

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Captain JAMES L. SCHANK
United States Air Force

ACM 36803

14 January 2008

Sentence adjudged 6 March 2006 by GCM convened at Osan Air Base, Republic of Korea. Military Judge: Eric L. Dillow (sitting alone).

Approved sentence: Dismissal and confinement for 6 months.

Appellate Counsel for the Appellant: Lieutenant Colonel Mark R. Strickland and Major John N. Page III.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, Major Steven R. Kaufman, and Captain Jamie L. Mendelson.

Before

FRANCIS, SOYBEL, and BRAND
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

SOYBEL, Judge:

In accordance with his pleas the appellant was found guilty of failure to obey a lawful order, violation of a lawful general order; making a false official statement; and conduct unbecoming an officer, in violation of Articles 90, 92, 107, and 133 UCMJ, 10 U.S.C. §§ 890, 892, 907 and 933. He was sentenced to a dismissal and confinement for 10 months. The convening authority approved only so much of the sentence as provided for a dismissal and confinement for 6 months.

On appeal the appellant, a mission planner for the 5th Reconnaissance Squadron stationed at Osan AB, Korea, claims the military judge abused his discretion when he

accepted the appellant's guilty plea to violating a lawful general order by disclosing classified information to a foreign national not authorized access to the information. The crux of his argument is that information similar to that released by the appellant was already released by the government on unclassified personnel records relating to the appellant.

The lawful order with which the appellant is charged with violating is Executive Order 12,968, and reads in pertinent part:

Sec. 6.2. Employee Responsibilities.

(a) Employees who are granted eligibility for access to classified information shall:

- (1) protect classified information in their custody from unauthorized disclosure;
- (2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information;
- (3) report all violations of security regulations to the appropriate security officials; and
- (4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

Exec. Order No. 12,968, 60 Fed. Reg. 40,245 (Aug. 7, 1995).

Even assuming for the purposes of this appeal that the information released by the appellant is identical to that supposedly contained in his unclassified personnel record,^{*} that fact would not justify the appellant's release of the information. We have reviewed the executive order in question and it contains no exception for previously released information. Therefore, even if one person violated the order, that fact does not justify another person's subsequent violation.

^{*} It is not.

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, GS-11, DAF
Clerk of the Court