

Case Summary
Office of the Judge Advocate General

DEFENDANT: PTE McPhee
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 12 November 2024
VENUE: Lavarack Barracks, Townsville

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Criminal Code Act 1995, s. 135.2(1) Obtaining a financial advantage	Not Guilty
Alternative to Charge 1	DFDA, s. 56(4) Recklessly making a false or misleading statement in relation to application for benefit	Guilty
Charge 2	DFDA, s. 61(3) and Criminal Code Act 1995, s. 135.2(1) Obtaining a financial advantage	Not Guilty
Alternative to Charge 2	DFDA, s. 56(4) Recklessly making a false or misleading statement in relation to application for benefit	Guilty
Charge 3	DFDA, s. 61(3) and Criminal Code Act 1995, s. 135.2(1) Obtaining a financial advantage	Withdrawn
Alternative to Charge 3	DFDA, s. 56(4) Recklessly making a false or misleading statement in relation to application for benefit	Withdrawn

Pre-Trial: Closed hearing and non-publication orders

Application made:	No.
Determination:	Not Applicable.

Trial: Facts and legal principles

At the commencement of proceedings, the Prosecuting Officer made application to withdraw Charge 3 and its alternative. The application was not opposed by the Defending Officer and was granted by the DFM. Accordingly, the offender was arraigned only in respect of Charges 1 and 2 and their alternatives. When arraigned the offender entered pleas of not guilty to each of Charges 1 and 2 but entered pleas of guilty to their alternatives. The Prosecuting Officer informed the DFM that pursuant to r. 41(4)(b) of the *Court Martial and Defence Force Magistrate Rules 2020*, the prosecution consented to the acceptance of the offender's pleas of guilty to the alternative charges in full satisfaction of the charge sheet. The case proceeded by way of a guilty plea.

Findings

	Finding
Charge 1	Not Applicable
Alternative to Charge 1	Guilty
Charge 2	Not Applicable
Alternative to Charge 2	Guilty

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

Sentencing: Facts and legal principles

Between 19 June 2021 and 22 September 2023, the offender appropriated 282 meals from Defence messes by selecting meal payment options that he was not entitled. They varied between Living in Meal (LIM) and Transit options and resulted in the offender obtaining meals to the value of \$2,071.75. The offender participated in a recorded interview with service investigators and made some admissions.

In mitigation of penalty, the Defending Officer referred to the offender's early pleas of guilty to less serious offences, his lack of disciplinary or civilian criminal convictions, his otherwise good character and genuine remorse.

Although the offender's behaviour was objectively serious, the DFM held that the minimum penalties necessary to satisfy the principles of general deterrence and maintenance of good order and discipline in the Defence Force were wholly suspended periods of detention coupled with orders for reparation to the Commonwealth.

Punishments and orders

Charge 1	Not Applicable
Alternative to Charge 1	To undergo detention for a period of 30 days. The Tribunal orders that the sentences of detention imposed in connection with 270/2024 and 272/2024 are to be served concurrently. Pursuant to s. 78 DFDA the Tribunal orders that the whole of the sentences of detention be suspended. To pay the sum of \$1804.50 by way of reparation to the Commonwealth in one lump sum.
Charge 2	Not Applicable
Alternative to Charge 2	To undergo detention for a period of 14 days. The Tribunal orders that the sentences of detention imposed in connection with 270/2024 and 272/2024 are to be served concurrently. Pursuant to s. 78 DFDA the Tribunal orders that the whole of the sentences of detention be suspended. To pay the sum of \$267.25 by way of reparation to the Commonwealth in one lump sum.

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 09 December 2024.

	Conviction	Punishments / Orders
Charge 1	Not applicable	Not applicable
Alternative to Charge 1	Upheld	Upheld
Charge 2	Not applicable	Not applicable
Alternative to Charge 2	Upheld	Upheld

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