

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

In the Matter of:)	
)	
B.S.)	
)	OAH No. 22-0748-PFD
<u>2021 Permanent Fund Dividend</u>)	Agency No. 2021-049-8234

DECISION

I. Introduction

B.S. applied for a 2021 permanent fund dividend (PFD). The Permanent Fund Dividend Division asserts that B.S. claimed the state of Washington as his residence in his employment records through March 5, 2020, therefore disqualifying him for the 2021 PFD. Following an unsuccessful informal appeal, B.S. requested a formal hearing.

A telephonic hearing occurred on October 3, 2022. B.S. participated as did the Division through its representative, Delilah Bernaldo. Based on the testimony and evidence presented, the Division’s decision denying B.S.’s 2021 PFD is affirmed.

II. Facts

The key facts in this case are not in dispute. B.S. is an active member of the United States Coast Guard. He returned to Alaska after being absent for many years and on March 12, 2021, timely filed an electronic application for a 2021 PFD. In his application, B.S. was asked whether he was or had ever been an active-duty member of the U.S. Armed Forces. He answered “Yes” to this question.¹ As a result, he was subsequently asked for and provided copies of his relevant leave and earnings statements from the Coast Guard. These statements identified the following regarding B.S.’s claimed states of legal residence during that period.

<u>Leave and Earnings Statement</u>	<u>State of Legal Residence</u>
December 2018	Washington
December 2019	Washington
February 2020	Washington
November 2020	Alaska
March 2021	Alaska ²

¹ Ex. 1; Delilah Bernaldo Testimony.

² Ex. 2.

As the leave and earnings statements suggest, in 2020, B.S. changed his state of legal residence from Washington to Alaska. This occurred on March 5, 2020, when he executed a certification of state of legal residence (DD Form 2058), identifying City A, Alaska as his legal residence and domicile.³

B.S. has clarified why he believes he is eligible for the 2021 PFD. Among other things, he indicates he took a variety of steps to establish his Alaska residency prior to submitting his 2021 PFD application, including registering his vehicle in Alaska, obtaining an Alaska driver's license, and registering to vote in Alaska.⁴ He also indicates that:

I have changed my SOLR [state of legal residence] prior to CY2020, declared AK on LES was inaccurate due to me overlooking its importance to AK but actual taxes were filed w/AK as my SOLR. LES section Lists WA under 'Tax Data'... WA state does Not have an income tax and therefore did not garner my attention until I realized my true intent to reliver in AK...⁵

Based on this information, the Division issued an informal appeal decision denying B.S.'s 2021 PFD application because he claimed a state other than Alaska as his legal residence after December 31, 2019.⁶ He then timely appealed that decision and requested a formal hearing.⁷ Both B.S. and Ms. Bernaldo testified at the hearing, held on October 4, 2022. B.S. indicated that he did not realize the leave and earnings statements were as important as they were, and instead, focused on the other facts arguably establishing his Alaska residency.⁸

III. Discussion

The PFD eligibility rules are technical and strict. Even someone who has clearly re-established Alaska residency, as B.S. has likely done here, can be disqualified from receiving a PFD if they are absent under the wrong circumstances or maintain certain residency ties to another state. One of these strict eligibility requirements is that a person must not have claimed or maintained a claim of residency in another state on employment records during the PFD qualifying year. Alaska regulation 15 AAC 23.143(d)(2) details this requirement as follows:

- (d) An individual is not eligible for a dividend if, at any time from January 1 of the qualifying year through the date of application, the individual has

³ Ex. 7, p. 4.

⁴ Ex. 4, p. 2.

⁵ Ex. 6, p. 1.

⁶ Ex. 5, pp. 1-7; Ex. 7, p. 4.

⁷ Ex. 6.

⁸ B.S. Testimony.

...

- (2) claimed or maintained a claim of residency in another state or country in the individual's employment personnel records; if the individual claims an error or a delay was made in processing by the personnel office, the individual must submit
 - (A) from the personnel office, a certified copy of the individual's request to change the individual's state of legal residence; or
 - (B) a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, or caused a delay, in processing the individual's personnel records; the personnel officer must state the exact date the records show the original request was received and why the request was not processed timely;

As was referenced during the hearing, the crux of this dispute is not whether B.S. took steps to re-establish his Alaska residency during the qualifying year. That question is largely irrelevant to this analysis. Instead, the key issue is whether, anytime during the qualifying year, B.S., maintained a claim of residency in another state in his employment records, thus disqualifying him from receiving a 2021 PFD. Here, it is undeniable that that B.S. did in fact maintain Washington as his state of legal residence in his employment records until it was changed to Alaska on March 5, 2020.⁹ Also, B.S. has not claimed that the delay in changing his state of legal residence was caused by any error on the part of the Coast Guard's personnel officer as referenced by 15 AAC 23.143(d)(2)(B).

The qualifying year for the 2021 dividend was 2020.¹⁰ Even though B.S. may have arguably re-established Alaska for residency many months prior to changing his state of legal residence certificate on March 5, 2020, the strict requirements of 15 AAC 23.143(d)(2) still disqualify him from receiving a 2021 PFD. This is because he failed to change his state of legal residence in time to qualify for the 2021 dividend.

⁹ Ex. 7, p. 4; B.S. Testimony; Delilah Bernaldo Testimony.

¹⁰ AS 43.23.095(6).

IV. Conclusion

Because B.S. did not change his state of legal residence certificate until March 5, 2020, he is disqualified from receiving a 2021 PFD. Accordingly, the Division’s informal appeal decision is AFFIRMED.

Dated this 6th day of October 2022

By: Signed
Name: Z. Kent Sullivan
Title: 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 31st day of October, 2022.

By: Signed
Name: Z. Kent Sullivan
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.]