

What Are Congressional References and How Do They Work?

Unique among federal courts, the U.S. Court of Federal Claims has jurisdiction to render findings of fact and conclusions of law on individual claims brought before Congress. The process by which one house of Congress by resolution refers a bill to the CFC for such determinations is called “congressional reference.”

Congressional reference resolutions are rare. But the U.S. House of Representatives recently utilized the procedure and passed a resolution referring a breach of trust claim by members of the Quapaw Tribe of Oklahoma to the CFC as reported in our January 2013 [Newsletter](#).

So, what is congressional reference?

A congressional reference is a procedure that allows either house of Congress to refer a matter to the Chief Judge of the U.S. Court of Federal Claims with directions that the CFC report back its findings to the referring house.

The jurisdictional basis for congressional reference is found in 28 U.S.C. 1492, which provides:

Any bill, except a bill for a pension, may be referred by either House of Congress to the chief judge of the United States Court of Federal Claims for a report in conformity with section 2509 of this title.

The procedural rules for congressional references are detailed in 28 U.S.C. 2509 and provide that, among other things, the Chief Judge designate a hearing officer for the case and a panel of three judges to serve as a reviewing body, one of whom serves as presiding officer.

The hearing officer determines the facts in accordance with rules and regulations approved by the Chief Judge and includes in his or her findings conclusions sufficient to inform Congress whether the claim is legal or equitable in nature and the amount, if any, due from the United States. CFC rules provide that the process of hearing a congressional reference case conform, as nearly as possible, to the rules for trial of ordinary lawsuits in the CFC.

Either party may take exceptions to the hearing officer’s report to the review panel, which consists of three CFC judges. The review panel then examines the record and may hear further argument on the issues. The review panel, by majority vote, adopts or modifies the hearing officer’s findings and submits its report to the Chief Judge who then transmits it to Congress.

It’s important to note that the CFC does not render final judgment in the form of a ruling when congressional reference is complete. Rather, the Chief Judge submits a report and recommendation to Congress which then can act to appropriate funds if damages are recommended. Congressional references are used in cases that are otherwise outside the jurisdiction of the CFC, including cases barred by statute of limitations or sovereign immunity, but for which Congress believes the claimant should at least be afforded a hearing.

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