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

In the Matter of	)	
	)	
M. D.	)	OAH No. 23-0408-PFD
	)	
2022 Permanent Fund Dividend	)	

DECISION

I. Introduction

M. L. D. of City A., Alaska applied for a 2022 Permanent Fund Dividend (PFD) by online filing. The Permanent Fund Dividend Division (Division) denied his application because his cumulative absences from Alaska exceeded 180 days and did not fall within the exceptions expressly permitted by statute, and therefore was not an allowable absence.

Mr. D. appealed the denial. In his appeal he conceded he was absent from Alaska for a total of 276 days in 2021.[1] Mr. D. explained his absences were for his employment as a civilian contractor with the United States Air Force Pacific Region Support Command on Island A."[2] The Division denied Mr. D.'s informal appeal, and Mr. D. filed a formal appeal by correspondence which was referred to the Office of Administrative Hearings (OAH).

Mr. D.'s absences from Alaska during 2021 were not allowable absences. For this reason, the Division's denial of Mr. D.'s 2022 PFD application is affirmed.

II. Facts

M. L. D. is a 42-year-old resident of City A.[3] He was not a member of the armed forces in 2021-22.[4] Mr. D. agrees he was absent from the state for 276 days in 2021.[5]

The Division denied Mr. D.'s application because he was absent from Alaska for more than 180 days without an applicable exception.[6] In Mr. D.'s informal appeal, he affirmed the facts in the denial letter and provided no additional documents.[7] Mr. D. provided two additional facts to support his appeal.

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1 Ex. 6.
2 Ex. 5, p. 2.
3 Ex. 1, p. 1.
4 Ex. 1, p. 1., *Cf.* AS 43.23.011(c).
5 Ex. 5, p. 2.
6 *Id.*
7 Ex. 3, p. 2.

Fact 1: “my home is in Alaska. I have lived in Alaska for 10 years”

Fact 2: “I work for an Alaska Native Corp. on a [government] contract”.[8]

Mr. D.’s informal appeal was unsuccessful.[9] On June 15, 2023, Mr. D. requested a formal hearing by correspondence, received by the Division on June 19, 2023.[10] That appeal conceded all the Division’s alleged facts, except fact 2. The Division’s fact 2 alleged;

“On October 7, 2022, your application was denied because you were absent for 276 days due to a reason not provided for by the Alaska laws that govern the PFD program, your employment as a truck driver. Your denial letter said you would need to provide proof you were not absent from Alaska for more than 180 days during 2021 or that your absence is allowable (provided for in Alaska law) along with your timely appeal request in order to be reconsidered for the 2022 PFD.”[11]

Mr. D.’s objection stated, “I was the site operations manager for ASRC Federal ISS2 contract on Island A.”

Under the “ISSUES” section of his request, he further explained:

“ [Island] A. is not a state. It is a U.S. held land. While I was not working in the State of Alaska, my employer and contract headquarters, and two of the sites for the ISS2 contract between ASRC Federal and the US.A.F. Pacific Region support command (PRSC) are located in Anchorage, Alaska. I believe that due to these facts that I should be eligible for my [dividend].”[12]

By notice dated June 28, 2023, Mr. D. was given until July 28, 2023 to send any additional documents or correspondence for consideration in this formal appeal. The PFD Division was given the same deadline. Each party was given until August 11, 2023 to respond to any documents received from the other. The Division filed a position statement with exhibits. Mr. D. filed nothing.

III. Discussion

The qualifying year for the 2022 PFD was 2021. In order to be eligible for the 2022 PFD, Mr. D. needed to be physically present in the state or, if absent, absent only as allowed in AS 43.23.008.[13] AS 43.23.008 allows absences from the state for applicants as long as the cumulative absences do not exceed 180 days, or fit into one of 17 allowable exemptions.[14]

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8 Ex. 3, p. 2.
9 *Id.*
10 Ex. 5, p. 1.
11 Ex. 4, p. 1.
12 Ex. 5, p. 2.
13 AS 43.23.005(a)(6)
14 43.23.008(a)(17)

Mr. D. argues that his absences occurred while he was working remotely for an employer that is an Alaskan Native Corporation headquartered in Anchorage. [15] As 43.23.005(a)(6) requires an applicant's physical presence in Alaska, the location of Mr. D.'s employer, while he was working remotely, is not relevant to establishing his physical presence in the state.

Mr. D. does not dispute his absence from Alaska was for more than 180 days, nor does he point directly to any of the 17 allowable absences.[16] In applying for the 2022 PFD, Mr. D. argues that while he was absent for 276 days, his absences were for his employment as a civilian contractor with the United States Air Force Pacific Region Support Command on Island A.[17]

While Mr. D. does not specifically claim this exemption, Alaska law establishes that if "a member of the armed forces" is deployed, their absence from the state is permissible for purposes of PFD eligibility.[18] 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."[19] Alaska law is clear that this narrow exception is only available to active-duty members of the armed forces.[20] Civilian employees do not fall within the definition of those covered by this exception.[21] Regardless of Mr. D.'s job duties, where he performed his duties, or who he performed those duties for, his status as a civilian contractor with the United States Air Force Pacific Region Support Command does not make him a member of the armed forces. Therefore, by remaining outside the state for more than 180 days in 2021, Mr. D. lost his eligibility for the 2022 dividend.

The Department of Revenue is bound by the statutes laid down by the Legislature and by its own regulations, which require the Department to deny an application for a dividend if an applicant is absent from the state for more than 180 days, unless they meet very specific exemptions. Under the law, the Department of Revenue has no discretion in this matter, and it cannot grant Mr. D. a dividend. As such, Mr. D. is not eligible for the 2022 PFD.

IV. Conclusion

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15 Ex. 3 p. 2, Ex. 5 p. 2.

16 Ex. 1 p. 5.

17 Ex. 5 p. 2.

18 AS 43.23.008 (a)(3).

19 *In re K.D.*, OAH No. 09-0014-PFD (Comm'r of Revenue, July 2009);

20 *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); *In re S.U.,* OAH No. 19-0812-PFD (Comm'r of Revenue, January 2020).

21 *In re S.U.,* OAH No. 19-0812-PFD (Comm'r of Revenue, January 2020).

As Mr. D.'s cumulative absences from the state exceed 180 days in 2021 and none of the exceptions in AS 43.23.008(a) apply, the Department of Revenue cannot grant M.L.D a dividend for 2022. This decision does not affect his ability to qualify in 2023 or future years.

DATED: August 31, 2023.

Signed
Eric Salinger
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 26th day of September, 2023.

By: *Signed*
Eric Salinger
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]