

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

In the Matter of)	
)	
E D)	OAH No. 15-1079-PFD
<u>2014 Permanent Fund Dividend</u>)	Agency No. 2014-057-6532

DECISION

I. INTRODUCTION

E D applied for a 2014 Permanent Fund Dividend (PFD). His application was denied by the Permanent Fund Dividend Division (Division) because his Alaska residency for PFD eligibility purposes was severed in 2009 and not reestablished prior to the qualifying year for the 2014 PFD, which was 2013. Mr. D completed the informal appeal process and then requested a formal hearing.

A formal hearing by telephone was held on September 14, 2015. Mr. D did not participate. The Division was represented by PFD specialist Pete Scott. The record closed at the end of the hearing.¹ Based on the evidence in the record, the Division’s decision to deny Mr. D’s application is upheld.

II. FACTS

Mr. D was born and raised in Alaska. He joined the military in 2003. He left the State due to his military service in 2003.² Mr. D applied for and received the 2004 through 2006 PFDs. He did not apply for the 2007 – 2013 PFDs.³ Mr. D was in Alaska for three days in 2005.⁴ Mr. D, according to his “2014 Extended Absence Questionnaire” was present in Alaska for approximately 6 days in 2008, for 10 days in 2009, for 22 days in 2013, and for 9 days in January 2014.⁵

¹ This decision is issued pursuant to Alaska regulation 15 AAC 05.030(j), which provides that when the person, who requested the hearing, does not appear for his hearing, the administrative law judge may issue a decision “without taking evidence from that person.” That regulation allows the requesting party to show reasonable cause for his failure to appear, within 10 days after the hearing date. The hearing in this case was held on September 14, 2015. More than 10 days have elapsed since the hearing without any contact from Mr. D. Accordingly, this case is ripe for decision based on the record submitted by the Division.

² Ex. 3.

³ Ex. 1, p. 6.

⁴ Ex. 8.

⁵ The form shows a date of January 6, 2008 for leaving Alaska. It does not provide a start date for his return to Alaska. Additionally, the form provides that he returned to Alaska on March 13, 2012 but does not provide a date for when he left Alaska. It is therefore not possible to determine what amount of time, if at all, he was in Alaska in 2012. Ex. 3, p. 3.

Mr. D applied for a 2014 PFD. His online application provides that he was not currently in Alaska, that he had been absent from Alaska in 2013 for more than 180 days, but that he had been in Alaska in 2013 for at least 72 hours.⁶ Mr. D was honorably discharged from the military on May 13, 2014.⁷ He returned to Alaska in 2014.

III. DISCUSSION

Among other requirements, a person must be a state resident during the entire qualifying year, and on the date of application, in order to be eligible to receive a PFD.⁸ 2013 was the qualifying year for the 2014 dividend. A person may remain a resident while absent from Alaska as long as he or she maintains the intent to return to Alaska and remain in the state indefinitely and to make a home in Alaska.⁹ For PFD purposes, when an applicant has been absent from the state for more than 5 years, there is a presumption that he or she no longer has the intent to return to Alaska and remain indefinitely.¹⁰ Several factors are considered when determining whether this presumption has been rebutted.¹¹ One factor is the frequency and duration of return trips to Alaska during the absence,¹² and it is particularly difficult to overcome the presumption for applicants who have not returned for at least a total of 30 days during the past five years:

[The] department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department's satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.^[13]

The only evidence in the record is that Mr. D was absent from the State from 2004 through 2009, a period of six years, with only minor returns to the State consisting of a total of 19 days during that time period (3 days in 2005, 6 days in 2008, and 10 days in 2009). Those facts raise a rebuttable presumption that Mr. D lost his Alaska residency for PFD purposes in 2009. Mr. D, however, did not appear for the hearing and did not present any evidence that rebutted the presumption of non-residency. Because Mr. D has the burden of proof,¹⁴ he has not

⁶ Ex. 1.
⁷ Ex. 4, p. 21.
⁸ AS 43.23.005(a)(2) & (3).
⁹ AS 01.10.055.
¹⁰ 15 AAC 23.163(f).
¹¹ 15 AAC 23.163(g).
¹² 15 AAC 23.163(g)(2).
¹³ 15 AAC 23.163(h)(2).
¹⁴ See 15 AAC 05.030(h).

rebutted the presumption of non-residency. As a result, Mr. D's Alaska residency was severed, for PFD eligibility purposes, during 2009.

In order to be eligible for a 2014 PFD, Mr. D would have had to reestablish his Alaska residency. That requires that he would have needed to begin establishing his Alaska residency prior to 2013 and spend more than 180 days in Alaska in 2013.¹⁵ However, Mr. D did not establish any presence in Alaska in 2012,¹⁶ and was only present in Alaska for 22 days in 2013. Mr. D therefore failed to establish that he was an Alaska resident in 2013, which was the qualifying year for the 2014 PFD.

IV. CONCLUSION

Mr. D's Alaska residency, for PFD purposes, was severed during 2009. He was not an Alaska resident, for PFD purposes, in 2013, the qualifying year for the 2014 PFD. As a result, the Division's determination that he was not eligible for the 2014 PFD is AFFIRMED.

Dated this 5th day of October, 2015.

By: Signed
Lawrence A. Pederson
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 21st day of October, 2015.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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

¹⁵ AS 43.23.005(a); AS 43.23.008(b); 15 AAC 23.163(b)(1).

¹⁶ See footnote 5 above.