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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

PETER EAGLE,)
Appellant,)
vs.)
STATE OF ALASKA, DEPARTMENT)
OF REVENUE,)
Appellee.)

) Superior Court No. 3AN-03-14150 Civil
) PFD Decision No. 030485

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ALASKA DEPT. OF REVENUE
PFD DIVISION
DIVIDEND APPEALS

Decision on Appeal

This appeal arises from a decision issued by the Department of Revenue, Permanent Fund Dividend Division on November 24, 2003. The Department denied Mr. Eagle's application for the 2003 permanent fund dividend. Mr. Eagle filed a timely appeal on December 22, 2003. The court has reviewed Appellant's brief filed December 15, 2004, Appellee's brief filed February 22, 2005, and Appellant's reply brief filed March 11, 2005. Oral argument was held on June 3, 2005. Mr. Eagle appeared personally and represented himself. The Department was represented by Mr. Poag, who appeared telephonically. This court has jurisdiction per AS 22.10.020(d), AS 43.23.015(g), and AS 44.62.560.

Facts

Mr. Eagle lived in Juneau, Alaska throughout his childhood and graduated from Juneau-Douglas High School in 1982. In 1986, Mr. Eagle joined the Navy and left the state. From 1986 until 1995, Mr. Eagle applied for and was granted an 'active duty' allowable absence provided in AS 43.23.008(a)(3) and continued to receive his permanent fund dividend. In 1995, the Department denied Mr. Eagle's application for the dividend, having determined that he did not overcome a

rebuttable presumption that he was no longer a resident of the state. Mr. Eagle did not appeal the decision and did not apply for PFDs from 1996 through 2002. During the period 1995-2002, Mr. Eagle came back to Alaska to visit once for approximately 2 weeks in July 1999. Tr. at 13-14. In 2002, Mr. Eagle was discharged from active duty. On October 21, 2002, he moved back to Alaska.

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Standard of Review

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There are four standards of review applied to administrative decisions: “the ‘substantial evidence’ test for questions of fact; the ‘reasonable basis’ test for questions of law involving agency expertise; the ‘substitution of judgment’ test for questions of law where no expertise is involved; [and] the ‘reasonable and not arbitrary’ test for review of administrative regulations.” Municipality of Anchorage, Police and Fire Retirement Bd. v. Coffey, 893 P.2d 722, 726 (Alaska 1995) (quoting Jager v. State, 537 P.2d 1100, 1107 n.23 (Alaska 1975)).

Application of the substitution of judgment standard means “that the court can substitute its judgment on a legal question that involves statutory interpretation or other legal issues where the courts have specialized knowledge and experience.” Bauder v. Alaska Airlines, Inc., 52 P.3d 166, 174 (Alaska 2002). See also Alyeska Pipeline Service Co. v. DeShong, 77 P.3d 1227, 1234 (Alaska 2003) (internal quotations omitted) (The substitution of judgment standard is “appropriate where the knowledge and experience of the agency is of little guidance to the court or where the case concerns statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge.”). Whether the

Servicemember's Civil Relief Act protects an active duty servicemember's state residency for purposes of the Alaska PFD is a question of law which the court reviews under the substitution of judgment standard.

The court reviews the Department's findings of fact under the substantial evidence standard. "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" DeYonge v. NANA/Marriott, 1 P.3d 90, 94 (Alaska 2000). On review, the court "will not reweigh conflicting evidence, determine witness credibility, or evaluate competing inferences from testimony because those functions are reserved to the [agency]." Robinson v. Municipality of Anchorage, 69 P.3d 489, 493 (Alaska 2003). "[E]ven where there is conflicting evidence, [the court] will uphold the [agency's] decision if it is supported by substantial evidence." Id.

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Discussion

AS 43.23.005 provides that an individual is eligible to receive the permanent fund dividend if, among other things, the individual was a "state resident during the entire qualifying year" and "was, at all times during the qualifying year, physically present in the state or, if absent, was absent only as allowed in AS 43.23.008." AS 43.23.008(a)(3) provides that "an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent . . . serving on active duty as a member of the armed forces of the United States." The administrative regulations state that an individual whose absence under AS 43.23.008 totals more than five years is

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“presumed not to have the intent to return to Alaska and remain indefinitely in Alaska and consequently that individual’s absence is not allowable.” 15 AAC

23.163(f). 15 AAC 23.163(g) lists a number of factors the Department considers when determining whether an individual who has been absent for more than five years has rebutted that presumption. In addition, 15 AAC 23.163(h) specifies the following for determining whether the presumption has been rebutted:

(1) the department will give greater weight to the claim of an individual who makes frequent voluntary return trips to Alaska during the period of the individual’s absence than to the claim of an individual who does not;

(2) the department will generally consider that an individual who has not been physically present in Alaska for at least 30 cumulative days during the past five years has not rebutted the presumption; however, this consideration does not apply if the individual shows to the department’s satisfaction that unavoidable circumstances prevented that individual from returning for at least 30 cumulative days during the past five years.

Mr. Eagle argues that the Servicemember’s Civil Relief Act protects an active duty servicemember’s domicile and state residency for any purpose while that servicemember is absent from that state while on active duty orders. See 50 App. U.S.C. §§ 501 et seq. Specifically, he cites to provisions that protect servicemembers’ residence and domicile for purposes of voting and taxation. The dividend is not part of the voting or taxing statutory schemes, but rather, an economic benefit provided to permanent residents of the state. It is well-established in Alaska law that “residency requirements for PFD eligibility may differ from other residency requirements.” State v. Andrade, 23 P.3d 58, 71-72 (Alaska 2001) (quoting Church v. State, Dep’t of Revenue, 973 P.2d 1125, 1129 (Alaska 1999)).

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Mr. Eagle also challenges both the State's adoption of varying definitions of "state resident" and the Department's adoption of the presumption that a servicemember does not intend to return to Alaska and remain indefinitely after a five-year absence, particularly in a case such as his where the servicemember spent his childhood in Alaska and does return to the state after being discharged from active duty. Mr. Eagle questions the soundness of the regulation stating that the presumption is not rebutted if the servicemember has not been physically present in the state for at least 30 cumulative days during the five years prior to submission of the PFD application. These arguments focus on why the law should be changed so that members of the military who leave Alaska for more than five years will not lose eligibility for continued annual permanent fund dividend payments. These arguments clearly reflect Mr. Eagle's sincerely held views, but they are properly directed to the legislature, not the court. It is the trial court's job to enforce the law as adopted by the legislature, not to re-write the law. See Church v. State, Dep't of Revenue, 973 P.2d 1125, 1129 (Alaska 1999) (legislature has given broad discretion to the Department of Revenue to define permanent resident). The record does not suggest that the Department exceeded its authority in adopting the subject definition and the court does not understand Mr. Eagle to be arguing that the Department exceeded its authority.

The Department concluded that Mr. Eagle does not qualify for a 2003 dividend because he was absent from the state for well over five years prior to submission of his 2003 PFD application and failed to rebut the presumption, with objective evidence, that he did not intend to return to Alaska and remain

indefinitely in Alaska. The court's review of the record shows that the Department's finding is supported by substantial evidence.

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Conclusion

The decision of the Department of Revenue is affirmed.

DATED 6/7/05

Morgan Christen

Morgan Christen

Superior Court Judge

I certify that on this 7 day of June, 2005, a true and correct copy of the foregoing was served by mail () fax () hand upon: Eagle; Poag; Dep't of Revenue

HW

Hilary Williams
Administrative Assistant