

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

In the Matter of:	)	
	)	
D K	)	
	)	OAH No. 11-0468-PFD
<u>2011 Permanent Fund Dividend</u>	)	Agency No. 2011-015-6755

**DECISION**

**I. INTRODUCTION**

Lieutenant D K applied for a 2011 Permanent Fund Dividend (PFD). His application was denied by the Permanent Fund Dividend Division (division) because he had been eligible for each of the prior ten PFDs, but was absent for more than 180 days during 2010. Lt. K went through the informal appeal process and then requested a formal hearing.

A hearing was held on January 19, 2012. Lt. K appeared in person. The division was represented by PFD Specialist Bethany Chase, who appeared by telephone. The facts are undisputed. Under the applicable statute, AS 43.23.008(c), the division has no discretion and must conclude that Lt. K is ineligible to receive a 2011 PFD. However, he remains an Alaska resident for PFD purposes.

**II. FACTS**

The facts are not in dispute. Lt. K is a life-long Alaska resident. He has chosen a military career, and as such has been allowably absent from Alaska for over 180 days the past ten years. He returned to Alaska in 2010, intending to remain. On June 3, 2010, Lt. K was deployed to Afghanistan, where he remained until May 31, 2011. Because of his deployment, Lt. K was absent from Alaska for more than 180 days during 2010, the qualifying year for a 2011 PFD.

**III. DISCUSSION**

Eligibility to receive a PFD depends on several different factors. Among other requirements, one must be physically present in Alaska during the entire qualifying year, or be absent only for an allowable reason.<sup>1</sup> In addition, one must be a state resident during the entire qualifying year.<sup>2</sup>

---

<sup>1</sup> AS 43.23.005(a)(6).

<sup>2</sup> AS 43.23.005(a)(3).

The distinction between residency and eligibility can be confusing. It is possible for a person to lose their status as an Alaska resident for PFD purposes.<sup>3</sup> Such a person might still be considered an Alaska resident under other statutes, but would not be eligible for a PFD.<sup>4</sup> Other individuals may remain Alaska residents for PFD purposes, but still be ineligible to receive a PFD in a particular year. For example, a person who leaves the state for a seven month cruise around the world – assuming the cruise was purely a vacation – could still remain an Alaska resident, but would not be eligible for a PFD.<sup>5</sup> As discussed below, Lt. K remains an Alaska resident for PFD purposes, but is not eligible to receive a PFD.

During his military career, Lt. K was allowably absent as an active duty member of the U.S. armed forces.<sup>6</sup> In 2010, Lt. K was absent from Alaska for 222 days. However, his absence in 2010 renders him ineligible for a 2011 PFD because of a different statutory provision.

An otherwise eligible individual who has been eligible for the immediately preceding 10 dividends despite being absent from the state for more than 180 days in each of the related 10 qualifying years is only eligible for the current year dividend if the individual was absent 180 days or less during the qualifying year. This subsection does not apply to an absence under (a)(9) or (10) of this section or to an absence under (a)(13) of this section if the absence is to accompany an individual who is absent under (a)(9) or (a)(10) of this section.<sup>7</sup>

Based on this statute, Lt. K was not eligible to receive a 2011 PFD. He agrees that the division correctly applied this statutory provision, but asks that an exception be made because of the circumstances surrounding his absence.

Lt. K's situation is unique. He had physically returned to Alaska in 2010 to make his home, left when called back into service, and returned when his tour was over. Clearly, Lt. K has the intent to remain in Alaska indefinitely and make his home here. The Legislature has set a bright line rule that if an individual received a PFD for 10 years while allowably absent from the state for more than 180 days in each of those years, to receive a PFD in the 11<sup>th</sup> year, the applicant must have been absent for 180 days or less in the qualifying year. The statute does not grant the division or this tribunal discretion to grant Lt. K's 2011 PFD application.

---

<sup>3</sup> See 15 AAC 23.143 (establishing and maintaining Alaska residency).

<sup>4</sup> *State v. Andrade*, 23 P.3d 58, 71 (Alaska 2001) (The residency requirement for PFD purposes may be different than the residency requirements of other statutes).

<sup>5</sup> AS 43.23.008(17) (maximum allowable absence is 180 days if no other allowable absence is applicable).

<sup>6</sup> AS 43.23.008(a)(3).

<sup>7</sup> AS 43.23.008(c). Sub-sections (a)(9) and (a)(10) create allowable absences for members of Congress and their staff. (a)(13) creates an allowable absence for a spouse or dependants of a person accompanying other eligible applicants.

**IV. CONCLUSION**

Because of his military career, Lt. D K has been allowably absent from Alaska for more than 180 days in each of the ten preceding qualifying years and has also been absent from Alaska for more than 180 days in 2010, the qualifying year for a 2011 PFD. Accordingly, he is not eligible to receive a 2011 PFD pursuant to AS 43.23.008(c).

Dated this 5<sup>th</sup> day of March, 2012.

*Signed* \_\_\_\_\_  
Rebecca L. Pauli  
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 2<sup>nd</sup> day of April, 2012.

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

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