

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CAMPANELLA, and CELTNIIEKS
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E1 TASHANNA A. HAMPTON
United States Army, Appellant

ARMY 20120290

Headquarters, Fort Hood
James L. Varley, Military Judge
Colonel Stuart W. Risch, Staff Judge Advocate (pretrial)
Colonel Richard W. Rousseau, Staff Judge Advocate (post-trial)

For Appellant: Colonel Kevin Boyle, JA; Major Amy E. Nieman, JA; Captain Payum Doroodian, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Major A.G. Courie III, JA; Captain Benjamin W. Hogan, JA; Captain Carling M. Dunham, JA (on brief).

17 April 2015

SUMMARY DISPOSITION

CAMPANELLA, Judge:

An officer panel, sitting as a special court-martial convicted appellant, contrary to her pleas, of one specification of desertion and one specification of absence without leave [hereinafter AWOL], in violation of Articles 85 and 86, Uniform Code of Military Justice, 10 U.S.C. §§ 885 and 886 (2006) [hereinafter UCMJ]. The panel sentenced appellant to a bad-conduct discharge. The convening authority approved the sentence as adjudged.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises two assignments of error, one of which warrants discussion but no relief. Specifically, appellant requests relief to remedy the significant dilatory post-trial processing in her case. We disagree that relief is appropriate in this case. We also find that matters raised personally by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) are without merit.

Appellant was nineteen years old when she reported Fort Hood, her first duty station, in September 2008. She became pregnant shortly thereafter. On 13 March 2009, appellant was listed as absent without leave (AWOL) by her unit commander.

Sometime between May or June 2009, appellant went to her home state of Florida, where she prematurely gave birth to her child at a civilian hospital on 27 July 2009. As a result of medical complications, the baby stayed in the hospital for approximately three months after birth. Appellant was allowed to stay at the hospital to learn to care for the baby's significant medical issues.

In May 2010, appellant turned herself into local authorities in Florida after being told by hospital personnel of an outstanding AWOL warrant for her arrest. She was immediately flown back to Fort Hood, leaving her child in the care of her mother.

In July 2010, appellant's mother drove from Florida to Fort Hood with appellant's baby. On 16 July 2010, appellant's baby was diagnosed with asthma and pneumonia and needed specialty medical care.

On 18 July 2010, appellant drove to Florida with her baby and obtained ongoing medical care in Florida. Appellant lived in Florida until she was arrested on 1 November 2011 on unrelated criminal charges and turned over to military authorities.

On 17 August 2012, after she was court-martialed and found guilty of desertion and AWOL, appellant was placed on voluntary excess leave. On appeal, appellant asks for relief from her case's dilatory post-trial processing.

The convening authority took action 666 days after the sentence was adjudged. Although we find no due process violation in the post-trial processing of appellant's case, we still review the appropriateness of appellant's sentence in light of the unjustified dilatory post-trial processing. UCMJ art. 66(c); *United States v. Tardif*, 57 M.J. 219, 224 (C.A.A.F. 2002) (“[Pursuant to Article 66(c), UCMJ, service courts are] required to determine what findings and sentence ‘should be approved,’ based on all the facts and circumstances reflected in the record, including the unexplained and unreasonable post-trial delay.”); *see generally United States v. Toohey*, 63 M.J. 353, 362-63 (C.A.A.F. 2006); *United States v. Ney*, 68 M.J. 613, 617 (Army Ct. Crim. App. 2010); *United States v. Collazo*, 53 M.J. 721, 727 (Army Ct. Crim. App. 2000).

While ordinarily such extreme post-trial delay might warrant relief, in this case where appellant's punishment was solely a bad-conduct discharge, we find no prejudice to appellant which would warrant the extraordinary measure of

disapproving appellant's punitive discharge. In fact, we find the post-trial delay substantially inured to the benefit of appellant. For the entire period of post-trial processing time, appellant and her children* were enrolled in TRICARE Prime, which provides medical care at no cost to appellant. *See* 10 U.S.C. § 1074(a)(1) (Members of the uniformed service on active duty are "entitled to medical and dental care in any facility of any uniformed service."); *see also* Memorandum from The Assistant Secretary of Defense, Health Affairs, Subject: Enrollment of Active Duty Service Members in Appellate Leave Status (Nov. 8, 2006) ("Enrollment to TRICARE Prime is mandatory for all active duty service members (ADSMs). This requirement does not end when the ADSM goes on appellate leave status."). Accordingly, given the totality of the circumstances, we conclude the post-trial delay does not adversely affect the public's perception of the fairness and integrity of the military justice system and no relief is warranted.

CONCLUSION

Upon consideration of the entire record, the findings of guilty and sentence are AFFIRMED.

Senior Judge TOZZI and Judge CELTNIIEKS concur.



FOR THE COURT:

A handwritten signature in black ink, appearing to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court

* It is apparent from the record that appellant has given birth to a second child.