

Clemency Possible, But Controversial Right Now

By Mathew B. Tully Q. If I get convicted in a court-martial, is there any way I might be granted clemency?

A.

This has been a hot issue since an Air Force commander earlier this year granted clemency to a pilot convicted of sexual assault, overturning his verdict and allowing him to return to active duty. So the answer is a qualified "yes" - mercy or leniency, also known as clemency, is a possibility. But when planning your defense, you shouldn't put all of your eggs in that basket. Defense Secretary Chuck Hagel announced April 8 that he is recommending to Congress a change in law under which convening authorities cannot overturn a court-martial panel's verdict. But unless and until Congress changes the law, Article 60 of the Uniform Code of Military Justice, in its current form, allows convening authorities - the commanders who convene courts-martial - to modify findings and sentences at court-martial. They can make these modifications so long as they're a function of "command prerogative." It is within the convening authority's power, under the Rules of Court-Martial, to disapprove a guilty finding or approve the lesser offense of a guilty finding "for any reason or no reason." The convening authority can also suspend a sentence, except when the sentence is death. Overturned convictions are extremely rare. More common forms of clemency include reductions of a sentence or of forfeitures of pay or allowances. Generally, convicted service members should have their attorneys make written requests for clemency. Depending on the circumstances, the request could highlight the unfairness of a sentence, hardships that forfeitures would impose on family members, new evidence not considered during trial, and other mitigating factors. The U.S. Court of Appeals for the Armed Forces has repeatedly emphasized that the "convening authority is an accused's best hope for sentence relief." In a 2003 case, the CAAF noted that requests for clemency should be treated impartially by the convening authorities to ensure they give "full and fair consideration to matters submitted by the accused and determine appropriate action on the sentence." While the convening authority may be the "best hope" for relief, convicted service members can also seek relief by appealing to their branch's Discharge Review Board, a Clemency and Parole Board, or Board for Correction of Military Records.