

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Airman First Class JUSTIN K. ARAKI
United States Air Force**

ACM 38009

08 February 2012

Sentence adjudged 17 May 2011 by GCM convened at Andersen Air Force Base, Guam. Military Judge: Vance H. Spath (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 14 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Grover H. Baxley.

Appellate Counsel for the United States: Colonel Don M. Christensen.

Before

**ORR, GREGORY, and WEISS
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of possession and distribution of child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court-martial sentenced the appellant to a dishonorable discharge, confinement for 24 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. A pretrial agreement capped confinement at 14 months with no other limitations on sentence, and the parties agreed that, under the agreement, the convening authority could approve the sentence adjudged except for confinement in excess of 14 months.

The Action of the convening authority does not explicitly approve the adjudged dishonorable discharge but exempts a dishonorable discharge from execution: “[O]nly so

much of the sentence as provides for 14 months of confinement, forfeiture of all pay and allowances, and reduction to the grade of E-1 is approved and, *except for the dishonorable discharge*, will be executed.” (Emphasis added). The court-martial promulgating order mirrors the language in the Action. Such clerical errors show a lack of attention to detail but do not make the Action ambiguous where the surrounding documentation is sufficient to interpret an otherwise unclear Action. *Compare United States v. Politte*, 63 M.J. 24, 26 (C.A.A.F. 2006) (setting aside an ambiguous Action, while acknowledging that, at times, an unclear Action can be reasonably interpreted in light of adequate surrounding documentation), *with United States v. Loft*, 10 M.J. 266, 267-68 (C.M.A. 1981) (Although the convening authority did not expressly approve a bad-conduct discharge, his action in suspending it shows that approval of a bad-conduct discharge is the only reasonable interpretation.).

The surrounding documentation in the present case clearly shows the convening authority’s intent to approve a dishonorable discharge: the pretrial agreement permits approval of a punitive discharge, the parties agreed that the convening authority could approve the adjudged dishonorable discharge, and the staff judge advocate recommended that the convening authority approve the dishonorable discharge. Further, the Action itself excludes a dishonorable discharge from the order executing the approved sentence – an exclusion that makes no sense if a dishonorable discharge was not part of the approved sentence. As in *Loft*, we find that the only reasonable interpretation of the convening authority’s Action is approval of a dishonorable discharge, confinement for 14 months, forfeiture of all pay and allowances, and reduction to the grade of E-1.* To avoid these recurring clerical errors, staff judge advocates should consult the advice of our superior court. *See Politte*, 63 MJ at 26.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

* To correct these clerical errors, we direct the convening authority to withdraw the original Action and substitute a corrected Action. Rule for Courts-Martial (R.C.M.) 1107(g). We also direct publication of a corrected promulgating order. R.C.M. 1114; Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 10.10 (3 February 2010).

Accordingly, the findings and the sentence are

AFFIRMED.

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal and extends to the right.

STEVEN LUCAS
Clerk of the Court