

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

In the Matter of)	
)	
D M. K)	OAH No. 16-1259-PFD
<hr style="width:45%; margin-left:0"/>)	Agency No. 2016-038-5667

DECISION

I. INTRODUCTION

D K applied for a 2016 Permanent Fund Dividend (PFD). His application was denied by the Permanent Fund Dividend Division (Division) because Mr. K, who was absent from the state for college, was gone for more than 120 days from the state, in addition to the time spent attending college, during 2015. Mr. K informally appealed the denial to the Division. That informal appeal was denied. Ms. K then requested a formal hearing.

The evidence shows Mr. K was gone for either 54 or 56 days in 2015 for work-related training, in addition to other time that he spent outside the state not related to his college education. The time he spent in that work-related training does not qualify for an exemption because it was not held at an educational institution per the Alaska Commission on Postsecondary Education. Therefore, the time Mr. K spent in that training program, when combined with his other non-education related absence from the state, caused him to be gone from the state for over 120 days, in addition to his absence for college. Mr. K’s combined absences placed him over the allowable time limits for absences from the state, disqualifying him from receiving the 2016 PFD.

II. FACTS¹

Mr. K is an Alaska resident who continuously qualified for, and received, a PFD from 1994 through 2015.² He attended college outside the state and graduated from that college on May 8, 2015.³ He did not return to Alaska until July 15, 2015, a period of 68 days after graduation.⁴ After he returned to Alaska, he obtained a job on the North Slope. As part of that job, he was sent to a “Drilling Fluids Fundamentals School” in Texas.⁵ Attending that school

¹ Unless otherwise specified, the facts are taken from Mr. K’s hearing testimony.

² Ex. 1, p. 5.

³ Ex. 4, p. 1.

⁴ Ex. 9, p. 3.

⁵ Ex. 5, pp. 4 – 5.

resulted in Mr. K being absent from the state for either 54 or 56 days.⁶ His combined time out-of-state in 2015, not including the time he was attending college, was either 122 or 124 days.

The “Drilling Fluids Fundamentals School” that Mr. K attended was part of his job: “[y]ou are being paid a salary and expenses while you attend this school. That makes this school a part of your job and failure to attend class is the same as failure to report to work.”⁷ It was not open to the public, and was offered by his employer to its employees only. The Alaska Commission on Post-Secondary Education does not consider that training program as meeting its definition of a postsecondary institution, because it is not open to the public.⁸

III. DISCUSSION

In order to qualify for a PFD, a person must be an Alaska resident both on the date of the application⁹ and during the entire qualifying year.¹⁰ An Alaska resident is someone who is in the state with the intent to remain indefinitely, or someone who intends to return to the state to remain indefinitely when that person’s absence is allowable by statute.¹¹ An applicant must normally be physically present in the state during the qualifying year.¹² Persons who are absent attending an accredited college, located outside the state, full-time, for the purpose of obtaining a degree, may be absent from the state for up to 120 days, in addition to the time spent attending that college.¹³ Absence from the state to receive “vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state at an educational institution . . .” is also an allowable absence.¹⁴

It is undisputed that Mr. K was gone from the state for more than 120 days in 2015, in addition to the time he spent in college. This would disqualify him to receive the 2016 PFD. However, if Mr. K’s participation in the Drilling School qualifies as exempt under PFD rules, he would qualify for the 2016 PFD, because he would have been absent from the state for less than

⁶⁶ Mr. K’s PFD absence questionnaire states that he was gone from September 20, 2015 through November 15, 2015, an absence of 56 days. *See* Ex. 5, p. 3. His hearing testimony was that he would have returned on November 13, 2015, which would be an absence of 54 days.

⁷ Ex. 14, p. 4.

⁸ Ex. 10, pp. 2 - 4.

⁹ AS 43.23.005(2).

¹⁰ AS 43.23.005(3).

¹¹ AS 43.23.095(7).

¹² AS 42.23.005(a)(6).

¹³ AS 42.23.008(a)(1) and (a)(17)(B); 15 AAC 23.163(c)(1)(B).

¹⁴ AS 42.23.008(a)(2).

120 days, in addition to allowable educational absences. There is an allowable exemption for attending “vocational, professional, or other specific education” for which the ACPE determined that there was not a comparable program reasonably available at an in-state educational institution.¹⁵ There was no evidence presented showing that the ACPE even considered whether there was a comparable program reasonably available in-state, merely that the ACPE did not consider the Drilling School an educational institution. A prior decision regarding the interpretation of the applicable regulation, 15 AAC 23.163(c)(2), held squarely that it should be read as requiring attendance at an educational institution, and not to any “vocational, professional, or other specific education” regardless of where the education was supplied.¹⁶ The necessary conclusion to be drawn is that training programs, required as part of one’s employment and not open to the public, do not constitute attendance at an educational institution per the ACPE. Consequently, Mr. K’s participation in the Drilling School does not qualify for the exemption provided by 15 AAC 23.163(c)(2).

IV. CONCLUSION

Mr. K was gone from the state for more than 120 days in 2015, in addition to the time he spent pursuing his college education. This made him ineligible for the 2016 PFD. The Division’s decision to deny his application for the 2016 PFD is **AFFIRMED**.

DATED this 9th day of December, 2016.

By: *Signed*
Lawrence A. Pederson
Administrative Law Judge

¹⁵ AS 42.23.008(a)(2); 15 AAC 23.163(c)(2).

¹⁶ *In re R. K.*, OAH No. 10-0541-PFD (Commissioner of Revenue 2011).

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 5th day of January, 2017.

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

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