

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman **BRANDON L. WOMACK**
United States Air Force

ACM S31212

3 October 2007

Sentence adjudged 23 August 2006 by SPCM convened at Hurlburt Field, Florida. Military Judge: Gary M. Jackson (sitting alone).

Approved sentence: Bad-conduct discharge, reduction to E-1, and a reprimand.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, and Captain John S. Fredland.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Daniel J. Breen.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of dereliction of duty,¹ one specification of making a false official statement, and one specification of larceny of military property valued over \$500.00, in violation of Articles 92, 107, and 121, UCMJ, 10 U.S.C. §§ 892, 907, 921. His approved sentence consists of a bad-conduct discharge, reduction to the grade of E-1, and a reprimand.

The appellant asserts that he is entitled to new post-trial processing or other meaningful relief because Lt Col A, the Staff Judge Advocate (SJA), was in the

¹ Although the appellant pled guilty to “willful” dereliction, he was convicted of “negligent” dereliction of duty.

courtroom during the trial and apparently advised the trial counsel on arguing an evidentiary issue,² but still signed the SJA Recommendation and the Addendum.

Background

In the post-trial submissions, the trial defense counsel objected to the SJA acting in this case. This was based upon actions by the SJA during the trial. At trial, the trial defense counsel objected to the admission of an enlisted performance report. The SJA and Chief of Military Justice were in the courtroom. According to the trial defense counsel, as trial counsel was responding to the objection,

it appeared the SJA and Chief of Justice began to quietly converse among themselves. The Chief of Justice next leaned over the bar and whispered something to the two trial counsel. Immediately thereafter the Government requested a break and the Military Judge granted it at approximately 1158 [for ten minutes]. At that time, the two government counsel, SJA, and Chief of Justice departed the courtroom. After departing, the four government attorneys *apparently* consulted on the issue. [Emphasis added.]

The appellant now argues that this alone, if in fact it occurred, is enough to disqualify the SJA based upon the SJA acting as “trial counsel.” In the addendum, the SJA informed the convening authority this issue was without merit. We agree with the SJA.

Discussion

Whether a SJA is disqualified from participating in the post-trial review is a question of law that we review *de novo*. *United States v. Taylor*, 60 M.J. 190, 194 (C.A.A.F. 2004). A SJA is disqualified if she or he has previously served in a conflicting capacity or has “other than an official interest in the same case.” Rule for Courts-Martial 1106(b) and its Discussion. The SJA, or legal officer, may supply general information to the trial counsel, “without having such advice transform him into a prosecutor so as to make him ineligible thereafter to advise the convening authority.” *United States v. Willis*, 46 C.M.R. 112, 114 (C.M.A. 1973). If there is extensive participation in a trial that would cause a disinterested observer to doubt the fairness of the post-trial proceedings, that person is disqualified. *United States v. Johnson-Saunders*, 48 M.J. 74, 75 (C.A.A.F. 1998). The defense has the burden of establishing a *prima facie* case that the SJA was disqualified. *Taylor*, 60 M.J. at 194. The appellant has failed to meet his burden.

² An argument which in fact failed.

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 findings and sentence are

AFFIRMED.

OFFICIAL



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