

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

RECEIVED

ALASKA DEPARTMENT OF REVENUE

Kari Wilson, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 State of Alaska, Commissioner )  
 of Revenue, )  
 )  
 Appellee. )

MAY 10 2002

COMMISSIONER'S OFFICE  
FORMAL HEARING SECTION

Case No. 3AN-01-7747 CI

MEMORANDUM OF DECISION

Kari Wilson appeals a decision from the Department of Revenue denying her a Permanent Fund Dividend for 2000.

I. **FACTS**

Kari Wilson was born and raised in Alaska and now attends school at Oregon State University (OSU). Wilson is enrolled in a five-year engineering program. As part of the graduation requirements, each student must complete two internships. Wilson had a six-month internship in 1999. The internship paid a salary and, during that time, Wilson was not officially enrolled at OSU nor did she receive actual university credits for her internship.

During 1999, Wilson was absent from Alaska for 332 days. From January 4, 1999 to March 19, 1999 (74 days), she was enrolled at OSU as a full-time student. From March 20, 1999 to July 30, 1999 (132 days) she was participating in an internship. From August 9, 1999 to September 26, 1999 (48

days) she was absent from Alaska and not enrolled at OSU or participating in an internship. From September 27, 1999 to December 10, 1999 (74 days) Wilson was enrolled at OSU as a full-time student. From December 11, 1999 to December 27, 1999 (16 days) she was absent from Alaska and not enrolled at OSU or participating in an internship. From December 28, 1999 to December 31, 1999 (3 days) she was enrolled at OSU as a full-time student.

To summarize, during 1999 Wilson was enrolled as a full-time student at OSU for 151 days, was participating in an internship for 132 days and was absent from Alaska and not enrolled as a full-time student or participating in an internship for 64 days. Wilson's status during the remaining 18 days in 1999 is unaccounted in the record.

Wilson applied for a 2000 Alaska Permanent Fund Dividend (PFD) and the Department of Revenue (department) rejected her application on the grounds that she was absent from the state for a period of time exceeding the maximum allowable under the PFD statutes and regulations.

Wilson appealed the rejection and an informal appeal decision was issued on November 30, 2000 affirming the initial rejection. In that decision, the administrator determined that Wilson was absent from the state in 1999 more than 180 days and that the internship did not qualify for an education exemption because she was paid and was not enrolled at OSU.

Wilson requested and received a formal hearing which was held on February 26, 2001. A decision affirming the initial rejection was issued on April 20, 2001. Wilson timely filed a motion for reconsideration which was denied by the Deputy Commissioner of Revenue on May 9, 2001.

Wilson appeals.

## II. ISSUES

1. Did the agency correctly interpret and apply the PFD statutes and regulations.
2. Does evidence in the record support the hearing officer's decision that Wilson was absent from the state for an amount of time exceeding the maximum allowable under the PFD statutes and regulations?

## III. STANDARD OF REVIEW

The Alaska Supreme Court has recognized four principal standards of review of administrative decisions. "The substantial evidence test is used for questions of fact. The reasonable basis test is used for questions of law involving agency expertise. The substitution of judgment test is used for questions of law where no expertise is involved. The reasonable and not arbitrary test is used for review of administrative regulations." Handley v. State, Dept of Revenue, 838 P.2d 1231, 1233 (Alaska 1992).

Here, the court is presented with questions of fact and questions of law involving agency expertise.

When a court is presented with questions of fact, the substantial evidence test applies. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. The court need only determine whether such evidence exists, and not choose between competing inferences. Interior Paint Co. v. Rogers, 522 P.2d 164, 170 (Alaska 1974). "We do not evaluate the strength of the evidence, but merely note its presence." Matinuska-Susitna Borough v. Hammond, 726 P.2d 166, 179 fn. 26 (Alaska 1986).

When a court is presented with a question of law involving agency expertise, the reasonable basis test applies. The reasonable basis test is used when an agency's interpretation of statutory and regulatory terms "implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions." Id. at 175. When applying this test, the court merely seeks to determine whether the agency's decision is supported by the facts and has a reasonable basis in law, even if the court may not agree with the agency's ultimate determination. Kelly v. Zamarello, 486 P.2d 906, 918 (Alaska 1971); Tesoro Alaska Petro v. Kenai Pipe Line, 746 P.2d 896, 903 (Alaska 1987).

#### IV. DISCUSSION

The issue presented to the agency was whether enrollment in an internship program required by an out-of-state engineering program is more like work, which is not an allowable absence, or more like post-secondary education, which is an allowable absence. If the internship is more like work, as the agency concluded, then Wilson was out of state more than the maximum days allowed under the PFD statutes and regulations. If the internship is more like post-secondary education, then the absence may be allowable and Wilson may not have exceeded the maximum allowable time out of the state.

Wilson contends that she should be eligible for the 2000 PFD unless proven ineligible. She bases this contention on the assumption that a person is innocent until proven guilty. This conclusion is incorrect. The regulations state that the burden of proof rests on the individual claiming an allowable absence. 15 AAC 23.173(i). Wilson does not challenge the regulation as being unconstitutional or beyond the scope of rule making authority of the department. The legislature has granted the department broad authority to adopt regulations to determine eligibility of applicants for the PFD. The Alaska Supreme Court has consistently upheld the authority of the department. State, Department of Revenue v. Cosio, 858 P.2d

621, 625 (Alaska 1993); State, Department of Revenue v. Bradley, 896 P.2d 237, 240 (Alaska 1995).

The concept of "innocent until proven guilty" is an allocation of the burden of proof in a criminal trial. The state, in a criminal prosecution, has the burden of proving each element of a crime in order for there to be a conviction. This is not a criminal matter and it is not an issue of being guilty or innocent. Therefore, the regulations properly place the burden of proof upon Wilson.

Wilson first argues that during 1999, she was a full-time student the entire year and, therefore, she was absent from Alaska for a valid and allowable post-secondary education program.

To receive a dividend, the individual must be eligible. To be eligible, the individual must apply to the department; be a state resident when applying; have been a state resident during the entire qualifying year; and have been present in the in the state for 72 consecutive hours during the previous two years. AS 43.23.005. In addition the applicant must be physically present in the state at all times during the qualifying year or, if absent, the absence must be allowable pursuant to AS 43.23.008. Id.

Among other reasons, absences are allowable if the individual was absent while receiving post-secondary education on a full-time basis or receiving vocational, professional or other specific education on a full-time

basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state. AS 43.23.008(a). Absences also are excused for any reason consistent with the individual's intent to remain a state resident, provided the absences or cumulative absences do not exceed 120 days in addition to any absence or cumulative absences for full-time education or vocational training programs. AS 43.23.008(a)(14).

Here, Wilson was enrolled at OSU on a full-time basis, for 151 days. These are allowable absences. She was participating in an internship for 132 days and was absent from the state and not enrolled at OSU or participating in an internship for 64 days. If the internship is counted as either post-secondary education on a full-time basis or vocational, professional or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state, then Wilson was absent from the state for only 66 days without an allowable excuse. If the internship does not fit one of these categories, then she was absent from the state for 196 days without an allowable excuse and she does not qualify for a PFD.

The administrator determined that the internship did not qualify under any of the categories of allowable

absences and rejected Wilson's claim. This determination involved a question of law involving agency expertise (determining the legal definition of "enrolled at a post-secondary program on a full-time basis) and a question of fact (whether, in fact, the internship fit the definition).

In reviewing the administrator's determination of the legal definition of "enrolled at a post-secondary program on a full-time basis," the court merely seeks to determine whether the decision is supported by the facts and has a reasonable basis in law, even if the court may not agree with the ultimate determination. Kelly v. Zamarello, 486 P.2d 906, 918 (Alaska 1971); Tesoro Alaska Petro v. Kenai Pipe Line, 746 P.2d 896, 903 (Alaska 1987).

The administrator defined post-secondary education by quoting 15 AAC 23.163(c)(1) which reads, in part, that "receiving secondary or postsecondary education on a full-time basis means...enrollment and attendance in good standing as a full-time student at a college, university, or junior or community college." The administrator further stated that the best reading of the rules is that an individual is a full-time student when seated in a classroom a specific number of hours in a defined course with the resulting credit showing up on a transcript.

It is true, as Wilson argues, that there are many untraditional ways of attending a university that vary from the administrator's definition of full-time student. The

definition is a policy decision and within the realm of the agency and legislature. A line must be drawn somewhere. The line drawn by the administrator's definition limits the allowable student absence to a traditional academic setting. That is, coursework that is part of an academic institution's program, a classroom setting, instruction and supervision by academic faculty of the institution, a minimum instruction period and, the award of academic credit on a permanent institutional record for successful completion of the course.

This definition is a reasonable one because it is readily understood and the education program can be measured relatively easily by the agency. Excluding other educational pursuits is reasonable because, otherwise, the exceptions for education could potentially swallow the rule. For example, an individual might claim that out-of-state employment was an allowable absence because they learned something while employed, or an individual who spent a year abroad might claim that they were learning a foreign language and therefore the absence from the state would be allowable. Limits must be made and the limits here are reasonable in light of the statutes and regulations.

The court applies the substantial evidence test when reviewing the administrator's determination that Wilson's internship was not the same as being enrolled full-time at a university.

The administrator did concede that whether the internship is the equivalent of being enrolled at a university full-time is a close call but decided that the internship was more like paid employment and less like enrollment and attendance in good standing at a university. The record supports this conclusion. Wilson was required to participate in the internship to obtain her degree from OSU, but Wilson was paid for her work through the regular company payroll. Further, Wilson was not enrolled at OSU from March 19, 1999 to September 26, 1999. A letter from Gary P. Peterson, the program coordinator at OSU, states that the engineering program required Wilson to complete two internships but that no credit is associated with the internships and the students are not enrolled at OSU while on their internship assignments. Substantial evidence in the record supports the administrator's findings that the internship was not the equivalent of full-time enrollment at a university.

Wilson next argues that the administrator's decision was inconsistent. She claims that the administrator agreed with many of her statements and stated that it was a close call but ruled against her anyway. She further claims that the internship did not benefit the company that provided her an intern position.

First, as noted earlier, the burden of proof was on Wilson to present enough evidence to convince the

administrator that she was eligible for the PFD. While the administrator did agree with many of her assertions, those assertions did not overcome the evidence in the record. Second, there is nothing in the applicable statutes or regulations indicating that an employer must benefit from an employee. The claim that the employer did not benefit is only one consideration, and it is doubtful at that. The administrator might have recognized that a firm that pays an advanced engineering student for her full-time work likely benefits monetarily, or in its public relations, or in its recruiting. Considering the record as a whole, substantial evidence supports the administrator's final determination.

Next, Wilson argues that the agency discriminates against OSU and any student opting for the OSU engineering program. A dividend is merely an economic interest and therefore entitled only to minimum protection under an equal protection analysis. Because an individual's interest in a PFD is at the low end of the sliding scale, the State need only show that the distinctions drawn bear a fair and substantial relationship to the statute's objectives. State v. Anthony, 810 P.2d 155,158-59 (Alaska 1991).

The statutes involved state that the agency shall set procedures to determine the eligibility for a PFD. AS 43.23.015. Setting a specific amount of time allowed outside the state and specific allowable absences from the state bears a substantial relationship to the statute's

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objectives. In Bradley, the Court held that the provision requiring students to be enrolled full-time was a permissible regulation as it "appropriately adds content to the standard set forth in the statute." Bradley, 896 P.2d at 239-40. Here, the regulation in question is similar to the one in Bradley. Both draw a defined line between what type of education receives an allowable absence and what type does not. In Bradley, it was part-time and full-time education at issue and here, it is traditional and untraditional education. The statutes in question do not unlawfully discriminate.

Wilson next argues that the "commissioner" brought up new arguments in his denial of the motion for reconsideration. Specifically, Wilson feels that it was unfair for the "commissioner" to state that the office has "...consistently interpreted and enforced the applicable statutes and regulations in this case to exclude paid internships as an allowable absence on the same basis as full-time enrollment in school." Wilson confuses reflection upon earlier administrative decisions with a new argument. While it is true that there are no citations to any decisions supporting this statement, the statement does not constitute a new argument but is only a statement of the consistent policy and decision-making on this issue.

Next, Wilson argues that her required internship was vocational and technical training and was an allowable

absence under AS 43.23.008(a)(2) ("receiving vocational, professional, or other specific education on a full-time basis for which, as determined by the Alaska Commission on Postsecondary Education, a comparable program is not reasonably available in the state"). To support her claim, Wilson presents evidence that the National Accreditation Board for Engineering and Technology considers the internship a critical component of the requirements for her engineering degree. She further asserts that the "commissioner" did not have the technical background or credentials to claim that the internship was not full-time vocational-technical training as part of a career education program.

Even if Wilson is correct in all her assertions, the outcome remains the same. The internship may be vocational-technical training, but this is only the first part of the analysis. The second part is that the Alaska Commission on Postsecondary Education must determine that a comparable program is not reasonably available in the state and inform the department of such a finding. Here, nothing in the record indicates such a determination. Because the burden of proof is on Wilson, it was her responsibility to present this evidence to the department. She failed to do so. Therefore, the department was correct in denying her a dividend under AS 43.23.008(a)(2).

Finally, Wilson contends that another student from Alaska in her program was granted a dividend. Wilson made this assertion at the hearings but refused to divulge the recipient's name. The administrator refused to take this into consideration. Without the case in front of the administrator, there was no way for him to distinguish the cases. For the same reasons, the court will not consider this argument.

V. CONCLUSION

The agency definition of "enrolled at a post-secondary program on a full-time basis" is supported by the facts and has a reasonable basis in law. The agency determination that Wilson's internship did not qualify as post-secondary education is supported by substantial evidence in the record. Wilson was not present in Alaska and not enrolled as a full-time student for 196 days in 1999. This exceeds the 120 days allowed by the statutes and regulations.

The decision of the department is AFFIRMED.

DATED this 17<sup>th</sup> day of April, 2002, at Kodiak, Alaska.

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DONALD D. HOPWOOD  
SUPERIOR COURT JUDGE

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