

(1) as to the findings, if there is insufficient evidence in the record to support the findings;

(2) to reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; or

(3) to 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.

(c) SUBMISSIONS BY ACCUSED AND VICTIM.—In accordance with rules prescribed by the President, in determining whether to act under this section, the convening authority shall consider matters submitted in writing by the accused or any victim of the offense. Such rules shall include the matter required by section 860a(e) of this title (article 60a(e)).

(d) DECISION OF CONVENING AUTHORITY.—(1) In a general or special court-martial, the decision of the convening authority under this section shall be forwarded to the military judge, with copies provided to the accused and to any victim of the offense.

(2) If the convening authority acts on the findings or the sentence under subsection (a)(1), the decision of the convening authority shall include a written explanation of the reasons for such action.

(Added Pub. L. 114-328, div. E, title LIX, §5323, Dec. 23, 2016, 130 Stat. 2926.)

#### DELAYED EFFECTIVE DATE

*For delayed effective date of section, see Effective Date note below.*

#### EFFECTIVE DATE

Section effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328, set out as an Effective Date of 2016 Amendment note under section 801 of this title.

#### § 860c. Art. 60c. Entry of judgment

(a) ENTRY OF JUDGMENT OF GENERAL OR SPECIAL COURT-MARTIAL.—(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60).

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

- (i) any post-trial action by the convening authority; or
- (ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

(2) Under rules prescribed by the President, the judgment under paragraph (1) shall be—

- (A) provided to the accused and to any victim of the offense; and
- (B) made available to the public.

(b) SUMMARY COURT-MARTIAL JUDGMENT.—The findings and sentence of a summary court-mar-

tial, as modified by any post-trial action by the convening authority under section 860b of this title (article 60b), constitutes the judgment of the court-martial and shall be recorded and distributed under rules prescribed by the President.

(Added Pub. L. 114-328, div. E, title LIX, §5324, Dec. 23, 2016, 130 Stat. 2927.)

#### DELAYED EFFECTIVE DATE

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#### EFFECTIVE DATE

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#### § 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; Pub. L. 114-328, div. E, title LIX, §5325, Dec. 23, 2016, 130 Stat. 2928.)

#### AMENDMENT OF SECTION

*Pub. L. 114-328, div. E, title LIX, §5325, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2928, 2967, provided that, effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, this section is amended to read as follows:*

§861. Art. 61. Waiver of right to appeal; withdrawal of appeal

(a) WAIVER OF RIGHT TO APPEAL.—After entry of judgment in a general or special court-martial, under procedures prescribed by the Secretary concerned, the accused may waive the right to appellate review in each case subject to

such review under section 866 of this title (article 66). Such a waiver shall be—

- (1) signed by the accused and by defense counsel; and
- (2) attached to the record of trial.

(b) **WITHDRAWAL OF APPEAL.**—In a general or special court-martial, the accused may withdraw an appeal at any time.

(c) **DEATH PENALTY CASE EXCEPTION.**—Notwithstanding subsections (a) and (b), an accused may not waive the right to appeal or withdraw an appeal with respect to a judgment that includes a sentence of death.

(d) **WAIVER OR WITHDRAWAL AS BAR.**—A waiver or withdrawal under this section bars review under section 866 of this title (article 66).

*See 2016 Amendment note below.*

#### 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

2016—Pub. L. 114-328 amended section generally. Prior to amendment, section related to waiver or withdrawal of appeal.

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 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328, set out as a note under section 801 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 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.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98-209, § 5(c)(1), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 103-337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104-106, div. A, title XI, § 1141(a), Feb. 10, 1996, 110 Stat. 466; Pub. L. 114-328, div. E, title LIX, § 5326, Dec. 23, 2016, 130 Stat. 2928; Pub. L. 115-91, div. A, title V, § 531(h), Dec. 12, 2017, 131 Stat. 1385.)

#### AMENDMENT OF SECTION

*Pub. L. 115-91, div. A, title V, § 531(h), (p), Dec. 12, 2017, 131 Stat. 1385, 1388, provided that, effective immediately after the amendment made by section 5326 of Pub. L. 114-328, set out below, takes effect as provided for in section 5542 of that Act, subsection (b) of this section is amended by striking “, notwithstanding section 866(c) of this title (article 66(c))”. See 2017 Amendment note below.*

*Pub. L. 114-328, div. E, title LIX, § 5326, title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2928, 2967, made amendments to this section effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23,*