

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

In the Matter of)	
)	
N H)	OAH No. 16-1168-PFD
_____)	Agency No. 2016-031-8617

DECISION AND ORDER

I. INTRODUCTION

Lieutenant Colonel N H was born and raised in Alaska. He left Alaska in 1994 for education and a military career, where he was repeatedly stationed and deployed outside the state. He last applied for a Permanent Fund Dividend (PFD) in 2002. That application was denied on residency grounds and he did not request an informal appeal to challenge the denial. Lt. Colonel H was stationed in Alaska beginning in May 2015. He applied for the 2016 PFD. The PFD Division (Division) denied his application on the grounds that its denial of his 2002 application conclusively established that he had lost his Alaska residency, for PFD purposes in 2002, and as a result, he was required to completely reestablish his Alaska residency prior to qualifying for a PFD. Lt. Colonel H informally appealed the denial to the Division. That informal appeal was denied. He then requested a formal hearing to challenge the denial.

The applicable law provides that if a person challenges the denial of his or her PFD application, and requests an informal appeal, or a subsequent formal hearing, then the final decision, whether reached after the informal appeal or a formal hearing, is binding against that person in subsequent PFD cases. However, if a party does not request an informal appeal, then the initial PFD denial is not binding against that party in cases involving applications in subsequent years. Because Lt. Colonel H did not request an informal appeal to challenge the denial of his 2002 PFD application, that denial did not conclusively establish that his Alaska residency had been severed. As a result, the denial of his 2016 application is reversed and this case is remanded to the Division to reexamine the issue of whether Lt. Colonel H is qualified to receive the 2016 PFD.

II. FACTS

Lt. Colonel H was born in Alaska and resided in Alaska continuously from his birth until 1994. He left in 1994 to attend West Point. After graduation from West Point and flight school, he has been stationed and deployed at various locales, none of them in Alaska. He has

consistently returned to Alaska for visits over the years. His immediate family still lives in Alaska.¹ He applied for and received PFDs through 2001.² His application for the 2002 PFD was denied on the grounds that he had severed his Alaska residency for PFD qualification purposes.³ He did not challenge that denial by requesting an informal appeal.⁴ He did not apply for a PFD between 2003 and 2015.⁵

Lt. Colonel H was assigned to and returned to Alaska in May 2015. He applied for the 2016 PFD.⁶ His application was denied by the Division on the basis that he had only been an Alaska resident since May 2015.⁷

III. DISCUSSION

In order to qualify for a PFD, a person must be an Alaska resident both on the date of the application⁸ and during the entire qualifying year.⁹ The Division argued that Lt. Colonel H had lost his Alaska residency for PFD purposes in 2002, and that the loss of his residency was conclusively established by the denial of his 2002 PFD application, which he did not appeal. It argued, as a result, that he would have had to returned to Alaska prior to January 1, 2015, in order to qualify for the 2016 PFD. Lt. Colonel H was undisputedly not present in Alaska until May 2015. Lt. Colonel H argued that he never gave up his Alaska residency and presented evidence regarding his return to Alaska over the years.

This case presents a legal issue: does the denial of Lt. Colonel H's 2002 PFD application conclusively establish that he was no longer an Alaska resident, for PFD eligibility purposes? The Alaska Supreme Court addressed this issue in 2011 and held, under the legal doctrine of collateral estoppel, that if a person was denied a PFD application and requested an informal appeal, then the result of that informal appeal was binding insofar as it affected his or her future PFD applications. That decision, however, did not address the issue of whether an unappealed decision would have a similar preclusive effect.¹⁰ That issue was addressed in a subsequent 2011 decision issued by the Office of Administrative Hearings. That decision held, in a case where no

¹ Ex. 13; Lt. Colonel H's testimony.

² Ex. 2.

³ Ex. 3.

⁴ Ex. 7, p. 5.

⁵ Ex. 2.

⁶ Ex. 1; Lt. Colonel H's testimony.

⁷ Ex. 7, p. 2; Ex. 12.

⁸ AS 43.23.005(2).

⁹ AS 43.23.005(3).

¹⁰ *Harrod v. State, Dep't of Revenue*, 255 P.3d 991, 999 - 1000 (Alaska 2011).

appeal was requested, that the unappealed denial letter was “not an adequate administrative substitute for judicial procedure that would be fair to give preclusive effect.”¹¹ It follows, as a purely legal matter, that because Lt. Colonel H did not appeal his 2002 denial, that denial did not conclusively establish that he severed his Alaska residency.

Because Lt. Colonel H was undisputedly not in Alaska for the entire calendar year of 2015, in order to qualify for the 2016 PFD, he would have needed to be an Alaska resident, for PFD purposes, prior to 2015. Given that the Division denied his application on the narrow ground of his 2002 PFD denial, which denial is reversed by this decision, it is necessary to remand this case to the Division for it to redetermine whether Lt. Colonel H was an Alaska resident for the purpose of qualifying for the 2016 PFD. In so doing, the Division cannot rely upon its denial of his application for the 2002 PFD.

IV. CONCLUSION

The Division’s determination that Lt. Colonel H was conclusively determined to have severed his Alaska residency for PFD eligibility purposes, because it denied his 2002 PFD application for a lack of residency, is reversed. This matter is remanded to the Division for it to reexamine its denial of his 2016 application.

DATED this 17th day of November, 2016.

By: Signed
Lawrence A. Pederson
Administrative Law Judge

¹¹ *In re A & J C*, OAH Case No. 11-0287-PFD (Office of Administrative Hearings October 13, 2011). The decision is available online at http://aws.state.ak.us/officeofadminhearings/Documents/PFD/PFD110287.pdf?_ga=1.48478446.931794347.1416513843.

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 13th day of December, 2016.

By: Signed
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

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