

Ask the Lawyer: PTSD Not a Free Pass for Criminal Charges

By Mathew B. Tully

Q:

Can I blame a crime I committed on post-traumatic stress disorder?

A:

A diagnosis of post-traumatic stress disorder is not a guaranteed get-out-of-jail card.

Under Article 50a of the Uniform Code of Military Justice, a lack of mental responsibility defense will fly in court only when a mental illness or disease is so severe that it makes a service member “unable to appreciate the nature and quality or wrongfulness of his or her acts.”

With the Veterans Affairs Department estimating that up to one-fifth of Iraq and Afghanistan war veterans suffer from PTSD, it is not surprising that many of them are raising this mental disorder as a defense to criminal charges. However, it’s not easy to prove that a service member’s PTSD was so severe that it impaired his ability to differentiate right from wrong.

It is important to remember that the severity of PTSD is not the same for every service member. “Like many other mental diseases or defects, PTSD exists in a range of degrees,” the U.S. Air Force Court of Criminal Appeals said in its 2009 ruling for U.S. v. Curtis.

That case involved an Air Force staff sergeant who was convicted of assault charges related to multiple incidents involving his wife. He pleaded guilty as part of a pretrial agreement, even though a pretrial sanity board found he suffered from adjustment and personality disorders.

While in confinement, the staff sergeant was diagnosed with PTSD. He appealed his conviction, claiming that he would not have pleaded guilty had he known he suffered from this mental disorder. But the court upheld his conviction, given that the staff sergeant chose to accept the pretrial agreement rather than raise a lack of mental responsibility defense earlier.

Further, the court noted that no one claimed his PTSD made him unable to appreciate the nature and quality or wrongfulness of his actions.

Crucial to claims of lack of mental responsibility are medical documentation and expert testimony attesting to how PTSD impaired a service member’s ability to appreciate the nature and quality or wrongfulness of his acts.

Service members who have been diagnosed with PTSD and face criminal charges should

consult with a military law attorney, who can help determine whether a lack of mental responsibility defense may apply to their case.

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a question. The information in this column is not intended as legal advice.