

Desertion Conviction Could Lead to Five-Year Prison Term

By Mathew B. Tully

Question:

I've never told anyone I plan to desert the military. So if I don't report for duty for awhile, would the military come after me for AWOL or desertion

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Answer:

The main difference between being absent without leave and desertion

is that the latter requires proof that a service member intended to permanently remain away from his unit or place of duty.

Because proving precisely what a person was thinking is difficult, intent is often proved through the use of circumstantial evidence. Also, intent to permanently remain away need not exist throughout the absence. It's enough to prove desertion to show that the intent to permanently remain away existed at some point during the absence. So even if a service member turns himself in from a period of AWOL

, that person may still be charged with desertion.

What type of circumstantial evidence shows an intent to permanently stay away? This could include the lengthy nature of the absence; that the accused attempted to or did dispose of uniforms or other military property; that the accused purchased a ticket for a distant point or was apprehended or surrendered a considerable distance from a duty station; that the accused could have conveniently surrendered to military control but did not; or that the accused made remarks indicating an intent to desert, among others.

However, with the help of a military law attorney, a service member can use circumstantial evidence to show there was no intent to remain away permanently. Such evidence might include previous long and excellent service; that the accused left valuable personal property at the unit or on the ship; or that the accused was under the influence of alcohol or drugs during the absence.

The case of *U.S. v. Oliver* illustrates the use of circumstantial evidence to charge and convict a service member of desertion. In that case, a soldier left Redstone Arsenal, Ala., but never reported to his new duty station at Fort Eustis, Va.

Instead, he went to live with family in New York for almost three years and got a job. He never

made an effort to surrender or obtain his military property from storage. Finally, after 33 months, the soldier turned himself in at Fort Hamilton, N.Y.

Those circumstances were sufficient for the soldier to be convicted of desertion in violation of Article 85 of the Uniform Code of Military Justice

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A regular desertion charge carries a punishment of two years' confinement and a dishonorable discharge. If a service member deserts with the intent to avoid a combat deployment, the punishment can be increased to up to five years' confinement.

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