

**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.

**JEREMY S. BROWN
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 201000664
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 20 August 2010.

Military Judge: LtCol Gregory L. Simmons, USMC.

Convening Authority: Commanding Officer, 12th Marine Corps District, San Diego, CA.

Staff Judge Advocate's Recommendation: Maj Z.W. Keske, USMC.

For Appellant: Capt Bow Bottomly, USMC.

For Appellee: CAPT Martin A. Grover, JAGC, USN; Capt Mark V. Balfantz, USMC.

31 May 2011

OPINION OF THE COURT

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

PER CURIAM:

The appellant entered mixed pleas at a trial by special court-martial with officers and enlisted members. Pursuant to his pleas with certain exceptions and substitutions, the military judge found the appellant guilty of one specification of attempting to sign and submit a false official record, two specifications of violation of a lawful general order by misusing his Government travel charge card, one specification of dereliction of duty, and one specification of obstruction of justice, in violation of Articles 80, 92, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880, 892, and 934. The

appellant pleaded not guilty to disobeying a lawful order and making a false official statement, but was convicted of the false official statement specification, in violation of Article 107, UCMJ, 10 U.S.C. § 907. The adjudged sentence included reduction to pay grade E-3 and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

The appellant has submitted one assignment of error averring that his sentence to a bad-conduct discharge is inappropriately severe.

Factual Background

The appellant, a Marine staff sergeant serving as the administrative chief for Marine Corps Recruiting Station, Seattle, Washington, was issued a Government travel charge card for his use during temporary additional duty (TAD) travel periods. He had also been appointed by his commanding officer as the agency program coordinator (APC) for his command's Government travel charge card program. In mid-to-late 2009, the appellant misused his Government travel charge card by making numerous unauthorized transactions totaling \$1,800.00 at restaurants, gas stations, and bars, and by making frequent automated teller machine (ATM) withdrawals, all when he was not in a TAD status. Then, when he could not pay the charge card bill, his account fell into a delinquent status due to nonpayment. As the APC for his command's charge card program, the appellant was required to report to the commanding officer any individuals who either misused their Government travel charge card or were in a delinquent status. The appellant discovered another Marine was misusing his government charge card, but the appellant failed to report the Marine as required. The appellant did not report this Marine because he was concerned his own misuse and abuse of the Government travel charge card would come to light.

After the appellant's misconduct finally was discovered, an investigation ensued. During that investigation, the appellant altered charge card documents maintained at the command to make it appear that he had been TAD when, in fact, he had not.

Sentence Severity

The appellant contends his sentence is inappropriately severe because he has a strong record of service, has the ability to continue to contribute to the Marine Corps, and has remorse for his offenses.¹ Essentially, the appellant's argument is that his military character, balanced against the nature of his offenses, makes a bad-conduct discharge inappropriately severe, and he requests that we disapprove the punitive discharge. We disagree, and decline to grant relief.

¹ Appellant's Brief of 7 Feb 2011 at 4.

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (quoting *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959)).

The appellant stands convicted of misusing his Government travel charge card on numerous occasions, lying to his chain of command when questioned, attempting to create false records so as to cover up his misuse, as well as dereliction of duty for his failure to report another Marine in the command who was also misusing his Government travel charge card. His disciplinary record includes one prior nonjudicial punishment. The appellant was a staff sergeant who had been selected for gunnery sergeant, with almost 12 years of service when his misconduct occurred. The appellant's character witnesses testified he provided outstanding leadership to junior Marines; was professional; had good relationships with both junior and senior Marines; went above and beyond what was expected of him; was one of the top 10 percent of staff non-commissioned officers; and still had great potential to serve as a Marine.

However, the appellant acknowledged during the providence inquiry, his sworn testimony on the merits, and his unsworn statement, that his misuse of the charge card was the result of his own financial mismanagement, living beyond his means, and most notably, gambling losses. Over a several month period, the appellant used his Government travel charge card to take numerous cash advances, eat and drink at restaurants and taverns (sometimes at multiple establishments on the same day), and obtain fuel for his personal vehicle, actions which are clearly contrary to the intent of charge card program. When confronted by his chain of command, rather than immediately reveal his misuse he chose a further path of deceitfulness, lying to his supervisor and altering documents to cover up his crimes.

After carefully reviewing the entire record, considering the appellant's misconduct, including his multiple deceptions and status as a staff sergeant with more than eleven years of service, we conclude that the adjudged sentence is appropriate for this particular offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005). Granting any sentence relief would be to engage in clemency, a prerogative reserved for the CA, and we decline to do so. *Healy*, 26 M.J. at 395-96.

Promulgating Order Errors

Service members are entitled to records that correctly reflect the results of court-martial proceedings. See *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998). The court-martial order in this case does not reflect all of the

offenses upon which the appellant was arraigned on 20 June and 17 August 2010. Additionally, it does not reflect that the specifications which the Government withdrew, Specifications 2 and 3 under Charge III and Specification 2-4 under Charge IV, were dismissed with prejudice. We shall order the necessary corrective action. No prejudice has been alleged and we find none.

Conclusion

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 was committed. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence are affirmed. The supplemental court-martial order will reflect all of the specifications upon which the appellant was arraigned and the disposition of those specifications

For the Court

R.H. TROIDL
Clerk of Court