

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

In the Matter of:)	
)	
U B)	
)	OAH No. 17-0530-PFD
<u>2016 Permanent Fund Dividend</u>)	Agency No. 2016-034-6857

DECISION

I. Introduction

The Permanent Fund Dividend Division denied U B’s 2016 Permanent Fund Dividend application. Mr. B requested a formal hearing by written correspondence.

Mr. B did not spend at least 72 hours in Alaska during 2015 as required. He also does not meet the criteria for a waiver of this requirement, even though he is in the military, because he did not show that he received imminent danger pay or hostile fire pay in 2015. Mr. B therefore does not meet the eligibility requirements to receive the 2016 PFD. The division’s decision to deny Mr. B’s dividend is upheld.

II. Facts

Mr. B serves in the Navy. In 2014 and 2015 he was stationed in Rhode Island, California, and Japan. He was not able to return to Alaska until 2016, when he had two weeks of leave during a change of station.¹ Mr. B applied for a 2016 permanent fund dividend.²

The division denied Mr. B’s application. Mr. B requested an informal appeal. The division’s informal appeal decision found Mr. B ineligible because he had not demonstrated that he was in the state for at least 72 consecutive hours during 2014 and 2015, and also did not prove that he qualified for a waiver.³ Mr. B then requested a formal hearing by written correspondence. He did not dispute the division’s finding that he had not been in Alaska for 72 consecutive hours in 2014 and 2015.

The parties were notified of the hearing by correspondence and given an opportunity to submit additional argument or evidence no later than June 15, 2017, with replies by June 29,

¹ Ex. 4 at 2; Ex. 5 at 2. *See also* Ex. 1 at 2 (application listing absence from January 1, 2015 through December 30, 2015).

² Exhibit 1.

³ Exhibit 6 at 1 – 2.

2017. The division submitted a position statement and exhibits. Mr. B did not submit additional arguments or documents beyond what he had provided with his request for appeal.

III. Discussion

The statutes governing the permanent fund dividend program set forth several eligibility criteria, one of which is that the applicant must have been physically present in Alaska for at least 72 consecutive hours during the two years prior to the dividend year.⁴ Mr. B applied for a 2016 dividend, and he does not dispute that he was not in Alaska for at least 72 consecutive hours in 2014 and 2015. Therefore, Mr. B does not meet the eligibility criteria in the statute.

However, the statute also provides that the commissioner may waive the 72-hour physical presence requirement “in a time of national military emergency under military orders while serving in the armed forces of the United States.”⁵ This authority is discretionary. The commissioner has adopted a military absence policy guiding the use of this discretion. That policy acknowledges that the United States are in a time of national military emergency, and waives the 72-hour physical presence requirement for an otherwise eligible military member who “[p]rovides a 2015 Leave and Earning Statement showing receipt of imminent danger or hostile fire pay.”⁶ Thus, the commissioner has exercised his discretion to waive the 72-hour physical presence requirement for some, but not all Alaskans serving in the military.

In this case, Mr. B did not show that he received imminent danger or hostile fire pay, so he did not meet the criteria for a waiver of the 72-hour requirement under the national emergency military absence policy in effect. In his appeal, Mr. B took issue with the waiver criteria: “I disagree with the concept of requiring ‘imminent danger pay or hostile fire pay.’ I am not in the Army or Marines but rather the Navy. I have been stationed overseas in Japan for my entire career. This is called ‘Forward Deployed’ the Navy because we are considered constantly deployed.”⁷

In this proceeding, Mr. B has the burden of proving that the denial of his application was incorrect. The division correctly applied both the 72-hour physical presence requirement, and the criteria for a waiver of that requirement under the national emergency military absence policy. The policy reflects the exercise of the commissioner’s discretion regarding when the 72-

⁴ AS 43.23.005(a)(4).

⁵ AS 43.23.005(f)(1).

⁶ Ex. 9 (National Emergency Military Absence Policy for the 2016 Permanent Fund Dividend).

⁷ Ex. 7 at 2.

hour physical presence requirement should be waived. Mr. B disagrees with the policy, but he has not shown why it was error on the part of the division to apply the policy in his case.

IV. Conclusion

Because Mr. B did not show that he received imminent danger or hostile fire pay in 2015, he is not eligible for a waiver of the 72-hour physical presence requirement under the commissioner’s policy. Because he was not physically present in Alaska for 72 consecutive hours in 2014 or 2015, and does not meet the criteria for a waiver of this eligibility requirement, he is not eligible to receive a 2016 permanent fund dividend. The division’s denial of Mr. B’s 2016 PFD application is affirmed.

DATED: July 2, 2017.

Signed _____
Kathryn L. Kurtz
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 31st day of March, 2017.

By: *Signed* _____
Signature
Kathryn Kurtz _____
Name
Administrative Law Judge _____
Title

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