

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

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

UNITED STATES OF AMERICA

v.

**SEAN C. DANLEY
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201000677
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 31 August 2010.

Military Judge: Col Michael Richardson, USMC.

Convening Authority: Commanding Officer, 3d Light Armored
Reconnaissance Battalion, 1st Marine Division, Twentynine
Palms, CA.

Staff Judge Advocate's Recommendation: Col D.K. Margolin,
USMC.

For Appellant: CDR R.D. Evans, Jr., JAGC, USN.

For Appellee: Capt Crista Kraics, USMC.

17 May 2012

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:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his plea, of unauthorized absence and missing movement by design in violation of Articles 86 and 87, Uniform Code of Military Justice, 10 U.S.C. §§ 886 and 887, respectively. The trial judge sentenced the appellant to 90 days confinement, reduction to pay grade E-1, and a bad

conduct discharge. Due to the deployment of the convening authority, the officer exercising general court-martial (OEGCM) jurisdiction, Commanding General, 1st Marine Division, took the convening authority's action. The substitute convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed. In accordance with the pretrial agreement, all confinement in excess of 75 days was suspended for a period of 12 months from the date of sentencing.

This matter comes before the court for a second time. On 8 November 2011 we set aside the action of the convening authority and directed that this matter be "returned to the Judge Advocate General for remand to a different convening authority who is qualified to conduct the post-trial review." *United States v. Danley*, 70 M.J. 556 (N.M.Ct.Crim.App. 2011). Return of the matter for a new CA's action was deemed essential due to the exposure of privileged correspondence between the appellant and his trial defense counsel to the staff judge advocate and convening authority. This unauthorized disclosure was made by the detailed defense counsel.

In remanding the case to the field, rather than delivering the case to the officer immediately superior in the chain of command to the OEGCM who took the initial action in this case, the Judge Advocate General caused the matter to be delivered to the officer exercising special court-martial (OESPCM) jurisdiction who referred the charges against the appellant. The appellant now asserts that the United States "violated this court's directive to remand the case to a different convening authority when the Government returned the case to the convening authority who convened appellant's court-martial and who is subordinate in command to the general court-martial convening authority who took the original, defective post-trial action." While we do not view the Government's action in this matter as intentionally violative of our mandate, we agree with the appellant that the review of the case by the original OESPCM after the matter was already passed upon by the OEGCM in his direct chain of command falls outside the spirit and intent of our 8 November 2011 opinion. We advance more specific corrective action in our decretal paragraph. It was never our intent that a convening authority holding field grade would be required to act upon a matter in which the action of his commanding general had been previously set aside.

Conclusion

The convening authority's action promulgated on 24 January 2012 by the officer exercising special court-martial jurisdiction over the appellant is set aside. The Judge Advocate General of the Navy shall cause the record of trial to be delivered to the general officer immediately superior in the chain of command to the Commanding General, 1st Marine Division. Prior to forwarding the record to the new convening authority for action, the staff judge advocate responsible for preparing the new staff judge advocate's recommendation will remove the sealed *Blunk* letter, the set aside convening authority's actions, the previous SJARs, and this court's decisions dated 8 November 2011 and 17 May 2012 from the record and reinsert those documents after the new action is taken. The record will then be returned to this court for completion of appellate review.

For the Court

R.H. TROIDL
Clerk of Court