

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

**Before  
M.D. MODZELEWSKI, E.C. PRICE, C.K. JOYCE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**EUGENE KING  
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 201300172  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 11 February 2013.

**Military Judge:** Maj Elizabeth A. Harvey, USMC.

**Convening Authority:** Commanding Officer, Headquarters and  
Headquarters Squadron, Marine Corps Air Station, Camp  
Pendleton, CA.

**Staff Judge Advocate's Recommendation:** LtCol P.A. Tafoya,  
USMC.

**For Appellant:** LT Jessica L. Fickey, JAGC, USN.

**For Appellee:** LT Ian D. MacLean, JAGC, USN.

**29 August 2013**

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**OPINION OF THE COURT**  
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**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 making a false official statement, assault consummated by a battery upon a child under sixteen, and two aggravated assaults, in violation of Articles 107 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 928. The military judge sentenced the appellant to nine months of confinement, reduction to pay grade

E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

The appellant's sole assigned error is that a punitive discharge in this case is inappropriately severe. Having considered the parties' pleadings and the record of trial, we find the findings and the 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. We therefore affirm the findings and the approved sentence.

Under Article 66(c), UCMJ, we may only approve a sentence that we find appropriate after we have independently reviewed the case and considered the nature and seriousness of the offenses and the character of the offender. *United States v. Baier*, 60 M.J. 382, 383-84 (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 appellant receives the punishment he deserves. *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

The appellant assaulted his infant daughter on three separate occasions. On the first occasion, when she was six weeks old, he struck her repeatedly on the buttocks, and caused bruising. Days later, he shook her severely. As a result of injuries sustained, the infant stopped breathing two days following the shaking incident, and was placed in an Intensive Care Unit. After the infant was discharged from the hospital, the appellant again assaulted her: on this occasion, he broke his daughter's femur. These three assaults occurred within her first two months. While at the hospital following the third assault, the appellant made false official statements to an investigator concerning the latest injury.

We have carefully considered the entire record of trial, the nature and seriousness of these offenses, the matters presented by the appellant in extenuation and mitigation, and the appellant's military service. We find the sentence to be appropriate for this offender and the offenses committed. Granting additional sentence relief at this point would be engaging in clemency, a prerogative reserved for the CA, and we decline to do so. *See 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