

Kevlar for the Mind: How to Get Out Without Trouble or Pain

By Mathew B. Tully

Q:

Short of doing something wrong or becoming disabled, how can someone leave the military before his service obligation expires?

A:

Much like marriage, the military demands a commitment from those who enter it. Breaking that commitment, whether in marriage or the military, is never easy. However, the Defense Department recognizes that there are circumstances when a service member cannot fulfill this commitment and should undergo early separation.

DoD Directive 1332.14 outlines the administrative separation guidelines and requirements, listing several reasons for which troops could be separated before their service obligation expires without having to suffer from a disability or being kicked out for misconduct.

These reasons mostly fall under separation “for the convenience of the government” and include: early release for further education; early release to assume public office; dependency or hardship; pregnancy or childbirth; parenthood; conscientious objector; surviving family member; other designated physical or mental conditions; and additional grounds.

Separation for the convenience of the government generally can be characterized as honorable unless an entry-level separation is required or a general characterization is warranted.

A defective enlistment, where a recruiting panel misrepresented facts about a service member, is another way someone could leave the military early without wrongdoing or disability.

Service members also may be separated while in entry-level status if they’re deemed unqualified or their performance is unsatisfactory. However, before receiving this type of separation, they must also undergo counseling and rehabilitation, according to the directive.

Even if service members have a legitimate reason to discontinue their service, if they leave the military before undergoing administrative separation procedures, they could be charged with desertion in violation of Article 85 of the Uniform Code of Military Justice.

For example, in *U.S. v. Mitchell* (1992), an Army staff sergeant challenged his Article 85 conviction by raising a defense of duress and claiming he had to desert so he could care for his suicidal wife. The Army Court of Military Review found that did not justify his desertion.

It's worth noting that the staff sergeant turned down a hardship discharge, opting instead to attempt to serve until his obligation had expired.

Service members who have trouble serving in the military due to extraordinary circumstances should consult with a military law attorney to see if any of these reasons apply to them.

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