

**APPELLATE LEAVE**  
**FREQUENTLY ASKED QUESTIONS**



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## **Appellate Leave FAQs**

### What is appellate leave?

Appellate leave is a leave status that a member may be placed in after they have been given a punitive discharge (Bad Conduct Discharge (BCD), Dishonorable Discharge (DD) or Dismissal (officers only)) from a court-martial. A punitive discharge, unlike other forms of court-martial punishment, can not be executed until the case has been reviewed by a military appeals court. The appeals process can take from one year to several years to be completed. Members may be placed on appellate leave while the appeals process is underway. *While on appellate leave you are on active duty in an excess leave status.* You are subject to the UCMJ and all orders and directives that apply to active duty members (including grooming standards) and can be returned from appellate leave for the purpose of being sent to additional courts-martial.

### Does appellate leave apply to administrative separations?

No. Appellate leave only applies to members awarded a punitive discharge at a court-martial. If you are administratively separated, you will be discharged and released from active duty once your discharge is approved by the separating authority (normally the first general officer in your chain of command).

### What order covers appellate leave?

MCO 1050.16A – Appellate Leave Awaiting Punitive Separation

### Do I get paid while on appellate leave?

No. Appellate leave is treated as excess leave and you will not rate pay.

### What happens to my regular leave balance?

You do not lose leave you have on the books. Whenever you check out for appellate leave, you are technically in a regular leave status (i.e., receiving pay) until your regular leave is exhausted. You are then placed into an excess leave status (i.e., not receiving pay). However, the current Defense Finance and Accounting Service (DFAS) policy is to hold all of your pay once you check out on appellate leave. You will not receive this pay until your punitive discharge is approved by the appeals court and you are issued your DD-214. DFAS says that the reason for this is that you are still eligible for SGLI while you are on appellate leave and they must collect the premiums. They will then deduct those premiums from the pay they held while your regular leave was being used and before you began excess leave. If you have questions about this, contact DFAS (contact information below).

### Do I get paid for travel if I go on voluntary appellate leave?

No. Neither a mileage allowance nor transportation-in-kind is authorized for Marines departing on voluntary appellate leave. Transportation in-kind is authorized for Marines ordered on involuntary appellate leave.

### Do I get a household goods move if I go on voluntary appellate leave?

No. Marines with dependents rate a household goods shipment for their dependents when departing on involuntary appellate leave.

### Do I rate benefits while on appellate leave?

Yes. You and your dependents are eligible for all of the benefits available to active duty members (e.g., medical care, commissary and exchange privileges, VA loans, legal assistance, etc.). Dental benefits are limited to emergency use only while on appellate leave. If you die while on appellate leave, you will get SGLI, death gratuity, etc. You will need to maintain a current ID card to access these benefits. You can not be arbitrarily denied access to any military facilities, but if you are deemed to present a threat to good and discipline you can be prevented access to base facilities by a legal barring order. For questions about using your health benefits, contact MMSO (contact information below).

### Will I have a military ID while on appellate leave?

Yes. When you check out on appellate leave you will be issued an ID card that is valid for ninety days. You will need to return to a military ID center in ninety days to renew your ID. The ID center will verify that you are still on appellate leave and issue you another ID valid for ninety days. This process will continue until you are no longer on appellate leave.

### Can I use my GI Bill while on appellate leave?

Yes. If you are otherwise eligible to receive GI Bill benefits, you can use them while on appellate leave. Remember, you are on active duty in an excess leave status and rate all active duty benefits. You can contact the VA (contact information below) or discuss this with a VA coordinator at the school where you would like to use your GI Bill benefits.

### Can I use transition assistance services if I go on voluntary appellate leave?

Yes. You are eligible for basic transition assistance services and are encouraged to attend Transition Assistance Program (TAP) classes.

### When does appellate leave start?

If you elect to take voluntary appellate leave, it will begin once you have completed all of the procedures required to check out on appellate leave. These procedures are very similar to the steps taken when you leave active duty (e.g., EAS or retire). If you received confinement time, you may be able to start the check out process while you are serving your sentence. Your request to go on appellate leave does not have to be granted, but is very unlikely to be denied. If you do not elect to take voluntary appellate leave, you can be put on involuntary appellate leave when the convening authority acts on your case (discussed below).

### What is convening authority action?

The convening authority is the officer that sent your case to a court-martial. If you went to a special court-martial, it is likely your squadron or battalion commander. If you went to a general court-martial, it is likely the first commanding general in your chain of command. After your court-martial is completed, the convening authority must approve the findings (i.e., guilt or innocence) and sentence (i.e., confinement, reduction, punitive discharge, etc.). This is called convening authority action. Some court-martial punishments don't happen until convening authority action (i.e., automatic reduction in rank), but most begin immediately after your court-martial (confinement, adjudged reduction in rank, etc.). Convening authority action can not take place until some administrative tasks are completed. One of these tasks is the preparation of the record of trial. This is the verbatim transcript of all of the proceedings in your case. Because this

can take several months to prepare (or even longer if your trial lasted several days), convening authority action will normally take place three months to one year after your court appearance.

#### Do I have to go on appellate leave?

Appellate leave is voluntary until the convening authority takes action on your case. Once the convening authority takes action on your case, you will be placed on involuntary appellate leave. The convening authority normally takes action on your case within a few months of your court appearance. Some administrative actions must be done before the convening authority can take action on your case (e.g., preparation of the transcript in your case) and the delay until this happens varies from case to case. If you had a long trial and the transcript in your case will be lengthy, it may take up to a year to be prepared and reviewed. If you pled guilty and your court appearance was brief, it will normally happen within two to five months. If you had a pretrial agreement in your case, you may have agreed to request voluntary appellate leave as a term of your agreement (check with your defense counsel).

#### What happens if I don't take voluntary appellate leave?

You will return to work at your unit. Once the convening authority takes action on your case (discussed above), you will be forced to go on involuntary appellate leave.

#### What do I do if I have an administrative issue while on appellate leave?

Prior to convening authority action, you are still a member of the unit that sent you on appellate leave. You should contact that unit. Once the convening authority takes action on your case (normally takes three months to a year), you will be transferred to Navy and Marine Corps Appellate Leave Activity (NAMALA). This will be your new command and you should contact them (contact information at the end of this document). If you are not sure if the convening authority has acted in your case, call NAMALA. If they do not have you in their system, contact your defense counsel. If you are unable to find your defense counsel, call the review section at the base or station where your court-martial was done. The review section should be able to tell you where your case is in the process.

#### Can I come back from voluntary appellate leave?

You may request to terminate voluntary appellate leave. The commanding general in your chain of command has the authority to grant or deny your request.

#### How can I find out what is going on with the appeal in my case?

When your case is assigned to an appellate defense counsel, they will attempt to contact you to discuss your case. If you are not sure if your case has made it to the appellate court yet (happens after the convening authority acts on your case), contact Navy and Marine Corps Appellate Leave Activity (NAMALA). If they don't have you in their system, the convening authority has probably not yet acted on your case or your case is in transit between your command and NAMALA. You can contact your defense counsel. If you are unable to find your defense counsel, call the review section at the base or station where your court-martial was done. The review section should be able to tell you where your case is in the process.

How long is this going to take?

The average delay from the date of a court-martial until a DD214 is issued and the member is discharged is in excess of two years. If you want to speed up the process, you can waive the appellate review. Contact your defense counsel for more information. .

Will I need to come back to my command once my discharge is approved?

No. When you check out on appellate leave, you will complete all necessary check out procedures (TAMP class, final physical, etc.). You will not need to return to your unit unless your appellate leave is terminated. This can only be done by a general officer and happens very rarely.

What if my discharge is not approved?

If your punitive discharge is disapproved or set aside by the appeals court, you will be entitled to pay and allowances for any period of involuntary appellate leave charged as excess leave, unless a rehearing is ordered. If a rehearing is ordered and you receive a new sentence which includes another punitive discharge, you are not entitled to back pay and allowances. If a rehearing is ordered and you do not receive a new sentence that includes a punitive discharge, you are entitled to back pay and allowances. If a rehearing is ordered, you will be ordered back from appellate leave and returned to your unit until the rehearing is held.

KEEP YOUR CONTACT INFORMATION UP TO DATE!

You must keep your contact information current with your command while on voluntary appellate leave and with NAMALA while on involuntary appellate leave. Should anything happen in your case, it is important that you are contacted. Also, your appellate defense counsel can't help you with your case if he or she does not know how to get in touch with you. They will get your contact information from your command or NAMALA. Also, upon receipt of a DD214, DFAS will make a final pay settlement and mail a U. S. Treasury check or a letter of indebtedness, whichever is applicable, to the most current leave address on record at NAMALA. If you do not keep your address current, you will not receive your pay settlement.

Contact Information

GI Bill – Veterans Administration

[www.gibill.va.gov](http://www.gibill.va.gov)

1-800-442-4551

Other benefits: [www.va.gov](http://www.va.gov) or 1-800-827-1000

Navy and Marine Corps Appellate Leave Activity (NAMALA)

<http://hqinet001.hqmc.usmc.mil/namala/welcome2.htm>

(202) 685-0100

Navy and Marine Corps Court of Criminal Appeals (NMCCA)

<http://www.jag.navy.mil/FieldOffices/NMCCA.htm>

(202) 685-7700

Defense Finance and Accounting Service (DFAS)

<http://dfas.mil>

(816) 926-7659

Military Medical Support Office (MMSO)

1-800-876-1131 x657

# APPELLATE LEAVE PACKAGE ROUTING

