

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

In the Matter of:)	
)	
D Z)	OAH No. 14-0578-PFD
)	PFD Nos. 2011-056-5941 &
<u>PFD Years 2011 & 2012</u>)	2012-016-1289

Decision

I. Introduction

D Z was gone from Alaska for more than 90 days in 2010 and 2011, and he was absent from Alaska when he filed his 2011 and 2012 Permanent Fund Dividend applications. His applications, however, stated that he was in Alaska when he filled out the applications and that he was not gone from Alaska for more than 90 days in 2010 and 2011. After first paying the 2011 and 2012 PFDs, the Permanent Fund Dividend Division issued a retroactive denial of his 2011 and 2012 PFDs. Because Mr. Z provided intentionally deceptive information in the applications, the Division's decisions are affirmed.

II. Facts

D Z grew up in Alaska and, with a few exceptions, generally received PFDs from 1991 to 2010.¹ He admits he left Alaska in August 2010.² Apparently, he was attending No Name Seminary in No Name. He may have returned to Alaska on May 16, 2011, and may have remained in Alaska two weeks, leaving on June 1, 2011. He may also have returned for a short time in October 2011.³ During the relevant period from August 2010 to December 2011, he was not otherwise in Alaska. Therefore, he was gone from Alaska for more than 90 days in 2010 and 2011, and for more than 180 days in 2011. In addition, he admits he was absent from Alaska when he filled out his applications for the 2011 and 2012 PFDs.⁴

Mr. Z applied for his 2011 and 2012 dividend electronically. On his 2011 and 2012 applications, he stated that he was in Alaska at the time he was filling out the application. That

¹ Division's Formal Hearing Position Statement at 1.

² Division's Exhibit 8 at 1, 3. The date he left Alaska in 2010 is unknown, but by his own admission he was gone for more than 90 days in 2010. *Id.*

³ Division Exhibit 3 at 2, 5-8. Because Mr. Z did not testify under oath, or provide conclusive documentation of his travel, the facts regarding his returns cannot be found with certainty. Given his admission that he was gone for more than 90 days in 2010, and more than 180 days in 2011, however, his representations of his returns are not material to this decision.

⁴ Division Exhibit 8 at 1, 3.

answer was not true. He also stated that he had not been absent for more than 90 days, and that he had not been absent for more than 180 days, in each of the qualifying years, 2010 and 2011.⁵ With the possible exception that he may not have been absent for more than 180 days in 2010, those answers were also false.

Based on the information in the application, the Division paid Mr. Z the dividends for 2011 and 2012. After a computer program detected that the electronic applications had been sent from a computer outside the state, the Division investigated Mr. Z. It determined that his answers were not truthful, retroactively denied the 2011 and 2012 PFDs, and directed that Mr. Z pay back the 2011 and 2012 PFD amounts of \$1174 and \$878.⁶ Mr. Z appealed to an informal conference, and the decision was upheld. Mr. Z appealed to a formal hearing, asking for a hearing by correspondence.⁷ In a Notice of Scheduled Hearing by Correspondence, Mr. Z was directed to submit any documents or argument he wished to have reviewed by the Administrative Law Judge by May 18, 2014, with an opportunity to respond to arguments made by the Division no later than May 28, 2014. Mr. Z did not file any documents or arguments.

III. Discussion

Under the regulations that govern the PFD program, “[t]he department will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department.”⁸ Here, Mr. Z twice failed to disclose a reportable absence. He also provided deceptive information when he twice stated that he was physically present in Alaska when he filled out his 2011 and 2012 applications. That he did this intentionally is inferred from the fact that he was repeatedly untruthful.⁹

⁵ Division Exhibit 1 at 1-2.

⁶ Division Exhibit 2.

⁷ Division Exhibit 10.

⁸ 15 AAC 23.103(j).

⁹ See, e.g., *In re TW*, OAH No. 13-1647-PFD at 3 (2014 Commissioner of Revenue) (inferring intent to provide deceptive information from applicant’s taking more than one deceptive act, and noting “it is permissible to infer that an accused intends the natural and probable consequences of his or her knowing actions.” (quoting *In re Disciplinary Matter of Friedman*, 23 P.3d 620, 626 (Alaska 2001))). That Mr. Z intentionally and knowingly provided incorrect information is confirmed by his explanation for his similar prevarication on his 2013 PFD application, in which he explained, “I did not think of it as big deal” and that he had “asked around” but was told (not by the Department) “don’t worry about it.” Division Exhibit 12 at 1. Although this explanation applies only to the 2013 PFD, it shows state of mind that more likely than not relates back to his intent in filling out his 2011 and 2012 PFD applications.

IV. Conclusion

The evidence in this record shows that Mr. Z intentionally provided deceptive information in his 2011 and 2012 PFD applications. Therefore, the Division's decisions denying Z's 2011 and 2012 PFDs, and requiring that he repay the dividend amounts with interest, are affirmed.

DATED this 30th of May, 2014.

By: Signed
Stephen C. Slotnick
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 27th day of June, 2014.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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