

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

In the Matter of)	
)	
C X)	OAH No. 20-0292-PFD
_____)	Agency No. 2019-014-9302

DECISION

I. Introduction

When C X applied for a 2019 Permanent Fund Dividend (PFD), the PFD Division (Division) denied his application initially and at the informal appeal level on the grounds that he had spent more than 180 days outside the state during the qualifying year while not on an allowable absence. At Mr. X’s request, the Office of Administrative Hearings held a formal hearing on May 4, 2020. Mr. X represented himself; the Division was represented by Pete Scott.

The denial is affirmed because Mr. X was absent from the state for more than 180 days in the qualifying year for reasons that, while understandable, are not allowable for purposes of PFD eligibility.

II. Facts

C X has been a PFD recipient since 2003.¹ Mr. X began living in Alaska in 2000, while he was serving in the U.S. Coast Guard.² Since 2001, he has resided in No Name, Alaska with his family. In 2002, he bought a home there, which is where he still resides.³ On July 1, 2004, Mr. X retired from the Coast Guard.⁴ For the past 13 years, he has worked as a Merchant Mariner and holds a U.S. Coast Guard Merchant Mariner Credential.⁵

From January of 2018 through December of 2018, Mr. X was employed by Employer A as an Assistant Engineer for the M/V No Name.⁶ The M/V No Name is owned by the U.S. Navy; it is a public vessel which the MAR Division of Employer A, a government contractor, operates for the United States Navy.⁷ The M/V No Name operates in the Pacific

¹ Exh. 1, p. 6.
² Exh. 2, pp. 3 & 6; Exh. 8, p. 6; Exh. 9, p. 1.
³ Exh. 2, pp. 2-3; Exh. 6, p. 3; Exh. 8, p. 6.
⁴ Exh. 2, p. 3; Exh. 6, p. 3.
⁵ Exh. 2, pp. 2 & 5.
⁶ Exh. 6, p. 6.
⁷ Exh. 2, p. 4; Exh. 6, pp. 2-3 & 5-6; Exh. 8, pp. 2 & 8; *see also* Exh. 10, p. 2; Exh. 17, p. 1.

Ocean off the coast of the United States.⁸ According to Mr. X, he works three months at sea on the M/V No Name and then is home for one month.⁹

In 2018, the qualifying year for the 2019 PFD, Mr. X was absent from Alaska for 196 days while at work aboard the M/V No Name.¹⁰

III. Discussion

The qualifying year for the 2019 PFD was 2018. In order to be eligible for the 2019 PFD, Mr. X could not be absent from Alaska for more than 180 days unless he fit into one of certain allowable absence categories listed in the PFD statutes. In applying for the 2019 PFD, Mr. X relied on the merchant mariner provision as the applicable allowable absence category.¹¹ His reliance was not unreasonable, since he had received a PFD in previous years under similar circumstances when he had been out of Alaska for more than 180 days.¹²

The allowable absence provision at issue in this case, found in AS 43.23.008(a), states:

Subject to [certain conditions not at issue here], an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent

(4) serving under foreign or coast articles of employment aboard an oceangoing vessel of the United States merchant marine.

However, when the Division reviewed Mr. X's application for the 2019 PFD and examined whether the M/V No Name was part of the U.S. merchant marine, it determined that this ship was not a qualifying vessel on MARAD's list of United States Flag Privately-Owned Merchant Fleet in 2018.¹³

⁸ Exh. 2, p. 4.

⁹ Exh. 2, pp. 2-3; Exh. 8, p. 5.

¹⁰ Exh. 2, p. 4; Exh. 6, p. 6

¹¹ See Exh. 2, p. 7.

¹² The Division in its presentation noted that Mr. X received a PFD in previous years despite being absent from Alaska for more than 180 days. On behalf of the Division, Mr. Scott explained that this was because Division had not previously examined the whether the vessels which Mr. X served aboard were part of the United States merchant marine. See Presentation of Pete Scott; see also Exh. 1, p. 6; Exh. 6, p. 6.

¹³ Exh. 5, p. 1; see also Presentation of Pete Scott; Division's Formal Position Statement ("Position Statement"), pp. 2 n. 5 & 5 n. 18. Mr. X did not dispute this determination. See Exh. 8, pp. 3 & 5. MARAD is a federal agency with oversight of the United States merchant marine and on its website maintains lists of vessels. See Exh. 16, p. 1; see also [https:// www.maritime.dot.gov/data-reports](https://www.maritime.dot.gov/data-reports). MARAD uses this data to monitor the performance of its programs and to ascertain the effectiveness of meeting agency mission requirements. See [https:// www.maritime.dot.gov/data-reports](https://www.maritime.dot.gov/data-reports).

The central issue in this case is whether the M/V No Name is part of the United States merchant marine.¹⁴ The “merchant marine” provision embodied in AS 43.23.008(4) went into effect on January 1, 2000.¹⁵ A decision rendered in a 2001 Permanent Fund Dividend appeal noted that there is no one authoritative definition of what constitutes the United States merchant marine.¹⁶ That decision also explained that: “[w]hether a ship is considered a part of a given nation’s merchant marine is generally a matter of maritime custom” and concluded that the phrase “United States merchant marine” in AS 43.23.008(4) was subject to interpretation according to its common and approved usage.”¹⁷

The United States Department of Transportation’s Maritime Administration agency (MARAD) is responsible for America’s waterborne transportation system. Its mission is “to promote the development and maintenance of an adequate, well-balanced United States merchant marine.”¹⁸ As MARAD’s website notes, the agency works “hard to maintain the overall health of the U.S. Merchant Marine.”¹⁹

As the government agency overseeing the “United States merchant marine,” MARAD is uniquely situated to shed light on the common and approved usage of that phrase. MARAD has described the “United States merchant marine” as follows:

¹⁴ In its Position Statement, the Division also argued that Mr. X was not eligible for the 2019 dividend because he had accepted full-time permanent employment outside of Alaska during the qualifying year through the date of application. *See* Position Statement, p. 5; *see also* 15 AAC 23.143(d)(4). According to the Division, Mr. X’s employment with Employer A was equivalent to that of a civilian defense contractor, except that he was employed on a U.S. Government research vessel. *See* Position Statement, p. 5. The Division did not elaborate on this argument at the hearing.

In light of the finding that Mr. X is ineligible for the 2019 dividend because he was unallowably absent over 180 days in 2018 (the qualifying year), it is not necessary to address this argument.

¹⁵ Exh. 12, p. 3.

¹⁶ Exh. 14, p. 2; *see also* Presentation of Pete Scott.

¹⁷ Exh. 14, p. 2.

¹⁸ Exh. 16, p. 1.

¹⁹ *See* <https://www.maritime.dot.gov/about-us>.

The U.S. merchant marine consists of *privately-owned*, U.S. registered merchant ships and a variety of towing, offshore supply, and passenger vessels which provide waterborne transportation for passengers and cargoes moving in *domestic and international commerce*. Employment on these vessels is the responsibility of the *owners* and is handled by maritime labor organizations or through direct employment by the company.²⁰

Similarly, the United States Merchant Marine Academy notes that the United States Merchant Marine is comprised of vessels in commerce “owned by U.S. companies” which are “registered and operated under the American flag.”²¹

Because it is a public vessel used for research rather than commerce and is owned by the U.S. Navy and operated by the government contractor that employed Mr. X, the M/V No Name is not part of the U.S. merchant marine.²² Thus, although Mr. X is a merchant mariner serving on a vessel operated under the American flag, he does not fit within the merchant mariner provision in AS 43.23.008(4) because he was not on a “vessel of the United States merchant marine.”²³ By remaining outside the state for more than 180 days in 2018 for the purpose of his employment on the M/V No Name, Mr. X lost his eligibility for the 2019 dividend.

IV. Conclusion

C X was absent from Alaska in 2018 for more than 180 days in order to serve on the M/V No Name. This absence disqualified him from eligibility for the next year’s PFD.

²⁰ See <https://www.maritime.dot.gov/about-us> (emphasis added).

²¹ Exh. 15, p. 3. As the Division has noted, the M/V No Name is a U.S. Naval research vessel. By contrast, ships and other vessels comprising the U.S. merchant marine are engaged in commerce, and are bound for foreign markets or arriving in U.S. harbors with merchandise and materials for American consumers. See Position Statement, p. 4; Exh. 15, p.3; Exh. 16; Exh. 17, p. 1; see also *In the Matter of H L. X*, OAH No. 07-0667-PFD (Commissioner of Revenue 2008)(<https://aws.state.ak.us/OAH/Decision/Display?rec=5211>), p. 2 n. 8 (noting that Webster’s New Riverside University Dictionary defines “merchant marine” as a “nation’s commercial ships”).

²² See Exh. 17.1.

²³ See Position Statement, p. 5 (noting that a person can hold a Merchant Mariner Credential yet not be serving on a U.S. Merchant Marine vessel); cf. *In the Matter of J H*, OAH No. 13-1599 PFD (Commissioner of Revenue 2014).

Accordingly, the decision of the Division to deny his application for a 2019 PFD is
AFFIRMED.

Dated: July 10, 2020

By: Signed
Signature
Kathleen A. Frederick
Name
Administrative Law Judge
Title

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 7th day of August, 2020.

By: Signed
Signature
Kathleen A. Frederick
Name
Administrative Law Judge
Title

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