

commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Military Commission Review of any order or ruling of the military judge—

(1) that terminates proceedings of the military commission with respect to a charge or specification;

(2) that excludes evidence that is substantial proof of a fact material in the proceeding;

(3) that relates to a matter under subsection (c) or (d) of section 949d of this title; or

(4) that, with respect to classified information—

(A) authorizes the disclosure of such information;

(B) imposes sanctions for nondisclosure of such information; or

(C) refuses a protective order sought by the United States to prevent the disclosure of such information.

(b) **LIMITATION.**—The United States may not appeal under subsection (a) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

(c) **SCOPE OF APPEAL RIGHT WITH RESPECT TO CLASSIFIED INFORMATION.**—The United States has the right to appeal under paragraph (4) of subsection (a) whenever the military judge enters an order or ruling that would require the disclosure of classified information, without regard to whether the order or ruling appealed from was entered under this chapter, another provision of law, a rule, or otherwise. Any such appeal may embrace any preceding order, ruling, or reasoning constituting the basis of the order or ruling that would authorize such disclosure.

(d) **TIMING AND ACTION ON INTERLOCUTORY APPEALS RELATING TO CLASSIFIED INFORMATION.**—

(1) **APPEAL TO BE EXPEDITED.**—An appeal taken pursuant to paragraph (4) of subsection (a) shall be expedited by the United States Court of Military Commission Review.

(2) **APPEALS BEFORE TRIAL.**—If such an appeal is taken before trial, the appeal shall be taken within 10 days after the order or ruling from which the appeal is made and the trial shall not commence until the appeal is decided.

(3) **APPEALS DURING TRIAL.**—If such an appeal is taken during trial, the military judge shall adjourn the trial until the appeal is decided, and the court of appeals—

(A) shall hear argument on such appeal within 4 days of the adjournment of the trial (excluding weekends and holidays);

(B) may dispense with written briefs other than the supporting materials previously submitted to the military judge;

(C) shall render its decision within four days of argument on appeal (excluding weekends and holidays); and

(D) may dispense with the issuance of a written opinion in rendering its decision.

(e) **NOTICE AND TIMING OF OTHER APPEALS.**—The United States shall take an appeal of an order or ruling under subsection (a), other than an appeal under paragraph (4) of that subsection, by filing a notice of appeal with the military judge within 5 days after the date of the order or ruling.

(f) **METHOD OF APPEAL.**—An appeal under this section shall be forwarded, by means specified in regulations prescribed by the Secretary of Defense, directly to the United States Court of Military Commission Review.

(g) **APPEALS COURT TO ACT ONLY WITH RESPECT TO MATTER OF LAW.**—In ruling on an appeal under paragraph (1), (2), or (3) of subsection (a), the appeals court may act only with respect to matters of law.

(h) **SUBSEQUENT APPEAL RIGHTS OF ACCUSED NOT AFFECTED.**—An appeal under paragraph (4) of subsection (a), and a decision on such appeal, shall not affect the right of the accused, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the military judge on remand of a ruling appealed from during trial.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2601.)

Editorial Notes

PRIOR PROVISIONS

A prior section 950d, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2620, related to appeal by the United States, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950e. Rehearings

(a) **COMPOSITION OF MILITARY COMMISSION FOR REHEARING.**—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

(b) **SCOPE OF REHEARING.**—(1) Upon a rehearing—

(A) the accused may not be tried for any offense of which the accused was found not guilty by the first military commission; and

(B) no sentence in excess of or more than the original sentence may be imposed unless—

(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

(ii) the sentence prescribed for the offense is mandatory.

(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2602.)

Editorial Notes

PRIOR PROVISIONS

A prior section 950e, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2621, related to rehearings, prior to the general amendment of this chapter by Pub. L. 111–84.

§ 950f. Review by United States Court of Military Commission Review

(a) ESTABLISHMENT.—There is a court of record to be known as the “United States Court of Military Commission Review” (in this section referred to as the “Court”). The Court shall consist of one or more panels, each composed of not less than three judges on the Court. For the purpose of reviewing decisions of military commissions under this chapter, the Court may sit in panels or as a whole, in accordance with rules prescribed by the Secretary of Defense.

(b) JUDGES.—(1) Judges on the Court shall be assigned or appointed in a manner consistent with the provisions of this subsection.

(2) The Secretary of Defense may assign persons who are appellate military judges to be judges on the Court. Any judge so assigned shall be a commissioned officer of the armed forces, and shall meet the qualifications for military judges prescribed by section 948j(b) of this title.

(3) The President may appoint, by and with the advice and consent of the Senate, additional judges to the United States Court of Military Commission Review.

(4) No person may serve as a judge on the Court in any case in which that person acted as a military judge, counsel, or reviewing official.

(5)(A) For purposes of sections 203, 205, 207, 208, and 209 of title 18, the term “special Government employee” shall include a judge of the Court appointed under paragraph (3).

(B) A person appointed as a judge of the Court under paragraph (3) shall be considered to be an officer or employee of the United States with respect to such person’s status as a judge, but only during periods in which such person is performing the duties of such a judge. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall only apply to such a judge during such periods.

(6) The term of an appellate military judge assigned to the Court under paragraph (2) or appointed to the Court under paragraph (3) shall expire on the earlier of the date on which—

(A) the judge leaves active duty; or

(B) the judge is reassigned to other duties in accordance with section 949b(b)(4) of this title.

(c) CASES TO BE REVIEWED.—The Court shall, in accordance with procedures prescribed under regulations of the Secretary, review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter properly raised by the accused.

(d) STANDARD AND SCOPE OF REVIEW.—In a case reviewed by the Court under this section, the Court may act only with respect to the findings and sentence as approved by the convening authority. The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the military commission saw and heard the witnesses.

(e) REHEARINGS.—If the Court sets aside the findings or sentence, the Court may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Court sets aside the findings or sentence and does not order a rehearing, the Court shall order that the charges be dismissed.

(Added Pub. L. 111–84, div. A, title XVIII, § 1802, Oct. 28, 2009, 123 Stat. 2603; amended Pub. L. 112–81, div. A, title X, § 1034(c), Dec. 31, 2011, 125 Stat. 1573; Pub. L. 115–91, div. A, title X, § 1082, Dec. 12, 2017, 131 Stat. 1602; Pub. L. 115–232, div. A, title V, § 541(a), Aug. 13, 2018, 132 Stat. 1761.)

Editorial Notes

PRIOR PROVISIONS

A prior section 950f, added Pub. L. 109–366, § 3(a)(1), Oct. 17, 2006, 120 Stat. 2621; amended Pub. L. 110–181, div. A, title X, § 1063(a)(6), Jan. 28, 2008, 122 Stat. 322, related to review by Court of Military Commission Review, prior to the general amendment of this chapter by Pub. L. 111–84.

AMENDMENTS

2018—Subsec. (b)(6). Pub. L. 115–232 added par. (6).

2017—Subsec. (b)(5). Pub. L. 115–91 added par. (5).

2011—Subsec. (a). Pub. L. 112–81 substituted “judges on the Court” for “appellate military judges” in second sentence.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title V, § 541(b), Aug. 13, 2018, 132 Stat. 1762, provided that: “The amendment made by subsection (a) [amending this section] shall apply to each judge of the United States Court of Military Commission Review serving on that court on the date of the enactment of this Act [Aug. 13, 2018] and each judge assigned or appointed to that court on or after such date.”

§ 950g. Review by United States Court of Appeals for the District of Columbia Circuit; writ of certiorari to Supreme Court

(a) EXCLUSIVE APPELLATE JURISDICTION.—Except as provided in subsection (b), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority and, where applicable, as affirmed or set aside as incorrect in law by the United States Court of Military Commission Review) under this chapter.

(b) EXHAUSTION OF OTHER APPEALS.—The United States Court of Appeals for the District of Columbia Circuit may not review a final judgment described in subsection (a) until all other appeals under this chapter have been waived or exhausted.

(c) TIME FOR SEEKING REVIEW.—A petition for review by the United States Court of Appeals for the District of Columbia Circuit must be filed in the Court of Appeals—

(1) not later than 20 days after the date on which written notice of the final decision of the United States Court of Military Commission Review is served on the parties; or

(2) if the accused submits, in the form prescribed by section 950c of this title, a written