

48-2924. (KCMJ Art. 69) Review in the office of the judge advocate general. (a) The record of trial in each general court-martial that is not otherwise reviewed under K.S.A. 48-2922 shall be examined in the office of the judge advocate general if there is a finding of guilty and the accused does not waive or withdraw the accused's right to appellate review under K.S.A. 48-2917. If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the judge advocate general may modify or set aside the findings or sentence or both. If the judge advocate general so directs, the record shall be reviewed by a court of military review under K.S.A. 48-2922, but in that event there may be no further review by the Kansas court of appeals except under subsection (b)(2) of K.S.A. 48-2923.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under K.S.A. 48-2922 may be modified or set aside, in whole or in part, by the judge advocate general on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the judge advocate general by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under subsection (c) of K.S.A. 48-2916, unless the accused establishes good cause for failure to file within that time.

(c) If the judge advocate general sets aside the findings or sentence, the judge advocate general may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the judge advocate general sets aside the findings and sentence and does not order a rehearing, the judge advocate general shall order that the charges be dismissed. If the judge advocate general orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

History: L. 1988, ch. 191, § 46; July 1.