

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-106 inserted after first sentence “Any such submission shall be in writing.”

1986—Subsec. (b)(1). Pub. L. 99-661, § 806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, 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.”

Subsec. (b)(2). Pub. L. 99-661, § 806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99-661, § 806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after “case”, and struck out former par. (3) which read as follows: “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 him within which to make a submission under paragraph (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.”

Subsec. (c)(2). Pub. L. 99-661, § 806(b), struck out “and, if applicable, under subsection (d),” after “under subsection (b)”.

Subsec. (d). Pub. L. 99-661, § 806(c), substituted “who may submit any matter in response under subsection (b)” for “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.”

1983—Pub. L. 98-209 amended section generally, substituting “Action by the convening authority” for “Initial action on the record” as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 806(c) [(d)] of title VIII of Pub. L. 99-661 provided that: “The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title.”

Title VIII of Pub. L. 99-661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99-661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sen-

tence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, § 5(b)(1), Dec. 6, 1983, 97 Stat. 1397.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------------------------------|
| 861 | 50:648. | May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127. |

The word “each” is substituted for the word “every”.

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting “Waiver or withdrawal of appeal” for “Same—General court-martial records” as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification):

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.