

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant MICHAEL A. VAN BIBBER
United States Air Force

ACM S30119

23 December 2003

Sentence adjudged 28 February 2002 by SPCM convened at Patrick Air Force Base, Florida. Military Judge: Thomas G. Crossan Jr. (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, forfeiture of \$500.00 pay per month for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Maria A. Fried.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major John D. Douglas.

Before

BRESLIN, ORR, and PETROW
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the appellant's assignment of error, and the government's reply thereto. Although the post-trial action is technically incorrect because it did not disapprove, modify, or suspend adjudged forfeitures, *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002), it clearly reflects the convening authority's intention to waive \$737.00 of the mandatory forfeiture of pay under Article 58b, UCMJ, 10 U.S.C. § 858b, for the benefit of the appellant's dependents. Furthermore, the record provides no basis to believe that the dependents were not paid. To the contrary, the appellant provided his leave and earning statement to this Court for the period in question. Those statements show that his dependents were paid. We hold that the action was effective; therefore, there is no cause to remand the case for a new action or to disapprove forfeitures. *United States v. Medina*, 59 M.J. 571 (A.F. Ct. Crim. App. 2003). See *United States v. Loft*, 10 M.J. 266, 268 (C.M.A. 1981) (holding that where the

convening authority's action is subject to only one interpretation, a supervisory authority is not required to return the record of court-martial to the convening authority for clarification).

On the basis of the entire record, we conclude the approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant was committed. 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

HEATHER D. LABE
Clerk of Court