

**48-2922. (KCMJ Art. 66) Review by court of military review.** (a) The judge advocate general shall establish a court of military review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a court of military review may be commissioned officers or civilians, each of whom must be a member of a bar of a federal court or the highest court of a state. The judge advocate general shall designate as chief judge one of the appellate military judges of the court of military review established by the judge advocate general. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The judge advocate general shall refer to a court of military review the record in each case of trial by court-martial in which:

(1) The sentence, as approved, extends to dismissal of a commissioned officer, dishonorable or bad-conduct discharge or confinement for three or more months; and

(2) the right to appellate review has not been waived or an appeal has not been withdrawn under K.S.A. 48-2917.

(c) In a case referred to it, the court of military review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty and the sentence, or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the court of military review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The judge advocate general shall, unless there is to be further action by the governor, the adjutant general, the Kansas court of appeals or the Kansas supreme court, instruct the convening authority to take action in accordance with the decision of the court of military review. If the court of military review has ordered a rehearing but the convening authority finds a rehearing impracticable, the convening authority shall dismiss the charges.

(f) The governor shall prescribe uniform rules of procedure for courts of military review and shall periodically formulate policies and procedure in regard to review of court-martial cases in the office of the judge advocate general and by courts of military review.

(g) No member of a court of military review shall be required or, on the member's own initiative, be permitted to prepare, approve, disapprove, review or submit, with respect to any other member of the same or another court of military review, an effectiveness, fitness or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces shall be retained on active duty.

(h) No member of a court of military review shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel or reviewing officer of such trial.

**History:** L. 1988, ch. 191, § 44; July 1.