

10 U.S.C. § 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 [10 USCS §§ 948a et seq.], 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 [10 USCS § 948j(b)].

(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 [18 USCS §§ 203, 205, 207, 208, and 209], 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 [10 USCS § 950c] 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.