

Ask the Lawyer: Can I Take Back My Guilty Plea?

By Mathew B. Tully Q. I had no idea that by pleading guilty to an offense I would end up losing all of my health care benefits. Is there any way I can take back my plea?

A.

Many service members who were found guilty of a Uniform Code of Military Justice offense often feel sideswiped when they learn of the consequences of their conviction, especially when it results in a bad conduct or dishonorable discharge. Among these consequences is the loss of military financial support, public and private sector employment rights, and housing and medical benefits. Military courts refer to these negative impacts as the “collateral consequences of a court-martial conviction.” Sometimes service members are not aware of these consequences, particularly when they are addressed in a plea agreement and their legal counsel failed to properly brief them. Other times the service member might misunderstand explanations of these consequences provided by his or her lawyer or a judge. There is also the possibility that the prosecution and defense attorneys who negotiated the pretrial agreement were not on the same page. In any event, the U.S. Court of Military Appeals in *U.S. v. Tomas S. Bedania* (1982) said that in cases where a service member challenges the legitimacy of a guilty plea because of his or her reliance on the collateral consequences of a court-martial conviction, he or she should prevail when those consequences are major and there is a certain type of misunderstanding. A misunderstanding must be based on unclear language in the pretrial agreement, on comments made by the trial judge during the preliminary inquiry, or on the trial judge’s failure to correct any apparent confusion. For example, *U.S. v. Luis A. Santos* (1977) involved a Navy airman apprentice who pleaded guilty to desertion and unauthorized absence. He was sentenced to total forfeitures, 10 months of confinement to hard labor, a reduction to E-1, and a bad conduct discharge. However, under his pretrial agreement, only nine months of confinement to hard labor were approved by the convening authority, who also suspended the service member’s discharge for the duration of the confinement period and one year after that. At the end of the probationary period, the discharge sentence would be thrown out. However, after the airman apprentice dodged a punitive discharge, the government moved to administratively discharge him under other than an honorable discharge for misconduct due to prolonged absence. The airman apprentice filed an appeal, claiming the government breached the terms of the pretrial agreement. He said he only pleaded guilty to the charges so he could “go back to duty and prove myself” and to “serve my country honorably.” He claimed that by agreeing to suspend the punitive discharge the convening authority implicitly assured him he would be granted the opportunity to rehabilitate himself during the probation period. Meanwhile, the government argued that the service member only bargained for release “from the stigma of a punitive discharge” and administrative actions were a completely different matter. After reviewing all the evidence, the Court of Military Appeals said “there was an honest and substantial misunderstanding as to the practical and legal effect of the pretrial agreement.” It set aside the findings and sentence and returned the case to the Judge Advocate General of the Navy. Service members charged with any offense should consult with a military law attorney, who, depending on the circumstances, can negotiate a pretrial agreement and ensure the service member is fully

aware of the terms outlined in that document. Former service members who have been awarded any discharge less than honorable should also consult with a military law attorney to inquire about an upgrade in their discharge from the Board of Corrections or Discharge Review Board.