

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
BURTON, RODRIGUEZ, and FLEMING
Appellate Military Judges

UNITED STATES, Appellee
v.
Private First Class JERRICA C. DANIELS
United States Army, Appellant

ARMY 20190696

Headquarters, United States Army Alaska
Joseph A. Keeler and Joseph R. Distaso, Military Judges
Colonel James A. Barkei, Staff Judge Advocate

For Appellant: Colonel Michael C. Friess, JA; Lieutenant Colonel Angela D. Swilley, JA; Captain Paul T. Shirk, JA (on brief).

For Appellee: Colonel Steven P. Haight, JA; Lieutenant Colonel Wayne H. Williams, JA; Major Brett Cramer, JA; Lieutenant Colonel Jaired D. Stallard, JA (on brief).

7 January 2021

SUMMARY DISPOSITION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

Per Curiam:

A military judge sitting as a special court-martial convicted appellant, in accordance with her pleas, of two specifications of larceny of government property in violation of Article 121, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 912 (2012). The military judge sentenced appellant to a bad-conduct discharge, confinement for twenty-five days, and reduction to the grade of E-1. This case is now before us for review under Article 66, UCMJ.

DISCUSSION

Appellant's larceny convictions stem from a DA Form 5960, *Authorization to Start, Stop or Change Basic Allowance for Quarters (BAQ), and/or Variable Housing Allowance*, she submitted to change her Basic Allowance for Housing (BAH) to the with dependent rate after she wed her husband in December 2017. At the time, appellant was stationed in Alaska and claimed her husband lived in San Francisco, the location for which the dependent rate BAH was claimed. Appellant knew, as of 1 March 2018, her husband did not live in San Francisco. During the time of the charged offenses (Specification 1 of Charge II covered the period 1 March 2018 – 31 December 2018; Specification 2 of Charge II covered the period 1 January 2019 – 30 June 2019), he lived in Alaska or Louisiana. Despite this knowledge, appellant never took action to adjust her BAH claim even though the BAH rate for both locations was significantly lower than San Francisco.

Appellant asserts the military judge abused his discretion by accepting appellant's guilty plea to two specifications of larceny when appellant only committed one act to effectuate the offense. *See United States v. Hines*, 73 M.J. 119, 122 (C.A.A.F. 2014 (citing *United States v. Watson*, 71 M.J. 54, 56 (C.A.A.F. 2012)). The government, based upon the unique facts of this case and on the entire record, concedes appellant committed but one offense of larceny. *See Hines*, 73 M.J. at 124. We agree, and therefore merge Specification 2 of Charge II into Specification 1 of Charge II to form a single specification that reads:

In that Private First Class (E-3) Jerrica C. Daniels, U.S. Army, did, at or near Joint Base Elmendorf-Richardson, Alaska, from on or about 1 March 2018 to on or about 30 June 2019, steal money in the form of basic housing allowance for San Francisco, California, military property, of a value of over \$1000, the property of the United States Government.

CONCLUSION

The finding of guilty to Specification 1 of Charge II, as merged, is AFFIRMED. Specification 2 of Charge II is dismissed.

Reassessing the sentence on the basis of our action in this case, the entire record, and in accordance with the principles of *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013), we affirm appellant's sentence to a bad-conduct discharge, confinement for twenty-five days, and reduction to the grade of E-1. All rights, privileges, and property, of which appellant has been deprived by virtue of that portion of her sentence set aside by this decision, are ordered restored. *See* UCMJ arts. 58b(c), 75(a).

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FOR THE COURT:

(b) (6)

MALCOLM H. SQUIRES, JR.
Clerk of Court