UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ERIC A. MARQUES
United States Air Force

ACM 35980

27 February 2006

Sentence adjudged 19 May 2004 by GCM convened at Ellsworth Air Force Base, South Dakota. Military Judge: Jack L. Anderson (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 19 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Sandra K. Whittington, and Captain David P. Bennett.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's answer. The appellant argues that a new action is necessary in his case to carry out the clear intent of the convening authority to waive automatic forfeitures of the appellant's pay and direct them to his spouse. We agree that the convening authority's intent was clear, but do not believe a new action is necessary. Instead, we disapprove the adjudged forfeitures.

The appellant was sentenced to a bad-conduct discharge, confinement for 19 months, forfeiture of all pay and allowances, and reduction to E-1. The convening authority's action stated, "Pursuant to Article 58b(b), UCMJ, all of the automatic forfeitures are waived for a period of six months, or release from confinement, or

expiration of term of service, whichever is sooner, from the date of this action. The total pay and allowances are directed to be paid to . . . [the] spouse of the accused." He did not explicitly suspend, modify or disapprove the adjudged forfeitures.

The appellant believes a new convening authority action is necessary to fulfill the convening authority's intent under *United States v. Emminizer*, 56 M.J. 441 (C.A.A.F. 2002). We find this issue virtually identical to the one presented in *United States v. Johnson*, 62 M.J. 31, 38 (C.A.A.F. 2005). In *Johnson*, the court solved a similar issue by disapproving the adjudged forfeitures. We agree with this approach and find it applicable here. Accordingly, we disapprove the adjudged forfeitures in the appellant's case, thereby accomplishing the convening authority's intended action.

We have examined the appellant's other assignments of error raised under *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) and find they have no merit. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

The approved findings and sentence, except for the adjudged forfeitures, 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 findings and sentence, as modified, are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court