

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

In the Matter of:	)	
	)	
T D	)	OAH No. 11-0293-PFD
	)	Agency No. 2010-058-9169
<u>2010 Permanent Fund Dividend</u>	)	

**DECISION AND ORDER**

**I. Introduction**

This case is the appeal of T D. Mr. D appealed the denial of his application for a 2010 Alaska Permanent Fund Dividend (PFD). Mr. D timely applied for his 2010 PFD. Mr. D's application was denied by the Permanent Fund Dividend Division (Division) because the Division determined that he had not been a resident of Alaska for all of 2009. Mr. D requested an informal appeal and was again denied. Mr. D then filed a late request for a formal hearing. The Division filed a motion to dismiss Mr. D's untimely appeal.

Administrative Law Judge Mark T. Handley heard the appeal in a formal hearing on August 29, 2011. Mr. D was represented by his wife who has his power of attorney because he was deployed to Afghanistan. PFD specialist Pete 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 the appeal deadline should not be waived because it would not work an injustice to apply the appeal deadline in this case. Mr. D does not qualify for a 2010 dividend because he maintained his claim of residency in another state on his employment records in 2009. However, the evidence does not show that Mr. D was not an Alaska resident for all of 2009, as argued by the Division. Other evidence in the record indicates that despite the fact that he failed to successfully change his state of legal record on his employment records before 2009, Mr. D became an Alaska resident in 2008.

**II. Facts**

Mr. D and his wife moved to the United States from Africa in 2003. Mr. D moved to Alaska as a member of the military in 2008. Mr. D's sister in law lives in Alaska. Before he moved to Alaska he lived in Georgia, and Mr. D's state of legal residence in his military pay records was listed as Georgia at least through 2009. Georgia state income tax was withheld from

his pay through 2009.<sup>1</sup> Mr. D became a U.S. citizen in Alaska in September of 2008. Mr. D obtained an Alaska driver's license and registered his vehicle in Alaska in 2008. Mr. D's wife explained that they wanted to move to Alaska because they believed it would be a better place to raise children. Mr. D thought he had done everything he needed to do to change his state residency to Alaska in September of 2008, including filing a request to change his state of legal residence on his employment record.<sup>2</sup>

After Mr. D's 2010 PFD application was denied, he timely filed his request for an informal appeal. Mr. D did not timely request a formal hearing within 30 days of the denial was upheld in an informal conference decision. The deadline for filing the request for a formal hearing was February 18, 2011. Mr. D did not file this request until July 18, 2011. Mr. D was in training from February 15, 2011 through March 15, 2011. Mr. D deployed to Afghanistan on April 28, 2011.<sup>3</sup>

Based on the evidence in the record, I find that during 2009, Mr. D maintained a claim of Georgia state residency on his employment records in 2009.<sup>4</sup>

### **III. Discussion**

The Division filed a motion to dismiss Mr. D's appeal of the denial of his 2010 PFD application because his appeal was filed long after the appeal deadline. A person who wishes to appeal the denial of a permanent fund dividend that was upheld in an informal appeal must file a request for a hearing within thirty days of the day the Division issues the informal appeal decision.<sup>5</sup> This deadline may be waived if strict adherence to the normal appeal deadlines would work an injustice.<sup>6</sup>

Mr. D's appeal request was filed 131 days after the passing of the 30-day appeal deadline. Ms. D explained that she did not figure out that they had failed to file his appeal until long after the deadline.

Under normal circumstances, there would be no apparent injustice that would be worked by strict adherence to the appeal deadline for an appeal that was filed so long after the deadline. In this case, however, Mr. D's failure to meet the appeal deadline appears to be due to his

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<sup>1</sup> Exhibit 2.  
<sup>2</sup> Exhibit 3 & 5.  
<sup>3</sup> Exhibit 3 -10 & Recording of Hearing- Testimony of Ms. D.  
<sup>4</sup> Exhibits 2& Recording of Hearing- Testimony of Ms. D.  
<sup>5</sup> 15 AAC 05.030(a).  
<sup>6</sup> 15 AAC 05.030(k).

forgetting to take care of one of many things he and his family had to deal with in the time that he was preparing to be deployed to a war zone. His wife simply did not realize that he had forgotten to do this until some months after he left. These circumstances would probably be grounds for excusing the late appeal if there was any chance that Mr. D could prevail on the merits, that is, show that he is eligible for a 2010 PFD. Unfortunately he cannot and the Division's motion should be granted.

The PFD eligibility rules are technical and strict. Even an Alaska resident can be disqualified if he is absent under the wrong circumstance, claims or maintains certain residency ties to another state during the PFD year, or files his application or appeal late.

One of these strict eligibility requirements is not to have claimed or maintained a claim that a state other than Alaska is your state of legal residence on your employment records during the PFD eligibility year. Alaska Regulation 15 AAC 23.143(d)(2) sets this requirement out as follows:

(d) An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual has

\* \* \* \* \*

(2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit

(A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or

(B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely.

Mr. D maintained a claim that Georgia was his state of legal residence on his military pay records through 2009, the 2010 PFD eligibility year. He was unable to provide either a certified

copy of a request to change those records filed before 2009 or a statement from his personnel officer. Mr. D is therefore not eligible for a 2010 PFD.

In its closing arguments, the Division also argued that Mr. D was not a state resident in 2009. The evidence in the record shows that Mr. D probably was an Alaska resident before 2009 despite his failure to successfully change his state of legal residence in his pay records before 2010. The evidence in the record shows that Mr. D moved to Alaska, decided to make Alaska his permanent home, and took many steps to establish Alaska residency in 2008.

Mr. D and his wife emigrated to the U.S. from Africa as adults. Mr. D's failure to successfully change his state of legal residence in his employer's records before 2010 is more likely to be attributable to his and his wife's difficulty in dealing with the military finance office and lack of familiarity with how state income tax and payroll tax withholding work, than to an intent to maintain a tie of residency to Georgia.

Even though Mr. D became an Alaska resident before 2009, he is still disqualified from 2010 PFD eligibility, however, because of the strict requirements on payroll records discussed above. Given this clear disqualification, it would not work an injustice to apply the appeal deadline in this case.

#### **IV. Conclusion**

The Division's motion to Dismiss is granted. The Division's decision is upheld. Mr. D is not eligible to receive the 2010 PFD.

DATED this 19<sup>th</sup> day of September, 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 20<sup>th</sup> day of October, 2011.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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