

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

**Before
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DEREK L. ALLEN
AVIATION BOATSWAIN'S MATE AIRMAN (E-3), U.S. NAVY**

**NMCCA 201100040
GENERAL COURT-MARTIAL**

Sentence Adjudged: 18 October 2010.
Military Judge: CDR Kevin O'Neil, JAGC, USN.
Convening Authority: Commander, Navy Region Northwest,
Silverdale, WA.
Staff Judge Advocate's Recommendation: CDR T.F.
DeAlicante, JAGC, USN.
For Appellant: LCDR Anthony Yim, JAGC, USN.
For Appellee: Maj Elizabeth Harvey, USMC; Maj William
Kirby, USMC.

29 December 2011

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

By decision dated 28 July 2011, this court affirmed the findings and sentence in the appellant's court-martial, awarding no relief for the sole error assigned by the appellant. The appellant subsequently petitioned the Court of Appeals for the Armed Forces (CAAF) for review and on 6 October 2011, CAAF vacated this court's decision and returned the record of trial to the Judge Advocate General for remand to this Court "for consideration of the granted issue in light of *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011)."

Regarding the remanded question, we again affirm the findings of guilty, pursuant to the appellant's pleas, for the reasons set for in *United States v. Hackler*, __ M.J. __ (N.M.Ct.Crim.App. 22 Dec 2011). As to all other matters in the appellant's case, for the reasons stated in our prior opinion, we again 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 was committed. Arts. 59(a) and 66(c), UCMJ. Accordingly, we affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court