



same oath of service sworn by officers of the armed forces, including the Army, Air Force, Navy, Marine Corps, and Coast Guard.<sup>6</sup> NOAA Corps officers may be called to serve with the Department of Defense, U.S. Coast Guard, or Department of State.<sup>7</sup> NOAA Corps officers are equated with military officers and may be transferred to military service during national emergencies.<sup>8</sup> Under federal law, NOAA Corps officers are entitled to many of the same rights, privileges, immunities, and benefits as officers in the armed forces.<sup>9</sup>

In May 2016, Ms. E received orders to serve aboard the NOAA research vessel Reuben Lasker, which is based in City A, California.<sup>10</sup> Ms. E served primarily as the vessel’s navigator and as a duty standing Deck Watch Officer.<sup>11</sup> Her additional duties included serving as a marine firefighter, safety diver, government property officer, morale officer, and drills and inspection officer.<sup>12</sup> The demands and hazards of the job required her to respond quickly to emergencies—the same duties required of Naval officers and Coast Guard officers aboard their respective vessels.<sup>13</sup> Due to her service as a NOAA Corps officer, she was absent from Alaska for 343 days during 2017, the qualifying year for the 2018 PFD.<sup>14</sup>

Ms. E did not become a resident of any other state during her absence from Alaska. She did not buy a home or sign a rental agreement in any other state, and her household goods remained in Alaska.<sup>15</sup> The majority of her time was spent at sea over three nautical miles from the coast, traveling from City A, California to the northern tip of City B, B.C. in international waters, and crossing the Pacific Ocean to City C at the northern end of the Hawaiian Islands.<sup>16</sup> Ms. E lived aboard the vessel with a bunk and duffel bag.<sup>17</sup> When the vessel returned to its homeport in City A, Ms. E stayed in temporary lodging at bed and breakfasts or hostels.<sup>18</sup>

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<sup>6</sup> Ex. 7 at 4.  
<sup>7</sup> Ex. 7 at 8.  
<sup>8</sup> Ex. 7 at 12, 13.  
<sup>9</sup> Ex. 7 at 11, 13.  
<sup>10</sup> Ex. 2 at 10.  
<sup>11</sup> E Testimony.  
<sup>12</sup> E Testimony.  
<sup>13</sup> E Testimony.  
<sup>14</sup> Ex. 1 at 2 & 5.  
<sup>15</sup> E Testimony.  
<sup>16</sup> E Testimony.  
<sup>17</sup> E Testimony.  
<sup>18</sup> E Testimony.

On January 31, 2018, Ms. E filed her PFD application, listing her absences from Alaska and explaining that the absences were due to her employment.<sup>19</sup> The Division denied her application initially and at the informal appeal level, primarily because she was absent from Alaska for more than 180 days during calendar year 2017 for a purpose not allowed under the PFD statutes.<sup>20</sup> At the informal appeal level, the Division also concluded that Ms. E was ineligible for the 2018 PFD because she maintained a principal home and she had accepted full-time permanent employment outside of Alaska.<sup>21</sup>

Ms. E requested a hearing to challenge the Division's denial.<sup>22</sup> A hearing was held on November 21, 2018. The Division was represented by PFD Specialist, Peter Scott. Ms. E represented herself and testified on her own behalf. Although Ms. E disputes that she maintained a principal home in another state and that she accepted full-time employment outside of Alaska, Ms. E does not dispute that she was absent from Alaska for 343 days in 2017. Ms. E argues that the same benefits received by members of the armed forces, U.S. Merchant Marines, members and staff of the U.S. Congress, and volunteers in the Peace Corps should be extended to members of the uniformed services for purposes of PFD eligibility.

### III. Discussion

Ms. E has the burden of proving by a preponderance of the evidence that she meets the eligibility requirements for a PFD.<sup>23</sup> To qualify for a PFD, the applicant must have either been physically present in Alaska throughout the qualifying year, or have been absent only for one of the allowable reasons listed in AS 43.23.008.<sup>24</sup> Under this standard, Ms. E must prove that it is more probable than not that her absences from Alaska during the qualifying year were allowable.<sup>25</sup> The qualifying year for the 2018 dividend was 2017.<sup>26</sup>

The Alaska legislature has identified seventeen reasons that a person may be absent from Alaska and still qualify for a dividend the next year.<sup>27</sup> There are two reasons that may be considered in this

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<sup>19</sup> Ex. 1 at 2 & 5.

<sup>20</sup> Ex. 3; Ex. 5.

<sup>21</sup> Ex. 5.

<sup>22</sup> Ex. 6.

<sup>23</sup> 15 AAC 05.030(h).

<sup>24</sup> AS 43.23.005(a)(6).

<sup>25</sup> Preponderance of the evidence is defined as: "Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Black's Law Dictionary* 1064 (5th Ed. 1979).

<sup>26</sup> AS 43.23.095(6).

<sup>27</sup> AS 43.23.008(a).

case. First, a person may be absent for up to 180 days for any reason consistent with Alaska residency.<sup>28</sup> Second, a person may be absent for any length of time during the qualifying year while “serving on active duty as a member of the *armed forces* of the United States . . . .”<sup>29</sup>

There is no dispute that Ms. E was absent from Alaska for 343 days in 2017, the qualifying year for the 2018 PFD. The Division agrees that Ms. E maintained her Alaska residency during her absence, and the parties agree about the facts regarding her absence. Because Ms. E was absent from Alaska for more than 180 days in 2017, the allowable absence for general reasons available to all residents does not apply in this case. So, the primary issue that would resolve all grounds on which the Division denied Ms. E’s application is whether Ms. E’s absence—while serving on active duty in the NOAA Corps (i.e. a uniformed service)—was allowable under AS 43.23.008(a)(3).<sup>30</sup>

Ms. E argues that members of the “uniformed services” are afforded the same benefits as members of the “armed forces” under federal law, and thus, the two terms should be considered equivalent under the PFD statute. As a NOAA Corps officer, Ms. E serves the nation’s and Alaska’s interests, and she performs many duties like those served by many of her counterparts in the armed forces. But the term “uniformed services” is not interchangeable with the term “armed forces.” Title 10 of the United States Code, which governs the “Armed Forces,” defines both terms. “Armed forces” means “the Army, Navy, Air Force, Marine Corps, and Coast Guard.”<sup>31</sup> Whereas, “uniformed services” means “(A) the armed forces; (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and (C) the commissioned corps of the Public Health Service.”<sup>32</sup> So although members of the “armed forces” are members of the “uniformed services,” members of the “uniformed services” are not members of the “armed forces.”

The law is clear that this exception to the rule requiring physical presence in Alaska as a requirement of eligibility for the PFD is only available to active-duty members of the armed forces. And the Alaska Statute governing allowable absences explicitly uses the term “armed forces” rather than “uniformed services.” As a member of the NOAA Corps, Ms. E does not fall within the definition of those covered by the exception for members of the armed forces.

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<sup>28</sup> AS 43.23.008(a)(17)(A).

<sup>29</sup> AS 43.23.008(a)(3) (emphasis added).

<sup>30</sup> An individual may retain a principal home in another state or country if his or her absence is for certain reasons allowed under AS 43023.008, including service in the armed forces. *See* 15 AAC 23.143(d)(1).

<sup>31</sup> 10 U.S.C. § 101(a)(4).

<sup>32</sup> 10 U.S.C. § 101(a)(5).

Although other allowable absence reasons may arguably be no more deserving than service in the uniformed services and there are strong policy arguments for including uniformed services personnel in the exception for absences carved out for members of the armed forces, the statute as written does not provide an exception for absences while serving in the NOAA Corps. The Division must apply the law as written, and it did so here. Only the legislature can change the allowable absence rules by enacting new legislation.

Accordingly, the Division's decision to deny Ms. E's 2018 PFD is affirmed.

#### IV. Conclusion

Although Ms. E's 343-day absence from Alaska in 2017 was due to service as a NOAA Corp officer, that absence is not allowable for purposes of PFD eligibility. Because the Division followed its statutes as written, the decision to deny Ms. E's 2018 PFD application is affirmed.

Dated: December 3, 2018

By: Signed  
Signature  
Jessica L. Leeah  
Name  
Administrative Law Judge  
Title

[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 3<sup>rd</sup> day of January, 2019.

By: Signed  
Signature  
Stephen Slotnick for Jessica L. Leeah  
Name  
Administrative Law Judge  
Title