

Retiree Court Martialing

The case of a retired sailor who was court-martialed after leaving the Navy has reached the military's highest appeals court, potentially setting the stage for a U.S. Supreme Court battle on the matter. Stephen Begani, a retired Navy chief petty officer who was court-martialed after being picked up by federal agents about a month after leaving active duty, has taken his case to the U.S. Court of Appeals for the Armed Forces. Begani filed a petition late last month for the top military appellate court to hear his case after a naval appeals court in January determined the retired sailor had been rightfully court-martialed. That was after the Navy-Marine Corps Court of Criminal Appeals issued a 2019 opinion that court-martialing military retirees is unconstitutional.

The U.S. Court of Appeals for the Armed Forces, known as CAAF, is the last stop before military appeals battles make it to the Supreme Court. Begani's attorney did not respond to a request for comment about the petition for the CAAF to consider the case. The retired chief petty officer's request calls on the court to consider whether his courtmartial was unfair since some retired troops are subject to the Uniform Code of Military Justice after leaving the military and others aren't. Sailors and Marines who leave active duty with more than 20 years in uniform but less than 30 who want to collect retiree pay move into the Fleet Reserve or Fleet Marine Corps Reserve. In that status, they essentially receive retainer pay and can be brought back onto active duty without consent in extreme circumstances, leaving them subject to the UCMJ. It's not until retired Marines and sailors hit the 30-year mark of active or inactive service when they're moved to the Regular Retired List, under which they're no longer subject to the UCMJ.

Those same rules don't apply to retired reservists, though, which has left some considering Begani's case unconstitutional. In 2019, Navy Lt. Daniel Rosinski, who represented Begani, argued that there's no difference between a retiree who leaves active duty versus one who leaves the Reserve. They're all out of uniform, aren't subject to military duties on a day-to-day basis, and can all be recalled to active duty, he said. Unlike Begani, though, who was tried in a military courtroom, Reserve retirees are tried as civilians. Begani's case dates back to 2017, when he was arrested by Naval Criminal Investigative Service agents after he'd left active duty and was transferred to the Fleet Reserve. He was working as a contractor at Marine Corps Air Station Iwakuni in Japan when he showed up at a residence where he believed a 15-year-old girl with whom he'd been communicating lived. Begani had actually been communicating with an undercover NCIS agent. He received a bad-conduct discharge and was sentenced to 18 months' confinement.

The military's top appeals court is made up of a group of civilian judges. They review only the cases they select, meaning a small percentage of the cases presented by appellants is considered by the court. Whether the court will grant review of the case can take months, according to the Air Force Judge Advocate General's Corps. If the petition for grant of review is denied, the appeal of the case concludes and there is no further action. That includes not being able to petition the U.S. Supreme Court to consider the case. If the CAAF does grant the petition, the court will eventually issue an opinion on a case, reversing or affirming the case in part or total. If the conviction is affirmed, according to the JAG Corps, there are 90 days to petition the U.S. Supreme Court.

The Supreme Court has previously upheld the Defense Department's authority to try retirees. In 2019, the court opted against hearing the case of a retired Marine who was court-martialed for a sexual

assault he committed a few months after leaving the military. By opting against hearing that case, the status quo was upheld, leaving some military retirees subject to the UCMJ.