WEST VIRGINIA CODE: §15-1E-64

§15-1E-64. Review by the senior force judge advocate.

(a) Each general and special court-martial case in which there has been a finding of guilty shall be reviewed by the senior force judge advocate, or a designee. The senior force judge advocate, or designee, may not review a case under this subsection if that person 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 senior force 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 Adjutant General, if:

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

(2) The sentence approved under subsection (c), section sixty of this article 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 Adjutant General.

(c)(1) The Adjutant General 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.

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(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 senior force judge advocate, or designee, in the senior force judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the Adjutant General 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 Governor for review and action as deemed appropriate.

(d) The senior force judge advocate, or a designee, may review any case in which there has been a finding of not guilty of all charges and specifications. The senior force judge advocate, or designee, may not review a case under this subsection if that person 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 senior force judge advocate's review shall be limited to questions of subject matter jurisdiction.

(e) The record of trial and related documents in each case reviewed under subsection (d) shall be sent for action to The Adjutant General. The Adjutant General may:

(1) When subject matter jurisdiction is found to be lacking, void the court-martial ab initio, with or without prejudice to the Government, as the Adjutant General deems appropriate; or

(2) Return the record of trial and related documents to the senior force judge advocate for appeal by the Government as provided by law.

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