

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

**Before
R.Q. WARD, K.M. MCDONALD, M.K. JAMISON
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JACOB A. BROWN
AVIATION STRUCTURAL MECHANIC AIRMAN RECRUIT
(E-1), U.S. NAVY**

**NMCCA 201300186
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 06 February 2013.

Military Judge: CDR John Maksym, JAGC, USN.

Convening Authority: Commanding Officer, USS GEORGE
WASHINGTON (CVN 73).

Staff Judge Advocate's Recommendation: LCDR C.C. Temple,
JAGC, USN.

For Appellant: Maj Babu Kaza, USMCR.

For Appellee: Capt Matthew Harris, USMC.

29 October 2013

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 pleas, of a violation of a lawful general regulation, in violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892. The military judge sentenced the appellant to confinement for 38 days, a fine of \$1,000.00, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

In the appellant's sole assignment of error, he contends that the adjudged fine of \$1000.00 was inappropriately severe. After carefully considering the record of trial and the submissions of the parties, we are convinced 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.

Sentence Appropriateness

The appellant argues that because he was not unjustly enriched by the offense to which he pled guilty, the adjudged fine of \$1,000.00 was legally inappropriate. Alternatively, even if the adjudged fine was legally permissible, he argues that it was "grossly disproportional" to the gravity of the offense for which he was convicted. We disagree.

"[A] court-martial is free to impose any legal sentence that it determines to be appropriate." *United States v. Dedert*, 54 M.J. 904, 909 (N.M.Ct.Crimp.App. 2001) (citations omitted). Fines may be imposed even in the absence of unjust enrichment. *United States v. Stebbins*, 61 M.J. 366, 372 (C.A.A.F. 2005).

We have a duty under Article 66(c), UCMJ, to independently review the sentence of each case within our jurisdiction and only approve that part of a sentence which we find should be approved. *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005). Our determination of sentence appropriateness under Article 66(c), UCMJ, requires us to analyze the record as a whole to ensure that justice is done and that the accused receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988). In making this assessment, we consider the nature and seriousness of the offenses as well as the character of the offender. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982).

The appellant admitted to repeatedly searching for pornography on a Government computer by entering various search terms such as "young teen girl," "pre-teen," and "very young premature girl." During a one-month period he searched for this type of pornography several times a week. This included accessing and viewing a pornographic video file. The appellant's decision repeatedly to search for, access, and view pornography on a Government computer led to an investigation that resulted, at a minimum, in the confiscation of one of the ship-board computers within the appellant's section, a fact that the appellant concedes. Reply Brief at 3. The appellant's sustained use over a one-month period of government resources

that culminated, at a minimum, in the confiscation of one of his section's computers was reasonably related to the military judge's imposition of the \$1,000.00 fine.¹

In addition to considering the nature and the seriousness of the specific offense committed by the appellant, we have carefully considered the individual characteristics of the appellant, which includes his past performance and conduct. Considering the entire record, we conclude that justice is done and that the appellant receives the punishment he deserves by affirming the sentence as approved by the CA. Granting sentence relief at this point would be to engage in dispensing clemency - a prerogative uniquely reserved for the CA -- and we decline to do so. *Healy*, 26 M.J. at 395-96.

Conclusion

The findings and the sentence as approved by the CA are affirmed.

For the Court

R.H. TROIDL
Clerk of Court

¹ After careful consideration, we reject the appellant's claim that the \$1,000.00 fine violates the Eight Amendment's "Excessive Fines" clause. The adjudged fine was not "grossly disproportional" to the gravity of the offense for which the appellant stands convicted. *United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Stebbins*, 61 M.J. at 372-74.