

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

In the Matter of:)	
)	
K. U.)	
)	OAH No. 21-2008-PFD
<u>2021 Permanent Fund Dividend</u>)	Agency No. 2021-047-0600

DECISION AND ORDER

I. Introduction

K. U.’s application for a 2021 permanent fund dividend (PFD) was denied initially and at the informal appeal level, primarily on the basis that during the qualifying year his military Leave and Earnings Statement (LES) showed Nevada as his State of Legal Residence (SLR). At K. U.’s request, this office held a formal hearing on October 4, 2021. The denial is affirmed because listing another state as SLR in military records has consistently been held a disqualifying condition for PFD eligibility. While K. U. is likely an Alaska resident for other purposes and the failure to change his military records was simply an oversight, Department of Revenue regulations create a bright-line rule that bars him from PFD eligibility under these circumstances.

II. Facts

K. U. was the sole witness at the hearing, and except as otherwise attributed the facts recorded here are based on his testimony. K. U. moved from Nevada to City A, Alaska in 2015, accepting a job as a civilian employee at a Coast Guard installation. He was not initially sure he would remain in Alaska, but he has since put down roots here, selling his house in Nevada in 2018 and otherwise behaving in a manner consistent with Alaska residency.

K. U. enlisted in the U.S. Navy Reserve in 2014, while he was still in Nevada.¹ Since leaving Nevada, K. U. has been a member of the Navy Reserve. Although the two are often confused, the Reserve is not the same as the National Guard; it is a purely federal entity.² K. U. was called back to active duty in April of 2020, serving more than a year in connection with the COVID-19 emergency. He was discharged back to Reserve status in July of 2021.³

¹ Ex. 8, pp. 3-6.

² See Ex. 13.

³ Ex. 8, p. 8.

Naturally, when he enlisted in the Reserve in Nevada in 2014, K. U. listed his Nevada address as his “home of record.”⁴ Perhaps for this reason, or perhaps because of other paperwork filled out at the time, Nevada also became his SLR in military personnel records. So it remained until March of 2021, when K. U. submitted a form DD 2058 to change it to Alaska.⁵ This seems to have had no practical consequences for him. Since neither Nevada nor Alaska has a personal income tax, so that no state taxes were deducted from K. U.’s military pay in any event.

III. Discussion

The qualifying year for the 2021 dividend was 2020.⁶ The regulation at 15 AAC 23.143(d)(2) establishes that an individual “is not eligible” for a PFD if, during the qualifying year or during the application year up to the date of application, the individual “claimed or maintained a claim of residency in another state or country in the individual’s employment personnel records.” This is an absolute disqualification that is independent from the broader question of whether the individual is, on balance, a legal resident of Alaska. The Alaska Supreme Court has endorsed the use of “some bright line rules” to make it easier to determine PFD eligibility without case-by-case analysis of residency,⁷ and this is such a rule.

Under the regulation, there are two independently sufficient evidentiary showings that will overcome this absolute disqualification if they show that the existence of the residency claim in another state was due to “an error or delay . . . in processing by the personnel office.” However, K. U. does not claim any delay or error by a personnel office, and so these showings are not relevant and have not been attempted.

The Department of Revenue is bound by its own regulations. Although the existence of a Nevada SLR in K. U.’s personnel records is almost certainly a result of it never occurring to him to submit a DD 2058 to have it changed, the department cannot pay him a dividend if the regulation prohibits it.

A question was alluded at the hearing as to whether this result still holds true if the SLR in another state exists only passively in a military reservist’s personnel record, when the military role is not even the person’s primary employment. This, however, has already been addressed in

⁴ Ex. 8, p. 3.

⁵ See Ex. 3, p. 4. The form contains an explanation of the difference between home of record and SLR, and warns service members that SLR can have consequences for a variety of state benefits.

⁶ AS 43.23.095(6).

a prior case, involving a North Slope Borough employee who remained in the Air Force Reserve with an SLR that had never been changed from Florida.⁸ The disqualifying regulation was found to apply equally to such an individual. Unless the regulation is modified or the Commissioner changes its interpretation, it should be applied here as it has been applied to others.

IV. Conclusion

A Department of Revenue regulation precludes K. U. from being eligible for a PFD while his personnel records reflected Nevada as his state of legal residence. The decision of the Permanent Fund Dividend Division to deny the application of K. U. for a 2021 PFD is AFFIRMED.

DATED this 1st day of December, 2021.

By: *Signed* _____
Christopher Kennedy
Administrative Law Judge

⁷ See *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1130 (Alaska 1999).

⁸ *In re R.M.P.*, OAH Case No. 08-0347-PFD (Dec. 9, 2008), published at aws.state.ak.us/OAH/Decision/Display?rec=5239

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 Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of January, 2022.

By: Signed
Lucinda Mahoney
Commissioner, Department of Revenue

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