

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Technical Sergeant TERRI S. KING  
United States Air Force

ACM S31434

26 November 2008

Sentence adjudged 30 October 2007 by SPCM convened at Osan Air Base, Republic of Korea. Military Judge: Gregory L. Friedland (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 106 days, forfeiture of \$860.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Michael A. Burnat

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Jeremy S. Weber, and Captain Michael T. Rakowski.

Before

BRAND, FRANCIS, and JACKSON  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIUM:

Pursuant to the appellant's pleas, a military judge sitting as a special court-martial convicted her of three specifications of making a false official statement and two specifications of larceny of military property, in violation of Articles 107 and 121, UCMJ, 10 U.S.C. §§ 907, 921. The military judge sentenced the appellant to a bad-conduct discharge, six months confinement, forfeiture of \$860 pay per month for six months, and a reduction to E-1. The convening authority approved the findings, the bad conduct discharge, 106 days confinement, the forfeitures, and the reduction in rank.<sup>1</sup> On

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<sup>1</sup> 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 in excess of five months.

appeal the appellant asks the Court to set aside the bad-conduct discharge or, in the alternative, grant other appropriate relief. The basis for her request is that she opines that the bad-conduct discharge is inappropriately severe.<sup>2</sup> Finding no error, we affirm.

### *Background*

On 22 August 2006, the appellant, in anticipation of her remote reassignment to Osan Air Base, Republic of Korea, moved her minor son and daughter to her parents' residence in Warren, Ohio. On 8 September 2006, the appellant arrived at Osan Air Base to begin her remote assignment. On 11 September 2006, the appellant filed permanent change of station (PCS) and government entitlement paperwork (a family separation allowance form, a PCS arrival worksheet, and a travel voucher) indicating her minor dependents resided in an apartment in Staten Island, New York, when they were actually residing with her parents in Warren, Ohio. As a result of the appellant's actions, the United States overpaid the appellant approximately \$5,400. Upon being discovered,<sup>3</sup> the appellant began repaying the United States the money she wrongfully obtained. By 31 July 2007, she had fully reimbursed the United States.

### *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 her offenses, and the entire record 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 defrauded the United States of approximately \$5,400 and clearly departed from the standards expected of non-commissioned officers and service members. 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 she was found guilty, we do not find the appellant's sentence, a sentence that includes a bad-conduct discharge, inappropriately severe.

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<sup>2</sup> This issue is filed pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>3</sup> The appellant's crimes were discovered as a result of an Air Force Office of Special Investigations (AFOSI) investigation of all overseas members claiming Basic Allowance for Housing in New York.

*Erroneous Promulgating Order*

Finally we note that Specification 3 of Charge I on the Court-Martial Order (CMO), dated 18 Jan 2008, erroneously references “children” rather than “dependents,” as reflected on the charge sheet. Preparation of a corrected CMO is hereby directed. *See United States v. Smith*, 30 M.J. 1022, 1028 (A.F.C.M.R. 1990).

*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