

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

In the Matter of	)		
	)		
S. U.	)	OAH No.	19-0812 PFD
	)	Agency No.	2019-027-239
_____	)		

**DECISION AND ORDER**

**I. Introduction**

S. U. applied for a 2019 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (Division) denied his application because his absence from Alaska for more than 180 days did not fall within the exceptions expressly permitted by statute, and therefore was not an allowable absence.

S. U. appealed the denial, contending that his employment overseas with the military should afford him the same consideration as members of the armed forces. The Division denied his informal appeal, and S. U. filed a formal appeal which was referred to the Office of Administrative Hearings (OAH).

A formal hearing took place October 23, 2019. S. U. appeared telephonically and testified on his own behalf. PFD specialist Pete Scott also appeared telephonically, representing the Division and testifying on its behalf. Exhibits 1 through 8 were admitted without objection.

S. U.'s absence from Alaska during the qualifying year of 2018 was not an allowable absence. For this reason, the Division's denial of S. U.'s 2019 PFD application is affirmed.

**II. Facts**

The relevant facts, which are not in dispute, are as follows. S. U., a resident of City A, Alaska, works for the Department of Defense as a civilian employee.<sup>1</sup> In October 2017, he was deployed to Afghanistan in a civilian capacity to support military operations there.<sup>2</sup> S. U.'s employment exposed him to many of the same conditions and dangers as active-duty soldiers, and his job duties required him to remain in Afghanistan for much of 2018, the qualifying year for 2019 PFDs.<sup>3</sup>

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<sup>1</sup> Exhibit 1, p. 3; Exhibit 2; S. U. testimony.

<sup>2</sup> S. U. testimony; Exhibit 2.

<sup>3</sup> S. U. testimony.

S. U. submitted an online application for his 2019 PFD on February 10, 2019.<sup>4</sup> In his application, S. U. confirmed that he was out of Alaska between October 30, 2017 and September 9, 2018, for a total of 252 days absent.<sup>5</sup> On his application form, S. U. listed his absence code as “C”, identifying as a member of the military.<sup>6</sup> He also clarified that he is not an active-duty member of the military, but was deployed as a civil employee, [title redacted], to Afghanistan.<sup>7</sup>

The Division did not dispute S. U.’s statement that he “worked side by side [with soldiers] in forward areas in hostile areas.”<sup>8</sup> The Division found, however, that a civil employee of the military is not a “member of the armed forces,” so S. U.’s absence from Alaska for more than 180 days was not an allowable absence.<sup>9</sup> Therefore, the Division denied his application.

### III. Discussion

In a formal appeal of a PFD denial, the party who filed the appeal “has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.”<sup>10</sup> Thus, S. U. has the burden of proof in this case.

#### A. S. U. has maintained his Alaska residency.

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.<sup>11</sup> 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 remain indefinitely when the circumstances of the person’s absence are not inconsistent with the intent to remain indefinitely.<sup>12</sup> S. U. maintains a residence in City A, Alaska.<sup>13</sup> While he was out of state as a result of his work, his wife remained in Alaska in their home, and S. U. took no steps to establish residency elsewhere or that would otherwise be inconsistent with an intent to remain indefinitely in Alaska upon his return.<sup>14</sup> The Division does not dispute that S. U. maintained his status as a resident of Alaska at the time of application and for the qualifying year.

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<sup>4</sup> S. U. testimony; Mr. Scott testimony; Exhibit 1.

<sup>5</sup> Exhibit 1, p. 4; Mr. Scott testimony; S. U. testimony.

<sup>6</sup> S. U. testimony; Exhibit 1 p. 4.

<sup>7</sup> S. U. testimony; Exhibit 1 p. 4; Exhibit 4 pp. 2-3; Exhibit 6 p. 2.

<sup>8</sup> Exhibit 4, p.3.

<sup>9</sup> Exhibit 3; Exhibit 5, pp. 1-2.

<sup>10</sup> *In re D.O.*, OAH No. 13-1294-PFD (Comm’r of Revenue, December 2013), available at <https://aws.state.ak.us/OAH/Decision/Display?rec=5637>.

<sup>11</sup> AS 43.23.005(2) and (3).

<sup>12</sup> AS 43.23.295(7).

<sup>13</sup> Exhibit 1.

<sup>14</sup> S. U. testimony Exhibit 4 p. 2.

*B. Residency does not necessarily equate with PFD eligibility*

In order to make the PFD program predictable and easy to administer, the legislature has set certain black and white rules regarding eligibility for a PFD. This system of rules, as set by the legislature, is binding on the Division. PFDs can be paid only to persons who qualify under the rules set by the legislature.

Under this system, a person can be an Alaska resident and yet be ineligible for a PFD for a variety of reasons.<sup>15</sup> In general, an applicant who is outside of Alaska for more than 180 days is ineligible for a PFD during that qualifying year.<sup>16</sup> An applicant who exceeds this time limit on being outside Alaska may still qualify if their absence is excused by one of the 17 allowable reasons listed in the statute describing “Allowable Absences.”<sup>17</sup> Absent such an exception, an individual outside of Alaska for more than 180 days in a qualifying year is deemed ineligible for a PFD.<sup>18</sup>

S. U. does not dispute his absence from Alaska was for more than 180 days, nor does he argue that he meets any of the 17 allowable absences.<sup>19</sup> Instead, S. U. argues by analogy that since AS 43.23.008(a)(3) allows an exception for an individual absent from Alaska for more than 180 days who is “serving on active military duty as a member of the armed forces of the United States,” he should be afforded the same exception as a member of the armed forces, because he was doing the same work and was exposed to the same risks.<sup>20</sup>

Alaska law establishes that if “a member of the armed forces” is deployed, his/her absence from the state is permissible for purposes of PFD eligibility.<sup>21</sup> Title 10 of the United States Code, which governs the “Armed Forces,” defines “armed forces” to mean the “Army, Navy, Air Force, Marine Corps, and Coast Guard.”<sup>22</sup> Regardless of S. U.’s job duties or the risks he faced while performing them, his status as a civilian employee of the Department of Defense does not qualify him as a member of the armed forces. Alaska law is clear that this narrow exception is only available to active-duty members of the armed forces.<sup>23</sup> Civilian

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<sup>15</sup> AS 43.23.005 sets forth the criteria for when an applicant is eligible and ineligible for a PFD.

<sup>16</sup> AS 43.23.008 (a)(17)(A).

<sup>17</sup> AS 43.23.008(a).

<sup>18</sup> AS 43.23.008.(a)(17)(A).

<sup>19</sup> S. U. testimony; Exhibit 1 pp. 1, 4.

<sup>20</sup> S. U. testimony.

<sup>21</sup> AS 43.23.008 (a)(3).

<sup>22</sup> *In re K.D.*, OAH No. 09-0014-PFD (Comm’r of Revenue, July 2009); Exhibit 5, p. 2.

<sup>23</sup> See *In re K.D.*, OAH No. 09-0014-PFD (Comm’r of Revenue, July 2009); *In re D. O.*, OAH No. 13-1294-PFD (Comm’r of Revenue, December 2013).

employees do not fall within the definition of those covered by this exception. Therefore, an absence of more than 180 days as a civilian employee of the Department of Defense renders a person ineligible. As such, S. U. is not eligible for the 2019 PFD.

S. U. argued that it is inequitable to deny PFDs to civilian employees of the military who are deployed, serve their country overseas, and face many of the same risks and dangers as active-duty military members who do receive PFDs. The requirements for PFD eligibility, however, are quite exacting. When those requirements exclude an individual from eligibility, the Division has no discretion to pay the dividend, regardless of the worthiness of the applicant. The PFD statutes and regulations provide no discretion to the Division or the administrative law judge to find a person eligible based on considerations of fairness or equity or on perceptions that a person has “earned” the right to receive a PFD.<sup>24</sup>

S. U. candidly admitted he understood the requirements of the law and simply wanted to be heard. The changes that S. U. advocates for, however, can only be accomplished through statutory change by the legislative branch. While his circumstances are sympathetic, neither the Division nor OAH has the authority to vary from the requirements of the law.

#### **IV. Conclusion**

The Division correctly applied the law when it made its decision to deny S. U.’s 2019 PFD. The Division’s decision, therefore, is affirmed. This decision does not affect S. U.’s status as an Alaska resident or his eligibility for future PFDs.

DATED this 23<sup>rd</sup> day of December, 2019

By: *Signed* \_\_\_\_\_  
Andrew M. Lebo  
Administrative Law Judge

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<sup>24</sup> At the hearing, S. U. cited anecdotal evidence of other civilian employees of the military he knows of who are similarly situated but nonetheless received their PFDs. In response, Mr. Scott did not dispute that errors can occur, and he also suggested there could be factual differences which could account for colleagues who appear to be similarly situated but whose circumstances are distinct. In any event, even if S. U. were correct, this does not overcome his burden to establish his own eligibility for a PFD.

## 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of January, 2020.

By: Signed  
Signature  
Andrew M. Lebo  
Name  
Administrative Law Judge  
Title

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