UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

U N I T E D S T A T E S,	**)**	**ACM 38039**
Appellee	**)**	
	)	
v.	**)**	
	)	**ORDER**
Senior Airman (E-4)	**)**	
CHRISTOPHER E. SELISKAR,	**)**	
USAF,	**)**	
Appellant	**)**	**Panel No. 2**

Background

At a general court-martial composed of officer members, the appellant pled guilty to attempting to engage in aggravated sexual assault of a child, attempting to transmit indecent pictures to a child, attempting to solicit a child to transmit child pornography, and attempting to communicate indecent language to a child in oral and written form, in violation of Article 80, UCMJ, 10 U.S.C. § 880. After the military judge accepted his pleas and entered findings of guilty, the court sentenced the appellant to a bad-conduct discharge, confinement for 15 months, and reduction to the grade of E-1. On 2 November 2012, the convening authority approved the sentence as adjudged.

This Court, ruling adversely to the appellant, affirmed the findings and sentence. *United States v. Seliskar*, ACM 38039 (A.F. Ct. Crim. App. 16 April 2013) (unpub. op.). Soon thereafter, however, the appellant moved this Court to reconsider that part of the decision that affirmed the adjudged and approved bad-conduct discharge, claiming that he had been validly discharged from the Air Force with an honorable discharge.

In his reconsideration request, the appellant provided us with a copy of a Department of Defense (DD) Form 214, *Certificate of Release or Discharge from Active Duty* (August 2009). This DD Form 214, dated 20 October 2011, reflected that the appellant was released from active duty at the completion of his required active service obligation, effective 15 October 2011, approximately one month after his court-martial and two weeks before the convening authority took action in his case. Approximately one year later, according to the appellant's declaration, he met with personnel from the Naval Consolidated Brig, Miramar, several weeks before he was to be released from confinement. As part of his out-processing, he elected to sell his remaining leave. This transaction is reflected on a November 2012 Leave and Earnings Statement.

In response, the Government argued the appellant never validly received his DD Form 214 and never received a final accounting of pay, using three affidavits and other documentary evidence in support of that argument. The submitted paperwork demonstrates that as military personnel began the process of updating the appellant's "duty status" on 13 October 2011 to reflect his on-going confinement, they noticed his records indicated he had a confirmed separation. After further processing and review of that status change within personnel channels, the appellant's separation was cancelled in January 2012 and his duty status was updated to "military confinement." Because the cancelation of the separation was not passed on to the division that processes DD Form 214s, the appellant's 20 October 2011 DD Form 214, which had already been sent to the appellant, was not voided to reflect this event. No separation orders were issued to effectuate the separation. Additionally, the appellant's military pay status reflected that he was "suspended/pending separation" and did not reflect that he had been separated.

The appellant also signed a DD Form 2717, *Voluntary/Involuntary Appellate Leave Action* (November 1999) in August 2012, upon his release from confinement. It informed him he remained a member of the United States military and would not receive a DD Form 214 until the completion of appellate review. He also was issued orders at that time which included this same information, signed a leave form for his time on appellate leave, and was issued a new military identification card.

Post-Trial Discharge

The interpretation of regulations is a question of law that we review de novo. *United States v. McCollum*, 58 M.J. 323, 340 (C.A.A.F. 2003) (citations omitted).

"A post-trial administrative discharge operates to remit the unexecuted punitive discharge portion of an adjudged court-martial sentence." *United States v. Watson*, 69 M.J. 415, 416 (C.A.A.F. 2011) (citing *Steele v. Van Riper*, 50 M.J. 89, 91-92 (C.A.A.F. 1999). *United States v. Davis*, 63 M.J. 171[, 176-77] (C.A.A.F. 2006) (regarding the authority for appellate review of the findings and sentence in the aftermath of a post-trial administrative discharge)). A void administrative discharge does not preclude the approval of an unexecuted punitive discharge. *See Smith v. Vanderbush*, 47 M.J. 56, 58 (C.A.A.F. 1997). Before an administrative discharge can impact appellate proceedings, three elements must be met: First, there must be a delivery of a valid discharge certificate; Second, there must be a final accounting of pay made; and Third, the appellant must undergo the "clearing" process required under appropriate service regulations to separate him from military service. *United States v. Hart*, 66 M.J. 273, 276 (C.A.A.F. 2008) (internal quotation marks omitted) (quoting *United States v. King*, 27 M.J. 327, 329 (C.M.A. 1989)).

As the UCMJ does not define the exact point in time when discharge occurs, we look to 10 U.S.C. §§ 1168(a), and 1169 (2000), a personnel statute, for guidance as to what is required to effectuate discharge. *Hart*, 66 M.J. at 275. Section 1168(a) which

governs "Discharge or release from active duty: limitations" states: "A member of an armed force may not be discharged or released from active duty until . . . his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative." *Id*. Our review of the material submitted on appeal leads us to conclude that neither the final pay nor a substantial part of that pay were ready for delivery within the plain meaning of 10 U.S.C. § 1168(a).

Although the appellant did receive payment for his accrued leave when he left confinement in August 2012, that payment does not constitute a final accounting of the appellant's pay. Because he was leaving confinement while his appeal was still pending, the appellant was being placed in an "excess leave" status, as directed by the convening authority in his action on the sentence in November 2011. *See* Article 76a, UCMJ, 10 U.S.C. § 876; Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 9.35.6 (21 December 2007, incorporating Change I, 3 February 2010). When put in that status, a service member with accrued leave can either (1) receive pay and allowances during the period of that accrued leave and then go on unpaid excess leave, or (2) receive immediate payment for the leave and serve the entire period of his appeal on unpaid excess leave. AFI 51-201, ¶ 9.35.4; AFI 36-3003, *Military Leave Program*, ¶ 6.8.3 (26 October 2009).

Receiving payment after electing one of these options clearly cannot be a final accounting of the service member's pay. Some service members will not have any accrued leave and thus would not receive any pay through this process. Others may have part of their court-martial sentence set aside on appeal and thus be entitled to additional pay and allowances. AFI 51-201, ¶ 9.35.5; AFI 36-3003, ¶ 6.8.4. Servicemembers' Group Life Insurance (SGLI) coverage and deductions continue while the service member is in excess leave and a debt is created for the service member. Air Force Manual (AFMAN) 65-116 V.1, *Defense Joint Military Pay System Active Component (DJMS-AC) FSO Procedures*, ¶ 63.4 (1 April 2007 incorporating through Change 3, 29 September 2008); Department of Defense Financial Management Regulation 7000.14-R, Vol. 7A, *Military Pay Policy*, Ch. 47, § 4705 (December 2012).

These facts, all of which appear on the paperwork signed by the appellant in August 2012, indicate that the payment to a service member for the amount of his accrued leave does not constitute a final accounting of his pay. Furthermore, a declaration submitted by the Government indicates the appellant remains coded in "T status" in the military pay system, which is a suspended status used for members on appellate leave. AFMAN 65-116 V.1, ¶ 44.6.4.1.2. In contrast, a member who has separated would be coded in "V status" after he has received his final pay, which does not occur until finance personnel take certain steps to account for the member's entitlements and debts. *Id.* at ¶¶ 52.4, 52.6, 52.10, 52.13.4, Figure 52.1; *Hart*, 66 M.J. at 276.

Under these circumstances, we conclude there has not been a final accounting of the appellant's final pay or a substantial part of it. Therefore he has not been discharged from the Air Force. Given this, we do not need to address whether his DD Form 214 was a valid discharge certificate or whether he underwent the required clearing process for separation from the Air Force.

Accordingly, it is by the Court on this 17th day of June, 2013,

ORDERED:

That the Appellant's Motion for Reconsideration is hereby **DENIED**.

FOR THE COURT

STEVEN LUCAS
Clerk of the Cour