

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JECONIAH A. YEHUDAH
United States Air Force

ACM 37244

30 January 2009

Sentence adjudged 28 March 2008 by GCM convened at Aviano Air Base, Italy. Military Judge: Jennifer L. Cline (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 15 months, fine of \$10,000.00, and reduction to E-2.

Appellate Counsel for the Appellant: Major Shannon A. Bennett and Captain Maria J. Gillman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce and Major Jeremy S. Weber.

Before

FRANCIS, HEIMANN, and THOMPSON
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

THOMPSON, Judge:

Consistent with the appellant's pleas, a military judge sitting as a general court-martial convicted him of one charge and one specification of larceny, and one charge and six specifications of false official statement, in violation of Articles 121 and 107, UCMJ, 10 U.S.C. §§ 921, 907. The convening authority approved a sentence consisting of a bad-

conduct discharge, confinement for 15 months, reduction to E-2, and a fine of \$10,000.¹ The appellant asserts the sentence is inappropriately severe.² The appellant's assertion is without merit. Finding no error, we affirm.

Background

The appellant enlisted in the Air Force in October 2000 and was an aircraft maintenance airman. In May 2004, while enroute to an assignment to Osan Air Base, Korea, the appellant married Ms. MM. Upon his arrival in Korea in June 2004, the appellant reported that his wife and stepson resided in Colorado. One month later, the appellant reported his wife and stepson moved to a new residence in New York. As would be uncovered later, the appellant's wife and stepson never lived in New York and, in fact, never moved from their residence in Colorado. Because the appellant was serving overseas without his dependents, he was entitled to receive an additional housing allowance for the residence of his dependents. The housing allowance for the New York address was significantly higher than the housing allowance for the address in Colorado where his wife and stepson actually resided.

In June 2005, the appellant was reassigned to Aviano Air Base, Italy. During inprocessing, he reported his wife and stepson remained at the New York address and noted they were "staying in school" rather than accompanying him to Italy. The appellant was scheduled for another assignment to Korea in the summer of 2007. In preparation for the new assignment, in September 2006, the appellant reported on three different official forms that his wife and stepson lived in New York and would not be moving from their residence.

On 13 December 2006, a special agent from the Air Force Office of Special Investigations went to the residence listed by the appellant as the home of his wife and stepson. The special agent discovered the appellant's father lived at the listed address in New York and that the appellant's wife and stepson had never lived at that address. The next day, the appellant filled out an official form and changed the address of his wife from New York to Colorado. He wrote that his wife "moved back to Colorado on December 1st."

During the 28 months he continued this criminal scheme, the appellant received \$30,957 in housing allowance overpayments. He sent his wife a monthly allotment of \$100, and sent her an extra \$200 on two occasions. However, the overwhelming majority of the money was spent on items the appellant typically could not afford, such as jewelry, expensive clothing, and new Italian furniture. These overpayments to the appellant led to

¹ The military judge imposed a sentence of a bad-conduct discharge, confinement for 17 months, reduction to E-2, a fine of \$10,000, and to serve additional confinement of six months until said fine is paid. The convening authority reduced the sentence according to the terms of a pretrial agreement.

² This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

the larceny charge. The false official statement charges stemmed from documents the appellant filed in order to receive the excess payments.

Discussion

The appellant asserts the approved sentence is inappropriately severe. He points to his excellent duty record and the fact that he deployed to Iraq and served honorably. He notes his outstanding work, as shown by his performance reports, awards, and character letters from co-workers, supervisors, and family. He requests that this Court reassess the sentence.

We “may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as [we find] correct in law and fact and determine[], on the basis of the entire record, should be approved.” Article 66(c), UCMJ, 10 U.S.C. § 866(c). We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offenses, the appellant’s record of service, and all matters contained in the record of trial. *United States v. Healy*, 26 M.J. 394, 396 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982). We have a great deal of discretion in determining whether a particular sentence is appropriate, but are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *Healy*, 26 M.J. at 395-96.

After a careful review of the record of trial, to include the appellant’s post-trial submissions, we conclude the appellant’s sentence is not inappropriately severe. For twenty-eight months, the appellant lied about the true residence of his wife and stepson. In so doing, he received nearly \$31,000 in overpayments from the Air Force. Each time he received a paycheck, he benefited from his lies and criminal activity. He stopped only when he knew he was caught. The appellant’s good duty performance does not outweigh his egregious criminal conduct. The appellant admitted as much during his unsworn statement when he told the military judge “[m]y work was always top-notch. But, honestly, I should hand those ribbons over and those EPRs³ should not be fives, because they are lies, too. My command never knew that I was a fake, a good respectable Airman who always performed well. But, beneath their noses, I was stealing from them and everyone in the Air Force.” Considering the offenses committed by the appellant, and weighing the appellant’s service record and other matters properly contained within the record, the approved sentence is fair, just, and appropriate.

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;

³ Enlisted Performance Reports.

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