**Section 400.1030 Action by the Convening Authority**

a) Who May Take Action. The convening authority shall take action on the sentence and, in the discretion of the convening authority, the findings, unless it is impractical. If it is impracticable for the convening authority to act, the convening authority shall, in accordance with regulations promulgated by the Adjutant General, forward the case to an officer exercising general court-martial jurisdiction who may take action. (See NGIL Reg. 27-10/NGIL-ANGI 51-202, paragraph 9-1(b)(1).)

b) Discretion to Modify. The authority *to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority* or other officer authorized to take action.

c) Action on the Sentence. *Action may be taken only after consideration of any matters submitted by the accused, or after the time* to submit them has expired, *whichever is earlier*. In his or her sole discretion, *the convening authority or other* officer authorized to *take action may approve, disapprove, commute or suspend the sentence in whole or in part*. The action may mitigate the sentence and change punishment to one of a different nature as long as the severity of the punishment is not increased. The action may not increase the punishment imposed by the court-martial. The action shall explicitly state approval or disapproval of the adjudged sentence.

d) Action on the Findings. *The convening authority or other* officer *acting on the sentence is not required* to take action on the findings. *However, that person, in his or her sole discretion, may*:

1) *Dismiss any charge or specification by setting aside a finding of guilty; or*

2) *Change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification*. (Code Section 60(c))

e) Revision and Rehearing. The convening authority or other person taking action, in the person's sole discretion, may order a proceeding in revision or rehearing.

1) Rehearing. *The convening authority or other person taking action may, in his or her sole discretion, order a rehearing if that person disapproves the findings and sentence, and states the reasons of disapproval of the findings. If that person disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges. A rehearing as to findings shall not be ordered if there is a lack of sufficient evidence in the record to support the findings. A rehearing on the sentence may be ordered if the convening authority or other person taking action disapproves the sentence.*  Rehearing will be in accordance with this Manual.

2) Revision. *A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision*:

A) *Reconsider a finding of not guilty of any specification or a ruling* *that* *amounts to a finding of not guilty;*

B) *Reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under the charge that sufficiently alleges a violation of some Section of* *the* *Code; or*

C) *Increases the severity of the sentence*. (Code Section 60(e))