

Subsecs. (b) to (e). Pub. L. 90-632, §2(27)(C), substituted “Court of Military Review” for “board of review” wherever appearing.

Subsec. (f). Pub. L. 90-632, §2(27)(D), substituted “Courts of Military Review” for “boards of review” in two places.

Subsecs. (g), (h). Pub. L. 90-632, §2(27)(E), added subsecs. (g) and (h).

CHANGE OF NAME

Pub. L. 103-337, div. A, title IX, §924(b)(1), Oct. 5, 1994, 108 Stat. 2831, provided that: “Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals.”

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 531(j) of Pub. L. 115-91 effective immediately after the amendments made by div. E (§§5001-5542) of Pub. L. 114-328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 531(p) of Pub. L. 115-91, set out as a note under section 801 of this title.

Amendment by section 1081(c)(1)(K) of Pub. L. 115-91 effective immediately after the amendments made by div. E (§§5001-5542) of Pub. L. 114-328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115-91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes 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 amendments by section 7(b), (c) of Pub. L. 98-209 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.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Pub. L. 90-632, §3(b), Oct. 24, 1968, 82 Stat. 1343, provided that: “Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review [now Court of Criminal Appeals].”

§ 867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General,

after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps, orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c)(1) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to—

(A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or

(B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals.

(2) In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him.

(3) In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review.

(4) The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces 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) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Pub. L. 88-426, title IV, § 403(j), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90-340, § 1, June 15, 1968, 82 Stat. 178; Pub. L. 90-632, § 2(28), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 96-579, § 12(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 97-81, § 5, Nov. 20, 1981, 95 Stat. 1088; Pub. L. 97-295, § 1(12), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98-209, §§ 7(d), 9(a), 10(c)(2), 13(d), Dec. 6, 1983, 97 Stat. 1402, 1404, 1406, 1408; Pub. L. 100-26, § 7(a)(2), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100-456, div. A, title VII, § 722(a), (c), Sept. 29, 1988, 102 Stat. 2002, 2003; Pub. L. 101-189, div. A, title XIII, § 1301(a), Nov. 29, 1989, 103 Stat. 1569; Pub. L. 103-337, div. A, title IX, § 924(c)(1), (2), (4)(B), Oct. 5, 1994, 108 Stat. 2831, 2832; Pub. L. 114-328, div. E, title LIX, § 5331, Dec. 23, 2016, 130 Stat. 2934.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
867(a)	50:654(a).	May 5, 1950, ch. 169, § 1
867(b)	50:654(b).	(Art. 67), 64 Stat. 129;
867(c)	50:654(c).	Mar. 2, 1955, ch. 9, § 1(i),
867(d)	50:654(d).	69 Stat. 10.
867(e)	50:654(e).	
867(f)	50:654(f).	
867(g)	50:654(g).	

In subsection (a)(1), the word "is" is substituted for the words "is hereby established". The words "all" and "which shall be" are omitted as surplusage. The word "consists" is substituted for the words "shall consist". The word "civil" is substituted for the word "civilian". The word "may" is substituted for the word "shall" before the words "be appointed". The word "is" is substituted for the word "shall" before the words "any person". The words "is entitled to" are substituted for the words "shall receive". The word "is" is substituted for the words "shall be" in the fourth sentence. The word "may" is substituted for the words "shall have power to * * * to". The word "does" is substituted for the word "shall" in the next to the last sentence. In the last sentence, the words "is entitled * * * to" are substituted for the word "shall". The word "outside" is substituted for the words "at a place other than his official station. The official station of such judges for such purpose shall be". The words "also" and "actually" are omitted as surplusage.

In subsection (a)(2), the words "February 28, 1951," are substituted for the words "the effective date of this subdivision". The word "shall" in the first sentence, and the word "shall" before the word "expire" in the second sentence, are omitted as surplusage. The word "before" is substituted for the words "prior to". The word "may" is substituted for the word "shall" before the words "be appointed".

In subsection (a)(3), the word "for" is substituted for the words "upon the ground of".

In subsection (b), the words "the following cases" are omitted as surplusage.

In subsections (b) and (d), the word "sent" is substituted for the word "forwarded".

In subsection (c), the word "when" is inserted after the word "time". The words "a grant of" are omitted as surplusage.

In subsection (d), the word "may" is substituted for the word "shall" in the first sentence.

In subsection (f), the words "Secretary concerned" are substituted for the words "Secretary of the Department".

In subsection (g), the words "of the armed forces" are omitted as surplusage. The words "policies as to sentences" are substituted for the words "sentence policies". The word "considered" is substituted for the word "deemed". The words "Secretaries of the military departments, and the Secretary of the Treasury" are substituted for the words "Secretaries of the Departments".

1982 ACT

In subsection (d), the words "Court of Military Review" are substituted for "board of review" because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90-632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

AMENDMENTS

2016—Subsec. (a)(2). Pub. L. 114-328, § 5331(a), inserted ", after appropriate notification to the other Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps," after "the Judge Advocate General".

Subsec. (c). Pub. L. 114-328, § 5331(b), designated first sentence as par. (1) and substituted "only with respect to—" and subpars. (A) and (B) for "only with respect to the issues raised by him." and designated second to fourth sentences as pars. (2) to (4), respectively.

1994—Pub. L. 103-337, § 924(c)(4)(B), substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals" in section catchline.

Pub. L. 103-337, § 924(c)(2), substituted "Court of Criminal Appeals" for "Court of Military Review" wherever appearing in subsecs. (a) to (c) and (e).

Pub. L. 103-337, § 924(c)(1), substituted "Court of Appeals for the Armed Forces" for "Court of Military Appeals" wherever appearing.

1989—Pub. L. 101-189 redesignated subsecs. (b) to (f) as (a) to (e), respectively, struck out former subsec. (a) which related to establishment of the United States Court of Military Appeals, and appointment, removal, allowances and compensation, etc., of judges of such court, struck out subsec. (g) which related to a committee required to make annual comprehensive surveys of the operation of this chapter, struck out subsec. (h) which related to review of decisions of the Court of Military Appeals by the Supreme Court, and struck out subsec. (i) which related to annuities for judges and former or retired judges, and survivors and former spouses of judges and former judges.

1988—Subsec. (a)(4). Pub. L. 100-456, § 722(c), inserted "or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5" after "retired pay" in two places.

Subsec. (i). Pub. L. 100-456, § 722(a), added subsec. (i).

1987—Subsec. (g)(1). Pub. L. 100-26 substituted "the Staff Judge Advocate to the Commandant of the Marine Corps" for "the Director, Judge Advocate Division, Headquarters, United States Marine Corps".

1983—Subsec. (a)(3). Pub. L. 98-209, § 13(d), inserted "Circuit" after "District of Columbia".

Subsec. (b)(1). Pub. L. 98-209, § 7(d), struck out "affects a general or flag officer or" before "extends to death".

Subsec. (g). Pub. L. 98-209, § 9(a), designated existing provisions as par. (1), substituted "A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report" for "The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report", and added pars. (2) and (3).

Subsec. (h). Pub. L. 98-209, § 10(c)(2), added subsec. (h).

1982—Subsec. (d). Pub. L. 97-295, § 1(12)(A), substituted "Court of Military Review" for "board of review" after "incorrect in law by the".

Subsec. (g). Pub. L. 97-295, § 1(12)(B), substituted "Secretary of Transportation" for "Secretary of the Treasury" after "military departments, and the".

1981—Subsec. (c). Pub. L. 97-81 substituted provisions authorizing the accused to petition the Court of Mil-

tary Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980—Subsec. (a)(1). Pub. L. 96-579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968—Subsec. (a)(1). Pub. L. 90-340 changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and established it under Article I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of \$33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed \$15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90-340 redesignated former par. (3) as (2) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90-340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90-340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90-632 substituted "Court of Military Review" for "board of review" wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88-426 increased salary of judges from \$25,500 to \$33,000.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. A, title VII, §722(d), Sept. 29, 1988, 102 Stat. 2003, provided that: "Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98-209 effective Dec. 6, 1983, and amendment by sections 7(d) and 10(c)(2) of Pub. L. 98-209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98-209 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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after that date, see section 7(a), (b)(5) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88-426, see section 501 of Pub. L. 88-426.

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 98-209, §9(b), Dec. 6, 1983, 97 Stat. 1404, as amended by Pub. L. 98-525, title XV, §1521, Oct. 19, 1984, 98 Stat. 2628, directed Secretary of Defense to establish a commission to study the sentencing authority, jurisdiction, tenure, and retirement system of military judges, and to report, not later than Dec. 15, 1984, its findings and recommendations to committees of Congress and to the committee established under former section 867(g) of this title.

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Pub. L. 96-579, §12(b), Dec. 23, 1980, 94 Stat. 3369, provided that the term of office of a judge of United States Court of Military Appeals serving on such court on Dec. 23, 1980, expire (1) on the date the term of such judge would have expired under the law in effect on the day before Dec. 23, 1980, or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Pub. L. 90-340, §2, June 15, 1968, 82 Stat. 178, provided that: "The United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or

powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act.”

SALARY INCREASES

1987—Salaries of judges increased to \$95,000 per annum, on recommendation of President, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to \$57,500 per annum, on recommendation of President, see note set out under section 358 of Title 2.

1969—Salaries of judges increased from \$33,000 to \$42,500 per annum, commencing first day of pay period which begins after Feb. 14, 1969, on recommendation of President, see note set out under section 358 of Title 2.

EXECUTIVE ORDER NO. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the United States Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added Pub. L. 101-189, div. A, title XIII, §1301(b), Nov. 29, 1989, 103 Stat. 1569; amended Pub. L. 103-337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 114-328, div. E, title LIX, §5332, Dec. 23, 2016, 130 Stat. 2935.)

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328 inserted “United States” before “Court of Appeals” in second sentence.

1994—Subsec. (a). Pub. L. 103-337 substituted “Court of Appeals for the Armed Forces” for “Court of Military Appeals” in two places.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114-328 effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of

the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90-632, §2(29), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103-337, div. A, title IX, §924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
868	50:655.	May 5, 1950, ch. 169, §1 (Art. 68), 64 Stat. 130.

The word “considers” is substituted for the word “deems”. The word “may” is substituted for the words “shall be empowered to”. The word “respective” is inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 substituted “Court of Criminal Appeals” for “Court of Military Review” wherever appearing.

1968—Pub. L. 90-632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted “Court of Military Review” for “board of review” as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90-632, set out as a note under section 801 of this title.

§ 869. Art. 69. Review by Judge Advocate General

(a) IN GENERAL.—Upon application by the accused and subject to subsections (b), (c), and (d), the Judge Advocate General may modify or set aside, in whole or in part, the findings and sentence in a court-martial that is not reviewed under section 866 of this title (article 66).

(b) TIMING.—To qualify for consideration, an application under subsection (a) must be submitted to the Judge Advocate General not later than one year after the date of completion of review under section 864 or 865 of this title (article 64 or 65), as the case may be. The Judge Advocate General may, for good cause shown, extend the period for submission of an application, but may not consider an application submitted more than three years after such completion date.

(c) SCOPE.—(1)(A) In a case reviewed under section 864 or 865(b) of this title (article 64 or 65(b)), the Judge Advocate General may set aside the findings or sentence, in whole or in part, on the grounds 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.

(B) In setting aside findings or sentence, the Judge Advocate General may order a rehearing, except that a rehearing may not be ordered in violation of section 844 of this title (article 44).

(C) If the Judge Advocate General sets aside findings and sentence and does not order a re-