

In follow up to his application, the Division sent several Requests for Information seeking documentation of sufficient presence in Alaska to make permit the Division to make an eligibility determination.³ The Division initially denied Mr. N's application for failure to respond to its requests. The initial denial stated that Mr. N would need to provide a completed 2017 Extended Absence Questionnaire, proof of physical presence in Alaska for at least 72 consecutive hours during 2015 and 2016, and further proof eligibility.⁴

Mr. N's Request for Informal Appeal was received by the Division on January 2, 2018. With the request, Mr. N provided a completed Extended Absence Questionnaire and documentary proof of physical presence in Alaska from August 11, 2016 – August 14, 2016.⁵ The information supplied by Mr. N showed that between 2012 and December 31, 2016, he was present in Alaska for a total of 24 days as follows: December 15, 2012 to December 26, 2012 (11 days), June 24, 2014 to July 5, 2014 (10 days), and August 11, 2016 to August 14, 2016 (3 days).⁶

Based on this information, the Division again denied Mr. N's application for a 2017 PFD at the informal appeal level finding that Mr. N had been absent from Alaska for more than 180 days in each of the five years preceding 2017 and had not been physically present in Alaska for 30 cumulative days during those 5 years.⁷ Mr. N timely filed a Request for Formal Hearing.⁸ In his request, Mr. N noted that he is an Alaska resident and that he has returned repeatedly for at least 72 hours. However, in 2016, his ship was deployed to a war zone prohibiting his return to the state.⁹

The formal hearing on this matter was held on August 20, 2018. Mr. N appeared telephonically and testified concerning his long-time residence in Alaska and his military service. Bethany Thorsteinson appeared representing the Division. At the hearing, Mr. N did not have any factual dispute concerning the Division's calculation of his days present in Alaska. He expressed his concern that the regulations would deny him the PFD when he is

³ Exhibit 2.

⁴ Id.

⁵ Exhibits 4, 6. Mr. N also provided proof of presence in Alaska for 10 days in 2017. However, presence in 2017 is not relevant to this decision as the determination of eligibility turns on presence only through December 2016.

⁶ Id.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ Exhibit 6 p. 11.

a long time Alaska resident whose absences are caused solely by his service the country as an officer in the United States Navy.¹⁰

III. Discussion

There are no factual disputes at issue in this appeal. The sole issue is whether the Division correctly denied Mr. N's 2017 PFD due to failure to prove that he was physically present in Alaska for 30 cumulative days over the 5 calendar years prior to the PFD year after having been gone for more than 180 days in each of the prior 5 years.

On appeal from the denial of a PFD, the applicant has the burden of proving that the Division erred in its decision.¹¹ AS 43.23.008 addresses allowable absences from Alaska for purposes of PFD eligibility. It provides, in relevant part:

- (d) After an individual has been absent from the state for more than 180 days in each of the five preceding qualifying years, the department shall presume that the individual is no longer a state resident. The individual may rebut this presumption by providing clear and convincing evidence to the department that
 - (1) the individual was physically present in the state for at least 30 cumulative days during the past five years; and
 - (2) the individual is a state resident as defined in AS 43.34.095.

Mr. N is and always has been an Alaska resident. There is no reason to doubt his intent to return to Alaska after the end of his military service. Unfortunately, the requirement in AS 43.23.008(d)(1) is not discretionary. The Division is required to deny eligibility in a case such as this, in which the individual has not been present in Alaska for 180 days in each of the 5 years prior to the year of application and has also not been present for 30 cumulative days over that time.

//

//

¹⁰ Testimony of Mr. N. Mr. N also asked about whether there was any effort on the part of the legislature to change the laws or regulations to recognize his service and his continued status as an Alaska resident.

¹¹ 15 AAC 05.030(h).

IV. Conclusion

Mr. N is not eligible for the 2017 PFD because of his extended absences – all of which were caused by his service to the country as a member of the U.S. Navy. The decision of the Division to deny his application for the 2017 PFD is AFFIRMED.

Dated: September 5, 2018

By: Signed
Name: Karen L. Loeffler
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 2nd day of October, 2018.

By: Signed
Name: Karen L. Loeffler
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]