

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

In the Matter of	)	
	)	
G Z	)	OAH No. 15-0443-PFD
	)	Agency No. 2014-024-6468
<u>2014 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

The Permanent Fund Dividend Division (Division) denied G Z’s application for a 2014 Permanent Fund Dividend (PFD). The Division denied his application because it believes Mr. Z concealed reportable absences and misrepresented his whereabouts at the time of application.<sup>1</sup> The evidence at the formal hearing showed that the Division’s decision to deny Mr. Z’s 2014 PFD application was correct.

**II. Facts**

G Z emigrated from China and is now a naturalized United States citizen. Mr. Z is well-educated. He obtained an undergraduate degree from a university in China, a Master of Economics from the University of Mississippi, and was a doctoral candidate for four years at the University of North Carolina.

He is also an entrepreneur. His business focuses on scrap metal and environmental clean up and requires that he return to China for extended periods of time.

The qualifying year for the 2014 PFD is 2013. In 2013, Mr. Z agrees that he was in China for at least 174 days and that he traveled in the United States for at least another 10-12 days in 2013, bringing his total days absent from Alaska in 2013 to at least 184 days.

He filed his 2014 PFD application online while he was physically in Lexington, Kentucky on January 29, 2014. On this application he represented that he was “physically present in Alaska today,” and he denied that he was “gone from Alaska more than 90 days total” or that he was “gone from Alaska more than 180 days total” in 2013.<sup>2</sup> The application prominently informs an applicant that “failure to disclose reportable absences constitutes fraud.”<sup>3</sup>

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<sup>1</sup> The Informal Appeal Decision identifies two issues. The arguments at hearing focused on the concealment of absences and misrepresenting his whereabouts at the time of application. Mr. Z agreed to have these issues included in the formal hearing.

<sup>2</sup> Ex. 1, p. 1 (application); Ex. 13 (screen print of questions presented to applicant when applying online).

<sup>3</sup> Ex. 13 (screen print of questions presented to applicant when applying online).

Mr. Z agrees that these are his answers and that he now understands that they are not correct. He gave several explanations of how these false answers came about: he “did not take the application seriously” and he did not “pay much attention” to the application so he answered “casually” resulting in “mistakes.”<sup>4</sup> When asked why he did not report his absences, Mr. Z explained that he is a citizen, was always coming back to Alaska, and was only gone for short periods of time on business.

### **III. Discussion**

Because this is an application for a PFD and Mr. Z requested the hearing, he has the burden of proving that he is eligible for the 2014 PFD.<sup>5</sup> The Division denied Mr. Z’s application because he was not allowably absent and because he intentionally provided deceptive information.

#### *A. Mr. Z Is Not Eligible For A 2014 PFD Because He Was Not Allowably Absent.*

There are several requirements that must be met before a person is eligible for a PFD. One of these requirements for a PFD is that a person be physically present in Alaska throughout the qualifying year unless allowably absent.<sup>6</sup> There are 17 allowable absences listed at AS 43.23.008. Mr. Z was absent on business. There is no allowable absence specifically for conducting business. Mr. Z’s absences, if allowable, would be allowable under the absence not to exceed 180 days for any reason provided the absence was consistent with maintaining Alaska residency.<sup>7</sup> Mr. Z does not dispute that he was that he was absent from Alaska over 180 days in 2013. Therefore he is not eligible for a 2014 PFD.

#### *B. Mr. Z Intentionally Provided Deceptive Information.*

It is important to the integrity of the PFD program that answers given on PFD applications be accurate. The application asks about current location and about absences totaling more than 90 days and more than 180 days so that the PFD Division can evaluate circumstances that may affect residence or eligibility. Those who do not report their location or their absences interfere with the Division’s ability to perform this task.

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<sup>4</sup> Testimony of G. Z.

<sup>5</sup> 15 AAC 05.030(h).

<sup>6</sup> AS 43.23.005(6).

<sup>7</sup> AS 43.23.008(a)(17)(A).

The Department of Revenue has adopted a regulation directing that it “will deny an application if the department determines that an individual has intentionally provided deceptive information such as failing to disclose a reportable absence to the department.”<sup>8</sup> Mr. Z admits that the answers he gave regarding his physical location and the number of days absent in the qualifying year were inaccurate. The central question is whether Mr. Z intended to deceive the Division.

The truth of the matter seems to be that Mr. Z simply did not care if his answers were accurate. He admits that he did not pay attention to the questions asked so he made mistakes on the application. He admits that he did not take the PFD application process seriously so he was “casual” in the attention he paid to the questions.

Mr. Z is a highly educated business man. It is more likely than not that he answered in a manner that he thought would deter closer examination of his application and avoid additional paper work. To answer as he did required that he read and understood the questions he was answering. This is evidenced by the answers Mr. Z provided on his application.

The PFD application, to be eligible, requires the applicant answer some questions yes and some no. The two questions immediately preceding the questions regarding absences were answered “yes” and Mr. Z went from answering “yes” to answering “no” when asked about absences exceeding 90 days and 180 days “no.” Therefore, it is more likely true than not true that he read the questions and intentionally answered “no.”

Mr. Z testified that one absence was for three months and then there were other absences for varying lengths of time. A reasonable person in Mr. Z’s position would realize they had been absent for 90 days. Had Mr. Z reported his 90 day absence, his argument that he was careless when failing to report a 180 day absence on his application would be plausible. However, under the facts of this case, his testimony and explanations are not credible.

When, as here, one gives false information because of a reckless indifference to whether it is true or false, the misrepresentation is intentional.<sup>9</sup> Mr. Z gave deceptive answers because he was reckless. By his own admission did not take the application process seriously. Therefore, he “intentionally provided deception information” within the meaning of that phrase in the regulation. Accordingly, the 2014 applications must be denied.

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<sup>8</sup> 15 AAC 23.103(j).

<sup>9</sup> See, e.g., *Jones v. Koons Automotive, Inc.*, 752 F. Supp. 2d 670, 686 (D. Md. 2010).

#### IV. Conclusion

The decision of the Permanent Fund Dividend Division to deny the application of G Z for a 2014 Permanent Fund Dividend is AFFIRMED.

DATED: June 8, 2015

*Signed*  
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Rebecca L. Pauli  
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 6<sup>th</sup> day of July, 2015.

By: *Signed*  
\_\_\_\_\_  
Signature  
Christopher Kennedy  
\_\_\_\_\_  
Name  
Deputy Chief Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication.]