

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

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UNITED STATES

v.

Staff Sergeant TAMICA L. TALLEY  
United States Air Force

ACM 36863

11 October 2007

Sentence adjudged 16 August 2006 by GCM convened at Charleston Air Force Base, South Carolina. Military Judge: Carl Reed.

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

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Major Chadwick A. Conn.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Major Kimani R. Eason.

Before

WISE, BRAND, and HEIMANN  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with her pleas, the appellant was found guilty of dereliction of duty, larceny, wrongfully opening mail matter, wrongfully obtaining goods and services valued at more than \$1000 by using credit cards she fraudulently obtained in violation of 18 U.S.C. § 1029, and wrongfully possessing and using a means of identification of another with the intent to commit larceny in violation of 18 U.S.C. § 1029, all in violation of Articles 92, 121, and 134, UCMJ, 10 U.S.C. §§ 892, 921, 934. A panel of officers sentenced the appellant to a dishonorable discharge, confinement for 1 year, forfeiture of all pay and allowances, reduction to E-1, and a fine of \$5000 with confinement for 1 additional year if the fine was not paid. The convening authority approved only the dishonorable discharge, confinement for 1 year, forfeiture of all pay and allowances, and

reduction to E-1. He waived all automatic forfeitures for a period of six months to be paid to the appellant's mother for the benefit of the appellant's minor child.

We have examined the record of trial, the assignment of error, and the government's reply thereto. On appeal, the appellant contends that the convening authority's action did not follow the proper format for waiver of mandatory forfeitures as required by *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). The government concedes.

The convening authority ordered that mandatory forfeitures under Article 58b, UCMJ, 10 U.S.C. § 858b, be waived for a period of up to six months and paid to the appellant's mother for the benefit of the appellant's minor child, but did not modify the adjudged forfeiture of all pay and allowances. This action does not meet the requirements of *Emminizer*, 56 M.J. at 445, and, if left uncorrected, could create a liability for future recoupment action against the appellant or her mother. See *United States v. Lajauni*, 60 M.J. 280, 281 (C.A.A.F. 2004). We can eliminate that possibility, however, and cure the error at our level by disapproving the adjudged forfeitures. *United States v. Johnson*, 62 M.J. 31, 38 (C.A.A.F. 2005). We therefore reassess the sentence and approve only so much as provides for a dishonorable discharge, confinement for 1 year, and reduction to the grade of E-1.

#### *Conclusion*

The findings and sentence, as reassessed, 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); See *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence, as reassessed, are

AFFIRMED.

OFFICIAL



STEVEN LUCAS, GS-11, DAF  
Clerk of the Court