

FACT SHEET

MILITARY APPELLATE REVIEW OF GENERAL COURTS-MARTIAL CONVICTIONS

Following every trial by a general court-martial resulting in conviction and sentence, a verbatim record of trial is prepared. This complete record, including exhibits, is then reviewed for legal correctness by the Staff Judge Advocate. All legal issues presented by the record are considered and the evidence is evaluated. The legal review and the record are then considered by the convening authority, who may approve only so much of the findings of guilty and the sentence as he finds correct in law and fact and determines should be approved. He cannot increase any sentence, but may reduce its severity.

If the sentence as approved by the convening authority extends to dismissal, dishonorable or bad conduct discharge, or to confinement for one year or more, the record of trial must be reviewed by a Court of Military Review in the Office of The Judge Advocate General of the Army in Washington, D. C. This nine member court, which normally acts in panels of three members each, is composed of senior judge advocates who are designated military judges. The accused may be represented before this court by military counsel at no expense to him, by civilian counsel provided by him at his own expense, or by both military and civilian counsel. The court has extremely broad powers to decide questions of fact as well as law, and to approve only so much of any finding or sentence as it determines both legally and factually correct. The court cannot increase any sentence.

Both the convening authority and a Court of Military Review have the power to set aside findings of guilty and the sentence and to direct a rehearing of any case if they determine that errors prejudicial to the substantial rights of the accused occurred during trial. Such rehearing may be on the entire case or on the sentence alone, but may not increase the severity of the finding or sentence. These authorities also have the power to set aside any or all findings of guilty and to dismiss any or all charges or specifications.

After review by a Court of Military Review, the accused may petition the United States Court of Military Appeals for a grant of review. The Court of Military Appeals consists of three civilian judges appointed to 15-year terms by the President. If good cause is shown, the Court will grant the petition and review the entire record for errors in matters of law. This Court may act only with respect to the findings and sentence approved by the convening authority and as affirmed by the Court of Military Review. During appeals before this court, military counsel are available without cost to the accused; he may retain civilian counsel at his own expense, or he may utilize both military and civilian counsel.

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Prior to completion of all appellate review as described above, the sentence of a general court-martial involving a punitive discharge or dismissal or confinement for one year or more cannot be ordered into execution. Thus, although an accused may be confined after sentencing, he remains an officer or enlisted man until such time as the punitive discharge or dismissal, if any, is ordered into execution.

The President of the United States has authority (which historically has been exercised with restraint) to grant executive clemency in the form of pardon in cases involving federal convictions by courts-martial or Courts of the United States. He may also act to reduce the severity of the findings or sentence. This authority is vested in the President by Article II, Section 2, of the Constitution of the United States. In addition to the military appellate procedures, an accused may apply to the Federal courts for relief, though normally those courts will not intervene until the military procedures have been exhausted by an individual convicted by a military tribunal.

Q. Does the execution of the portion of the sentence as to the forfeiture of all pay and allowances become effective at the time the convening authority takes his action approving or disapproving the findings and sentence?

A. Yes.

Q. As Commander-in-Chief, does the President have to pardon a convicted member of the Armed Forces, or can he reduce the sentence or set aside a verdict?

A. The President can pardon, reduce the sentence, or set aside the verdict.

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*What is happening to Callahan??*

*Military CWR*

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