

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

In the Matter of: )  
 )  
X.K. ) OAH No. 18-0508-CSS  
 ) Agency No. 001136544  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

Following his retirement from the military, X.K. requested that the Child Support Services Division modify his monthly child support obligation. Based on the limited information available to it, the division found that there had not been a material change in circumstances and denied the request for modification. X.K. requested a hearing. Based on additional information provided in the course of the hearing process, the division recalculated X.K.'s child support obligation, and concluded that there had been a material change in circumstances.

Because X.K.'s income has decreased since his retirement from the military, there has been a material change of circumstances. Based on his retirement pay and his current wage income, X.K.'s child support obligation is modified to \$806 a month for one child.

**II. Facts**

The division set X.K.'s child support obligation for his daughter at \$978 a month in January 2017.<sup>1</sup> X.K. retired from active duty in the effective in 2017.<sup>2</sup> He now receives retirement pay of \$27,144 a year, significantly less than he was earning on active duty.<sup>3</sup>

X.K. also works at Company A where he earns \$11.50 an hour. His earnings vary depending on the number of hours worked, tips, and whether he receives overtime pay.<sup>4</sup> His pay rate for overtime is \$17.25 an hour. He worked a total of 13.39 hours of overtime in January and February 2018, and no overtime in March.<sup>5</sup> He earned a total of \$8,070 at Company A during the first three months of 2018.<sup>6</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Testimony of X.K..

<sup>3</sup> Ex. 5 at 1; Ex. 6 at 1 (according to statements by the division's representative at the hearing, the is Employer "C" and X.K. was earning \$21,804 quarterly in active duty pay from the military).

<sup>4</sup> Ex. 2, Ex. 5.

<sup>5</sup> Ex. 2 at 2, Ex. 5 at 3.

<sup>6</sup> Ex. 5 at 8.

X.K. occasionally worked when he lived in Hawaii. However, X.K. testified that employment there was no longer available to him now that he lives in Washington.<sup>7</sup> After moving to Washington and before starting the job at Company A, X.K. worked for a brief period at Company B, however, he is no longer working there.<sup>8</sup>

In January 2018, X.K. requested that the division review his child support obligation. He provided three paystubs.<sup>9</sup> The division notified A.X. of the petition for modification on January 18, 2018.<sup>10</sup> The division reviewed the request. Based on X.K.'s January 12, 2018 paystub and his military retirement pay, the division calculated that X.K.'s child support obligation would be \$858 a month.<sup>11</sup> Finding no indication of a material change in circumstances, the division denied the request for modification.<sup>12</sup> X.K. appealed.<sup>13</sup>

A telephonic hearing was held on May 29, 2018. X.K. represented himself. Child Support Specialist Brandi Estes presented the division's case. A.X., the custodial parent, participated in the hearing. The record closed on May 30, 2018.

### **III. Discussion**

Civil Rule 90.3 provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources," minus allowable deductions specified in the rule. The resulting adjusted income figure is multiplied by 20 percent to arrive at the child support obligation for one child.<sup>14</sup>

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>15</sup> Where a party shows that support calculated according to Civil Rule 90.3 is more than 15 percent greater or less than the existing support order, a material change of circumstances is presumed to exist.<sup>16</sup> A modification is effective beginning the first of the next month after the division issues a notice to the parties that a modification has been requested.<sup>17</sup>

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<sup>7</sup> Testimony of X.K.; Ex. 6 at 1.

<sup>8</sup> Testimony of X.K..

<sup>9</sup> Ex. 2.

<sup>10</sup> Ex. 3 at 3.

<sup>11</sup> Ex. 4 at 3.

<sup>12</sup> Ex. 4 at 2.

<sup>13</sup> Ex. 5.

<sup>14</sup> Civil Rule 90.3(a).

<sup>15</sup> AS 25.27.190(e).

<sup>16</sup> Alaska Rule of Civil Procedure 90.3(h)(1).

<sup>17</sup> 15 AAC 125.321(d).

The division denied the request for modification in this case because, based on the information it had at the time, it appeared that the 15 percent threshold to trigger the presumption of material change had not been met. However, based on the additional information obtained at the hearing, including X.K.'s April 6, 2018 paystub (which reported his year-to-date earnings from Company A), the division recalculated and concluded that the threshold had been met.<sup>18</sup> The division's new calculations showed a child support obligation of \$806 a month.<sup>19</sup>

Child support calculations are prospective. They are calculated as a percent of the obligor's expected income when the child support is to be paid.<sup>20</sup> The division's original calculations were based on X.K.'s retirement pay and just one paycheck from Company A. The division's revised calculations are based on three months worth of paychecks from X.K.'s job at Company A. The estimated annual wage figure based on three months of actual paychecks better reflects the likely fluctuations in X.K.'s income, including differences in hours and overtime from one pay period to another.

At the hearing A.X. argued that X.K. had not been forthcoming about his additional income over the years. The division questioned X.K. about his other sources of income, eliciting the testimony about his previous employment as a background actor and at the Company B. X.K.'s testimony adequately explained the various sources of his wage income reported to the Department of Labor for 2017.<sup>21</sup> X.K. testified under oath that his only two sources of income at present are his retirement pay and his wages from Company A. A.X. did not identify any specific sources of additional income not included in the division's calculations. Based on the evidence presented, it is more likely than not that X.K.'s current sources of income are limited to his retirement pay and his wages from Company A.

A.X. also argued that X.K. is underemployed at Company A. If a parent is voluntarily and unreasonably underemployed, potential income may be imputed based on the parent's work history, qualifications, and job opportunities.<sup>22</sup> Although A.X. argued that X.K. is underemployed, she did not elaborate or provide specific evidence of voluntary and unreasonable underemployment to support the imputation of income to X.K.. The division did not impute

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<sup>18</sup> Submission to Record dated May 29, 2018.

<sup>19</sup> Ex. 8.

<sup>20</sup> Commentary to Civil Rule 90.3 at III.E.

<sup>21</sup> Ex. 6.

<sup>22</sup> Civil Rule 90.3(a)(4).

income to X.K. in its original or revised calculations, and the record in this case does not support the imputation of income.

The division's revised calculations reflect X.K.'s annual income based on his actual wages for the first quarter of 2018 and his retirement benefits. The calculations are a reasonable projection of X.K.'s total income from all sources expected over the period during which the child support is to be paid. The difference between the child support obligation of \$806 under the revised calculations and the \$978 obligation set in the January 26, 2017 order exceeds 15 percent, triggering the presumption of a material change in circumstances. Based on this, X.K.'s child support obligation should be modified.

According to the division's regulations, the effective date of a modification is the first day of the month following the date on which notice of the petition for modification was served on the other parent. Because the notice of the request for modification was sent to A.X. on January 18, 2018, the effective date of the modification in this case should be February 1, 2018.<sup>23</sup>

#### ***IV. Conclusion***

X.K.'s monthly child support obligation should be modified based on a material change in circumstances. In accordance with the division's revised calculations, the ongoing child support should be set at \$806 a month, effective February 1, 2018. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

#### ***V. Child Support Order***

1. The division's decision on Request for Modification Review dated March 31, 2018 is reversed.
2. X.K.'s ongoing child support for his daughter is set at \$806 per month effective February 1, 2018 and ongoing.
3. All other provisions of the Modified Administrative Child and Medical Support Order dated January 26, 2017 remain in effect.

Dated: June 20, 2018.

*Signed*

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Kathryn L. Kurtz  
Administrative Law Judge

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<sup>23</sup> Ex. 3.

## 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.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days after the date of this decision.

DATED this 3<sup>rd</sup> day of July, 2018.

By: Signed  
Signature  
Kathryn L.Kurtz  
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.]