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**UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES
Appellee

v.

Jerome J. FORREST, Private First Class
United States Army, Appellant

No. 25-0081
Crim. App. No. 20200715

Decided September 21, 2026

Military Judges: Matthew Calarco (arraignment),
Jacqueline Tubbs (trial), and
Steven C. Henricks (*DuBay*)

For Appellant: *Lieutenant Colonel Autumn R. Porter, Captain Louis S. Steiner, Captain Alexis N. Dunlap, and Jonathan F. Potter, Esq.*

For Appellee: *Colonel Richard E. Gorini, Major Lisa Limb, Captain Andrew T. Bobowski, and Captain Anthony J. Scarpati.*

PER CURIAM.¹

In *United States v. Abdullah*, we held that a retired appellate judge's participation in an en banc decision of the United States Army Court of Criminal Appeals (ACCA) was impermissible because he was not assigned to the ACCA when the case was decided. __ M.J. __, __ (6) (C.A.A.F. 2026). Therefore, we remanded for a new Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866 (Supp. III 2019-2022), review by a properly constituted en banc court. *Abdullah*, __ M.J. at __ (16). We reserved the question whether the participation of a former appellate judge on terminal leave was permissible. *Id.*

We now address the issue we reserved in *Abdullah*. We hold, in light of *Abdullah*, that an appellate judge's participation in an ACCA panel decision was permissible where she was on active duty and assigned to the ACCA when the case was decided.

I. Background

Appellant was convicted, contrary to his pleas, of unpremeditated murder for the death of his wife. He was sentenced to confinement for life with the possibility of parole, reduction to the lowest enlisted grade, and a dishonorable discharge. The ACCA affirmed the findings and sentence. *United States v. Forrest*, No. ARMY 20200715, 2024 CCA LEXIS 504, at *43, 2024 WL 4879961, at *12 (A. Ct. Crim. App. Nov. 22, 2024) (unpublished).

The ACCA's decision in *Forrest* was issued on November 22, 2024. Senior Judge Walker authored the opinion of the court on behalf of the three-judge panel. In a footnote, the opinion noted that Senior Judge Walker took final action on the case prior to her retirement. *Id.* at *1 n.1, 2024 WL 4879961, at *1 n.1.

¹ Chief Judge Maggs is recused and did not participate in this case.

Appellant petitioned this Court for review, arguing that trial defense counsel were ineffective in several respects, and that Senior Judge Walker was precluded from participating in the decision of his case because she was retired when the decision was issued.

We ordered the Government to file an answer and provide an affidavit establishing the date Senior Judge Walker began terminal leave and the date she retired. *United States v. Forrest*, 85 M.J. 406, 407 (C.A.A.F. 2025) (interlocutory order). The Government provided an affidavit stating that Senior Judge Walker retired on November 30, 2024, and her “terminal/transition leave ran from October 10, 2024, until her retirement.” We then granted review of a single, modified issue: whether an appellate judge on terminal leave impermissibly participated in a decision of the ACCA. *United States v. Forrest*, 86 M.J. 138 (C.A.A.F. 2025) (order granting review).

After hearing oral argument in *Abdullah* but before we released our decision in that case, we ordered the Government to provide, in connection with *Forrest*:

1. Copies of former-Senior Judge Walker’s orders with respect to (1) her uncharged transition absence, (2) her terminal/transition leave, and (3) retirement.
2. A declaration or affidavit from former-Senior Judge Walker detailing (1) the actual dates of her uncharged transition absence, her terminal/transition leave, and her retirement, and (2) where and when she began any follow-up employment.

United States v. Forrest, 86 M.J. 462 (C.A.A.F. 2025) (order).

Former Senior Judge Walker provided a declaration in which she stated, in pertinent part:

1. She was on continuous active duty from June 3, 2001, until November 30, 2024;

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2. She was assigned as an appellate judge on the ACCA from July 5, 2019, until her retirement from active duty in 2024;
3. She was on approved terminal/transition leave from October 10, 2024, until November 30, 2024;
4. Her retirement date from active duty was November 30, 2024; and
5. She was appointed to her position at the United States Court of Appeals for the Armed Forces on October 21, 2024.

Attached to the affidavit were approved absence requests reflecting periods of leave including:

- Transition Administrative Absence from September 20, 2024, to September 29, 2024;
- Involuntary Separation Administrative Absence from September 30, 2024, to October 9, 2024; and
- Terminal/Transitional Leave from October 10, 2024, until her retirement on November 30, 2024.

Each order listed her department and location as 00248329/W0KEAA – W0KE USA Legal Services Agency at Ft. Belvoir (USALSA). Also attached to the affidavit was an order reflecting former Senior Judge Walker’s reassignment on November 30, 2024, from USALSA to Fort Belvoir TC.

II. Discussion

“Whether a court is properly constituted is a question of law that this Court reviews de novo.” *Abdullah*, __ M.J. at __ (5).

In *Abdullah*, we held that a retired judge who was not assigned to the ACCA when the case was decided was not eligible to participate in the decision. *Id.* at __ (11). Former Chief Judge Smawley retired from the Army on October 31,

2024. The ACCA decided *Abdullah* on November 5, 2024. Absent any evidence that former Chief Judge Smawley had been reassigned to the ACCA after his retirement, we held that he was not eligible to participate in the en banc decision of the court. *Id.* at __ (8). Therefore, the en banc court was improperly constituted. *Id.* at __ (13).

In *Forrest*, by contrast, former Senior Judge Walker was assigned to the ACCA when the case was decided. The ACCA decided *Forrest* on November 22, 2024. Former Senior Judge Walker was on continuous active duty and assigned as an ACCA judge at the time the case was decided and until the date of her retirement on November 30, 2024.

Applying the principles articulated in *Abdullah*, we reach the opposite result in this case. “[A] case is decided when the court’s decision is issued.” *Id.* at __ (9). “Only a properly constituted appellate panel can complete the review required by Article 66, UCMJ.” *Id.* at __ (5) (internal quotation marks omitted) (quoting *United States v. Lane*, 64 M.J. 1, 7 (C.A.A.F. 2006)). Thus, as former Chief Judge Ohlson noted in his separate opinion concurring in the judgment, “[i]n order to be authorized to participate in deciding a United States Court of Criminal Appeals (CCA) case, a person must be properly serving as a CCA judge.” *Id.* at __ (17) (Ohlson, C.J., with whom Hardy, J., joined, concurring in judgment). The record demonstrates that Senior Judge Walker was assigned to the ACCA at the time the case was decided. Therefore, we conclude her participation in the panel decision in *Forrest* was not barred by statute or rule.

III. Conclusion

We answer the granted issue in the negative. The decision of the United States Army Court of Criminal Appeals is affirmed.