

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant CLAYTON L. JONES
United States Air Force

ACM 35010

19 April 2004

Sentence adjudged 8 January 2002 by GCM at Sheppard Air Force Base, Texas. Military Judge: Israel B. Willner (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 16 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, Major Natasha V. Wrobel, Major Patricia A. McHugh, and Captain L. Martin Powell.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major John D. Douglas.

Before

BRESLIN, ORR, and GENT
Appellate Military Judges

PER CURIAM:

A general court-martial found the appellant guilty, in accordance with his pleas, of three specifications of failure to follow a lawful general regulation, in violation of Article 92, UCMJ, 10 U.S.C. § 892, and one specification of adultery, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced the appellant to a bad-conduct discharge, confinement for 16 months, forfeiture of all pay and allowances, and reduction to E-1.

The convening authority approved the sentence adjudged, but he granted clemency to the appellant by waiving the mandatory forfeiture of all pay and allowances arising

under Article 58b(b), UCMJ, 10 U.S.C. § 858b(b). The formal action of the convening authority provided, in pertinent part:

Pursuant to Article 58b, Uniform Code of Military Justice, Section (b), \$485 pay per month of the required forfeiture of total pay and allowances is waived for a period of 6 months or release from confinement, whichever is sooner, beginning on 1 February 2002. The \$485 pay per month for 6 months, minus appropriate taxes and deductions, is directed to be paid to . . . [the] former spouse of the accused, for the benefit of the accused's dependent son. . . .

The appellant notes that the convening authority did not disapprove or suspend the adjudged forfeitures before approving the waiver of the automatic forfeitures, as required by *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002), decided after the action in this case. The appellant expresses concern that because the waiver of the automatic forfeitures was not technically correct, the funds may be recouped at a later time. The appellant now invites this Court to take appropriate action to ensure that the intent of the convening authority is satisfied.

We find that the convening authority intended to take appropriate action to waive the automatic forfeitures under Article 58b(b), UCMJ. The convening authority's action is not ambiguous, even if it is not technically correct under *Emminizer*. As we stated in *United States v. Medina*, 59 M.J. 571, 572 (A.F. Ct. Crim. App. 2003):

There is no need for this Court to disapprove the appellant's adjudged forfeitures where the convening authority clearly intended to waive the mandatory forfeitures, the action carried out such waiver in a manner compliant with the understanding of Article 58b, UCMJ, at the time, and the appellant's [dependent] received the pay at issue. *Cf. United States v. Loft*, 10 M.J. 266, 268 (C.M.A. 1981) (holding that where the convening authority's action is subject to only one interpretation, a supervisory authority is not required to return the record of court-martial to the convening authority for clarification).

We hold that the convening authority intended to approve the waiver of forfeitures and that his action was effective to do so, even if it did not technically comply with *Emminizer*.

Finally, we note that, subject to review by our superior courts, our appellate review of this record of trial will become "final and conclusive" and "binding upon all departments, courts, agencies, and officers of the United States" under Article 76, UCMJ, 10 U.S.C. § 876. This issue preclusion statute would apply to any future—and at this point, highly speculative—collection efforts of any officer of the United States who

disagrees with our determination of the convening authority's intention to exercise his authority under Article 58b, UCMJ, for the benefit of the appellant's wife.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER
Chief Court Administrator