

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

In the Matter of:)
)
 J. S.)
) OAH No. 11-0117-PFD
) Agency No. 2010-066-2736
2010 Permanent Fund Dividend)

DECISION

I. INTRODUCTION

J. S. submitted an application for a 2010 Permanent Fund Dividend (PFD).¹ The Permanent Fund Dividend Division (Division) denied his application because he was absent for more than 180 days during the 2009 qualifying year, a large portion of which was devoted to research for his Ph.D degree.²

Mr. S. completed the informal review process, and then requested a formal appeal. A hearing was held by telephone on May 2, 2011. Mr. S. represented himself, and the Division was represented by PFD Specialist Bethany Chase. After the hearing, the parties were asked to submit additional information. That information was submitted and the record was closed.

Based on the evidence in the record, Mr. S. is entitled to receive a 2010 PFD.

II. FACTS

Mr. S. is a doctoral candidate at the University of Alaska Fairbanks.³ He was absent from Alaska for 188 days during 2009. 114 of those days were for vacation, although he did spend some of that time working on his research and dissertation.⁴ The remaining 74 of those days were for the purpose of receiving his graduate education.⁵ The purpose of Mr. S.'s time out of state was described in a letter by Interim Dean L. K. D.

Mr. S. began working on a Ph.D in Biological Sciences in the fall of 2005 and has completed all of his required coursework. In the summer of 2009 Mr. S. applied for the East Asia and Pacific Summer Institutes (EAPSI) fellowship (funded by the National Science Foundation), to work with theoretician Y. I. at K. U. in No Name City, Japan. . . . He needed the expertise of Dr. I. to help him design the models needed for his subsequent research. The knowledge that Mr. S. gained

¹ Exhibit 1.
² Exhibit 4.
³ S. testimony.
⁴ Exhibit 1, page 2.
⁵ *Id.*

during his time in Japan was directly related to the work he has been doing at UAF and could not have been gained without this experience.

To be eligible for the EAPSI fellowship Mr. S. must have been a U.S. graduate student in good standing. The fellowship did not require recipients to be registered at their home institution during the summer they are in residence in Japan. The research that Mr. S. was doing during his stay in Japan was vital to his research and to the completion of his dissertation and he was in Japan as a Ph.D candidate in good standing from the University of Alaska Fairbanks doing research required for his degree.^[6]

The training Mr. S. received in Japan was “a crucial part of [his] graduate education.”⁷

His time in Japan “was necessary for Mr. S.’s Ph.D program because the mathematical modeling mentoring required for his research was not available at UAF. This was a unique educational opportunity not available in the state of Alaska.”⁸

Mr. S. acknowledged during his testimony that he did not receive academic credit for his work in Japan. While Dean D. considered Mr. S. to be in Japan as a Ph.D candidate, the school’s registrar did not consider him to be enrolled.⁹ Ms. Chase testified at the hearing that she called the registrar who confirmed that Mr. S. was not enrolled for any credit during the summer of 2009.

III. DISCUSSION

In order to be eligible for a PFD, one must be a resident of Alaska¹⁰ and meet several other eligibility criteria. One requirement is to be physically present during the entire qualifying year, or if absent, absent for an allowable reason.¹¹ One of those allowable reasons is “receiving secondary or postsecondary education on a full-time basis.”¹² A person who is absent for this reason may be out of Alaska for the number of days he or she is receiving education on a full-time basis plus an additional 120 days.¹³

Receiving education on a full-time basis is defined as “enrollment and attendance in good standing as a full-time student where participation requires absence from this state . . .”¹⁴ The

⁶ Exhibit 11.
⁷ Exhibit 10, page 1.
⁸ Exhibit 3.
⁹ Exhibit 7, page 2 (oral communication from Marlene to Ms. Chase).
¹⁰ There is no dispute that Mr. S. has maintained his Alaska residency.
¹¹ AS 43.23.005(a)(6).
¹² AS 43.23.008(a)(1).
¹³ AS 43.23.008(a)(17)(B).
¹⁴ 15 AAC 23.163(c)(1).

central dispute in this matter is whether Mr. S. was “enrolled” while studying in Japan. The Division’s position is that one must be receiving academic credit to be considered enrolled.¹⁵

In a similar case, G.S. was a Ph.D candidate in Texas.¹⁶ G.S. was enrolled in one credit at Texas Tech while preparing to defend his thesis.¹⁷

For doctorate-level work at Texas Tech University, particularly in the later stages of study, the number of credits a student is enrolled for and completes is not as important as the successful production of a dissertation. This is the case at many universities in a variety of academic fields.^{18]}

In holding that G.S. was not eligible for a PFD, the Department of Revenue noted that there may be students working on graduate degrees who do not expend their full-time at that effort.

Rather than requiring the division to devote the resources and expertise to evaluate every student’s academic program, the regulation requires the division to rely on the official status of students as reported by their accredited or otherwise officially recognized institutions.^{19]}

Texas Tech considered full time enrollment to be a minimum of nine credits.²⁰ Because G.S. was not considered by his institution to be enrolled full-time, his absence was not allowable under AS 43.23.008(a)(1).²¹

In re G.S. does not, however, discuss a prior ruling that holds the institution’s definition of a full time student is not always controlling. That prior case noted:

In general, the division will accept an educational institution’s own standards as sufficient to establish that a student is a full-time student for purposes of the dividend program, even though the number of credit hours required for full time status varies. But an institution’s standards are not conclusive; when circumstances warrant, the individuals may be considered to have full-time status for purposes of the dividend program even if they are not carrying the full number of credit hours the institution generally requires for full time student status.^[22]

The *K.O.A.* ruling quoted a prior ruling with approval that said:

The most reasonable and practical interpretation of “full-time” is study at a pace that demonstrates, within reason, that applicants are devoting their full attention to their studies, and are not absent for other reasons than for education, such as

¹⁵ Pre-hearing brief page 4; post hearing brief, page 3, ¶ 4.

¹⁶ *In re G.S.*, OAH No. 10-0018-PFD (Dept of Revenue 2010).

¹⁷ *In re G.S.*, page 1.

¹⁸ *Id.*

¹⁹ *In re G.S.*, page 3.

²⁰ *In re G.S.*, page 1.

²¹ *In re G.S.*, page 3.

²² *In re K.O.A.*, OAH No. 09-0123-PFD (Dept of Revenue 2009), page 3.

employment. In most case, the college or university’s definition of full-time and part-time attendance will provide useful guidelines. But colleges and universities do not have the final say on the meaning of Alaska laws.^[23]

Although *In re K.O.A.* and *In re M.F.* were focused on the definition of “full-time,” the reasoning also applies to whether one must be receiving academic credit in order to be considered “enrolled.” The college’s or university’s definition of “enrolled” can provide a useful guideline, but is not always the final say on the meaning of Alaska laws.

Mr. S. testified that doctoral candidates must conduct research as part of their degree program, and that depending on the thesis topic, this research might have to be conducted outside of Alaska. According to Mr. S., when summer field work occurs over the summer, students typically do not receive academic credit for that work.²⁴ However, students are required to get permission for their thesis committee to do this field work.

PFD’s position is that “enrolled” means “enrolled for credit.” Usually, that will be an appropriate guideline. But as was noted in *In re K.O.A.*, the question that must be answered is whether the absence is for receiving an education, or for some other reason.²⁵

PFD’s use of enrollment for credit as a guideline works well for the typical undergraduate student. The typical undergraduate will be enrolled for credit during each fall and spring semester, followed by a summer break. During those summer breaks, undergraduate students are typically not devoting their full attention to their studies. They may be travelling or working, but their efforts during this time are not requirement for earning a degree, and any absence from Alaska during that time is not for the purpose of receiving a secondary or postsecondary education.

Mr. S.’s graduate program, on the other hand, does have degree requirements that are not attached to the receipt of academic credit. He is required to conduct research, including out of state field work, and to obtain additional training necessary for his Ph.D. There is no dispute that during all of 2009, Mr. S. was a graduate student in good standing at UAF. While in Japan during the summer of 2009, Mr. S. was devoting his full attention to a program, attendance at which was necessary for him to receive his graduate degree. The purpose of spending his time in Japan was to receive postsecondary education. Although he was not enrolled for academic

²³ *In re K.O.A.*, page 4, quoting *In re M.F.*, OAH No. 06-0722-PFD (Dept of Revenue 2007), page 3.

²⁴ *See also*, Mr. S.’s post-hearing submission, page 9.

²⁵ *In re K.O.A.*, pages 3 – 4.

credit, he was enrolled in UAF's graduate degree program during that time period, and his absence is allowable under AS 43.23.008(a)(1).

IV. CONCLUSION

Mr. S. was out of state for a total of 188 days during 2009. He was enrolled as a full-time student for 72 days, from June 15, 2009 through August 28, 2009. The remaining 116 days is less than the 120 days allowable for any reason under AS 43.23.008(a)(17)(B). Accordingly, Mr. S. is entitled to receive a 2009 PFD.

Dated this 19th day of May, 2011.

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 17th day of June, 2011.

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

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