

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

In the Matter of :)	
)	
J C)	OAH No. 11-0137-PFD
_____)	DOR No. 2010-033-1594

DECISION

I. Introduction

Staff Sergeant J C was denied a 2010 Alaska Permanent Fund dividend on the ground that he had not established residence in Alaska at least six months prior to March 1, 2009. He filed an appeal, and the assigned administrative law judge conducted a telephonic hearing on May 12, 2011. Sgt. C was represented by his wife, N C. Pete Scott represented the Permanent Fund Dividend Division.

The preponderance of the evidence and testimony is that Sgt. C established residence in Alaska more than six months prior to March 1, 2009. The denial of his application for a 2010 dividend is therefore reversed.

II. Facts

J C was born and raised in Michigan. In 1999, at age 21, he enlisted in the United States Air Force and was stationed in Grand Forks, North Dakota, where he lived on the base. In 2004, Sgt. C married and his wife, N C, moved into the base housing with him. The couple had two children while living on base in North Dakota. Sgt. C had no particular ties to North Dakota, other than that his wife’s family was there; his own family was in Michigan.

Sgt. C enjoys hunting and fishing. After he enlisted in the Air Force, he began hearing about Alaska from other members of the military who had been stationed there. He and his wife had military friends who had been stationed in Alaska, been transferred out of state, and returned to Alaska upon retirement from the military. The couple decided that they would like to move to Alaska and reside there permanently. When Sgt. C reenlisted in 2007, he selected Fort Elmendorf, in Anchorage, as his first choice, and a Fairbanks posting as his second choice.¹

As requested, Sgt. C received a posting to Fort Elmendorf.² All of the family household goods were shipped to Alaska on February 8, 2008.³ The family arrived in Alaska on February

¹ The foregoing facts are based on N C’s testimony at the hearing.
² See Ex. 4, p. 7 (date of orders January 11, 2008).

28, 2008, and moved in to on-base housing, with the intent to remain in the state indefinitely.⁴ Their household goods (including 12 firearms) were delivered on March 1.⁵ In October, the couple travelled to North Dakota for N C's father's retirement party, and he told his daughter that she should take care of getting her Alaska driver's license. His parental advice, and Sgt. C's anticipated deployment to Afghanistan, prompted the Cs to take care of the paperwork associated with a change of legal residence. In November, Sgt. C registered to vote in Alaska, obtained an Alaska driver's license (on the same day as his wife), and registered his vehicles in Alaska.⁶ By the end of the year, he had changed his state of residence for tax purposes, as listed on his leave and earnings statement, from Michigan to Alaska.⁷

In 2009, Sgt. C deployed to Afghanistan. He was absent on deployment from March 1 through October 27, 2009 (240 days).⁸ He was in Alaska for the remainder of the year.

III. Discussion

The division does not dispute that all of the Cs became residents of Alaska prior to January 1, 2010, and that they remain Alaska residents. Except for Sgt. C, all of the family members who applied were awarded the 2010 Alaska Permanent Fund dividend, except for Sgt. C. Sgt. C's application was denied pursuant to 15 AAC 23.163(b), which provides that an individual who is absent from Alaska for more than 180 days in the qualifying year is ineligible for a dividend unless the individual was a state resident for at least 180 days immediately before the date of departure. Under this regulation Sgt. C is ineligible unless he was a state resident at least 180 days prior to March 1, 2009, that is, by September 1, 2008. Thus, to prevail on appeal, Sgt. C needed to prove, by a preponderance of the evidence, that he became a state resident prior to September 1, 2008.

The definition of state resident as it applies to the Alaska Permanent Fund dividend program is set out in AS 43.23.095(7), which states in relevant part:

³ Ex. 4, p. 7.

⁴ Testimony of N. C; Ex. 1, p. 2 (application form stating Alaska residence began on February 28, 2008).

⁵ Ex. 4, p. 7.

⁶ Ex. 2, p. 2; Ex. 10, p. 1(driver's license), p. 2 (voter registration); Ex. 5, p. 5.

⁷ Ex. 4, p. 1 (leave and earnings statement for December, showing Alaska as tax residence); Ex. 5, p. 2.

Such a change is effected by executing Department of Defense form 2058, which shows the state in which residence is claimed "for the purpose of determining the State for which income taxes are to be withheld from your wages." See generally, *In Re K.W.B.*, OAH No. 09-0366-PFD at 4-6 (Commissioner of Revenue 2009).

⁸ Ex. 1, p. 3.

(7) “state resident” means an individual who is physically in the state with the intent to remain indefinitely in the state under the requirements of AS 01.10.055.....

AS 01.10.055 provides:

- (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.
- (b) A person demonstrates the intent required under (a) of this section
 - (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and
 - (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

In this case, it is undisputed that Sgt. C maintained his principal place of abode in Alaska for more than six months prior to March 1, 2009; indeed, he maintained his principal place of abode in Alaska from the day he arrived in the state, on February 28, 2008. He thus has demonstrated intent as required by AS 01.10.055(b)(1) for purposes of establishing residency. At issue is whether he has satisfied the additional requirement of AS 01.10.055(b)(2) to provide “other proof of intent as may be required by law or regulation.”

For purposes the Alaska Permanent Fund dividend, the required “other proof of intent” is that stated in 15 AAC 23.143:

- (a) An individual’s intent to establish residency [and] remain indefinitely in Alaska...is demonstrated through the establishment and maintenance of customary ties indicative of Alaska residency and the absence of those ties elsewhere. Acts that are required by law or contract or are routinely performed by temporary residents of Alaska are not by themselves evidence of residency. In evaluating whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the department will consider whether or not an individual has:
 - (1) taken steps to establish Alaska residency and sever residency in a previous state or country;
 - (2) ties to another state or country that indicate continued residency in the other state or country;
 - (3) taken other action during or subsequent to the qualifying year that is inconsistent with an intent to remain in Alaska indefinitely.

A. 15 AAC 23.143(a)(1)

The first specific consideration under the regulation is whether the individual has taken steps to establish Alaska residency and to sever residency in a previous state. In this case, the

evidence is that Sgt. C was physically present in Alaska (except for a visit to North Dakota in October, 2008) from the time he arrived in the state on February 28, 2008, until he was deployed to Afghanistan in March, 2009. By March 1, 2008, Sgt. C (1) at his own request, had obtained a transfer of his duty station to Alaska, (2) had moved his entire family and all of his household belongings to Alaska, (3) was engaged in full time, permanent employment in Alaska, and (4) had established his principal (and only) home in premises located in Alaska. These are all steps towards the establishment of Alaska residency and the severance of ties to Sgt. C's prior state of residence, which was North Dakota.

The division argues that Sgt. C's request for a posting to Alaska could simply indicate a desire to spend a few years in Alaska enjoying hunting and fishing. But while one might speculate that there was another explanation for requesting a posting to Alaska, the preponderance of the evidence in this case is that the request reflected an intent to move to Alaska and remain there indefinitely. In particular, Sgt. C's wife testified that the couple had family friends who had been stationed in Alaska and returned to retire there after being stationed elsewhere, and that this was among the reasons for their decision to move. Moreover, as previously observed, Sgt. C again requested an Alaska posting in 2011. Consideration of the first factor supports a finding that Sgt. C possessed the intent to remain in Alaska indefinitely from the date he arrived.

B. 15 AAC 23.143(a)(2)

The second specific consideration is whether the individual has ties to another state indicative of continued residence there. In this case, Sgt. C had no significant personal ties to his prior state of residence, North Dakota; it was simply where he had been stationed by the military, and it happened that he met and married his wife there. However, Sgt. C had, until November, 2008, two paper ties to other states that are indicative of continued residence in another state. First, Sgt. C remained a licensed driver in North Dakota. Second, Sgt. C's leave and earnings statement continued to show Michigan as his state of residence for tax purposes.

That Sgt. C maintained paper ties to North Dakota (a driver's license) and to Michigan (his leave and earnings statement) is not of particular significance for purposes of determining his residence. Paper ties to one state or another are relatively easy to acquire while living there, and relatively easy to maintain after departure. For this reason, maintaining paper ties to Alaska after moving to another state is not in itself strong evidence of an intent to return to Alaska, and,

conversely, maintaining paper ties to another state after moving to Alaska is not in itself strong evidence of an intent to return to the other state.⁹ In this case, because Sgt. C retained paper ties to two different states, any inference regarding residence is even more attenuated: it cannot have been Sgt. C's intent to return to both North Dakota and Michigan to live indefinitely, and yet that is what the paper ties (considered in isolation) would suggest.

Moreover, in this particular case the specific paper ties at issue are of little persuasive effect with respect to Sgt. C's intent. For purposes of determining residency, it is of no particular significance that Sgt. C's leave and earnings statement listed Michigan as his state of residence for tax purposes.¹⁰ There is no evidence that Sgt. C ever claimed residence in Michigan, and it is entirely possible that the leave and earnings statement shows Michigan as state of residence for tax purposes because that was his home state of record at the time he enlisted.¹¹ Sgt. C's North Dakota driver's license might be seen as an indication that Sgt. C was exercising the right of an out-of-state resident who is a member of the military to forego the otherwise-applicable requirement to obtain an Alaska driver's license.¹² However, any such adverse inference is significantly weakened by the fact that N C, too, held a North Dakota driver's license until November, 2008. Ms. C, unlike her husband, had no legal excuse for not obtaining an Alaska driver's license prior to that time. That she failed to do so, notwithstanding a legal requirement to obtain one, is a strong indication that inadvertence, oversight or neglect, rather than an intent to retain North Dakota residence, was the reason she failed to obtain an Alaska driver's license prior to November. That, moreover, is precisely what she testified to: that she took care of her driver's license after her father prompted her to do so when she visited him in October.¹³ In that light, Sgt. C's repeated assertion, in his communications with the division, that he "changed his

⁹ See, e.g., In Re S.M. et al., OAH No. 09-0097-PFD at 4 (Commissioner of Revenue 2009); In Re E.L., OAH No. 08-0072-PFD at 3 (Commissioner of Revenue 2008).

¹⁰ Had Sgt. C at some point completed the Department of Defense form 2058 and thus claimed residence in another state, maintenance of that claim on his leave and earnings statement during the qualifying year would likely have rendered him ineligible, without regard to his actual state of residence, pursuant to 15 AAC 23.143(d)(2).

¹¹ As was explained in In Re K.W.B., OAH No. 09-0366-PFD at 4-5 (Commissioner of Revenue 2009), an enlistee's home state of record is generally the state in which the enlistee is living at the time of enlistment, and by default that state is typically listed as the state of residence for tax purposes. The distinction between an enlistee's home state of record and the state of legal residence has been addressed in numerous previous cases. See, e.g., In Re J.M.J., OAH Nos. 09-0153/0302-PFD at 4 (Commissioner of Revenue 2010); In Re C.R.C., et al., OAH No. 08-0497-PFD (Commissioner of Revenue, 2009); In Re G.C., OAH No. 06-0747-PFD (Commissioner of Revenue 2007); In Re M.L., Department of Revenue Caseload No. 961052 (1997); In Re B.R., Department of Revenue Caseload No. 951596 (1997)..

¹² See AS 28.15.021(3).

¹³ See AS 43.23.015(a) ("The commissioner shall consider all relevant circumstances in determining the eligibility of an individual.").

residence” to Alaska in November suggests that he meant nothing more than that was when he and his wife finally got around to taking care of the paperwork associated with a legal change of residence, even though as a factual matter the change of residence had already occurred. In light of the evidence as a whole, consideration of this factor does not support a finding that Sgt. C intended to retain residence in another state after he arrived in Alaska.

C. 15 AAC 23.143(a)(3)

The third specific consideration is whether the individual has taken any action during or subsequent to the qualifying year that is inconsistent with an intent to remain in Alaska permanently. In this case, not only is there an absence of any such actions, there was in fact an action indicative of an intent to remain, in that Sgt. C again requested and obtained an Alaska posting at the next opportunity, when he re-enlisted in 2011. Consideration of this factor supports a finding that Sgt. C had the intent to become a resident when he arrived.

IV. Conclusion

In this case, considering all of the circumstances, and in particular the specific considerations mentioned in subsections (a)(1)-(3), the preponderance of the evidence is that Sgt. C moved to Alaska with the intent to remain indefinitely, and that accordingly he established residence in the state more than six months prior to March 1, 2009. Therefore, the division’s decision is REVERSED. Sgt. C’s application is GRANTED.

DATED August 15, 2011

Signed _____
Andrew M. Hemenway
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 14th day of September, 2011.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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