

**UNITED STATES NAVY-MARINE CORPS  
COURT OF CRIMINAL APPEALS  
WASHINGTON, D.C.**

**Before  
C.L. REISMEIER, F.D. MITCHELL, R.E. BEAL  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JEREMY K. NARE  
YEOMAN FIRST CLASS (E-6), U.S. NAVY**

**NMCCA 200900611  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 30 June 2009.

**Military Judge:** CDR Bethany Payton-O'Brien, JAGC, USN.

**Convening Authority:** Commanding Officer, Naval Air  
Station, Lemoore, CA.

**Staff Judge Advocate's Recommendation:** LT L.A. Connel,  
JAGC, USN.

**For Appellant:** CAPT Patricia Leonard, JAGC, USN.

**For Appellee:** LT Brian Burgtorf, JAGC, USN.

**13 July 2010**

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**OPINION OF THE COURT**  
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**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS  
OPINION DOES NOT SERVE AS PRECEDENT.**

**PER CURIAM:**

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of twelve specifications of larceny, twelve specifications of fraud against the United States, and three specifications of unlawfully using the identification of another, in violation of Articles 121, 132, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 921, 932, and 934. The military judge sentenced the appellant to 16 months confinement, reduction to pay grade E-1, and a bad-conduct discharge. In accordance with a pretrial agreement, the convening authority suspended confinement in excess of 12 months and reduction in pay grade below E-3, and deferred automatic

forfeitures in excess of one-half pay per month. He did not, however, explicitly waive automatic forfeitures in his action.

The appellant assigns two errors. First, he claims the military judge abused her discretion by accepting the appellant's guilty pleas to Charge II and all its specifications because, during the military judge's providence colloquy, the appellant gave responses inconsistent with his pleas. Second, the appellant notes the convening authority's failure to explicitly waive automatic forfeitures in his action.

After carefully considering the parties' briefs and reviewing the record of trial, we are convinced that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ.

### **Background**

The appellant was stationed at Naval Air Station Lemoore, California, where he served as the administrative leading petty officer (LPO) of his command. As part of his duties, he served as his command's Government Travel Credit Card (GTCC) and Defense Travel System (DTS) representative, processing travel claims and resolving issues involving GTCCs issued to members within the command. Prosecution Exhibit 1 at 2; Record at 58. In the course of his duties, the appellant came into possession of three GTCCs that were assigned to different members of the command. *Id.* at 38-39. The appellant used these three cards in conjunction with his access to DTS for personal financial gain. *Id.* at 38-41. On divers occasions from April 2008 until October 2008, the appellant used the aforementioned GTCCs to make unauthorized cash advances from automatic teller machines (ATM's) that ranged from a few hundred to a few thousand dollars. *Id.* at 40-41. After obtaining these funds, the appellant used his access to DTS to enter false or counterfeited travel claims into the system that reflected the amounts of the unauthorized cash advances he had obtained through the use of the GTCCs. *Id.* at 40-41, 50. To ensure that his unauthorized cash withdrawals and fraudulent DTS entries would withstand potential audits, the appellant forged the signatures of the service members whose GTCC's he had obtained to fake or altered paper travel claims. *Id.* at 53, 60-61, 65, 69. As a result of the false DTS entries, the United States government directly reimbursed Bank of America, the issuer of the GTCCs, for the cash advances. *Id.* at 69. Thus, the individuals whose names were on the cards never saw any record of his activities, Bank of America always received reimbursement for the cash advances, and the United States did not notice the scam for months.

## Analysis

### A. Improvident Pleas

Each specification under Charge II alleges that the appellant knowingly used another service member's forged and counterfeited signature on a travel voucher or sub-voucher for the purpose of obtaining the approval, allowance, and payment of a claim against the United States. During the providence inquiry, the appellant told the military judge that the paper travel claims with the forged signatures were not necessary, in practice, for the approval of the electronic claims which the appellant entered into the DTS. The appellant now argues the military judge abused her discretion by accepting the appellant's pleas without clearing up inconsistent matter, i.e., that the appellant used forged signatures to obtain the approval, allowance, and payment of claims when the forged signatures were not, in practice, necessary to obtain the initial approval of the claims. We disagree with the appellant's interpretation of the record.

During his providence inquiry, the appellant told the military judge that the physical travel claims, although required to be entered into the system, were not necessary to obtain the approval of the claim through DTS, at least initially. Nonetheless, the appellant admitted that he created or modified the paper travel claims "to pay for the ATM advance money." *Id.* at 55. Moreover, the appellant acknowledged that the proper administration of the DTS required that travel vouchers be scanned into the system. *Id.* at 60. The fact payments may have been approved even if the appellant failed to follow program requirements (i.e., by not filing signed claims) is not inconsistent with his admitted intent in using the documents. Furthermore, the appellant explained the paper claims with the forged signatures were a protective measure he took to persuade potential auditors to approve the fraudulent DTS entries as legitimate claims. *Id.* at 60-61. He also tacitly admitted the physical travel claims were necessary for the final approval of the claims in the event of an audit. *Id.* Accordingly, we find the appellant's responses to the military judge's questions provided an adequate factual basis to support his pleas of guilty and that the military judge did not abuse her discretion by accepting the pleas. *United States v. Inabinette*, 66 M.J. 320, 321 (C.A.A.F. 2008).

### B. Deferral and Waiver of Automatic Forfeitures.

We are not persuaded that any error occurred as alleged by the second assigned error. While it is true that the convening authority's action remains silent as to the waiver of the automatic forfeitures, we note that the convening authority explicitly approved both deferral and waiver of all automatic forfeitures in excess of one-half pay per month within the terms

of the sentence limitation portion of the pretrial agreement.  
Appellate Exhibit II at 2.

Furthermore, even if failure to address automatic forfeitures in the convening authority's action does constitute error, we agree with the Government that the appellant has suffered no prejudice as a result. The appellant was sentenced on 30 June 2009 and the convening authority took action on 23 October 2009. Automatic forfeitures would have gone into effect by mid July 2009, yet the appellant fails to aver that his pay was affected during the period of deferral (30 June 2009 - 23 October 2009) or for the six months following the convening authority's action. Furthermore, the affidavit from the Deputy Disbursing Officer for PSD Naval Air Station Lemoore, California, indicates the appellant received the monetary benefit of his bargain.

### **Conclusion**

After carefully considering the record of trial, we conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant occurred. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL  
Clerk of Court