

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

In the Matter of :)	
)	
L D)	
)	OAH No. 13-0135-PFD
<u>2012 Alaska Permanent Fund Dividend</u>)	DOR No. 2012-050-1321

DECISION

I. Introduction

L D applied for a 2012 Alaska Permanent Fund dividend. The Permanent Fund Dividend Division denied the application, concluding he was not allowably absent from Alaska. Mr. D appealed and a hearing was conducted on March 4, 2013. Mr. D's mother appeared, pursuant to a power of attorney, and argued on Mr. D's behalf. The division participated by telephone.

Mr. D was absent from Alaska for over 140 days while training and competing as the sole Alaskan on the United States Alpine Team (USAT) in hopes of being named a member of the 2014 United States Olympic Team (USOT). This is not an allowable absence.¹ The division's decision is sustained.

II. Facts

There are no material facts in dispute. Rather, the issue presented is whether the division correctly applied the law to the undisputed facts.

L D is an Alaska resident; he is also the only Alaskan on the USAT. It is likely that Mr. D will have the honor of representing the United States and Alaska at the 2014 Winter Olympics if he stays healthy and maintains his ranking. To compete and train at the Olympic level, Mr. D is required to spend much of his time away from Alaska. He was absent over 140 days, training with and competing on the USAT, and 136 days attending school. Unless the time, training, and competing are considered an allowable absence, Alaska's only member of the USAT will be ineligible for a 2012 PFD.

III. Discussion

Alaska law identifies several requirements before an applicant will be found eligible to receive a PFD.² The requirement relevant to this case is that the applicant must be present in

¹ *In re Q.H.*, OAH No. 09-0260-PFD (Commission of Revenue October 16, 2009).

² AS 43.23.005.

Alaska during the entire qualifying year, unless absent for an allowable reason.³Mr. D's application was denied based on the division's determination that he was not allowably absent.

The legislature has identified 17 "allowable absences" that a resident may claim. Sixteen of the absences are for specific reasons such as to attend school, settling the estate of a deceased parent, serving as a member of Congress, serving as a peace corps volunteer, etc.⁴ The 17th is an absence for any reason consistent with the individual's intent to remain a resident.⁵ The "any reason" absence is not without limits. A person may not be absent for more than a cumulative 180 days for any reason, or 120 days for any reason in addition to the time spent at school. Also, when an applicant is claiming certain absences, such as the USOT absence, then all absences under AS 43.008(a)(1)– (16) may be combined, and an additional 45 any reason days may be claimed as an allowable absence.⁶ The three "any reason" absences are disjunctive and may not be combined.

Mr. D would like the division to treat his absences associated with the USAT as an allowable absence under AS 43.23.008(a)(15). Alaska Statute 43.23.008(a) provides:

... an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent

(15) because of training or competing as a member of the United States Olympic Team....

If a portion of his absence is allowable under this provision, then that absence may be combined with any other allowable absences, and he would be eligible for a 2012 PFD.⁷

The division concluded that Mr. D's absence for training and competing on the USAT was not allowable under this provision because he was not on the USOT. Mr. D believes the division misapplies the statute. He reasons that the legislature could not have intended to limit this allowable absence to just members of the USOT, since then AS 43.23.008(a)(15) would not benefit Alaska's Olympic hopefuls because:

1) a resident could only claim an allowable absence once every four years;

³ AS 43.23.005(a)(6).

⁴ *See generally* AS 43.23.008(a)(1) – (16).

⁵ AS 43.23.008(a)(17).

⁶ *Id.*

⁷ AS 43.23.008(a)(17)(c).

- 2) USOT members are not named to the team until a few weeks before the Olympics commence, then the team is disbanded shortly after the Olympics end; and
- 3) as a practical matter the absence only permits another 45 days in addition to the time spent training and competing as a USOT member, so the 180 day absence for any reason would suffice.

To avoid what he calls an absurd result, Mr. D argues the statute should be applied in a manner that would recognize his timetraining for an Olympic sport and treat it as an allowable absence. There is a flaw with this thinking. If applied as desired by Mr. D, then any Alaska resident could be allowably absent for any period of time while they trained for, or competed in, any sport that is also an Olympic sport.

This is not what the legislature intended. The statutory language directs that the exception applies while training or competing *as a member* of the Olympic team, and not *in hope of being named* to that team. Statutory construction “begins with the language of the statute, . . . with due regard for the meaning that the statutory language conveys to others.”⁸ When interpreting a statute, a tribunal interprets texts, not “disembodied purposes.”⁹ The search is for what the legislature “meant by *what it said*,” not for what it meant to say.¹⁰ This is because the text, and the text alone, is the law under our constitutional structure.¹¹

If the language of the statute has ambiguity, then a sliding scale is applied: “the plainer the language, the more convincing contrary legislative history must be.”¹² The standard usage of legislative history in statutory interpretation is to supply the right meaning for undefined terms. If the legislative history demonstrates no ambiguity, a court adheres to the statute’s language and will not modify or extend it by judicial construct.¹³ Here, there is no ambiguity. If the plain language of AS 43.23.008(a)(15) does not accomplish what its history directs, then the matter is one for the legislature, not this tribunal.¹⁴

⁸ *Tesoro Petroleum Corp. v. State*, 42 P.3d 531, 537 (Alaska 2002).

⁹ *Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 310 (7th Cir. 1986).

¹⁰ *Id.*

¹¹ *State Dept. of Commerce, Community, and Economic Development Division of Insurance v. Alyeska Pipeline Service Co.*, 262 P.3d 593 (Alaska 2011).

¹² *Tesoro*, *supra*. (quoting prior authority).

¹³ *Gillis v. Aleutians East Borough*, 258 P.3d 118, 123 (Alaska 2011); *State Dept. of Commerce, Community, and Economic Development Division of Insurance*, *supra*.

¹⁴ The legislative history of AS 43.23.008(a)(15) was discussed in the 2009 decision *In re Q.H.*, OAH No. 09-0260-PFD (Commissioner of Revenue October 16, 2009). *In re Q.H.* presented an almost identical factual situation.

Mr. D spent 136 days in school. Under AS 43.23.008(a)(17)(B), Mr. D was permitted an additional 120 days absence for any reason. Had he spent just 20 more days in Alaska, Mr. D would have had 256 days of allowable absence from Alaska, and would have been eligible for a 2012 PFD.

Mr. D argues that there is, in reality, no distinction between the USAT and a member of the USOT. If this is true, then why did Mr. D write on his PFD application that he was absent to “meet up with the United States Alpine Men’s Ski Team of which I am a member” and not that he was absent to meet up with the USOT – Men’s Alpine?¹⁵ The answer is that Mr. D recognizes, as did the legislature, that being a member of a national team is not the same as being a member of the USOT.

IV. Conclusion

L D was absent from Alaska during the qualifying year for more than the time allowed under AS 43.23.008. He is therefore ineligible for the 2012 dividend. The division’s decision to deny his application is AFFIRMED.

DATED this 16th day of May, 2013.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

Mr. H was a member of United States Biathlon Team. He sought to have his time, training, and competing in preparation for the Olympic Games considered an allowable absence under the USOT absence. *In re Q.H.* concluded that the legislative history demonstrates no ambiguity. Applying to this prior decision the plain language of AS 43.23.008(a)(15) precludes the division from treating Mr. D’s time spent training with and competing on the USAT as an allowable absence.

¹⁵ Exhibit 1 at 3.

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 19th day of June, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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