

§432. Reconsideration

1. Return of record. If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

[PL 1983, c. 460, §3 (NEW).]

2. Errors. Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case may the record be returned:

A. For reconsideration of a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty; [PL 1983, c. 460, §3 (NEW).]

B. For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this Code; or [PL 1983, c. 460, §3 (NEW).]

C. For increasing the severity of the sentence, unless the sentence imposed is less than the mandatory sentence prescribed for the offense. [PL 1983, c. 460, §3 (NEW).]

[PL 1983, c. 460, §3 (NEW).]

3. Rehearing. A rehearing must be ordered as follows.

A. If the convening authority disapproves of the findings and sentence, the convening authority shall state the reasons for disapproval, and may order a rehearing, except where there is lack of sufficient evidence in the record to support the findings. If the convening authority disapproves the findings and sentence and does not order a rehearing, the convening authority shall dismiss the charges. [RR 2019, c. 1, Pt. B, §33 (COR).]

B. Each rehearing must take place before a court-martial composed of members who were not members of the court-martial that first heard the case. Upon a rehearing, the accused may not be tried for any offense of which the accused was found not guilty by the first court-martial. No sentence more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [RR 2019, c. 1, Pt. B, §33 (COR).]

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SECTION HISTORY

PL 1983, c. 460, §3 (NEW). RR 2019, c. 1, Pt. B, §33 (COR).

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