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

In the Matter of	)	
	)	OAH No. 25-1239-PFD
L. X. AND N. X. (MINOR)	)	

DECISION

I. Introduction

L. X. appeals denials of 2024 Permanent Fund Dividend (PFD) applications that he filed on behalf of himself and his minor son, N. As detailed below, the evidence in this matter shows that Mr. X. established administrative error regarding a statement of residency in another state in his military employment records, and that he did not submit a false answer to a question posed in his electronic application. Additionally, sworn testimony offered during the hearing in this matter shows that N. X. satisfied a statutory requirement of 30 days' physical presence in Alaska during the preceding five years. Accordingly, the denials of the X.s' 2024 PFD applications are REVERSED.

II. Facts

Major L. X. is an active-duty officer currently serving in the Florida Air National Guard. He first moved to Alaska in February 2007 when his wife, E. X. – who is also an Air National Guard officer – was assigned to Military Base A.[1] The X.s are still an active-duty couple who now reside near City A[2] L. X. has received Alaska PFDs since at least 2009.[3] N. X. has received dividends since 2010.[4]

In 2019, Mr. X.'s wife accepted an assignment to Military Base B in Florida. In conjunction with her assignment, Mr. X. applied for and obtained a full-time position with the Florida Air National Guard. Following his move to Florida, Mr. X. met with a payroll specialist in October 2019 who assisted him with filling out the paperwork required for all incoming personnel (which

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1 *Division position statement*, at p. 2.
2 *Id.*
3 Exhibit 1, p. 6.
4 Exhibit 1, p. 11.

is typically referred to as "in-processing" within the military). In the payroll records that were filled out during this in-processing, Florida was designated as Mr. X.'s state of legal residence.[5]

Mr. X. has consistently asserted that he did not designate Florida as his legal state of residence in his payroll records, with this entry instead attributable to error during his in-processing with the Florida Air National Guard.[6] As Mr. X. has noted here, he would have received no tax benefit from claiming Florida residency because neither Alaska nor Florida has state personal income taxes. Additionally, he claims to have corrected this error as soon as it was brought to his attention.[7]

On March 20, 2024, L. X. timely submitted on-line 2024 PFD applications on his behalf and on behalf of his son, N..[8] He reported that he was applying from outside Alaska.[9] In this application, X. denied that he had claimed sister state residency in employment records.[10] However, the on-line application phrased the question, thus: "Since December 31, 2022, *for tax purposes* did you claim residency in another state [] on your employment records?"[11] X. responded in the negative.[12]

On August 16, 2024, the Division denied L. and N. X.'s 2024 applications.[13] The Division determined that L. X. was ineligible because his military pay statement listed Florida as a state of legal residence, and because it concluded that X.'s response to the above question was false.[14]

The Division denied N. X.'s application because it determined that N.'s sponsor (L.) was ineligible, and because it concluded that N.'s absences from Alaska exceed the permissible maximum.[15] The Division's denial concluded that N. X. had not been physically present in Alaska

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5 *Id.*; *Division position statement*, at p. 3. This is an important fact, since individuals who claim residence in another state in their employment records are generally deemed ineligible to receive a PFD. 15 AAC 23.143(a) and (d)(2).

6 *L. X. hearing testimony.*

7 *L. X. hearing testimony; E. X. hearing testimony.*

8 Exhibit 1, pgs. 1 & 7.

9 *Id.*

10 Exhibit 12, pgs. 3 & 8 (X.'s response to question 7-B).

11 Exhibit 12, p. 8. (emphasis added).

12 *Id.* On March 20, 2024, in his on-line application, X. answered this question in the negative. Exhibit 1, pgs. 1-3. The Division regarded this answer as dishonest and cited it as a reason to deny L.'s 2024 PFD application. Exhibit 2, p. 2. However, a careful review of the phrasing of the actual on-line application question established that X.'s answer was not untruthful. This point is discussed in detail, below.

13 Exhibit 2, pgs. 1 & 3.

14 Exhibit 2, p. 2.

15 Exhibit 2, p. 3.

for 30 cumulative days during the five-year period of January 2019 through December 2023.[16] In its prehearing briefing, the Division credited N. X. with only 28 days of physical presence in Alaska during the pertinent 2019-2023 window.[17] Thus, as the hearing approached, N. was two days short of the mark. However, the Division's calculation did not account for 2023 travel.[18]

X. pursued informal appeals of both denials on September 15, 2024.[19] Those appeals were denied on March 5, 2025.[20] X. timely requested a formal hearing on March 31, 2025.[21] In the meantime, an independent criminal investigation was initiated by the Department of Revenue (DOR), Criminal Investigations Unit, with an investigator assigned in August 2024.[22]

After Mr. X. filed his formal appeal, a hearing was held in this matter on June 18, 2025. Among the exhibits submitted during the hearing was a written statement from F. N., a GS-12 payroll administrator with the Florida National Guard who assisted Mr. X. during his in-processing in 2019. In that statement, Mr. N. characterized the designation of Florida as Mr. X.'s state of legal residence as an error, and that Mr. X.'s payroll records had mistakenly "link[ed] to his actual physical address [in Florida], not his state of legal residence."[23]

For military payroll purposes, a service member's declaration of state of legal residence for state tax purposes is usually tied to a specific federal Department of Defense payroll form designed for this very purpose – a DD Form 2058. However, in this case, the division's eligibility staff never located or offered a copy of the DD Form 2058 that Mr. X. may have filled out in 2019. Nor, apparently, did the Department's criminal investigation unit. Mr. X. testified that he tried to locate a copy of the DD Form 2058 in his case -- without success.[24]

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16 AS 43.23.008(d)(1) (applicant on an allowable absence must establish, by clear and convincing evidence, that the person was "physically present in [Alaska] for at least 30 cumulative days during the past five years."); *Division representative testimony,* at 2:50:45; *Division position statement*, p. 6.

17 *Division position statement*, at p. 6-7.

18 *Id.*

19 Exhibit 3, p. 1 & 3.

20 Exhibit 8, pgs. 3 & 8.

21 Exhibit 11, p. 1.

22 Exhibit 4, p. 1.

23 Exhibit 11, p. 3. The N. statement was obtained by X. and submitted to the Division. It was offered by the Division and received as a hearing exhibit. *Id.* Mr. N. stated that Mr. X. corrected the error, redesignating his claimed state to Alaska "once it was caught." *Id.* The Division did not offer any evidence to rebut or contradict this statement.

24 *Division representative hearing testimony; L. X. hearing testimony*.

Mr. X. testified during the hearing that the Florida residency designation in his Florida Air National Guard records was not attributable to a conscious decision on his part.[25] As Mr. X. explained, he took great care to maintain his Alaska residency and avoid establishing residency in another state. In this regard, it is important to note that the Florida Air National Guard does not require Florida residency as a predicate to employment.[26] Mr. X. has been consistent on these points throughout the appeal and investigative process.[27]

Another topic addressed during the evidentiary hearing was the cumulative duration of N. X.'s physical presence in Alaska during the 2019-2023 timeframe. A previously unnoticed fact that came to the attention of the Division's representative during Mr. X.'s testimony was the issuance of a driver's instruction permit to N. on July 23, 2023. When Mr. X. was questioned about this, he testified that he had traveled to Alaska with N. from July 23 through August 1 of that year, and that N. had obtained his Alaska driver's instruction permit during that trip.[28] Immediately following the hearing, Mr. X. submitted an image of his son's Alaska instruction permit which corroborated this fact. The Division's representative testified during the hearing that if the time N. spent in Alaska in 2023 was added to N.'s other visits to the state in the relevant period, this "pushed him over" the 30-day cumulative physical presence requirement.[29]

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25 *L. X. hearing testimony* (1:36:27--2:07:34).

26 *L. X. hearing testimony*.

27 Exhibit 4, p. 5 (same statement to PFD operations manager Bigelow, October 2024); Exhibit 4, p. 1 (same statement to DOR Inv. Lane; February 7, 2025); Exhibit 11, p. 2 (same statement to this office in request for formal appeal, April 2025).

28 Exhibit 11, p. 4.

29 *Division representative hearing testimony.*

III. Discussion

A. Burden of proof.

In proceedings before this office, the person requesting the hearing has the burden of proving that the appealed government action is incorrect by a preponderance of the evidence.[30] This standard applies to the first two issues presented here regarding L. X.'s eligibility. With regard to N. X.'s eligibility, Mr. X. must prove an error on the Division's part by clear and convincing evidence.[31]

B. The declaration of Florida residency in Mr. X.'s Florida Air National Guard payroll records resulted from an administrative error.

To qualify for an Alaska PFD, an applicant must establish and maintain Alaska residency for the entire qualifying year.[32] Generally, a person must physically reside in Alaska to be eligible for a PFD. But certain long-term absences are allowed, including for active military service.[33] Even for individuals in the military, however, a claim of sister state residency on payroll records is usually a disqualifying fact.[34] To account for the possibility of clerical mistakes in those records, the Division has adopted a regulation which provides that an erroneous payroll entry may be cured by submission of a statement of a person with specific knowledge establishing administrative error. The regulation has a "savings clause"– specifically governing errors in personnel records. This regulation provides,

> [I]f the individual claims an error … the individual must submit a sworn statement from the personnel officer who has specific knowledge that the personnel office made an error, …in processing the individual's personnel records …[35]

Questions of PFD eligibility hinging upon military payroll records are frequently encountered in appeals such as this. Where a sister state payroll declaration is based upon administrative error, this office's prior decisions have typically resolved the issue in the applicant's favor -- even where that conclusion rested upon a reasonable inference drawn in the applicant's

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30 15 AAC 05.030(h) and 2 AAC 64.290(c).
31 AS 43.23.008(d)(1)&(2).
32 AS 43.23.005.
33 AS 43.23.008(a)(3).
34 15 AAC 23.143(d)(2).
35 15 AAC 23.143(d)(2)(B).

favor. For example, in *In re K.W.B.*[36] the Division's denial of a military member's PFD application was reversed based upon evidence showing that the applicant's leave and earnings statement (LES), which listed another state as the applicant's state of residence, had been automatically populated by default to be consistent with the home state where he had enlisted.[37] A similar outcome is found in *In re S.P.S.*,[38] where a military member was granted a PFD based upon evidence that an erroneous entry in the applicant's LES was caused by someone in a Navy personnel office mistakenly typing "AZ" rather than "AK" when preparing his payroll records.

In contrast, denials of PFD applications have been upheld in cases where a military member failed to timely update the state of residence shown in their payrolls following a transfer to Alaska, even if this resulted from understandable confusion on the applicant's part. One such case is *In re L.&T.R.*,[39] where a military applicant who took substantial steps to establish Alaska residency failed to update his state of residence on his DD Form 2058 based upon incorrect advice from Army officials. Because this oversight could not be attributed to an error made in processing the applicant's payroll records, the Division's denial was upheld.[40]

The facts of this case are closely aligned with those in *K.W.B.* and *S.P.S.* Here, Mr. X. testified in a credible manner that he did not initiate a declaration of Florida residency in his Florida Air National Guard payroll records. He submitted an official memorandum from the payroll administrator who actually handled his payroll in-processing in 2019 from which it can be concluded the declaration of Florida residency was not an intentional act by Mr. X..[41] Instead, Mr.

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36 *In re K.W.B.*, OAH No. 09-0366-PFD (Dep't of Revenue 2009) (available at: https://aws.state.ak.us/OAH/ Decision/ Display?rec=5408).

37 Similar to the facts here, the applicant's DD Form 2058 was never located, and the applicant testified that he did not initiate a claim of residence in another state.

38 *In re S.P.S.*, OAH No. 09-0512-PFD (Dep't of Revenue 2009) (available at: https://aws.state.ak.us/OAH/Decision/Display?rec=5446). This was another case where the applicant's DD Form 2058 could not be located, yet there was testimony he did not initiate the sister state entry.

39 *In re L.&T.R.*, OAH No. 23-0483-PFD (Dep't of Revenue 2023).

40 *See also In re B.S.,* OAH No. 22-0748-PFD (Dep't of Revenue 2022) (available at: https://aws.state.ak.us/OAH/Decision/Display?rec=6847) (affirming denial of a PFD application submitted by a military member who failed to change the state of residence on his LES until part way through the qualifying year).

41 While Mr. N.'s memorandum does not appear to have been sworn before a notary, by all appearances it is an official Department of the Air Force document which, on its face, declares that it is "submitted in accordance with Section 15 Alaska Administrative Code (AAC) 23.143(d)(2)(B)." Exhibit 11, p. 3. The Division's position statement and testimony of its hearing representative repeatedly described the N. statement as "sworn" and accorded it commensurate value. *Division position statement*, June 9, 2025, at p. 8; *Division representative hearing testimony*, at 54:20, 1:06:54, 1:25:50, and 2:55:37 (referring

N.'s conclusion that the declaration of Florida residency was most likely "linked to" Mr. X.'s local physical address rather than his intended state of legal residence resonates with the clerical errors described in *K.W.B*. and *S.B.S.*

Nor does the record disclose that Mr. X. had any motive to declare Florida residency. His position with the Florida Air National Guard did not require Florida residency, nor did he seek or obtain an economic benefit available only to Florida residents. He denied taking any steps that would have been consistent with Florida residency, such as voter or motor vehicle registration. His testimony on these points was both credible and uncontradicted.

Accordingly, Mr. X. has satisfied his burden to establish, by a preponderance of the evidence, that the declaration of Florida residency in the payroll records filled out during his 2019 in-processing was attributable to administrative error.[42]

C. Mr. X.'s response to question 7-B on his 2024 on-line application was not untruthful.

As mentioned above, the Division faulted Mr. X. for his response to question 7-B on his 2024 on-line PFD application. The 2024 on-line web application posed this question:

> "Since December 2022, ***for tax purposes*** did you claim residency in another state or country in your employment records." (emphasis added)

In advance of the hearing the Division's representative independently researched the phrasing of the 2024 application question, compared it to the pertinent regulation, and concluded that the clause, "for tax purposes" represents phrasing not found in the applicable regulation.[43]

For most applicants, the clause "for tax purposes" would probably not make a substantive difference. However, for applicants like Mr. X., this clause makes a substantial difference. An applicant in Mr. X.'s position could legitimately conclude that, because neither Alaska nor Florida has a state income tax or a withholding scheme, the truthful answer to this question would be "no"

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to the statement as "sworn" at each point and assigning determinative value to it). This substantially complies with the regulation's requirement for a "sworn statement from the personnel officer who has specific knowledge that the personnel office made an error . . . in processing the individual's personnel records." *See Jones v. Short*, 696 P.2d 665, 667 n.10 (Alaska 1985) ("…substantial compliance involves conduct which falls short of strict compliance [] but which affords the public the same protection that strict compliance would offer.").

42 15 AAC 23.143(d)(2)(B).

43 *Division position statement*, at p. 4 (contrasting the question as it appears on the 2024 web application with the pertinent regulation, found at 15 AAC 23.143(d)(2)).

– regardless of what his payroll records showed.[44] And, in fact, this is how X. answered the question.

During the June 2025 hearing, X. testified that when he clicked "no" on his on-line application, he believed he was answering as truthfully as he could, "because I didn't pay taxes in Florida. So... I answered correctly…"[45] Mr. X.'s assessment of this question was shared by the Division's representative, who noted that an applicant moving from Alaska to another state without a personal income tax would reasonably be expected to answer this question in the negative – and that answer would be truthful.[46]

Accordingly, Mr. X. has established, by a preponderance of the evidence, that his answer to question 7-B on his 2024 PFD on-line application was truthful.

D. N. X.'s eligibility.

As mentioned above, the Division denied N. X.'s 2024 application because it had concluded that N. had failed to satisfy the "30 days within five years" rule.[47] However, as the Division's representative noted during the hearing, N. satisfied the requirements of this rule once his July 2023 Alaska travel is counted in his favor. Given the credible and unrefuted testimony from Mr. X. regarding this trip, and the copy of N.'s instruction permit that was provided after the hearing, there is clear and convincing evidence establishing that N. was present in Alaska in July 2023 and that he satisfies the statutory physical presence requirement.[48]

E. Evidence regarding the criminal investigation of Mr. X. does not alter the outcome here.

As detailed above, the Department of Revenue pursued a criminal investigation of Mr. X.'s relating to his 2019-23 PFD applications. An investigator was assigned in August 2024.[49] The information offered by the Division regarding this investigation in this hearing was limited, consisting of the one-page investigative report prepared by DOR Inv. Lane, along with several related emails.[50] In his brief report, Inv. Lane described an interview with Mr. X. that occurred on

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44 *Division representative hearing testimony*, at 1:13:06.

45 *X. testimony,* at 1:43:30-1:45:33).

46 *Division representative hearing testimony*, at 50:09. This concession by the Division appears well founded.

47 AS 43.23.008(d)(1).

48 *Id.*

49 Exhibit 4, p.1.

50 Exhibit 4, pgs. 1-3.

Friday, February 7, 2025.[51] In that interview, Mr. X. advised that he had been unaware that his Florida Air National Guard payroll records reflected Florida as his state of residence.[52] It does not appear that Inv. Lane advised X. how to establish that an administrative error had occurred in the processing of his records.

In a follow-up email sent on February 12, 2025, Inv. Lane advised Mr. X. that a state prosecutor had agreed to resolve matters through a pre-charging agreement calling for a payment of restitution.[53] Mr. X. responded that he would accept that agreement.[54] However, the specific terms of this agreement are not detailed in this email, or addressed in Inv. Lane's report. During the hearing, Mr. X. testified that the precise terms of this agreement were never reduced to writing, aside from this email exchange[55]

The Division's position statement expressly invited this tribunal's attention to the criminal investigation of Mr. X.'s 2019-23 applications.[56] However, those applications are not before this office in this appeal.[57]

The emails regarding the pre-charging agreement are likewise of little assistance here. While it is clear that Mr. X. viewed the payment of restitution as preferrable to subjecting himself to a criminal prosecution,[58] by itself this email exchange does not rebut or foreclose any of the arguments that Mr. X. has presented here.[59] It is also important to note that, with regard to those

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51 Exhibit 4, p. 1. There is no indication in this record of any investigative activity prior to this February 2025 interview.

52 *Id*.

53 Exhibit 4, at p. 2.

54 *Id.*

55 Nor, based upon the evidence developed at this hearing, does it appear that X.'s negotiations with the prosecution office progressed as far as formal deferred entry of judgment or deferred sentencing agreement. *X. hearing testimony*; *see also* Alaska R.Crim.P. 11; AS 12.55.078 (generally).

56 *Division position statement*, June 9, 2025, pgs. 7-8.

57 While Inv. Lane's brief report was submitted by the Division as an exhibit, nobody from the Department's criminal investigations staff was called as a witness. There is no indication that Mr. X. made any incriminating admissions to Inv. Lane, and the limited information provided in the report is entirely consistent with Mr. X.'s hearing testimony.

58 Given the costs and stress inherent in any criminal prosecution, it seems likely that many individuals would be willing to pay a sum amounting to less than $10,000 to avoid being subjected to one. The logic of doing so would be even more compelling for an individual whose career or professional reputation could be harmed by a criminal charge -- regardless of whether the matter was ultimately dismissed or ended with an acquittal.

59 Indeed, whether Mr. X. even entered into a legally enforceable agreement to pay restitution is unclear given the absence of a signed, written agreement setting out why, when, and how this payment was to occur, or precisely defining the scope of the government's commitment to forego prosecution.

past PFD applications, Mr. X. did not have any right to pursue an administrative appeal such as this. Thus, his apparent willingness to pay restitution to avoid a criminal prosecution does not constitute an acknowledgment of wrongdoing in the context of this proceeding.

Thus, even if it were presumed that Mr. X. entered into a binding agreement to repay PFD's received between 2019 and 2023, this fails to rebut the sworn testimony and exhibits offered in this matter. The cumulative weight of the evidence presented in this matter provides more than ample basis for concluding that Mr. X. did not provide a false answer to the questions that were posed in the electronic applications for the 2024 PFD that he filed on behalf of himself and his minor son.

It should be noted that this tribunal does not have the jurisdictional authority to address the validity or enforceability of the pre-charging agreement referenced in the Division's exhibits. The extent to which this decision has any effect on the issues surrounding the criminal investigation is a matter that is left to the sound discretion of the Department.

IV. Conclusion

For the reasons explained above, Mr. X. has established he and his son were eligible for the 2024 PFD. Accordingly, the Division's decision to deny those applications is REVERSED.

DATED this 25th day of July 2025.

SIGNED
James Fayette
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 28th day of August 2025

By: SIGNED
Signature
James Fayette
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.]