15 AAC 23.163(h)(2).

*In the Matter of K.A.P.*,<sup>19</sup> compares cases addressing this issue. A case in which unavoidable circumstances were found involved a service member stationed in Europe. Returning to Alaska would have required difficult trips with four young children. In addition, he was assigned to an undermanned Navy position, had lost accrued leave because of an inability to take leave, had his leave denied five times, and been told that future leave would be restricted.<sup>20</sup>

In a different case, the applicant had returned for 28 days during the five years of absence. He had shown that it would be expensive and inconvenient to return to Alaska for more days, but not that he had been prevented from returning.<sup>21</sup>

Mr. Z. could have returned to Alaska more often even though it might have been expensive and inconvenient. Even if he could not have scheduled a single, long trip, he could have scheduled several short trips. Traveling with one child within the United States is not always easy, but it is not an unusual circumstances. There was no evidence that leave requests were actually denied, and he had been able to schedule 50 days of leave during the five year period.<sup>22</sup> His evidence is not sufficient to overcome the strong presumption that exists when a person has not returned to Alaska for at least 30 days during a five year period. He is not eligible to receive a 2010 PFD.

Mrs. Z. is also not eligible to receive a 2010 PFD. She was absent for more than 180 days during the 2009 qualifying year.<sup>23</sup> Since Mr. Z. is not eligible, she does not qualify for an allowable absence as the spouse of an active duty member of the armed forces,<sup>24</sup> and there is no evidence in this appeal that she qualifies for any other allowable absence. Thus, it is not necessary to determine whether she has the required intent to return to Alaska. Similarly, the Z.s' child, B., is not eligible to receive a 2010 PFD because she does not have an eligible sponsor.<sup>25</sup>

While Mr. Z. has not provided sufficiently strong evidence to overcome the presumption in 15 AAC 23.163(h)(2), he has presented strong evidence of his ties to Alaska and his intent to return to Alaska. This ruling that he has not met his burden of overcoming this presumption for purposes of the 2010 PFD is not a ruling that he is not still a resident of Alaska as defined by AS

---

<sup>19</sup> OAH Case No. 09-0274-PFD.

<sup>20</sup> See, OAH No. 09-0274-PFD at page 4.

<sup>21</sup> See, OAH No. 09-0274-PFD, at pages 4 – 5.

<sup>22</sup> Some of these days were weekends or days that Mr. Z. ended up working. Exhibit 8, page 3.

<sup>23</sup> Exhibit 1, page 4.

<sup>24</sup> See AS 43.23.008(a)(3)(B).

<sup>25</sup> 15 AAC 23.113(b)(1).

01.10.055. This decision is also not a ruling on the residency of Mrs. Z. or B.. Whether the Z.s will be eligible for any future PFDs will depend on the evidence presented as part of any future applications.

#### **IV. CONCLUSION**

Mr. Z. has not rebutted the presumption that a person who has been absent from the state for five years and who has not returned for at least 30 cumulative days during that absence does not have the intent to return to Alaska. Accordingly, neither he nor his family members are eligible to receive a 2010 PFD. Because the burden of proof required to rebut this presumption is different than the burden of proof required to prove continued state residency, no ruling is made as to whether the Z.s will be eligible for future PFDs. The decision of the Permanent Fund Dividend Division to deny the applications of C., K., & B. Z. III is AFFIRMED.

Dated this 12<sup>th</sup> day of October, 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 8<sup>th</sup> day of November, 2010.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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