

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

In the Matter of)	
)	
B J-H)	OAH No. 18-1298-PFD
)	Agency No. 2018-018-3664
_____)	

DECISION

I. Introduction

B Q J-H appeals the denial of his 2018 Permanent Fund Dividend (PFD) application. The application was denied because he did not meet the residency requirement. Because Mr. J-H did not have the requisite intent to remain an Alaska resident at the time of his application, the Division’s determination that Mr. J-H is ineligible for the 2018 PFD is affirmed.

II. Facts¹

On January 27, 2018, Mr. J-H electronically applied for his PFD.² He certified the application was true and correct on the same date.³

Question 2 of the online application asks, “Are you physically present in Alaska today?” The question is accompanied by a special instruction and warning that reads:

Answer **No** if you are completing this application from someplace other than within Alaska. Failure to disclose a reportable absence constitutes fraud.

Mr. J-H truthfully checked “No” and described his absence as “Relocated[.]”⁴

In submitting his Adult Supplemental Schedule, Mr. J-H’s response to “Do you intend to return to Alaska to remain indefinitely and make your principal home in the state?” was “No.”

Mr. J-H testified that he left Alaska, prior to submitting his PFD application, for job opportunities in Oregon. His ticket to Oregon was one way; he had no return plans at the time he left. He began renting an apartment in Oregon in mid-February 2018. He applied for an Oregon driver’s license.⁵

After his PFD application was denied, the Division gave Mr. J-H the opportunity to show that even though he had left the state, he had the requisite intent to remain an Alaska resident.

¹ The facts are based on Mr. J-H’s testimony, as well as Exhibits 1-10 and Exhibit A.
² Exhibit 1.
³ Exhibit 1 at 3.
⁴ Exhibit 1.
⁵ Mr. J-H said he was required to get an Oregon driver’s license as part of his employment.

Mr. J-H made an informal appeal on July 14, 2018 but did not provide any documentation to support his appeal. His Request for Informal Appeal made the following correction:

“I left Alaska on 1/24/2018. I accidentally marked the wrong box on the intent to return to Alaska question[.] I have lived in Alaska for 27 years and I have never been denied eligibility[.] I do plan to return to Alaska to make it my primary residence[.] My permanent residence was Anchorage for the Entirety of 2017. I erroneously marked “No” on the intent to return to Alaska Question because I misread it. This was the first time I ever filed while I was out of the state and misunderstood the additional questions. I would have completed the application before I left but I was unable to. I do plan on returning to Alaska and make it my Primary residence[.]”⁶ [sic].

On September 19, 2018, the Division sent Mr. J-H an email. It gave him 30 days to explain how his application statement correlated with his appeal and to provide documentation that he had not moved from Alaska to live indefinitely in Oregon prior to filing his PFD application. Mr. J-H did not respond, and the denial was upheld.⁷ Mr. J-H then requested a formal hearing.

The formal hearing took place telephonically on January 24, 2019. The Division submitted a position statement and Exhibits 1-10. Those were admitted without objection. The record was held open to give Mr. J-H additional time to submit records supporting his claim that he maintained his Alaska residency. Mr. J-H’s submitted a voter registration card which was marked and admitted as Exhibit A, as the Division had no objection. The record closed February 6, 2019.

III. Discussion

As the individual challenging the Division’s decision, it is Mr. J-H’s burden to establish that he is eligible for a 2018 PFD.⁸ In a PFD denial appeal, the person who filed the appeal, “has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.”⁹

To qualify for a PFD, a person must be an Alaska resident both on the date of the application and during the entire qualifying year.¹⁰ An Alaska resident is someone who is in the state with the intent to remain indefinitely, or someone who intends to return to the state to

⁶ Exhibit 3.

⁷ Exhibit 5.

⁸ 15 AAC 05.030(h).

⁹ *In re D. O.*, OAH No. 13-1294-PFD (Comm’r of Revenue, December 24, 2013), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5637>

¹⁰ AS 43.23.005(2) and (3).

remain indefinitely when that person's absence is allowable by statute.¹¹ Residency is extinguished when the individual acts in a manner inconsistent with an intent to remain an Alaskan resident.¹²

Mr. J-H flew to Oregon from Alaska on January 24, 2018; he applied for his PFD on January 27, 2018.¹³ When Mr. J-H applied for his 2018 PFD, he was physically in Portland, Oregon.¹⁴ So, even though Mr. J-H resided in Alaska throughout 2017, since he was not in Alaska at the time of his application, the question becomes whether, at that time, Mr. J-H maintained the requisite intent to remain an Alaskan resident.¹⁵

Mr. J-H described his absence from Alaska as "Relocate." This is not consistent with maintaining residency in Alaska. "Moving out of Alaska for the purpose of a full-time, permanent job in another state, [and] maintaining one's principal home outside of Alaska, are all specifically defined factors that cause a person to be ineligible for a PFD."¹⁶ Even though Mr. J-H argues that the move to Oregon was only temporary and that he erred in his description of his absence, the facts are inconsistent with an intent to remain an Alaska resident.

Mr. J H lived in Alaska for 27 years and his intent to someday return seems sincere. But that does not establish residency for the purposes of eligibility for the PFD. He moved to Oregon for professional opportunities. Mr. J-H left Alaska via a one-way ticket and no concrete plan to return to Alaska. He obtained employment in Oregon. He signed a rental agreement for an apartment in Oregon shortly after arriving. He signed a rental agreement. He gave up his Alaska driver's license and obtained an Oregon driver's license. Mr. J-H did provide a voter registration card from Alaska, but it is unclear, given the other circumstances, that he is still eligible to vote in Alaska.¹⁷ The facts, collectively, show Mr. J-H relinquished his Alaska residency for purpose of qualifying for the 2018 PFD.

¹¹ AS 43.23.095(7).

¹² AS 01.10.055 (c).

¹³ Exhibit 3 at 2.

¹⁴ Exhibit 5 at 2.

¹⁵ AS 01.10.055; AS 43.23.095(7).

¹⁶ 15 AAC 23.143(d); *In re A.X. et al*, OAH No. 14-1716-PFD (Comm'r of Revenue, April 17, 2015), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5678>

¹⁷ The possession of a voter registration card is not sufficient to establish residency. This decision is not evaluating Mr. J-H's eligibility for voting in Alaska.

IV. Conclusion

Mr. J-H did not show that he retained his Alaska residency at the time he applied for his PFD. As a result, he does not qualify for the 2018 PFD. The Division’s decision is upheld.

Dated: March 4, 2019

Signed

Hanna Sebold
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 29th day of March, 2019.

By: Signed

Signature
Hanna Sebold

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.]