UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Major CHANTAY P. WHITE
United States Air Force

ACM 37282

21 October 2009

Sentence adjudged 09 May 2008 by GCM convened at Dover Air Force Base, Delaware. Military Judge: Stephen R. Woody.

Approved sentence: Dismissal.

Appellate Counsel for the Appellant: Captain Phillip T. Korman (argued), Colonel James B. Roan, Major Shannon A. Bennett, Major Michael A. Burnat, and Major Tiffany M. Wagner.

Appellate Counsel for the United States: Captain Charles G. Warren (argued), Colonel Douglas P. Cordova, Lieutenant Colonel Jeremy S. Weber, Captain Ryan N. Hoback, and Gerald R. Bruce, Esquire.

Before

BRAND, JACKSON, and THOMPSON
Appellate Military Judges

OPINION OF THE COURT

JACKSON, Senior Judge:

Contrary to the appellant's pleas, a panel of officers sitting as a general court-martial convicted her of two specifications of making a false official statement, in violation of Article 107, UCMJ, 10 U.S.C. § 907. The adjudged and approved sentence consists of a dismissal. On appeal, the appellant asks this Court to set aside the findings of guilty.

As the basis for her request, the appellant opines: (1) the military judge abused his discretion and violated her right to due process and a fair trial by erroneously excluding as irrelevant her previously completed Army credentialing questionnaires; (2) the military judge abused his discretion and violated her right to due process and a fair trial by erroneously excluding relevant lay opinions of question D on Section VIII of AF Form 1540, *Application for Clinical Privileges/Medical Staff Appointment* (28 May 2002); (3) the evidence is legally and factually insufficient to support a finding of guilty that she made a false statement on the AF Form 1540; (4) the evidence is legally and factually insufficient to support a finding of guilty that she made a false statement on the Electronic Questionnaire for Investigations Processing (e-QIP);[1] and (5) given her 12 years of overall distinguished service, her sentence consisting of a dismissal for her false official statement conviction is inappropriately severe. We disagree, and finding no prejudicial error, we affirm.

Background

On 20 September 2006, the appellant completed the AF Form 1540 for her new assignment as a social worker at the 436th Medical Operations Squadron. On the form, she was asked whether she had "ever been a defendant in a felony or misdemeanor case," to which she replied "no." On 13 March 2007, the appellant completed the e-QIP. On the form, she was asked whether she had "ever been charged with or convicted of any felony offense," to which she replied "no."

This information was false because the appellant had been indicted on 20 August 1986, for embezzling a letter, embezzling $22.50 from the United States, and for obstructing the mail while employed by the United States Postal Service. The embezzlement of the letter was a felony and the remaining offenses were misdemeanors. On 15 December 1986, the appellant signed a waiver of personal appearance at her arraignment, in which she acknowledged receipt of the indictment and an understanding of the charges. Soon after, the appellant entered into a plea agreement with the respective United States District Attorney to plead guilty to the obstruction of mail charge in return for the dismissal of the other charges. On 2 March 1987, the appellant pled and was found guilty of obstructing the mail; the remaining charges were dismissed. The appellant's statements on the AF Form 1540 and the e-QIP formed the basis for the false official statement charge.

At trial, the appellant moved to admit stipulations of expected testimony from two co-workers and sought to call another colleague as a witness in order to provide opinions on their interpretations of the question "have you ever been a defendant in a felony or misdemeanor case." The appellant argued her co-workers' opinions were relevant to whether she knew her answer on the AF Form 1540 was false, whether her belief was

[1] The e-QIP is a United States Government security clearance questionnaire.

reasonable, and whether she had an intent to deceive. However, under questioning from the military judge, the trial defense counsel conceded the appellant did not know her co-workers' opinions on the question prior to completing the AF Form 1540 and the e-QIP. After hearing argument, the military judge found the co-workers' opinions were irrelevant and he sustained the trial counsel's objection to the proffered testimony.

The appellant also moved to admit ten pages of credentialing questionnaires which she had completed annually from 1995-2002 while she was in the United States Army. The appellant opined the Army credentialing questionnaires were relevant to whether she had intent to deceive. After hearing argument, the military judge admitted pages 1- 4 of the exhibit and denied as irrelevant the remaining pages.

Admissibility of the Army Credentialing Questionnaires and the Co-Workers' Opinions

We review a military judge's ruling regarding admissibility of evidence for abuse of discretion. *United States v. Datz*, 61 M.J. 37, 42 (C.A.A.F. 2005) (quoting *United States v. Johnson*, 46 M.J. 8, 10 (C.A.A.F. 1997)); *United States v. Gilbride*, 56 M.J. 428, 430 (C.A.A.F. 2002) (citing *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995)). Under an abuse of discretion review, we examine a military judge's findings of fact using a clearly-erroneous standard and conclusions of law de novo. *United States v. Larson*, 66 M.J. 212, 215 (C.A.A.F. 2008); *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004).

"All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States as applied to members of the armed forces, the code, these rules, [the *Manual for Courts-Martial, United States (MCM)*], or any Act of Congress applicable to members of the armed forces. Evidence which is not relevant is not admissible." Mil. R. Evid. 402. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Mil. R. Evid. 401.

In the case at hand, the military judge determined pages 5 - 10 of the Army credentialing questionnaires were irrelevant. We agree. Pages 5 - 10 of the exhibit contain no information to assist the trier-of-fact in determining whether the appellant knowingly and deceitfully lied about her criminal history on the AF Form 1540 and the e-QIP.

The military judge also determined the co-workers' opinions on the meaning of the question "have you ever been a defendant in a felony or misdemeanor case" were irrelevant. Again, we agree. The co-workers' opinions were irrelevant for two reasons. First, their opinions were given well after the appellant completed the AF Form 1540 and

the e-QIP. Thus, their opinions could not have influenced the appellant's interpretation of the question "have you ever been a defendant in a felony or misdemeanor case." Second, even assuming the appellant was influenced by her co-workers' opinions, those opinions would have been relevant only if this were a general intent offense. *See* Rule for Courts-Martial (R.C.M.) 916(j)(1).

The making of a false official statement is a specific intent offense; the false information must be provided with the intent to deceive. *MCM*, Part IV, ¶ 31.b. Therefore, the reasonableness of the appellant's belief and the opinions upon which her belief was ostensibly shaped would have been irrelevant because the mistake—an understanding that she was not being asked to disclose her full criminal history—need only be honest, not reasonable. R.C.M. 916(j)(1).

In short, pages 5 - 10 of the Army credentialing questionnaires and the co-workers' opinions on the meaning of the question "have you ever been a defendant in a felony or misdemeanor case" were irrelevant and the military judge did not abuse his discretion in refusing to admit such evidence.

Legal and Factual Sufficiency

In accordance with Article 66(c), UCMJ, 10 U.S.C. § 866(c), we review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for legal sufficiency of the evidence is "whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *United States v. Humpherys*, 57 M.J. 83, 94 (C.A.A.F. 2002) (quoting *United States v. Turner*, 25 M.J. 324, 324 (C.M.A. 1987)). In resolving questions of legal sufficiency, we are "bound to draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001). Our assessment of legal sufficiency is limited to the evidence produced at trial. *United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993).

We have considered the evidence produced at trial in a light most favorable to the government and conclude a reasonable fact finder could have found all of the essential elements of these specifications beyond a reasonable doubt. On this point we note: (1) on the AF Form 1540 in question, the appellant denied ever having been a defendant in a felony or misdemeanor case; (2) on an AF Form 1540 the appellant completed a year before the AF Form 1540 in question, she failed to disclose whether she ever had been a defendant in a felony or misdemeanor case; (3) on the e-QIP, the appellant denied ever having been charged with or convicted of any felony offense; (4) the appellant's indictment, waiver of personal appearance at her arraignment, plea agreement, and judgment belie her statements that she had never been a defendant in a felony or misdemeanor case and that she had never been charged with a felony; and (5) the

appellant's indictment, waiver of personal appearance at her arraignment, plea agreement, and judgment as well as the testimony of the prosecution's witnesses also belie the appellant's claim that she did not provide false information with the intent to deceive. Considering the evidence in the light most favorable to the prosecution, we find a reasonable fact finder could have found beyond a reasonable doubt that the appellant made the two false official statements.

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [we] are [ourselves] convinced of the accused's guilt beyond a reasonable doubt." *Turner*, 25 M.J. at 325. Review of the evidence is limited to the entire record, which includes only the evidence admitted at trial and exposed to the crucible of cross-examination. Article 66(c), UCMJ; *United States v. Bethea*, 46 C.M.R. 223, 224-25 (C.M.A. 1973). We have carefully considered the evidence under this standard and are convinced beyond a reasonable doubt that the appellant is guilty of this charge and its specifications.

Inappropriately Severe Sentence

We review sentence appropriateness de novo. *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005). We make such determinations in light of the character of the offender, the nature and seriousness of her offenses, and the entire record of trial. *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006), *aff'd*, 65 M.J. 35 (C.A.A.F. 2007). Additionally, while we have a great deal of discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999); *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988).

Integrity is the quintessential attribute of officership and the appellant's crimes undermine her standing as an officer and an Air Force member. Her past disciplinary record[2], one which is replete with an indifference and outright hostility toward superiors, co-workers, and subordinates, evinces poor rehabilitative potential. After carefully examining the submissions of counsel, the appellant's military record, and taking into account all the facts and circumstances surrounding the offenses of which the appellant was found guilty, we do not find the appellant's sentence, one which includes a dismissal, inappropriately severe.

Conclusion

[2] The appellant had received a letter of reprimand for belittling and demeaning subordinates in the presence of other subordinates and patients, a letter of admonishment for failing to obey a lawful order, and a letter of counseling for engaging in a heated altercation with a co-worker in the presence of a subordinate.

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; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, YA-02, DAF
Clerk of the Court