

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

**Before
C.L. REISMEIER, F.D. MITCHELL, D.O. HARRIS
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**VIDA M. FLYNN
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201100012
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 15 October 2010.

Military Judge: CDR Douglas Barber, JAGC, USN.

Convening Authority: Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, VA.

Staff Judge Advocate's Recommendation: LtCol C.M. Greer, USMC.

For Appellant: CDR Luis Leme, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

29 March 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:

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to his plea, of three specifications of unauthorized absence, in violation of Article 86, Uniform Code of Military Justice, 10 U.S.C. § 886. The trial judge sentenced the appellant to confinement for eight months, and a bad-conduct discharge. The convening authority approved the sentence as adjudged, but suspended confinement in excess of 180 days and the bad-conduct discharge, in accordance with the terms of the pretrial agreement.

The appellant's case was submitted to this court without assignment of error. Upon review, we note that the court-martial order in one paragraph suspends the bad-conduct discharge, but under the "execution" section indicates that "... the punitive discharge will be executed after final judgement." We find that corrective action is necessary. We otherwise 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 exists. Arts. 59(a) and 66(c), UCMJ.

Although the court-martial order indicates that the bad-conduct discharge will be executed after completion of appellate review, the intent of the convening authority, i.e., to suspend the bad-conduct discharge, is clear. In the absence of some claim that the appellant's punitive discharge was not in fact suspended, the omission is a mere scrivener's error.

The supplemental court-martial order will accurately reflect that the bad-conduct discharge awarded at trial was suspended by the convening authority, pursuant to the pretrial agreement. Otherwise, we affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court