

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

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|-------------------------------------|---|--------------------------|
| In the Matter of: |) | |
| |) | |
| K J |) | OAH No. 13-0198-PFD |
| |) | Agency No. 2012-044-7439 |
| <u>2012 Permanent Fund Dividend</u> |) | |

DECISION AND ORDER

I. Introduction

This case is the appeal of K J. Mr. J appealed the denial of his application for a 2012 Alaska Permanent Fund Dividend (PFD). Mr. J timely applied for his 2012 PFD. Mr. J's application was denied by the Permanent Fund Dividend Division (Division) because the Division determined that he had continued to live outside of Alaska for several years after he graduated from college, and had severed his Alaska residency. Mr. J requested an informal appeal and was again denied. Mr. J then requested a formal hearing.

Administrative Law Judge Mark T. Handley heard the appeal in a formal hearing on March 21, 2013. Mr. J appeared by telephone. PFD specialist Peter F. 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 the record, and after due deliberation, the Administrative Law Judge concludes that Mr. J does not qualify for a 2012 dividend because he did not meet his burden of proof to show that he maintained the intent to return to Alaska permanently while he was living and working outside of Alaska, between when he graduated from college in California in May of 2009 and the date of his application for a 2012 PFD.

II. Facts

Mr. J moved to Alaska when he was four years-old, in 1992. Mr. J went to college in California, and he continued to live in that state after he graduated in May of 2009. Mr. J did not apply for the 2009 through 2011 PFDs. He has not yet moved back to Alaska. At the hearing, Mr. J explained that after he graduated from college in California, he rented an apartment in Santa Barbara, California, and worked in a coffee shop. He was thinking about applying for Law School. Mr. J decided not to try to go to Law School. Mr. J decided to move to Washington DC in hopes of getting a job with one of the members of the Alaska delegation. Mr. J eventually was able to get a job with Senator No Name's office. Mr. J's father was the only parent living in

Alaska when he graduated from college, but he moved to Washington State in 2011. Mr. J views his grandmother's home as his Alaska residence.¹

Based on the evidence in the record, I find that during 2011, Mr. J did not show that it was more likely than not that he, at all times, maintained the intent to return to Alaska and live there indefinitely while he was living outside Alaska from the time of his graduation from college in 2009 to when he applied for a 2012 PFD.²

III. Discussion

Mr. J was a very credible witness. He was very straightforward in explaining his actions and plans during his extended absence from Alaska. The real dispute in this case is not what Mr. J did or what his plans were, but whether the circumstances surrounding his extended absence from Alaska severed his Alaska residency.

To qualify for the 2012 PFD, an applicant must meet the eligibility requirements during all of 2011, the qualifying year for the 2012 PFD, and through the date of application. As applied to Mr. J's application, that means he must have been an Alaska resident through January 30, 2012, the date of his PFD application, as well as during all of 2011.³ To be an Alaska resident, one must not claim residency in another state, or be absent under circumstances that are inconsistent with the intent required to remain a resident of Alaska during an absence.⁴

Mr. J's appeal is based on his view that he has not yet established residency in another state, and has maintained paper ties of residency to Alaska. Mr. J did not show that his extended absence during 2009, 2010, and 2011 was consistent with the intent required to remain a resident of Alaska. Mr. J lost his status as an Alaska resident when he stayed in California working for several years after his graduation from college doing the type of work he could easily have done in Alaska if that was where he wanted to live. Mr. J's decision to make his home in California for several years after his graduation from college, rather than move back to Alaska, was not consistent with the intent to remain an Alaska resident.⁵

In a formal hearing in an appeal of a PFD denial, the person who filed the appeal, in this case, Mr. J, has the burden of proving by a preponderance of the evidence that the denial is incorrect.⁶ Mr. J did not show by a preponderance of the evidence that he maintained the intent

¹ Recording of Hearing.

² Exhibits 1-10 & Recording of Hearing.

³ Alaska Statute AS 43.23.005(a).

⁴ AS 01.10.055(c).

⁵ Alaska Statutes 01.10.055(c) & 43.25.005(a)(2)&(3).

⁶ Alaska Regulation 15 AAC 05.030(h).

to move back to Alaska at all times while he was living in California. Mr. J has not moved back to Alaska and has only visited the state since he left to start college in 2005. He has been living outside Alaska since that year. While he currently has a job outside Alaska that gives him ties to the state, and while his absence for this job would not be a disqualifying absence if he were still an Alaska resident, Mr. J severed his Alaska residency before that employment started. Unfortunately, Mr. J did not re-establish his Alaska residency by moving back to the state before the beginning of 2011, the 2012 PFD qualifying year.

IV. Conclusion

Mr. J failed to show by a preponderance of the evidence that he maintained his Alaska residency during his absence from Alaska before 2011. He did not re-establish his Alaska residency before the beginning of the 2012 PFD qualifying year. The Division's decision is upheld. Mr. J is not eligible to receive the 2012 PFD.

DATED this 16th day of April, 2013.

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 20th day of May, 2013.

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

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