

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JOSE P.O. DUVAL
United States Air Force

ACM S31472

26 November 2008

Sentence adjudged 09 February 2008 by SPCM convened at Travis Air Force Base, California. Military Judge: Charles Wiedie (sitting alone).

Approved sentence: Bad-conduct discharge, a fine of \$10,000.00, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Jeremy S. Weber.

Before

BRAND, FRANCIS, and JACKSON
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

Pursuant to the appellant's pleas, a military judge sitting as a special court-martial convicted him of one specification of divers larceny of military housing allowances,¹ one specification of divers larceny of travel reimbursement payments, two specifications of making false official statements, and one specification of failing to obey a lawful general regulation, in violation of Articles 121, 107, and 92, UCMJ, 10 U.S.C. §§ 921, 907, 892.²

¹ The appellant pled guilty to divers larceny of military housing allowances of a value in excess of \$500 but was found guilty of divers larceny of military housing allowances of a value less than \$500.

² The appellant pled and was found not guilty of disobeying a lawful order.

The military judge sentenced the appellant to a bad-conduct discharge, nine months confinement, a \$10,000 fine with three months contingent confinement if the fine is not paid, and a reduction to E-1. The convening authority approved the findings, the bad conduct discharge, the fine, and the reduction in rank.³ On appeal the appellant asks the Court to disapprove the \$10,000 fine or, in the alternative, grant other meaningful relief. The basis for his request is that he opines that the fine is inappropriately severe.⁴ Finding no error, we affirm.

Background

Between 9 June 2004 and 24 April 2007, the appellant submitted 34 fraudulent travel vouchers. The travel vouchers were fraudulent in that the appellant claimed and was paid more money than he was entitled to for his air travel. The appellant was able to trick the government into paying him money to which he was not entitled by claiming travel at the government travel rate where in reality he either used a reduced rate ticket that he purchased with his personal credit card or frequent flier miles to travel. As a result of the appellant's fraudulent travel vouchers, the government overpaid him approximately \$15,626.

On 17 August 2006, the appellant and his wife divorced. However, the appellant, who was receiving Basic Allowance for Housing (BAH) at a with-dependent rate, willfully failed to inform the base finance office of his change in dependent status. On 24 April 2007, Colonel (Retired) RK filed an Inspector General complaint alleging that the appellant was fraudulently receiving BAH at a with-dependent rate. On 27 June 2007, the Air Force Office of Special Investigations summoned the appellant to their offices for an interview.

After a proper rights advisement, the appellant waived his rights and confessed to fraudulently receiving BAH at a with-dependent rate. Following his questioning, the appellant informed the base finance office of his change in dependent status. As a result of the appellant's failure to timely change his dependent status, the government overpaid him \$2,190. On 16 July 2007, the appellant reimbursed the United States government \$2,190.

Inappropriately Severe Sentence

This Court reviews sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 383-84 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of his offenses, and the entire record

³ The appellant and the convening authority entered into a pretrial agreement wherein the appellant agreed to plead guilty in return for the convening authority's promise not to approve confinement if a bad-conduct discharge was adjudged or not to approve in excess of six months confinement if a bad-conduct discharge was not adjudged.

⁴ This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). The appellant, as a result of his fraudulent actions, was unjustly enriched by \$15,626. His fraudulent actions undermine his standing as a non-commissioned officer and seriously compromise his standing as a military member. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses of which he was found guilty, we do not find the appellant's sentence, a sentence that includes a \$10,000 fine, inappropriately severe.

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). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, YA-02, DAF
Clerk of the Court