

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

In the Matter of)	
)	
L E)	OAH No. 19-0674-PFD
<hr style="width:40%; margin-left:0"/>)	Agency No. 2019-028-1773

DECISION

I. Introduction

L E applied for a 2019 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application because he was absent from the state for more than 180 days during the qualifying year.¹ The division did not modify its determination during the informal appeal process, and Mr. E requested a formal hearing.

The hearing in this matter was held August 12, 2019. Peter Scott appeared telephonically on behalf of the Division. Prior to the hearing the Division submitted seven (7) exhibits which included Mr. E's application and the internal appeal file, as well as prior decisions by the Commissioner on circumstances similar to Mr. E's.

Mr. E appeared telephonically on his own behalf. The record remained open until August 26, 2019. However, Mr. E notified OAH prior to that date no additional materials would be submitted.

Based on the evidence in the record, and controlling law, Mr. E is not eligible to receive a 2019 PFD.

II. Facts²

L E is retired military. He has been a pilot most of his life. He is now employed as an international cargo pilot. He, his wife, and children have called Alaska home since 2009. He received the PFD from 2015 through 2018.

He filed his application for the 2019 PFD on February 11, 2019.³ The application included a list of his absences. The record demonstrates he was absent from Alaska for 188 days. Of that 188-day total, 119 were required by work while 69 days were taken as vacation.⁴

¹ The qualifying year is the year immediately preceding the dividend year. 15 AAC 23.993(a) (11). The dividend year is the year in which the dividend is declared. 15 AAC 23.993(a)(7). In this case, the qualify is 2018 for the PFD declared and applied for in 2019.

² The facts in this section are based on the testimony provided at the hearing as well as the pre-hearing position statement and exhibits filed by the Division.

³ Ex. 1, p. 1.

⁴ Ex. 1, pp. 4 and 5.

His employment as a cargo pilot requires regular absences from Alaska.⁵ The Ted Stevens International Airport has been ranked one of the five busiest cargo hubs in the world.⁶ Every day 75 cargo planes land and depart carrying 3 million tons of freight annually.⁷

In 2018 work travel required Mr. E's absence from Alaska for 119 days. He also felt a significant amount of travel for personal reasons was necessary. His extended family is in Wisconsin. His wife's extended family is in Alabama. They recently had a child who needed to be introduced to both families. Thus, he left Alaska for an additional 69 days of vacation to do so.⁸

The Division sent an initial denial notice to Mr. E on February 22, 2019.⁹

He filed a request for informal appeal on March 24, 2019.¹⁰ In the informal appeal Mr. E informed the Division that his "job/employment requires travel out of state. I have no control over this. I own two homes in the State of Alaska and spend a large amount on my resources in the local community with my family. I am an international Airline pilot who chooses to live and whose employment is in Alaska." "I travel mostly for work to support my family and we reside in Alaska. We travel personally to mostly see our families which live outside the state. I have no control over the fact my job requires travel."¹¹

The informal appeal decision upholding the denial of Mr. E's PFD issued June 28, 2019.¹² Because employment as an airline pilot is not one of the circumstances listed in AS 43.23.008(a) which would permit a different calculation, Mr. E's allowable absences were capped at 180 days. He was absent a total of 188 days. Thus, the Division found he was an Alaska resident, who, unfortunately, exceeded the statutorily allowable absence during the year.¹³

Mr. E requested a formal hearing on July 28, 2019.¹⁴ He argued his employment with a private airline should be considered the equivalent of other employment such as active duty military, Congressional staff, and State of Alaska employees in field offices outside the state where requirements

⁵ Id.

⁶⁶ <https://www.alaskapublic.org/2018/04/13/ted-stevens-international-airport-ranked-fifth-busiest-hub-for-air-cargo/>

⁷ Id.

⁸ K. E hearing testimony.

⁹ Ex. 2.

¹⁰ Ex. 3.

¹¹ Ex. 3, p. 2.

¹² Ex. 4.

¹³ Id.

¹⁴ Ex. 5.

of employment were responsible for the absence from the State. He argued, because his absences were similarly required by his employer, he should not be penalized.¹⁵

Mr. E maintained that argument at the hearing on his appeal. The Division responded that previous decisions by the Commissioner regarding employment as an airline pilot demonstrated the denial was appropriate.¹⁶

III. Discussion

Alaskans are eligible to receive a PFD each year if they meet certain requirements specified in state law. One requirement is that the applicant “was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008[.]”¹⁷ Most Alaskans rely on the catch-all allowance in AS 43.23.008(17) (A) to establish their allowable absences. That section provides for 180 days of cumulative absence for any reason or combination of reasons so long as the absences are consistent with an individual’s intent to remain a state resident.

Different allowable absences exist if the applicant relies on a basis other than the catch-all to determine eligibility.¹⁸ Full-time secondary or post-secondary students or individuals who receive vocational, professional or other specific education on a full-time basis for which a comparable program does not exist in Alaska are permitted 120 days of absence in addition to the time they can demonstrate they were actively in school.¹⁹

Alaskan residents who are active duty military are also entitled to 120 days of absence in addition to the time they are deployed outside of Alaska before they are considered ineligible.²⁰

Individuals who are absent from Alaska for any of the other 13 reasons enumerated in AS 43.23.008(4) -(16) are entitled to only 45 days of absence in addition to that caused by the reason for the absence.²¹ Thus, many people who are absent to care for a terminally ill family member, settle the estate of a qualifying family member, obtain their own medical care, or accompany an ill family member will still rely on the AS 43.23.0017(A) 180-day catchall provision. The 180 days of absence permitted in the catch-all is often more time than they would be entitled to by merely adding 45 days to the time they were absent for the reason listed in AS 43.23.008(4) -(16).

¹⁵ Ex. 5, pp. 2-3.

¹⁶ Ex. 6 and 7.

¹⁷ AS 43.23.005(a)(6).

¹⁸ AS 43.23.008(B) and (C)

¹⁹ AS 43.23.008(17) (B).

²⁰ AS 43.23.008(17) (B).

²¹ AS 43.23.008(17) (C).

At the hearing Mr. E analogized his situation to athletes competing on Olympic or National Teams, or individuals employed by Congressional staff or the State of Alaska in field offices. He also argued his situation was somewhat analogous to active duty military members.

Similar request by pilots have been denied in two prior OAH decisions.²² In each of those cases the request was rejected because the Division and OAH are bound to follow the statutory guidelines for absences as they are currently written.

There is no ambiguity in the statute.²³ The Alaska Supreme Court has upheld different eligibility requirements.²⁴ The Division and the Commissioner must follow existing state law as well as the Alaska supreme court interpretations of that law. Unless invalidated by a court of law or modified by the legislature, AS 43.23.008(a) must be followed as written. Thus, under current law Mr. E exceeded his allowable absence from the state during 2018. He is not eligible for a 2019 PFD.

IV. Conclusion

Mr. E was absent from Alaska for a total of more than 180 days during the qualifying year. According to the records he submitted, he was absent for 188 days. His work as a pilot was responsible for 119 days. His voluntary decision to depart for family vacation was responsible for the remaining 69 days.

This absent exceeded the time permitted in AS 43.23.008(a). Accordingly, he is not eligible for a 2019 PFD.

Dated: August 22, 2019

Signed

Carmen E. Clark
Administrative Law Judge

²² *In the Matter of J.S.*, OAH 12-0122-PFD (Commissioner of Revenue, July 23, 2012); *In the Matter of M.A.R.*, OAH 09-01319-PFD (Commissioner of Revenue, November 2, 2009).

²³ *In the Matter of M.A.R.*, p. 2.

²⁴ *Eldrige v. State*, 988 P.2d 101 (Alaska 1999); *Church v. State*, 973 P.2d 1125 (Alaska 1999).

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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of September, 2019.

By: Signed
Signature
Carmen Clark
Name
Administrative Law Judge
Title

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