

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

In the Matter of:)	
)	
K J)	
)	OAH No. 13-1599-PFD
<u>2013 Permanent Fund Dividend</u>)	Agency No. 2013-045-3033

DECISION

I. Introduction

When K J, a merchant seaman, applied for a 2013 Permanent Fund Dividend (PFD), the PFD Division denied his application initially and at the informal appeal level on multiple grounds, including the basis that he spent more than 180 days outside the state during the qualifying year while not on an allowable absence. At Mr. J's request, this office conducted a hearing by correspondence in which both Mr. J and the Division were able to submit evidence and argument. The denial is affirmed on the single ground that Mr. J was absent from the state for more than 180 days in the qualifying year for reasons that, while understandable, are not allowable for purposes of PFD eligibility.

II. Facts

The facts of this case are essentially undisputed, with only their legal consequences at issue.

K J moved to Alaska in July of 2011 and maintains his principal year-round home in No Name.¹ He pays taxes in No Name and is active in the No Name community.²

Mr. J holds a U.S. Coast Guard Merchant Mariner Credential.³ After unsuccessfully seeking work in Alaska, in January of 2012 he accepted a job with No Name Offshore Services (a U.S. company), serving on the supply vessel No Name as a marine engineer.⁴ Most of his work apparently takes place in U.S. territorial waters in the Gulf of Mexico.⁵ The No Name is a foreign-flagged vessel.⁶

Mr. J works two weeks on, two weeks off. In 2012, he spent 191 days outside Alaska, all of it connected with this employment.⁷

¹ Ex. 4, p. 3.

² *Id.*

³ Ex. 7, p. 3.

⁴ See Appeal statement of Mr. J.

⁵ Ex. 7, p. 3.

⁶ Ex. 4, p. 3. It flies the flag of No Name, apparently a flag of convenience. Ex. 8, p. 2.

⁷ Ex. 1, pp. 3-4.

III. Discussion

The qualifying year for the 2013 dividend was 2012.⁸ To be eligible for a 2013 dividend, Mr. J could not be absent from Alaska for more than 180 days unless he fitted one of certain allowable absence categories listed in the PFD statutes.⁹ The single allowable absence provision at issue in this case, found in AS 43.23.008, is the following:

Subject to [certain conditions not at issue here], 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

* * *

(4) serving under foreign or coastal articles of employment aboard an oceangoing vessel of the United States merchant marine

In applying for a 2013 PFD, Mr. J has relied on the merchant mariner provision. But although he was a merchant mariner serving on an American-owned vessel, Mr. J does not fit within this provision because he was not on a “vessel of the United States merchant marine.” Vessels of the U.S. Merchant Marine are under U.S. registry and therefore fly the American flag.¹⁰ Section 902 of the Merchant Marine Act of 1936 made these vessels subject to requisition during national emergencies. The No Name, flagged in No Name, is not one of these vessels.

It is not clear that merely accepting employment on the No Name is inconsistent with overall Alaska residency or with PFD eligibility.¹¹ However, by remaining outside the state for more than 180 days in 2012 for the purpose of that employment, Mr. J lost his eligibility for the 2013 dividend.

IV. Conclusion

K J was absent from Alaska in 2012 solely to serve on a foreign-flagged merchant vessel. This absence disqualified him from eligibility for the next year’s PFD. The decision of the

⁸ AS 43.23.095(6).

⁹ See AS 43.23.008.

¹⁰ See, e.g., 27 U.S.C. § 1101; *In re P.O.*, PFD Caseload No. 020787 (Dep’t of Revenue 2003); *In re D. & M. W.*, PFD Caseload No. 020073 (Dep’t of Revenue 2002); *In re H.L.X.*, OAH No. 07-0667-PFD (Dep’t of Revenue 2008). For a general discussion of the U.S. merchant marine, see http://en.wikipedia.org/wiki/United_States_Merchant_Marine.

¹¹ The PFD Division thought otherwise, noting that one can be disqualified from PFD eligibility by accepting “full time, permanent employment in another state or country.” 15 AAC 23.143(d). However, Mr. J seems to do most of his work in the U.S. territorial zone in waters that are neither in another state nor in another country.

Permanent Fund Dividend Division to deny the application of K J for a 2013 Permanent Fund Dividend is affirmed.

DATED this 3rd day of March, 2014.

By: Signed
Christopher Kennedy
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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of April, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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