

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

In the Matter of:	)	
	)	
E J, JR.	)	OAH No. 10-0613-PFD
	)	Agency No. 2010-063-7430
<u>2010 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

This case is the appeal of E J, Jr. Mr. J appealed the denial of his application for a 2010 Alaska Permanent Fund Dividend (PFD). Mr. J timely applied for his 2010 PFD. Mr. J’s application was denied by the Permanent Fund Dividend Division (Division) because he had answered “no” to the question asking whether he intended to return to and remain in Alaska indefinitely. Mr. J requested an informal appeal and was again denied. Mr. J then requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal in a formal hearing on January 18, 2011. Mr. J appeared by telephone. PFD specialist Peter F. Scott represented the Division by telephone. The hearing was audio recorded. The record in this appeal closed at the end of the hearing.

Having reviewed that record and after due deliberation, the Administrative Law Judge concludes that Mr. J does not qualify for a 2010 dividend, because he did not meet his burden of proof to show that he maintained the intent to return to Alaska permanently between when he moved to Virginia and the date of his application for a 2010 PFD.

**II. Facts**

Mr. J lived in Alaska with his wife and child while serving in the U.S. Coast Guard. Mr. J lived in Alaska from July 2006 to December 2008. At the hearing, Mr. J explained that he left Alaska because his wife passed away. Mr. J stated that he requested an emergency transfer back to Norfolk, Virginia so that his children and step-children would be closer to their other family members and he could receive support with the children’s care.<sup>1</sup>

In completing his Adult Supplemental Schedule, Mr. J answered “no” to question 4B which asks, “are you returning to Alaska to remain indefinitely.” During the appeal process, Mr. J explained to the Division that he would not be coming back to Alaska to live but might just

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<sup>1</sup> Recording of Hearing-Testimony of Mr. J.

come back for a visit. At the hearing, Mr. J stated that he might put down Alaska as one of his choices for his next tour of duty. Mr. J admitted that he has not returned to Alaska since he left in 2008. Mr. J explained that it has been too expensive for him to return with his children for a visit.<sup>2</sup>

Based on the evidence in the record, I find that during 2009, Mr. J did not show that it was more likely than not that he maintained the intent to return to Alaska and live there indefinitely at all times while he was living in Virginia since he move there in December of 2008 and when he applied for a 2010 PFD.<sup>3</sup>

### **III. Discussion**

To qualify for the 2010 PFD, an applicant must meet the eligibility requirements during all of the 2009, the qualifying year for the 2010 PFD, and through the date of application. As applied to Mr. J's application, that means he must have been an Alaska resident through January 26, 2010, the date of his application, as well as during all of 2009.<sup>4</sup> To be an Alaska resident, one must not claim residency in the other state, or be absent under circumstance that are inconsistent with the intent required to remain a resident of Alaska during an absence.<sup>5</sup> Mr. J's appeal appears to be primarily based on his assertion that he has not yet established residency in Virginia, and his plan to maintain paper ties of residency to Alaska. Mr. J did not show that his absence in 2009 was consistent with the intent required to remain a resident of Alaska. Mr. J lost his status as an Alaska resident when he moved to Virginia under circumstances that are inconsistent with the intent to remain an Alaska resident.<sup>6</sup>

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Mr. J, has the burden of proving by a preponderance of the evidence that the denial is incorrect.<sup>7</sup> Mr. J did not show by a preponderance of the evidence that he maintained the intent to return to Alaska while he has been living in Virginia. Mr. J admitted that he left Alaska not as part of an involuntary military transfer. His transfer was made at his own request in order to live closer to his children and step-children's family, because it would be hard to raise them as a single parent in Alaska while he was working. This reason for his move was a responsible step

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

<sup>3</sup> Exhibit 1, page 2 & Recording of Hearing.

<sup>4</sup> Alaska Statute AS 43.23.005(a).

<sup>5</sup> AS 01.10.055(c).

<sup>6</sup> Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

<sup>7</sup> Alaska Regulation 15 AAC 05.030(h).

to take, but it is inconsistent with the intent required to remain a resident of Alaska. Although Mr. J asserts that he and his children may soon be ready to consider a move back to Alaska for another tour of duty, the circumstances of Mr. J's move from Alaska in 2008 were not consistent with the intent to return to Alaska in the foreseeable future. At that time, Mr. J moved from Alaska so that he and he children in his care would be living closer adults who are not living in Alaska. Mr. J has not even returned to Alaska for a visit since he left. Mr. J still has no definite plans to move back to Alaska. When Mr. J indicated in on his 2010 PFD application that he did not intend to move back to Alaska, that answer was probably correct.

**IV. Conclusion**

Mr. J failed to show by a preponderance of the evidence that he maintained his Alaska residency during his absence from Alaska. The Division's decision is upheld. Mr. J is not eligible to receive the 2010 PFD.

DATED this 19<sup>th</sup> day of January, 2011.

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 28<sup>th</sup> day of February, 2011.

By: Signed \_\_\_\_\_  
Signature  
Jerry Burnett \_\_\_\_\_  
Name  
Deputy Commissioner \_\_\_\_\_  
Title

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