

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

**Before  
B.L. PAYTON-O'BRIEN, R.Q. WARD, J.R. MCFARLANE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**RONALD B. DEGUZMAN  
LOGISTICS SPECIALIST FIRST CLASS (E-6), U.S. NAVY**

**NMCCA 201200402  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 23 May 2012.

**Military Judge:** Col Daniel Daugherty, USMC.

**Convening Authority:** Commanding Officer, Mobile Diving and Salvage Unit 1, Pearl Harbor, HI.

**Staff Judge Advocate's Recommendation:** LCDR K.A. Elkins, JAGC, USN.

**For Appellant:** LCDR Brandon Boutelle, JAGC, USN.

**For Appellee:** LCDR Keith Lofland, JAGC, USN.

**14 February 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 one specification of disobeying a lawful general regulation, one specification of dereliction of duty, and one specification of larceny, in violation of Articles 92 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 921. The appellant was sentenced to a punitive reprimand, reduction to pay grade E-1, forfeiture of \$994.00 pay per month for 12 months, and a bad-

conduct discharge. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered the sentence executed.<sup>1</sup>

The appellant avers in his two assignments of error that: (1) a bad-conduct discharge is inappropriately severe in this case; and (2) that the special court-martial order incorrectly refers to the appellant at his reduced rank. After considering the pleadings and reviewing the entire record of trial, we find no error materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ. We do, however, find merit in the appellant's argument that the court-martial order incorrectly states his reduced rank. We will address that error in our decretal paragraph.

### **Background**

The appellant, a Logistics Specialist First Class, served as both the acting leading chief petty officer (LCPO), and then later as the leading petty officer (LPO), for Mobile Diving and Salvage Unit (MDSU) ONE's supply department. His duties included supervising two junior personnel, administering the shop's day-to-day operations, maintaining accountability for the command's government credit card program, and placing orders in the supply system for the items MDSU ONE needed to complete its mission.

Contrary to well-established procurement procedures that the appellant had been training on and had years of experience following, he entered into an agreement with a single vendor, Veterans Logistics (VL), that also does business as Industrial Xchange (IX), for VL/IX to supply MDSU ONE any items that the appellant needed to order, regardless of whether VL/IX had been approved to sell those items on DOD EMALL. Orders were placed in the Department of Defense Electronic Mall (DOD EMALL) system. The appellant accomplished this by having an unsuspecting approving official in his command authorize a particular purchase, often for furniture. The appellant would then use the document number from that purchase authorization to buy something via DOD EMALL from VL/IX that they were authorized to sell (pipe couplers, clamp elbows, etc.) in order to build up sufficient "credit" with VL/IX to cover the items he actually needed for the command. VL/IX would then locate, purchase, and ship to the appellant the items that he actually wanted, not

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<sup>1</sup> To the extent that the CA's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543 (N.M.Ct.Crim.App. 2011).

what the records showed that he bought. The appellant created this relationship to save himself time and effort. He also admitted that he used this process to hide money from the unit's comptrollers to prevent them from reallocating unused funds. This process resulted in a complete lack of accountability for what was actually purchased, and allowed VL/IX to sell merchandise to the Government for whatever price they deemed appropriate, without those prices having been vetted through the normal supply system protocols.

The appellant used the aforementioned process numerous times to acquire goods from VL/IX. He also used it to build up credits to be used at a later date. In August of 2010, the appellant ordered, and the Government paid for, over \$24,000.00 worth of items that were never received. In September of 2010, the appellant deployed to Bahrain having left those "credits" unused, thus leaving MDSU ONE without anything of value for the more than \$24,000.00 it had expended. It was not until after the irregularities were discovered, and the company was contacted, that the money was reluctantly returned to the Government.

During the ensuing investigation, it was determined that prior to the appellant's deployment, he was told by VL/IX that he needed to close out another one of his orders by using the remaining \$2,400.00 of credit. Instead of seeking a refund of the money, or buying something that the command needed, the appellant bought headphones, an iPad, luggage, and a rice cooker, all for his own personal use while on deployment. Although the manufacturer's suggested retail price for these items was under \$1,200.00, the appellant spent the full \$2,400.00 credit to acquire them from VL/IX. The appellant admitted he intended to keep the items for his personal use after the deployment was over, and that he only turned them over to his command once the theft was discovered.

### **Sentence Appropriateness**

The appellant alleges that a bad-conduct discharge is inappropriately severe in light of the nature of his crimes and the length of his otherwise unblemished service. "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 process 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)).

After carefully reviewing the entire record, including the fact that the appellant abused his position of trust as MDSU ONE's acting supply department LCPO, and later as the supply department LPO, by both stealing and placing thousands of government dollars at risk to avoid work, we conclude that a bad-conduct discharge is appropriate for this particular offender and his offenses. *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005). In this case granting any sentence relief would be to engage in clemency, which is a function reserved for the convening authority, and we decline to do so. *Healy*, 26 M.J. at 395-96.

#### **Court-Martial Order Errors**

The appellant alleges that his court-martial order (CMO) incorrectly refers to the appellant at his reduced rank. See General Court-Martial Order No. 1-12, dated 30 Aug 2012, at 1. We agree. Although the appellant's reduction in rate became effective 14 days after he was sentenced (through operation of Article 57, UCMJ), the CMO should nonetheless refer to the appellant as a Logistics Specialist First Class. In keeping with the principle that military members are entitled to records that correctly reflect the results of their court-martial proceedings, we will order corrective action in our decretal paragraph. See *United States v. Crumpley*, 49 M.J. 538, 539 (N.M.Ct.Crim.App. 1998).

#### **Conclusion**

The findings and sentence are affirmed. The supplemental CMO shall reflect the appellant's correct rank at the time of trial.

For the Court

R.H. TROIDL  
Clerk of Court