UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman TAYLOR T. STICKNEY
United States Air Force

ACM S32106

1 October 2013

Sentence adjudged 2 October 2012 by SPCM convened at Joint Base San Antonio-Randolph, Texas. Military Judge: Donald R. Eller, Jr.

Approved sentence: Bad-conduct discharge, forfeiture of $745.00 pay per month for 1 month, and reduction to E-1.

Appellate Counsel for the Appellant: Major Ja Rai A. Williams.

Appellate Counsel for the United States: Colonel Don M. Christensen.

Before

HELGET, HARNEY, and WEBER
Appellate Military Judges

PER CURIAM:

A special court-martial composed of officer members convicted the appellant, in accordance with her pleas, of two specifications of theft, in violation of Article 121, UCMJ, 10 U.S.C. § 921. The court sentenced her to a bad-conduct discharge, restriction to base for one month, forfeiture of $745.00 pay per month for one month, and reduction to E-1. The staff judge advocate recommended approval of the sentence as adjudged, except for the restriction to base. In an obvious but flawed attempt to follow that recommendation, the Action of the convening authority states: "only so much of the sentence as provides for forfeiture of $745.00 pay per month for one month and reduction to airman basic is approved and, *except for the bad conduct discharge*, will be executed." (Emphasis added.). The court-martial promulgating order mirrors the language in the Action.

We previously affirmed the findings and sentence. *United States v. Stickney*, ACM S32106 (A.F. Ct. Crim. App. 5 April 2013) (unpub. op.). On 11 September 2013, the Court of Appeals for the Armed Forces granted the appellant's petition for review on the issue of whether one of the judges who participated in the original decision was unconstitutionally appointed. In the same order, the Court vacated our decision and remanded the case for further review by a properly appointed Court of Criminal Appeals in light of *Ryder v. United States*, 515 U.S. 177 (1995) and *United States v. Carpenter*, 37 M.J. 291 (C.M.A. 1993), *vacated*, 515 U.S. 1138 (1995). *United States v. Stickney*, __ M.J. ___ (C.A.A.F. 2013) (order granting review).

Our decision today reaffirms our earlier decision.

The failure to include a punitive discharge in the approval clause shows a lack of attention to detail, but does not make the action ambiguous where the surrounding documentation is sufficient to interpret an otherwise unclear action. *United States v. Politte*, 63 M.J. 24, 26 (C.A.A.F. 2006); *United States v. Loft*, 10 M.J. 266 (C.M.A. 1981). In *Politte*, the Court found that an action which expressly excluded a punitive discharge from approval was too vague for supervisory interpretation. *See Politte*, 63 M.J. at 27. The present case, however, is more analogous to *Loft* where the Court found that "the only reasonable interpretation of the convening authority's action includes approval of the bad-conduct discharge." *Loft*, 10 M.J. at 267.

The following shows that the only reasonable interpretation of the Action is approval of the bad-conduct discharge: (1) the staff judge advocate recommended approval of the sentence as adjudged, except for restriction; (2) the approval clause does not expressly *exclude* the punitive discharge; (3) the execution clause *does* expressly exclude a bad-conduct discharge from execution; (4) the Action requires the appellant to take appellate leave pending appellate review; and (5) the appellant indorsed a notification of required excess leave which included a statement that the convening authority had approved the adjudged bad-conduct discharge. Indeed, the exclusion of a bad-conduct discharge from the order executing the approved sentence makes no sense if a bad-conduct discharge was not part of the approved sentence. *Id*. at 267-68 (noting the convening authority's suspension of a punitive discharge would be meaningless absent an intent to approve it). As in *Loft*, we find that the only reasonable interpretation of the convening authority's action is approval of a bad-conduct discharge, forfeiture of $745.00 pay per month for one month, and reduction to E-1.[*] To avoid these recurring clerical errors, staff judge advocates should consult the guidance of our superior court. *See Politte*, 63 M.J. at 26 n.11.

[*] To correct these clerical errors, we direct the convening authority to withdraw the original action and substitute a corrected action. Rule for Courts-Martial (R.C.M.) 1107(g). We also direct publication of a corrected promulgating order. *See* R.C.M. 1114; Air Force Instruction 51-201, *Administration of Military Justice*, ¶ 10.10 (6 June 2013).

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Articles 59(a) and 66(c), UCMJ, 10 U.S.C. §§ 859(a), 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

FOR THE COURT

LEAH M. CALAHAN
Deputy Clerk of the Court