

2012 Kansas Statutes

48-2916. (KCMJ Art. 60) Action by the convening authority. (a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b) (1) Within 30 days after announcement of the sentence of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period:

(A) In the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

(B) in the case of all other courts-martial, for not more than an additional 10 days.

(2) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by subsection (b)(1).

(3) In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to the accused within which to make a submission under subsection (b)(1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.

(4) The accused may waive the accused's right to make a submission to the convening authority under subsection (b)(1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c) (1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the governor, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the governor, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) and, if applicable, under subsection (d), or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in such person's sole discretion, may approve, disapprove, commute or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in such person's sole discretion, may:

(A) Dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification by a finding of guilty to an offense that is a lesser-included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of the staff judge advocate. The convening authority or other person taking action under this section shall refer the record of trial to such person's staff judge advocate and the staff judge advocate shall use such record in the preparation of the staff judge advocate's recommendation. The recommendation of the staff judge advocate shall include such matters as the governor may prescribe by regulation and shall be served on the accused, who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days. Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e) (1) The convening authority or other person taking action under this section, in such person's sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(A) Reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of some article of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if such person disapproval of the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, such person shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

History: L. 1988, ch. 191, § 38; July 1.