

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

In the Matter of)	
)	
G C)	OAH No. 17-1002-PFD
)	Agency No. 2012-033-8083 &
_____)	2014-044-5282

DECISION

I. Introduction

G C applied for 2012 and 2014 Permanent Fund Dividends (PFD). After a criminal investigation into Mr. C’s absences from Alaska, the Department of Revenue, Permanent Fund Dividend Division (Division) denied Mr. C’s applications. The Division determined that Mr. C was absent from the state for more than 181 days during the qualifying years and he intentionally provided deceptive information by failing to disclose reportable absences on his applications. The Division did not change its position during the informal appeal process, and Mr. C filed a timely request for hearing by correspondence. The hearing record closed on November 14, 2017. But Mr. C did not file any additional documents. PFD specialist Peter Scott represented the division and filed a position paper.

Because Mr. C has not met his burden of proof that he was eligible for the 2012 and 2014 PFDs, the Division’s decisions are affirmed.

II. Facts and Procedural Background

On February 14, 2012, Mr. C filed an online application for the 2012 PFD with an electronic signature certifying that the information provided in the application was true and correct.¹ In his application, Mr. C disclosed that he was absent from Alaska for 125 days from July 26, 2011 to November 28, 2011.² He denied that he was gone from Alaska more than 180 days total in 2011.³

On August 24, 2012, the Alaska Department of Labor, Unemployment Insurance Benefit Payment Control Unit (“UIB Fraud”) notified the Department of Revenue Criminal Investigations Unit (“CIU”) that it was investigating Mr. C for failing to disclose absences from Alaska and the United States for purposes of his Alaska unemployment insurance claims.⁴

¹ Ex. 1 at 1.
² *Id.* at 1, 3.
³ *Id.* at 1.
⁴ Ex. 8 at 3.

The CIU launched an investigation.⁵ While that investigation was pending, on March 3, 2014, Mr. C filed an online application for the 2014 PFD.⁶ On April 1, 2014, he filed a signature page certifying that the information provided in the application was true and correct.⁷ In his application, Mr. C disclosed that he was absent from Alaska for 124 days from February 1, 2013 to June 5, 2013.⁸ He again denied that he was gone from Alaska more than 180 days total in 2013.⁹

As part of its investigation, the CIU requested border crossing information from the Department of Homeland Security Investigations (HSI).¹⁰ The HSI informed the CIU investigator that Mr. C travels under multiple aliases: G K Z, G K E, G C, G E C, G U C, G U, and G Z.¹¹ Based on their investigation, the CIU investigator concluded that Mr. C was absent from Alaska during the following periods: August 28, 2010 to February 26, 2011 and July 21, 2011 (not July 26 as reported by Mr. C) to November 28, 2011; and February 1, 2013 to June 6, 2013 (not June 5 as reported by Mr. C) and November 6, 2013 to February 4, 2014.¹² None of the border crossing information establishes when Mr. C actually returned to Alaska.¹³ The investigator concluded that Mr. C underreported his absences, failing to disclose at least 61 days in 2011 and 55 days in 2013.¹⁴ They remanded the case to the PFD eligibility section to determine Mr. C's eligibility.¹⁵

The Division denied Mr. C's 2012 and 2014 PFD applications.¹⁶ The Division compared the HSI border crossing information with Mr. C's applications and concluded that Mr. C denied being absent from Alaska for more than 180 days, when he was in fact absent from the state for at least 187 days during 2011; and he failed to provide proof that his absences over 180 days were allowable under the PFD statutes.¹⁷ For 2013, the Division concluded that Mr. C denied being absent from Alaska for more than 180 days, when he was in fact absent from the state for at least

⁵ Ex. 8.

⁶ Ex. 1 at 5.

⁷ Ex. 1 at 7.

⁸ Ex. 1 at 1, 3.

⁹ Ex. 1 at 1.

¹⁰ Ex. 8 at 4.

¹¹ Ex. 8.

¹² Ex. 8 at 7; *see also* Ex. 9.

¹³ *Id.* at 8.

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 7.

¹⁶ Ex. 2.

¹⁷ Ex. 2 at 6-7.

181 days; and he failed to provide proof that his absences over 180 days were allowable under the PFD statutes and regulations.¹⁸ Mr. C requested an informal appeal.¹⁹

At the informal appeal level, Mr. C provided tax returns, but he did not provide proof that he was not absent from Alaska for more than 180 days.²⁰ The Division asked Mr. C to provide the correct dates of his absences through 2011 and 2013 and credible proof of the days he was present in the state those two years.²¹ Mr. C did not provide the requested information. The Division affirmed the denial, concluding that without the specifically requested information there is insufficient proof that he is eligible for the 2012 and 2014 dividends.²² .

After his informal appeals were denied, Mr. C filed a timely request for hearing by correspondence.²³ With his hearing request, he submitted a copy of his passport with stamps and a copy of his W2 for 2013.²⁴ Mr. C did not file a position statement or any additional documents. PFD specialist Peter Scott represented the division and filed a position paper. The hearing record closed on November 14, 2017.

III. Discussion

In a PFD denial appeal, the person who filed the appeal, in this case Mr. C, has the burden of proving by a preponderance of the evidence that the Division’s decision is incorrect.²⁵ Mr. C has failed to meet that burden.

The qualifying year for the 2012 PFD was 2011.²⁶ And the qualifying year for the 2014 PFD was 2013.²⁷ To qualify for a Permanent Fund Dividend in 2012 and 2014, the applicant had to meet several eligibility requirements.²⁸ One of the eligibility requirements is that a person must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.²⁹ One of the allowable absences is an absence for any reason consistent with Alaska residency.³⁰ Vacations fit

¹⁸ Ex. 2 at 6-7.

¹⁹ Ex. 7.

²⁰ Ex. 3.

²¹ Ex. 6 at 1, 4.

²² Ex. 6 at 2, 5.

²³ Ex. 7.

²⁴ Ex. 7 at 6, 9.

²⁵ 15 AAC 05.030(h).

²⁶ AS 43.23.095(6).

²⁷ *Id.*

²⁸ AS 43.23.005(a).

²⁹ AS 43.23.005(a)(6).

³⁰ AS 43.23.008(a)(17).

under this absence. However, an absence for this open-ended reason cannot have exceeded 180 days under any circumstances.³¹ The Division “count[s] whole days when determining the number of days an individual was absent from Alaska.”³² And the Division “count[s] the day an individual arrives or returns to Alaska as a day absent unless the individual previously left Alaska that same day.”³³

The preponderance of the evidence in the record shows that Mr. C was absent from Alaska for 187 days in 2011 and 181 days 2013—the qualifying years for the 2012 and 2014 dividends, respectively. Mr. C did not provide sufficient proof that he was in Alaska for the requisite amount of time. And because Mr. C admits that his absences were for vacation, and thus, not allowable under the PFD statutes and regulations, Mr. C is not eligible to receive the 2012 and 2014 PFDs. And the Division’s denial of his applications is AFFIRMED.

IV. Conclusion

The undisputed evidence submitted by the Division establishes that Mr. C was absent from Alaska for more than 180 days during 2011 and 2013, the qualifying years for the 2012 and 2014 Alaska Permanent Fund dividends. Mr. C did not present any evidence showing that those absences were allowable under the PFD statutes and regulations. He is therefore ineligible for the 2012 and 2014 dividends. The Division’s denial of his applications is AFFIRMED.

Dated: January 12, 2018

Signed _____
Jessica Leeah
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 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 6th day of February, 2018.

By: Signed _____
Signature
Jessica Leeah _____
Name
Administrative Law Judge _____
Title

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

³¹ AS 43.23.008(a)(17).

³² 15 AAC 23.163(j).

³³ *Id.*