

48-2920. (KCMJ Art. 64) Review by a judge advocate. (a) Each case in which there has been a finding of guilty that is not reviewed under K.S.A. 48-2922 or subsection (a) of K.S.A. 48-2924 shall be reviewed by a judge advocate under regulations of the governor. A judge advocate may not review a case under this subsection if the judge advocate has acted in the same case as an accuser, investigating officer, member of the court, military judge or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether:

- (A) The court had jurisdiction over the accused and the offense;
- (B) the charge and specification stated an offense; and
- (C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened, or to that person's successor in command, if:

(1) The judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under subsection (c) of K.S.A. 48-2916 extends to dismissal, a bad-conduct or dishonorable discharge or confinement for more than six months; or

(3) such action is otherwise required by regulations of the governor.

(c) (1) The person to whom the record of trial and related documents are sent under subsection (b) may:

(A) Disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the judge advocate general for review under subsection (b) of K.S.A.. 48-2924.

History: L. 1988, ch. 191, § 42; July 1.