

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

In the Matter of: )  
 )  
 E A. U )  
 ) OAH No. 11-0306-PFD  
 ) Agency No. 2010-059-3488  
2010 Permanent Fund Dividend )

**DECISION**

**I. Introduction**

E A. U was assigned to Alaska, arriving on October 25, 2008. Five months later he was deployed to Afghanistan, where he remained until February, 2010. In March of 2010 he timely applied for a 2010 permanent fund dividend (PFD). The Permanent Fund Dividend Division denied his application both initially and at the informal appeal level on the basis that he had not been an Alaska resident for 180 days before leaving on his military-related absence. At Mr. U’s request, a formal hearing was held on September 27, 2011. The division’s denial is affirmed because the law as presently framed does not permit the payment of a 2010 dividend to him.

**II. Facts**

The facts of this case are not in dispute. The facts set out below are based on Mr. U’s testimony at the hearing and a small number of exhibits submitted by the division.

E A. U was assigned to the Fort Richardson Army Base. He arrived in Alaska under military orders on October 25, 2008. Other than changing his “State of Legal Residence” in military records to Alaska, it does not appear that he took other steps to establish Alaska residency prior to January 1, 2009.<sup>1</sup> On March 7, 2009, he was deployed to Afghanistan, remaining there for 299 days and returning to Alaska on February 24 of the following year. He did receive two weeks of leave during this period which he used to visit his family in California. Mr. U did not return to Alaska at any time throughout his 299 day deployment.

**III. Discussion**

The requirements for PFD eligibility are, in some situations, quite exacting. When they exclude an individual from eligibility, the Department of Revenue has no discretion to pay the

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<sup>1</sup> Exhibit 10.

dividend, regardless of the worthiness of the individual, the seeming technicality of the exclusion, or the individual's Alaska connections outside the context of the exclusion. The department is bound not only by the PFD statutes but also by its own regulations.<sup>2</sup>

In March of 2009, Mr. U left Alaska for Afghanistan and remained there for the remainder of 2009, the qualifying year for the 2010 dividend. It is possible to retain PFD eligibility while living in another state or country during the qualifying year, but eligibility is only retained if one is absent for certain reasons listed in Alaska Statute 43.23.008. One of the permissible reasons is AS 43.23.008(a)(3): while serving in, or accompanying as spouse or dependent someone serving in, the armed forces of the United States. This is the allowable absence on which Mr. U would have to rely to maintain eligibility through 2009. However, in order to take advantage of an allowable absence such as this one for a period exceeding 180 days, the applicant must have been "a state resident for at least 180 days immediately before departure from Alaska."<sup>3</sup> The rule applies to all absences of 180 days or more beginning less than 180 days after residency commenced.<sup>4</sup> There is no exception for involuntary absences.<sup>5</sup> Mr. U was a state resident for at most 133 days before beginning his deployment.

Although Mr. U left Alaska too soon to be eligible for a 2010 dividend, nothing in the record established in this appeal suggests that he severed his underlying Alaska residency when he went to Afghanistan; only his PFD eligibility appears to have been affected. The record does not presently reveal any impediments to eligibility for 2011 and later dividends.

#### **IV. Conclusion**

E A. U was not an Alaska resident sufficiently in advance of his deployment to Afghanistan to be eligible to claim an allowable absence of more than 180 days while serving in that country. Because his absence exceeded 180 days and encompassed most of the qualifying year for the 2010 dividend, he is not eligible for that dividend.

DATED this 21<sup>st</sup> day of November, 2011.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

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<sup>2</sup> E.g., *Stoshs I/M v. Fairbanks N. Star Borough*, 12 P.3d 1180, 1185 (Alaska 2000).

<sup>3</sup> 15 AAC 23.163.

<sup>4</sup> *In re R.C.H.*, OAH No. 07-0677 PFD (January 31, 2008).

<sup>5</sup> *Id.*

### 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 19<sup>th</sup> day of December, 2011.

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

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