IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.

BEFORE

C.A. PRICE **E.B. HEALEY** **R.C. HARRIS**

UNITED STATES

v.

Armando B. BARQUIN
Hospital Corpsman Third Class (E-4), U.S. Navy

NMCCA 200101696 Decided 13 August 2004

Sentence adjudged 7 July 1999. Military Judge: S.L. Raffetto. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, U.S. Naval Hospital, Yokosuka, Japan.

CDR GEORGE F. REILLY, JAGC, USN, Appellate Defense Counsel
CDR RHODA J.GANZEL, JAGC, USNR, Appellate Defense Counsel
LtCol JOHN KENNEDY, USMCR, Appellate Government Counsel

PRICE, Senior Judge:

Pursuant to his pleas, the appellant was convicted by a military judge sitting alone, of conspiracy to commit fraud and larceny, larceny of military property, making a fraudulent travel claim, presenting a fraudulent travel claim, and soliciting another to submit a false statement and steal U.S. currency (two specifications), in violation of Articles 81, 121, 132, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 921, 932, and 934. The military judge sentenced the appellant to confinement for 29 days, restriction to the limits of U.S. Fleet Activities, Yokosuka, Japan for 60 days, a fine of $680.00, and a bad-conduct discharge. The convening authority approved the sentence as adjudged, but suspended all of the confinement and restriction.

The appellant has assigned the following errors: (1) multiplicity and unreasonable multiplication of charges among the larceny and fraud specifications, (2) improvident guilty pleas to making a fraudulent travel claim, and (3) the military judge's and trial defense counsel's handling of the appellant's request for a bad-conduct discharge. We have carefully

considered the record of trial, the assignments of error, and the Government's response. We conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant were committed. Arts. 59(a) and 66(c), UCMJ.

Appellant's Request for a Bad-Conduct Discharge

The appellant contends that the cumulative effect of (1) the military judge's questioning of the appellant during his unsworn statement, (2) the military judge giving too much emphasis to the appellant's request for a bad-conduct discharge (BCD), and (3) the trial defense counsel's offer of a BCD "striker" advisement letter amounted to prejudicial error. We disagree.

In his unsworn statement, the appellant requested that if confinement was considered for possible punishment, that he be given a bad-conduct discharge instead. The military judge then questioned the appellant regarding the request and his understanding of the negative ramifications of a bad-conduct discharge. Some of the military judge's questions elicited disclosure of privileged communications between the appellant and the trial defense counsel. The military judge's lengthy questioning occupies five pages in the record of trial. When asked if he had anything else to present in extenuation and mitigation, the trial defense counsel offered a *Blunk* letter[1] and the military judge admitted it into evidence. Following argument, including the trial defense counsel's request for a bad-conduct discharge, the military judge commented that he adjudged a bad-conduct discharge because it was appropriate based on the facts of the case, not because the appellant asked for it.

Based on our scrutiny of the military judge's questioning of the appellant during his unsworn statement, we conclude that the military judge erred. His interrogation of the appellant was similar to, but far more extensive than, the questioning we criticized, and found to be improper, in *United States v. Adame*, 57 M.J. 812, 814-15 (N.M.Ct.Crim.App. 2003). The trial defense counsel compounded the military judge's error by offering the *Blunk* letter, a document that counsel should have retained in his case file. *See United States v. Williams*, 57 M.J. 581, 583 (N.M.Ct.Crim.App. 2002).

Nevertheless, we conclude that the appellant suffered no prejudice. The military judge specifically advised the appellant that he awarded a bad-conduct discharge based on the facts of the case, not in response to his request for such a discharge. In view of the seriousness of the appellant's offenses, we have no difficulty taking the military judge at his word. Furthermore, nothing has been submitted to this court indicating that the appellant ever had a change of heart regarding his request for a

[1] *United States v. Blunk*, 17 C.M.R. 422 (C.M.A. 1967).

punitive discharge. The military judge's error does not warrant relief. *Id.*

Conclusion

We have considered the remaining assignments of error and find them lacking in merit. The findings and the sentence, as approved by the convening authority, are affirmed.

Judge HEALEY and Judge HARRIS concur.

For the Court

R.H. TROIDL
Clerk of Court