



UNITED STATES  
COURT OF MILITARY COMMISSION REVIEW

OMAR AHMED KHADR,	)	
	)	ORDER
Appellant	)	
	)	RECUSAL OF JUDGES
v.	)	WARD AND WEBER
	)	
UNITED STATES,	)	CMCR Case No. 13-005
	)	
Appellee	)	October 17, 2014

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**BEFORE:**

**POLLARD, PRESIDING Judge**  
**WARD, WEBER, Judges**

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On August 15, 2014, appellant moved Judges Ward and Weber to recuse themselves from his case because “Congress’s effort to insulate the military officers assigned to the Court from the President’s authority as Commander-in-Chief violates [Constitutional notions of] separation of powers.” Appellant’s Motion to Recuse Judges Ward and Weber 1. Alternatively, appellant argues that “the Secretary of Defense’s assignment of active duty military officers to serve as principal officers on an independent Article I court violates the Appointments Clause,” U.S. Const., art. II, § 2, cl. 2. *Id.* Appellee opposes the motion, asserting that “even if appellate military judges assigned to duty on the [U.S. Court of Military Commission Review (USCMCR)] are principal officers, they have already been appointed in accordance with the Appointments Clause as commissioned officers,” and that USCMCR appellate judges “are properly considered inferior officers” because the Secretary of Defense has statutory authority to assign and reassign them to other duties. Response to Motion to Recuse Judges Ward and Weber 1-2. Additionally, appellee opposes the motion because it asserts 10 U.S.C. § 949b(b)(4), setting forth the circumstances under which appellate military judges assigned to the USCMCR may be reassigned to other duties, does not encroach “upon the Commander in Chief’s ability to use military resources to protect the national interest.” *Id.* at 2.

The appointments of Judges Ward and Weber to the USCMCR and their continued service on the USCMCR are lawful and consistent with the Appointments Clause, the Military Commissions Act of 2009, 10 U.S.C. §§ 948a

*et. seq.*, and Constitutional principles of separation of powers. Concerning appellant's separation of powers challenge, 10 U.S.C. § 949b(b)(4) permits appellate military judges on the USCMCR to be reassigned to other duties based on military necessity, consistent with applicable service rotation regulations. Concerning appellant's Appointments Clause challenge, the Supreme Court in *Weiss v. United States*, 510 U.S. 163 (1994) rejected a requirement for military officers assigned to the service Court of Criminal Appeals to receive another appointment, noting that "[a]ll of the military judges involved in these cases, however, were already commissioned officers when they were assigned to serve as judges, and thus they had already been appointed by the President with the advice and consent of the Senate." *Id.* at 170. Therefore, military judges on those courts did not require another appointment. *Id.* at 176. *See also Edmond v. United States*, 520 U.S. 651, 654 (1997) (noting that *Weiss* upheld the judicial assignments of military judges "because each of the military judges had been previously appointed by the President as a commissioned military officer, and was serving on active duty under that commission at the time he was assigned to a military court."). We find *Weiss* applicable here.

Accordingly, Judges Ward and Weber decline to recuse themselves from appellant's case.

It is hereby,

**ORDERED** that the abeyance order dated July 11, 2014 is lifted to the extent necessary to resolve the motion addressed by this Order regarding the request that Judges Ward and Weber recuse themselves from appellant's case.

**ORDERED** that appellant's motion that Judges Ward and Weber recuse themselves from appellant's case is **DENIED**.

FOR THE COURT:

  
Mark Harvey  
Clerk of Court, U.S. Court of Military  
Commission Review