

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

In the Matter of)	
)	
H C)	OAH No. 16-1502-PFD
_____)	Agency No. 2016-022-6458

DECISION

I. Introduction

Coast Guard Lieutenant Commander H C was transferred to Alaska in June 2009. In January 2010, he filed a form with the Coast Guard to change his state of legal residence to Alaska. Because he filed this form after January 1st, he was not a resident for Permanent Fund Dividend purposes for the entire year of 2010. Therefore, he was not eligible for the 2011 dividend. When he applied for the 2011 dividend, the Permanent Fund Dividend Division rejected his application.

LCDR C appealed the denial to an informal conference. He sent the division two documents, both of which, if accurate and genuine Coast Guard documents, would have established that he was eligible for the 2011 dividend.

The division concluded that both of these documents were falsified documents that LCDR C created after the fact in an attempt to deceive the division into believing that he was eligible for a dividend. The division denied his informal appeal, and referred the case for criminal proceedings. After the criminal proceedings came to an end, the division issued an order imposing forfeiture and a fine for willfully filing misleading information in an attempt to establish eligibility for a dividend.

LCDR C appealed the informal conference decision and the order. He requested a formal hearing. The evidence at the hearing, however, showed that the two documents are more likely than not forged. The division's findings and order imposing penalties are affirmed.

II. Facts

In 2009, Lieutenant Commander H C was a search-and-rescue helicopter pilot with the United States Coast Guard. Although in early 2009 he was stationed in Oregon, he had received orders to transfer to the Coast Guard station in No Name A. He leased a home in No Name A before he arrived. He stepped off the ferry in No Name A on June 30, 2009. He enrolled his

children in school. He obtained an Alaska driver's license. He registered to vote. He looked forward to obtaining a resident's hunting and fishing license after he achieved residency status.¹

As part of its orientation to Alaska, the Coast Guard introduced new transfers to the Permanent Fund Dividend. According to LCDR C, he attentively watched the power-point presentation on eligibility for a dividend. He learned from the presentation what steps he must take in order to qualify for the dividend. He understood that he must take all steps to establish residency for a full qualifying year. For him, that meant he had to take these steps before 2010 in order to be eligible in 2011.²

LCDR C learned that a crucial step in the process was changing his state of legal residence form that was on file with the Department of Defense. In early 2009, that form designated his state of residence as Florida. He had not changed his residency after his move to Oregon because his long-term plans were in flux, and might involve a move back to the East Coast for further schooling. The military did not require that the form be updated with each transfer, and Florida had no income tax, which might have been a tax advantage over Oregon. LCDR C understood that in order to qualify for the 2011 dividend, he needed to submit a new state of legal residency form (called a DD-2058) to the Coast Guard before the end of 2009.

Whether LCDR C submitted a DD-2058 in 2009 is one of two primary issue in dispute in this case. LCDR C asserts that he submitted to the Coast Guard a DD-2058 designating Alaska as his state of residency on November 1, 2009. The division asserts that LCDR did not submit a DD-2058 to the Coast Guard until January 14, 2010. This question is of great importance because if the DD-2058 was not submitted until January 2010, LCDR C was not eligible for the 2011 PFD. Furthermore, and much more important here, it would mean that the November 2009 DD-2058 that LCDR C provided to the division in August 2011 could be a sham—a form that he created after the fact in an attempt to fool the division. If so, LCDR C committed an offense that could result in forfeiture and fines.

The second issue in dispute involves LCDR C's December 2009 leave-and-earnings statement. This statement is, essentially, a check stub. In 2009 and early 2010, the Coast Guard would mail this form to a service member when the service member's pay was electronically deposited in his or her bank account.³ Two different versions of LCDR C's December 2009

¹ LCDR C testimony.

² *Id.*

³ *Id.*

leave-and-earnings statement are in the record. One shows Florida as his state of legal residence. The other shows Alaska. Whether the Alaska version is a genuine Coast Guard record, or whether it is a forgery, is the second major issue in dispute. These two issues are discussed in detail below.

The undisputed facts in the record that will help resolve the disputes between the parties can be summarized as follows:

- Before January 2010, the administrative personnel in No Name A could make inputs to the Coast Guard personnel accounting system. After January 2010, however, the military implemented a significant change in personnel accounting software. After that date, all personnel records from No Name A were sent to the No Name B office for entry.⁴
- On January 14, 2010, LCDR C filed with the Coast Guard an updated DD-2058 (state of legal residence form) that established Alaska as his state of legal residence.⁵
- When the Coast Guard receives a new DD-2058 from a service member, it destroys the existing DD-2058. Here, as would be expected, the Coast Guard has no record of any DD-2058 for LCDR C dated before January 14, 2010.⁶
- The first official leave-and-earnings statement in the Coast Guard's records that reflected Alaska as LCDR C's state of legal residence was April 2010. His January-March 2010 statements all showed Florida as his state of legal residence.⁷
- The December 2009 leave-and-earnings statement that was sent to LCDR C in January 2010, and the electronic version of this statement that was accessed and printed subsequently by Coast Guard officials, show Florida as LCDR C's state of legal residence.⁸
- LCDR C filed an on-line application for a dividend on March 30, 2011.⁹
- LCDR C sent in supporting documents for his dividend application in April, including a copy of his December 2009 leave-and-earnings statement.¹⁰ The

⁴ LCDR C testimony.

⁵ Division Exhibit 6 at 22; LCDR C testimony.

⁶ Inv. Stendevad testimony; LCDR C testimony.

⁷ Division Exhibit 6 at 21; LCDR C testimony.

⁸ LCDR C testimony; Division Exhibit 6 at 8-9.

⁹ Division Exhibit 6 at 1-2.

¹⁰ Division Exhibit 6 at 7-13.

December statement he sent in showed that his state of legal residence was Florida.¹¹

- The division denied LCDR C's application because his state of legal residence was not Alaska for all of the qualifying year, 2010.¹² This denial was based on 15 AAC 23.143(d)(2), which requires that a person claiming residency in Alaska must not be claiming residency in another state on his or her official employment personnel records. Under this regulation, if LCDR C did not timely file a DD-2058 in 2009, he would not be eligible for a dividend in 2011.¹³
- In August 2011, LCDR C filed an informal appeal contesting the division's denial.¹⁴ He attached to this appeal a copy of a DD-2058 state of legal residence form dated November 1, 2009.¹⁵ This form, signed by "H M. C, LT, USCG" designated Alaska as his state of legal residence.
- He also attached to his informal appeal a copy of a leave-and-earnings statement for Lt. H M. C that was for December 01-31, 2009. This statement showed his state of residence to be Alaska.¹⁶
- Upon review of the two documents sent by LCDR C, the division determined that they were likely forgeries. It forwarded the file to the department's criminal investigation unit.
- After investigation, the District Attorney presented a criminal case against LCDR C to a grand jury. The grand jury returned an indictment for two counts of unsworn falsification in the first degree.¹⁷
- LCDR C filed a motion to quash the indictment. The superior court quashed the indictment without prejudice because the department's Investigator, Shawn Stendevad, had not informed the grand jury that the Coast Guard's practice would have been to dispose of the old DD-2058 form upon receipt of a new DD-2058

¹¹ LCDR C testimony; Division Exhibit 6 at 8-9.

¹² Division Exhibit 6 at 15.

¹³ LCDR C admits that if he did not file the DD-2058 until January 2010, he would not be eligible for the 2011 dividend. The division did not address whether LCDR C would be eligible for the 2011 if he had filed the DD-2058 in November 2009. Based on the evidence in the record, however, I conclude that if he had filed that form in 2009, he would be eligible for the 2011 dividend.

¹⁴ Division Exhibit 6 at 16-17.

¹⁵ Division Exhibit 6 at 19.

¹⁶ Division Exhibit 6 at 20.

¹⁷ Division Exhibit 5 at 34-37.

form. The grand jury might have been misled to think that the November 1, 2009, DD-2058 form was a forgery because the Coast Guard did not have a copy of it.¹⁸

- The District Attorney did not ask the grand jury to re-indict LCDR C.
- Because no criminal action was pending, the division resumed civil regulatory proceedings against LCDR C. On November 14, 2016, the division issued a “Notice of Action and Order of Penalties under AS 43.23.035.”¹⁹ The Notice charged two violations of AS 43.23.035(c); one for each of the two documents that the division concluded were false.
- LCDR C appealed and requested a hearing.²⁰

A hearing was held on February 7, 2017. James McGowan represented LCDR C. Robert Pearson represented the division. The arguments presented in the hearing are addressed below.

III. Discussion

The division has charged LCDR C with a violation of AS 43.23.035. Under that statute, the department may impose penalties if an applicant “wilfully misrepresents, exercises gross negligence with respect to, or recklessly disregards a material fact pertaining to, eligibility.”²¹ The penalties available under the statute include, “(1) forfeiture of the dividend; (2) imposition of a civil fine of up to \$3,000; and (3) loss of eligibility to receive the next five dividends following the forfeited dividend.”²² The division has requested that all three penalties be imposed against LCDR C. The basis for the division’s enforcement action is its allegation that the November 1, 2009, DD-2058 and the December 1-31, 2009, leave-and-earnings statements are falsified documents.

In response, LCDR C argues that he has done nothing wrong. He asserts that the documents in the record show he was qualified for the 2011 dividend. He asks that he be awarded all back dividends and not be subject to a fine.

Each side has put forward a version of the facts. The two versions are very different. Below, I will first describe the two versions. I will then explain which version I believe, and why.

¹⁸ Division Exhibit 6.

¹⁹ Division Exhibit 10.

²⁰ Division Exhibit 1.

²¹ AS 43.23.035(c).

²² *Id.*

A. What is LCDR C's version of the facts?²³

According to LCDR C, what happened is as follows:

LCDR C is a detail-oriented person. In operating a multi-million-dollar helicopter, and in running search-and-rescue operations upon which lives depend, he keeps a checklist of necessary tasks. He ensures that every item is checked off in full. In 2009, when he was applying for his dividend, he approached the application the same way he approaches flying his helicopter: He studied the issue, learned what was required, and then took steps to make sure that he met every detail.

In that regard, a first step was to prepare a new DD-2058 designating Alaska as his state of legal residence, and file it with the personnel office a full two months before necessary. On November 1, 2009, he pulled the DD-2058 form off of "webdocs." He typed in his information in an interactive portable document format (PDF), and then printed it. He signed it with a pen, not with his stamp. He then carefully kept a copy of that form for his records.²⁴ That form is in this record as Division Exhibit 6, page 19.

Later, in December, consistent with his detail-oriented approach, he went back to the administrative office. He had no reason for this visit other than to ensure that his records were in order before the end of the year.²⁵ He does not remember the exact date of this visit, but he recalls that it was before the holiday break.²⁶ While he was at the office, the Yeoman on duty at the administration office pulled up his December leave-and-earnings statement.²⁷ This form was not accessible by a service member like LCDR C. The Yeoman, however, had access to it. She then did a screen print of the information she had in front of her on that day in December. She handed the screen print to LCDR C. Although the month of December was not yet over, the screen print showed all of his earnings and deductions for the entire month of December. It also showed his leave balance as of December 31, 2009. This version of the December 2009 leave-

²³ The facts stated in this version are either drawn from the undisputed record described above or from LCDR C's testimony. The explanation for LCDR C's action is taken from both LCDR C's testimony and his counsel's closing argument. Although counsel's argument is not testimony and is not taken as fact, the *explanation* of the facts is what constitutes LCDR C's version.

²⁴ LCDR C testimony.

²⁵ *Id.*

²⁶ *Id.*

²⁷ According to Wikipedia, a "Yeoman" is an enlisted service member who performs administrative and clerical work. Available at: <https://en.wikipedia.org/wiki/Yeoman>.

and-earnings statement showed his state of residence as “AK.”²⁸ He carefully kept a copy of this screen print for his records. The screen print is in this record as Division Exhibit 6, page 20.

On January 14, 2010, when LCDR C received his mailed version of his December 2009 leave-and-earnings statement, he was surprised to see that it still showed “FL” as his state of legal residence. He remembers the day very well. It was a Thursday. He had been on a search-and-rescue mission that day. He was still wearing his flight suit when he opened his mail and discovered the discrepancy. He had his signature stamp in a zippered pocket of his flight suit. He called the personnel office. He went again to the personnel office to check with officials about the issue.²⁹

With regard to what happened at the administrative office, LCDR C does not remember whether the administrative Yeoman with whom he spoke pulled up his existing DD-2058 on her computer. He does not remember whether she advised him that it takes time to process a DD-2058. He says that he does remember very clearly, however, that he was told that the best thing for him to do at that time was to fill out a new DD-2058. The Yeoman printed a form for him. He filled it out, and signed the form using his signature stamp.³⁰

One year and three months later, on March 30, 2011, LCDR C applied for his 2011 permanent fund dividend. He knew he needed a check stub, a copy of his lease, and his birth certificate for his application. By this time, however, he had forgotten that he had preserved the two forms that he had obtained in November and December 2009. Instead, on April 1, he apparently obtained a copy of his December 2009 leave-and-earnings statement from the personnel office of the Coast Guard.³¹ This statement showed that his address in December 2009 was No Name A. It also showed, however, that his state of residence was Florida.

When he received in July the division’s decision denying his application for a dividend, he now remembered that he had, in fact, retained copies of the two records. In August, when he filed

²⁸ *Id.* LCDR C testified that the screen print was a document that he obtained “in December as a result of my DD-2058 that was entered in November.”

²⁹ *Id.*

³⁰ *Id.*

³¹ Division Exhibit 6 at 8. LCDR C testified that this exhibit is the document he sent to the division on April 1, 2011. When asked by his counsel whether this exhibit was the same document that had been mailed to his P.O. box, however, LCDR C’s response was at first unclear. Then he later agreed with counsel that it was. This exhibit, however, is date and time stamped “7:54:57 Friday, April 01, 2011.” Therefore, it could not be the version that was mailed to him. Still later, LCDR C conceded that because this document is time stamped, it appears that it was obtained from the administrative office of the Coast Guard, and was not, in fact, mailed to him.

his request for an informal conference, he sent the division a copy of the November 1, 2009, DD-2058 and of the mid-December “AK” version of the December 2009 leave-and-earnings statement.

LCDR C acknowledges the anomaly that the “AK” version of his December 2009 leave-and-earnings statement that he obtained in mid-December is the only version of the December 2009 statement that was updated to reflect his change of his home state to Alaska. He acknowledges that others may have difficulty explaining why this version said Alaska when the subsequent versions of the same statement continued to say Florida. In his view, however, this anomaly is explainable as a glitch in the system. The entire payroll accounting software system for the military was being replaced. That a change of residence showed up as fully entered and processed on a computer screen in No Name A in mid-December 2009 only to disappear and revert back to the former state of residence after the system changed should not be that surprising. Perhaps a No Name A official neglected to hit save or to upload the document into the full system. Perhaps the new software simply resurrected the old form. Whatever happened, in his opinion, it was not his fault, and he should not be held responsible for the failure.

B. What is the division’s version of the facts?

In the division’s view, the facts are as follows. LCDR C did not fill out a DD-2058 in 2009. Instead, he waited until January 14, 2010, to fill out the only DD-2058 that he ever filed with the Coast Guard in Alaska, which he filled out and filed on that day. Similarly, LCDR C did not obtain a screen print of his December 2009 leave-and-earnings statement in mid-December 2009 from a Yeoman at the Coast Guard administrative office. The only screen print of the December 2009 leave-and-earnings statement he obtained was the version in the record that he obtained on April 1, 2011.

The division believes that LCDR C fabricated the November 1, 2009, DD-2058 and the version of the December 2009 leave-and-earnings statement with a home state of “AK.” In its view, he fabricated these documents after receiving in July the denial of his 2011 dividend. He then attached them to his informal appeal filed in August 2011. The DD-2058 was, apparently, easy to fabricate—he could just prepare it by downloading the document in PDF and typing in “November 1, 2009.” The leave-and-earnings statement required more ingenuity. The Division’s theory is that LCDR C scanned in the December statement he had received from the Coast Guard administrative office. He then converted the resulting document into a Microsoft Word or other word processing format. Once he had the document in an addressable form, he changed “FL” to

“AK.” He may have also deleted some extraneous lines. He then printed that version of the leave-and-earnings statement, and the sham DD-2058, and sent both fabrications to the division.

C. Which version of the facts is more persuasive?

LCDR C argues that only his version of the facts is supported by direct evidence. He has given sworn testimony that his version of the two documents is the truth. In contrast, no one has testified to having first-hand knowledge that the documents were fabrications. The only witness called by the division was Investigator Shawn Stendevad. Inv. Stendevad testified that she was told by officials in the Coast Guard that the “AK” version of the December 2009 leave-and-earnings statement was not an official Coast Guard document. This testimony, however, is hearsay. Other than that hearsay evidence, the division did not have any testimony of the provenance of the documents or of wrongdoing by LCDR C. The division simply offered the circumstantial evidence that the existence of the two documents was hard to explain. From that circumstantial evidence, the division asks for an inference of fabrication.

In LCDR C’s view, this circumstantial evidence is not enough to overcome his sworn testimony. He argues that the lack of proof that the November 2009 DD-2058 is genuine is explainable because the Coast Guard would not have kept a copy of the November form after he filed the January DD-2058. As for the oddity that the mid-December screen print of the December 2009 leave-and-earnings statement showed “AK” even though the official January version still showed “FL,” he notes that strange things often happen with computer documents. He concludes that the existence of one unexplained document is not enough to overcome his sworn testimony.

The Alaska Supreme Court has held, however, that “[i]t is well settled that substantial evidence to support an administrative agency’s finding of fact may take the form of circumstantial evidence or indirect proof.”³² If the witness who gave the direct testimony is biased and unreliable, and the circumstantial evidence provides strong support for inferences contrary to the witness’s testimony, the agency should rely on the circumstantial evidence rather than the testimony.³³ The question of whether I believe LCDR C, or conclude that the circumstantial

³² *Commercial Fisheries Entry Comm’n, State of Alaska v. Baxter*, 806 P.2d 1373, 1375 (Alaska 1991).

³³ *Cf., e.g., Shea v. State, Dep’t of Admin., Div. of Ret. & Benefits*, 267 P.3d 624, 635 n.40 (Alaska 2011) (“although the substantial evidence test is highly deferential, the test ‘precludes affirmance of an agency finding in the extreme case where the evidence that detracts from the finding is dramatically disproportionate to the evidence that supports the finding, e.g., a finding based on the testimony of one obviously biased witness that is contradicted by the testimony of multiple unbiased witnesses or powerful documentary or circumstantial evidence.’” (quoting Richard Pierce, *Administrative Law Treatise* 979–80 (Wolters Kluwer Law & Bus., 5th ed. 2010))).

evidence outweighs his testimony, will require weighing his testimony against the inferences that can be drawn from the circumstantial evidence.

1. Is LCDR C's explanation for the mid-December version of the December 01-31, 2009, leave-and-earnings statement plausible?

LCDR C testified under oath that he obtained the "AK" version of the December 2009, leave-and-earnings statement from a Yeoman in mid-December before the holiday break. This testimony, however, is inherently implausible.

First, in mid-December, the data for his December 31 leave and earnings would not be complete. He would not yet have worked a full month. Whether he would report for work or take leave during the remaining time in December would be unknown. Yet, the numbers on the "AK" version of the statement precisely match the numbers on the final "FL" version of the December 01-31 leave-and-earnings statement. That final version was prepared after he had worked his last day, and taken his last day of leave (which was none) for December.³⁴ That the two versions should be precisely the same is inherently implausible.

No testimony was received from either party regarding when the Coast Guard prepares leave-and-earnings statements. LCDR C's version of the facts, however, requires me to make a logical leap that the Coast Guard prepares each month's leave-and-earnings statements in advance. Applying common sense, this seems unlikely. LCDR C has the burden of proving that he is eligible for a dividend.³⁵ Given that he is advocating a version of the facts that defies common sense, he must bring in evidence to show that, as unlikely as it appears, his version is, in fact, what happens. Here, he has not persuaded me that earnings and leave balances will be known before they are earned or accrued.

Second, the discrepancy between the "AK" version of the December 2009 statement and all subsequent versions of the December 2009 statement is strong evidence that the "AK" version is a fabrication.³⁶ LCDR C's explanation that unexplained things sometimes happen with

³⁴ Compare Exhibit 6 page 20 with Exhibit 6 pages 8-9. The two exhibits have precisely the same numbers for all categories of leave use and balance, net and gross income, and taxes withheld. The "AK" version (page 20), however, is missing a "t" in the word "amount" on its line 11. It has spacing that does not match the numbers. It is also missing his social security number. The social security number, however, may have been redacted for privacy purposes during these legal proceedings. Therefore, the missing SSN is not evidence of illicit tampering.

³⁵ 15 AAC 05.030(h).

³⁶ LCDR C testified that he received a version of the December 2009 leave-and-earnings statement in the mail on January 14, 2011. That version was an "FL" version. C testimony. A copy of that document, however, is not in the record. The record does contain a copy of the version that LCDR C obtained as a screen print from the administrative office on April 1, 2011, and sent to the division. Division Exhibit 6 at 8. That version of the December 2009 statement was also an "FL" version.

computers is merely a remotely possible, but not a likely, explanation. If, as he asserts, a No Name A Yeoman had been able to pull up a leave-and-earnings statement in December 2009 that said “AK,” we would expect that all subsequent versions of that statement would also say “AK.” Yet, it was not until April 2010 that his leave-and-earnings statement was changed to Alaska. Moreover, LCDR C explained that leave-and-earnings statements were prepared at an out-of-state centralized accounting facility. For a No Name A Yeoman to have overtyped a field on a leave-and-earnings statement would mean that the Yeoman had access to that field, which seems unlikely. In addition, for a low-ranking enlisted person to overtype a field on a document that is prepared at a centralized out-of-state accounting facility would appear to be a breach of protocol. Finally, such an act would be pointless because it would not advance LCDR C’s cause at all—it would merely be a fabricated document with no evidentiary value as to whether LCDR C had actually filed a genuine DD-2058. For all these reasons, by far the most likely explanation for the difference between the “AK” version of the 2009 statement and all other versions of the 2009 statement is that the “AK” version was a fabrication.

Third, LCDR C’s failure to file the “AK” version with his application in March 2011 strongly supports an inference that the “AK” version did not exist in March 2011. Under his version of the facts, his grave concern about qualifying for the dividend was the reason he made the extra trip to the administration office in December 2009. He claims he obtained a supporting document, which he saved. Then, in January 2010, he discovered a discrepancy which, in his testimony, conflicted with the document he had obtained in December. This would have alerted him to the fact that he had a problem. If he was as careful, cautious, knowledgeable, and concerned as he asks us to believe, he almost certainly would have remembered to send in the “AK” version in March 2011. True, as he argued, it was over one year later. But his lack of care in March 2011 is in such stark contrast to the extreme care and vigilance that he claims he took in November and December 2009, that one version of these events is almost certainly untrue. Because we know what he did with his supporting documents in March 2011, his version of what occurred in December 2009 is almost certainly false.

Fourth, LCDR C did not have a persuasive story for why he went to the administrative office in December. At the hearing, he explained that he went there in an excess of caution, just to make sure that his November 2009 DD-2058 had been processed. When interviewed by a Coast Guard investigator on April 7, 2015, however, LCDR C told a different story. He explained that “they (meaning the administrative office of the Coast Guard) ran” the leave-and-

earnings statement after he received a telephone call, apparently from the administrative office, telling him that the original DD-2058 had not taken:

And that's when they ran the LES. Or that's after they called, and said, "hey we still don't have you as an Alaska resident." And like, well, "I submitted it." And like, "well, we don't have that." And that's why it triggered this one again.³⁷

At the hearing, LCDR C no longer asserted that his visit to the administrative office in mid-December was triggered by a telephone call regarding his DD-2058.

Although this now-abandoned story of a telephone call triggering the screen print of the "AK" version could have been an innocent mistake in a stressful interview occurring many years after the event, this inconsistency adds to the doubt about LCDR C's version. In my view, the statement he made to the Coast Guard shows he recognized a weakness in his story: He had no reason for obtaining the screen print in mid-December 2009. He gave what seemed like a plausible reason—a telephone call—so that the Coast Guard investigator would gloss over the weakness. Spinning versions and explanations for events is a classic sign of a fabricated story, and this interview, while not conclusive, makes it more likely that LCDR C fabricated the "AK" version of the December 2009 statement.

Fifth, the appearance of the "AK" version of the December 2009 statement does not have any indicia that this is an official document obtained from the Coast Guard. As Inv. Stendevad pointed out, it does not have a date or time stamp, or the cues that we see on other official screen prints of leave-and-earnings statements obtained from the Coast Guard.³⁸ That the document is missing a "t" in the word "amount" on its line 11 indicates that it was altered from the fields that would be hard-coded into a leave-and-earnings statement. That it has peculiar spacing and a proportional font makes it unlikely that this document is a true screen print of a leave-and-earnings statement, which Inv. Stendevad testified would normally mimic what is actually on the computer screen. Finally, to the extent that Inv. Stendevad's testimony regarding what she was

³⁷ Unnumbered Division Exhibit (DVD of April 7, 2015, interview at approximately 9:20:50). Earlier in that interview, LCDR C had suggested that a call from the division had triggered the January 14, 2010, filing of the DD-2058. He admitted that this statement had to be inaccurate because the division would not have been aware of his presence until he filed his application in March 2011. In the statement quoted here, he appears to be referring to a different telephone call triggering the printing of the leave-and-earnings statement. This alleged call was apparently from the administrative office.

³⁸ Compare Division Exhibit 6 at 8-9; 21 with Division Exhibit 6 at 20. The verified versions of Coast Guard screen prints of leave-and-earnings statements have the following cues: "Type 6-digit date (YYYYMM) or press enter to continue or type 'E' to end." Inv. Stendevad explained that a true screen print would have cues such as these because they are cues giving direction to the operator.

told by the Coast Guard is entitled to weight, her statement that she was told that the “AK” version is not an official Coast Guard document is consistent with the evidence that the “AK” version has no indicia of authenticity.³⁹

Although in the absence of expert testimony I have no expertise in determining whether the document is a genuine Coast Guard document, the evidence shows that this document was altered from any version that would have appeared on a Coast Guard computer. Its appearance raises questions about its authenticity.

Based on the evidence in the record as a whole, and relying mostly on the inherent implausibility of LCDR C’s version of the facts, I conclude that the “AK” version of the December 2009 leave-and-earnings statement is not genuine.

2. Is LCDR C’s version of what occurred on January 14, 2010, plausible?

According to LCDR C, when he went to the administrative office on January 14, 2010, he was instructed to file a new DD-2058 even though he had already filed a DD-2058 on November 1, 2009. I find his testimony regarding what occurred on January 14, 2010, however, to be evidence that LCDR C never filed a DD-2058 in November 2009.

First, LCDR C testified that he was knowledgeable about the rules for dividend eligibility. That, he explained, was the reason he was so vigilant about filing the DD-2058 in November and then returning to the administrative office in December. If, however, he was as knowledgeable as he claims, and understood the importance of the DD-2058 being filed in 2009 (a crucial step for his eligibility), the last thing he would have done would have been to file a new DD-2058 in January 2010. That is the one thing that would have made him ineligible. A much more likely explanation for his conduct is that the reason he filed the DD-2058 in January 2010 is that he had never filed a DD-2058 in November.

Second, although LCDR C had a very good memory of what initially occurred on January 14, 2011, his memory was not so good when he was asked about how the administrative personnel responded to his inquiry about the prior form. We would expect that administrative personnel would search computer records to see if there was a record of his having filed a DD-2058 in November. We would also expect that they would let him know that it takes time for the

³⁹ LCDR C has asked that I give no weight to any testimony from Inv. Stendevad because, in his view, she misled the grand jury. I agree with LCDR C that Inv. Stendevad’s failure to be fully forthright with the grand jury undercuts her testimony, and I will give it less weight than I might otherwise. It does not, however, mean that her testimony is entitled to no weight. Moreover, here, the evidence against LCDR C is so strong that even if I disregard Inv. Stendevad’s testimony entirely, the outcome would be the same.

results of a DD-2058 filing to be entered into the system. LCDR C, however, has no memory of either having happened.

LCDR C's lack of memory of the Yeoman searching computer records for his November 2009 DD-2058 (when he remembers everything else so clearly) makes it less likely that he filed such a form. According to his testimony, the trip to the office in January 2010 was not made for the purpose of filing a new form. It was made for the purpose of finding out what happened to his old form. All he remembers, however, is the filing of the new form, and then signing it with the stamp that he had in the zippered pocket of his flight suit. If, as he testified, the purpose was to investigate the old form, he would have remembered the discussion of what happened to the old form.

Here, I believe LCDR C's testimony that he clearly remembers going to the office on January 14, and that he remembers filling out the form. What I do not believe, however, is that he went to the office for the purpose of inquiring about what happened to his old form. I believe he never filed the form in November, and that he went to the office on January 14, 2010, for the purpose of filing an Alaska DD-2058 for the first time.

Finally, if he had filed a DD-2058 on November 1, 2009, we would expect that on January 14, 2010, the No Name A Coast Guard's records would have some indication that he had already filed the form, even if his leave-and-earnings statement had not yet been updated at a central facility. If so, he would not have to file a duplicate form in January. Of course, we know that once he filed the new form on January 14, the old record would have been destroyed. That no record of his previous filing materialized on January 14, 2010, however, makes it more likely that no November 2009 DD-2058 ever existed. Thus, the evidence as a whole supports a conclusion that the November 1, 2009, DD-2058 (Division Exhibit 6 at 19) is a fabrication.

3. Does the strength of LCDR C's testimony outweigh the circumstantial evidence?

LCDR C has argued in this appeal that his sworn testimony outweighs the circumstantial evidence. He points to his career as a search-and-rescue helicopter pilot as evidence of his credibility. He further asserts that the alleged forgeries in this record are amateurish. Had a person with his professionalism set out to forge a leave-and-earnings statement, he would have done a much better job. He would not have submitted an amateurish statement that did not have the appearance of being an official document.

I have the utmost respect for search-and-rescue helicopter pilots. As a resident of Southeast Alaska, I am well aware of the courage and skill required for the breathtaking rescue operations they perform. Here, however, I must evaluate the evidence in this record without regard to my personal respect for the respondent's profession and his professional ability.

The evidence in the record demonstrates that LCDR C is not a reliable witness. In his informal appeal, LCDR C explained that "the residence certificate submitted was processed in November. But the change did not show up [on] the December LES[], it did show up on Jan. LES."⁴⁰ That statement is incorrect—the change to Alaska as his state of residence was not recorded on his January statement. In his interview with the Coast Guard investigator on April 17, 2015, he twice mentioned telephone calls as a reason for his trips to the administrative office. One call, in January 2011, was said to have been from the division, which he now admits was not possible. The source of the other call was not clear, although he implied that it was from the administrative office, and led to the printing of the "AK" version of the leave-and-earnings statement—a story he has since abandoned.

All of these inconsistencies mean that LCDR C is not reliable and not a credible witness. Moreover, he has a clear bias for giving self-serving testimony to protect his reputation and clear his name. Indeed, his testimony in this hearing has been entirely consistent with what we would expect from a person who has forged documents and submitted a false claim.

LCDR C's story simply does not square with the facts. Although he is obviously capable and meticulous when he chooses to be, here, he has not taken the Permanent Fund Dividend Division seriously. He first believed that filing a DD-2058 in January would be close enough for purposes of applying for the dividend the next year. Then he thought he could send the division a check stub with his address, and the division would not notice that it said "FL" as the state of residence. When the division invalidated him based on the "FL" designation, he quickly prepared two forged documents that he believed would be good enough to fool the division. He provided false information about his leave-and-earnings statements—apparently never expecting that the division would inquire further into the documents' authenticity. Then, when interviewed in 2015, he still never expected an in-depth investigation, and simply spun two stories of telephone calls as being the reasons for his actions in mid-December and early January.

In short, however meticulous LCDR C must be with his helicopter, he was sloppy when it came to applying for the dividend. Everything about his conduct, from his waiting until the last

⁴⁰ Division Exhibit 6 at 17.

minute in March to apply, to not attaching documentation that would verify his residency, to claiming that his January 2010 leave-and-earnings statement was the first to designate Alaska as his home state (when attaching a fabricated December 2009 “AK” version) is the opposite of the story he tells of a careful, meticulous, and knowledgeable applicant.

The division’s version of events, on the other hand, is completely consistent. The facts in this record are explained very simply. A new resident waited until January 2010 to change his employment form. He then carelessly falsified two documents in an attempt to backdate his residency. When caught, he recited implausible stories of the origin of the documents. This explanation of events fits the evidence. Rather than exonerating him, LCDR C’s testimony and explanation of events make clear that he willfully misrepresented a material fact pertaining to his eligibility in violation of AS 43.23.035(c) when he filed fabricated documents and represented that they were authentic.

4. Should the maximum penalties be imposed upon LCDR C?

The division imposed the maximum penalties available under the statute upon LCDR C. LCDR C did not argue mitigating circumstances or otherwise assert that if the facts showed he did violate AS 43.23.0135(c), he should receive a lesser penalty. The only argument for mitigation that I can see here is that, but for the technicality of his filing his DD-2058 14 days too late, LCDR C would have been eligible for the 2011 dividend. If this “form over substance” argument were accepted as a possible mitigating circumstance, we would be asked to accept that LCDR C’s action complied with the spirit of the law in that in substance he qualified as a resident even though in form he did not.

Even if LCDR C had made this argument (which he did not), I would not accept it. Residency has both technical and substantive requirements. Falsifying documents is a significant breach of the law that, when discovered, must be penalized and discouraged. Therefore, the division has met its burden to demonstrate the penalties it imposed were warranted and appropriate.

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IV. Conclusion and Order

H M. C committed two violations of AS 43.23.0135(c) when he falsified two documents and submitted them to the permanent fund dividend division with the expectation that the division would rely on the documents as genuine and award him a 2011 dividend. Therefore, Mr. C is ordered to

- (1) forfeit the 2011-2016 dividends; and
- (2) pay a civil fine of \$3,000.

DATED this 28th of February, 2017.

By: Signed _____
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Revenue and under the authority of AS 44.64.060(e)(1), I adopt 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 29th day of March, 2017.

By: Signed _____
Stephen C. Slotnick
Administrative Law Judge

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