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

In the Matter of	)	
	)	
E. N. X.	)	OAH No. 23-0611-PFD
	)	

DECISION

I. INTRODUCTION

The Permanent Fund Dividend Division ("Division") denied a 2022 Permanent Fund Dividend ("PFD") for E. X. because her personnel records for Air Force Reserve service listed Colorado as a state for withholding state income tax. Ms. X. has never lived in Colorado and was living and working in Alaska throughout the 2021 qualifying year. Claiming residency in another state on personnel record, however, can make a person ineligible for a PFD and the Division determined that Ms. X. did not provide sufficient documentation to show Colorado was included on her personnel records in error. The issue here, however, is not one of error or delay by a personnel office in processing a non-Alaska residency claim, but the absence of a non-Alaska residency claim. The evidence shows Ms. X. never affirmatively claimed Colorado residency. Because she did not claim out of state residency, the appearance of Colorado residency on her personnel records alone does not bar her eligibility under these particular circumstances. Accordingly, the Division's decision is reversed.

II. FACTS

E. X. moved to Alaska in 2010 and had been receiving PFDs for many years. For the entirety of 2021, the qualifying year for a 2022 PFD, Ms. X. lived in Alaska, working for the United States Veteran's Affairs Department.[1] Ms. X. also served in the United States Air Force Reserve as a chaplain candidate in 2021.[2] Her reserve service in 2021 consisted of three weeks of training in Arizona during the summer.[3] The Air Force paid Ms. X. $1354 for her three weeks of service.[4] The Leave and Earnings Statement for this payment includes a notation of "SITW (CO)," indicating state income tax withholding for Colorado.

1 X. testimony.
2 *Id.*
3 *Id.*; Ex. 10 at 3; Ex. 15 at 2.
4 Ex. 2 at 3.

The Division denied Ms. X.'s 2022 PFD application because she "claimed residency in employment records outside of Alaska" during 2021.[5] Ms. X. requested an informal appeal, arguing that she had not claimed Colorado residency.[6] She submitted pay records from her Veteran's Affair job for June and early July 2021, the period when she was completing her reserve service.[7] These records do not show any withholding for state income taxes for Colorado or any other state.[8]

Ms. X. submitted a memorandum from an Air Force financial operations representative certifying that the Air Force had no record of a DD 2058 — State of Legal Residence Certificate — for Ms. X.[9] The representative further explained that when there is no DD 2058, "the location of our finance office which is Base A in City A, CO is used as the default."[10] On informal appeal, the Division again found Ms. X. ineligible because she had claimed residency in another state on personnel records, citing a lack of proper documentation to demonstrate the Colorado residency notation on her records was an error.[11]

Ms. X. requested this formal appeal. A hearing was held on October 31, 2023.

III. DISCUSSION

A person is not eligible for a PFD if they "claimed or maintained a claim of residency in another state or country in the individual's employment personnel records."[12] If the claim was the result of personnel office error or delay, a person can demonstrate they would have been eligible absent that error or delay by submitting either a certified request to change residency or an affidavit from the personnel office acknowledging its error.[13]

It is readily apparent from the record and from hearing testimony that the Division worked diligently with Ms. X. throughout the review and appeal process to provide her with information and request documentation that would support her application. Ms. X. provided what she could and what she understood would show eligibility — in particular the letter from

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5 Ex. 3.
6 Ex. 5.
7 Ex. 5 at 4-9.
8 *Id.*
9 Ex. 10 at 3. Ms. X. subsequently completed a DD 2058 dated June 1, 2022, listing Alaska as her state of residence. Ex. 7 at 17. Because it was not completed after the 2021 qualifying year, this document is not relevant to Ms. X.'s eligibility for a 2022 PFD.
10 *Id.*
11 Ex. 11. The Division raised other issues, but those issues were no longer at issue as of this formal appeal.
12 15 AAC 23.143(d)(2).
13 *Id.*

the Air Force explaining that it had no DD 2058 State of Legal Residence Certificate on file and therefore the Air Force assigned Colorado as Ms. X.'s state of residence by default. The Division contends this letter does not meet the regulatory requirements to demonstrate a personnel office processing error.

What Ms. X. is claiming, though, is not an error in how the personnel office processed a residency claim. The requirements for documenting an error thus do not fit the facts here. What Ms. X. contends is that while Colorado appears on her Air Force Reserves personnel records, she never claimed Colorado residency. Thus there was never a DD 2058 for the personnel office to process incorrectly or untimely.

The regulation at issue states that a person is ineligible if they "claimed or maintained a claim" of residency outside Alaska. The words "claim" and "maintain" indicate an affirmative action by the applicant. What we have here is a lack of action by Ms. X. She did not claim Colorado residency. And she did not have a prior claim of Colorado residency that she maintained for 2021. It was the Air Force that designated Colorado as Ms. X.'s state of residency in her personnel records without action by Ms. X.

The Division points to a prior case where a person was found ineligible for a PFD for failure to timely change their residency to Alaska on their personnel records.[14] But there, the applicant had made an affirmative claim of residency out of state and maintained it during the relevant time prior by not timely changing residency. Here, Ms. X. never made a residency claim. Nor would a Colorado residency claim have been factually accurate, considering that Ms. X. has never lived in Colorado.[15] The only affirmative residency claim she made here was for her fulltime Veteran's Affairs job, where her personnel records show no income tax withholding for Colorado or any other state. And while it would be possible for a person to simultaneously have two jobs and submit paperwork to claim residency in different states for each job, that is not what happened here.

Thus while the Division is correct that Ms. X. has not submitted the necessary documentation to demonstrate an error, the issue here is not error or delay by a personnel office

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14 In re SC, OAH 15-1520-PFD (Commissioner Revenue 2016).

15 Ex. 15 at 26. The propriety of withholding Colorado state income tax for a nonresident's military service is unclear, but well beyond the scope of this decision. *See* Colo. Rev. Stat. Ann. § 39-22-109(2)(a) ("Colorado nonresident federal adjusted gross income means that part of the individual's federal adjusted gross income . . . derived from sources within Colorado"), (2)(b) ("Compensation paid by the United States for service in the armed forces of the United States performed by an individual not domiciled in Colorado shall not constitute income derived from sources within Colorado").

in processing a non-Alaska residency claim but the absence of a non-Alaska residency claim. The Division was right to question Ms. X.'s eligibility based on her personnel records, right to request relevant documentation, and right to question the sufficiency of that documentation. But a threshold issue is whether Ms. X. herself ever affirmatively claimed Colorado residency. The evidence shows she did not. Accordingly, the Colorado residency notation on her personnel records does not bar her from a 2022 PFD.

IV. CONCLUSION

Because Ms. X. did not claim Colorado residency for purposes of her personnel records for the qualifying year, the Air Force's act of withholding Colorado state tax does not bar her from a 2022 PFD. The Division's decision is reversed.

Dated: November 1, 2023

Signed

Rebecca Kruse
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 November, 2023.

By: *Signed*
Rebecca Kruse
Administrative Law Judge