

CONSCIENTIOUS OBJECTION DIGEST

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CONSCIENTIOUS OBJECTION CASES

Helpful sources:

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1. GENERAL

- Gillette v. United States, 401 U.S. 437, 441 (1971), The right to be discharged from a military enlistment as a conscientious objector is a statutory right, not a constitutional right.
- But, the DOD has long-established procedures under which members of any branch of the military who meet certain criteria will be discharged honorably as conscientious objectors. See 32 CFR § 75.3.
- Hager v. Secretary of Air Force, 938 F.2d 1449 (C.A.1 1991). Applicant for conscientious objector status, whether applicant is

service member or draft registrant, must show that he is conscientiously opposed to war in any form, that opposition is based upon religious training and belief, and that objection is sincere.

- Clay v. United States, 403 U.S. 698 (1971) (per curiam) (heavy-weight boxing champion qualified as a conscientious objector). A conscientious objector must be opposed to participation in *war* in any form, but not necessarily to any and all uses of force or even of violence.
- Sicurella v. United States, 348 U.S. 385 (1955) Jehovah's Witness's willingness to participate in a theocratic war did not disqualify him from conscientious objector status.
- Kessler v. United States, 406 F.2d 151 (C.A.5. 1969)

Selective service registrant's expression of disapproval of war in Vietnam was not inconsistent with registrant's conscientious objection to armed conflict.

- Sicurella v. United States, 348 U.S. 385 (1955) the Court held that opposition to war refers to "real shooting wars," not to any figurative or theocratic war.
- U.S. v. Purvis, 403 F.2d 555, 563 (2d Cir., 1968) held that an applicant's agreement that force can be used to restrain wrongdoing, especially as a last alternative, has little bearing on the applicant's attitude towards war.
- U. S. v. Gearey, 379 F.2d 915, (C.A.N.Y.,1967)
A registrant's belief in use of force in self-defense is consistent with a conscientious objection to participation in war in any form.
- Ehlert v. U.S. , 402 U.S. 99, 106-7 (1971). Decisions arising out of selective service cases apply equally to those applying for discharge from within the service.

2. JURISDICTION

a. General

- A federal court has jurisdiction to issue a writ of habeas corpus and to grant relief under 28 U.S.C. §§ 2241(a) and (c)(1):

- 28 U.S.C. §§ 2241(a) “Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.”
- 28 U.S.C. §§ 2241 (c)(1): The petitioner is "in custody under or by color of the authority of the United States," because he is an enlisted member of the United States Army.
- Federal courts retain jurisdiction to consider whether the reason for denial, once provided, was adequate to support the Army's denial. See Sanger v. Seamans, 507 F.2d 814, 820 (9th Cir. 1974) (describing a procedure for appeal on remand).
- LaFranchi v. Seamans, 536 F.2d 1259, 1260-61 (9th Cir. 1976). (Pediatrician resigned his commission for CO reasons after receiving activation orders.) When a military service branch denies an application for discharge for reasons of conscientious objection, federal courts will grant relief pursuant to their habeas jurisdiction under 28 U.S.C. § 2241, when the petitioner has asserted beliefs which, if sincerely and deeply held, would qualify him for discharge as a conscientious objector, and when the military has demonstrated no basis in fact in the record to support its denial of the claim.
- Parisi v Davidson, 405 U.S. 34 (1972). When member of Armed Forces has applied for discharge as conscientious objector and has exhausted all avenues of administrative relief, he may seek habeas corpus relief in Federal District Court on ground that denial of his application had no basis in fact.
- Grubb v. Birdsong, 452 F.2d 516 (C.A.6 1971). If the petitioner was a conscientious objector at the time of induction but did not raise the point at that time, then he cannot apply for conscientious objector status afterwards.
- **Silverthorne v. Laird**, 460 F.2d 1175 (C.A.5 1972). The court does not have jurisdiction to hear an argument that the Army should have discharged petitioner as unfit or unsuitable for further duty, as that is a discretionary discharge.
- Nicholson v. Brown, 599 F.2d 639 (C.A.Tex., 1979). A decision to deny request for a CO exemption is judicially reviewable on whether

it is arbitrary.

- McDonough v United States, 452 F.2d 1075 (C.A.1, 1971). The fact that the substantive question before the court is also one that is determinative of jurisdiction does not mean that the court lacks power to make a decision regarding jurisdiction.

b. Jurisdiction based on form of relief asked for:

- Jurisdiction to review denials of discharge to military personnel who alleged that they were conscientious objectors was properly in federal courts involving petitions for declaratory judgment and injunctive relief, but not mandamus:
 - Schmidt v Laird, 328 F.Supp 1009, (D.C.N.C., 1971). Mandamus remedy could not be used for purpose of reviewing discretionary acts of Army.
 - Berman v Resor, 302 F.Supp 1200 (DC.Cal., 1969). Jurisdiction of federal district court to review the Army's denial of discharge on grounds of conscientious objection by a first lieutenant and medical intern commissioned under the Berry Plan was proper because application was for declaratory and injunctive relief, notwithstanding the government's contention that a petition for a writ of habeas corpus would be the more appropriate remedy; because petitioner was in the inactive reserves and thus not "in custody" for purpose of a habeas corpus petition.
 - Issuance of writ of mandamus was not appropriate where serviceman sought to require Army to process his application for conscientious objector discharge in accordance with regulations with which it had allegedly failed to comply, where mandamus remedy would not afford complete relief and serviceman could obtain habeas corpus relief, there hence being another adequate remedy. Strait v Laird, 445 F.2d 843 (C.A.Cal., 1971), rev'd on other grounds 406 U.S. 341.

c. Mootness:

- Carafas v. LaVallee, 391 U.S. 234 (1968), Once jurisdiction has attached in district court, it is not defeated by release of petitioner prior to completion of habeas corpus proceedings.
- McAliley v. Birdsong 451 F.2d 1244 (C.A.6, 1971) (on the issue of whether a bad discharge from the Army renders moot an appeal of denial of habeas corpus writ) Once jurisdiction has attached in federal District Court it is not defeated by release of petitioner prior to completion of habeas corpus proceedings.
- McAliley v. Birdsong 451 F.2d 1244 (C.A.6, 1971). An “other than honorable” discharge from the Army could qualify as “collateral consequences” to stave off mootness of habeas claim when petitioner is no longer in custody.
- Grubb v. Birdsong, 452 F.2d 516 (C.A.6, 1971), (undesirable discharge issue, as in McAliley) held that a petition for habeas corpus is not moot after an undesirable military discharge releases petitioner from military custody.
- Leonard v. Hammond, 804 F.2d 838, 842 (C.A.4 1986), (a prison habeas case, not a military case) explains that jurisdiction remains even if petitioner is no longer in custody at the time the petition is scheduled to be heard. The petition must be in custody when the original complaint is filed, wherein federal jurisdiction attaches. “Plaintiffs’ subsequent releases have no effect on that jurisdiction. “[O]nce the federal jurisdiction has attached in the District Court, it is not defeated by the release of the petitioner prior to completion of proceedings on such application.” Carafas, 391 U.S. at 238, (quoted in Kempen v. Maryland, 428 F.2d 169, 171 (4th Cir. 1970)).”
- Piland v. Eidson, 477 F.2d 1148, 1150 (9th Cir. 1973), (soldier received stay of deployment while his habeas petition was being processed). held that an appeal is not moot even though there is a stay of deployment because of the importance of preserving jurisdiction in fear of impending transfer to a different jurisdiction. “It is not for the Government, by the calculated use of military orders, to determine where jurisdiction shall lie for adjudication of disputes in which it may become involved.”

d. What is “in custody” for purposes of a habeas petition?

AWOL

- In United States ex rel. Crane v. Laird, 315 F.Supp. 837 (D.C.Or., 1970), it was held that an army enlisted man who, while absent without leave, surrendered to civilian police, was "in custody" within the meaning of 28 U.S.C.A. § 2241(c)(1), (2) and (3), and that the court in the district where he had surrendered had jurisdiction over his habeas corpus petition demanding action upon his application for a discharge on grounds of conscientious objection even though it was submitted before he reported to his duty station or submitted to military control.
- Meck v. Commanding Officer, Valley Forge General Hospital 452 F.2d 758 (C.A.3, 1971). Where petitioner was stationed in Washington, went AWOL, filed a habeas petition in Washington, withdrew the petition, then turned self into a hospital in Pennsylvania, and then filed a new habeas petition in Pennsylvania, the court held that the jurisdiction of petitioner rests on whether the commanding officer is in petitioner's chain of command at the time the petition is filed.

Between Assignments/ Transfer Orders/ On Leave

- Carney v. Laird, 462 F.2d 606 (C.A.1, 1972). Serviceman on leave and under orders to report to new duty station could properly bring habeas corpus action in the jurisdiction where his previous duty station was located if it was *before* time to report to the new duty station had expired.
- Carney v. Laird, 462 F.2d 606 (C.A.1, 1972). Federal District Court for district of Rhode Island had habeas corpus jurisdiction over an application for discharge as conscientious objector where, although serviceman had been ordered to California air base for flight to Vietnam and a new duty station, all of serviceman's active duty contacts with Navy were in Rhode Island; Secretary of Navy, named respondent through chief of naval personnel, had consistently exercised control over serviceman in Rhode Island through commander of destroyer attached to Rhode Island naval base upon which serviceman had been stationed; and serviceman was still under obligation to surrender pay records in Rhode Island, even though serviceman was in the process of acquiring new superior

who was neither present in Rhode Island nor had enlisted the aid of officers there in dealing with servicemen.

- McDonough v U. S., 452 F.2d 1075 (C.A.1, 1971). A serviceman while on leave between duty assignments was nevertheless sufficiently "in custody" to support habeas corpus review of a denial of a request for discharge as a conscientious objector.
- McDonough v U. S., 452 F.2d 1075 (C.A.1, 1971). Custody remained with the commanding officer of an illegally disbanded program in New Hampshire, even though the petitioner had been ordered to Fort Knox.
- Examining the question of its jurisdiction to consider a habeas corpus petition brought by an army enlistee seeking his discharge from the Army as a conscientious objector, the court in United States ex rel. Lohmeyer v Laird, 318 F.Supp. 94 (1970, D.C.Md.), determined that it had subject matter jurisdiction, and held that petitioner, although on leave and between duty stations at the time of filing his petition, nevertheless was "in custody" within the district, since mere retention in the Armed Forces is sufficient to constitute custody within the meaning of the habeas corpus statute.
- Sutton v. Laird, 455 F.2d 1376, 1377 (C.A.D.C., 1972). In the case that a petitioner is transferred to a different state between denial of his petition for conscientious objector status and his filing a writ of habeas corpus, then the court in the state he originally filed his petition and has established meaningful contacts in does have jurisdiction, even though petitioner has been since transferred.

After being discharged/ In inactive reserves (also see Mootness, above)

- Berman v Resor, 302 F.Supp. 1200 (D.C.Cal., 1969). Jurisdiction of federal district court to review the Army's denial of discharge on grounds of conscientious objection by a first lieutenant and medical intern commissioned under the Berry Plan was proper because application was for declaratory and injunctive relief, notwithstanding the government's contention that a petition for a writ of habeas corpus would be the more appropriate remedy; because petitioner

was in the inactive reserves and thus not “in custody” for purpose of a habeas corpus petition.

3. EXHAUSTION

- Parisi v. Davidson, 405 U.S. 34, (1972), (soldier court-martialed for refusing order to board plane for Vietnam assigned to non-combatant duties while his CO claim was being litigated) A member of the armed forces who has applied for a discharge as a conscientious objector must exhaust all avenues of administrative relief within the military before he may seek habeas corpus relief in a federal district court on the ground that the denial of his application had no basis in fact.
- Parisi v. Davidson, 405 U.S. 34, 41-2 (1972), (soldier court-martialed for refusing order to board plane for Vietnam assigned to non-combatant duties while his CO claim was being litigated) “Under accepted principles of comity, the court should stay its hand only if the relief the petitioner seeks--discharge as a conscientious objector--would also be available to him with reasonable promptness and certainty through the machinery of the military judicial system in its processing of the court-martial charge.” (citations omitted)
- Parisi v. Davidson, 405 U.S. 34, 44 (1972). In order to exhaust military remedies, it is not necessary or appropriate to appeal denial of conscientious objector claim to the Court of Military Appeals before petitioning the appropriate federal district court for a writ of habeas corpus.
- Cole v. Spear, 747 F.2d 217, 220 (4th Cir.1984) (applying Parisi v. Davidson, 405 U.S. 34, 44 (1972), and reversing district court's grant of discharge to conscientious objector) The fact that pending disciplinary action against objector currently prevented final administrative action on her application for discharge did not constitute "valid reason to excuse her from the necessity of exhaustion".
- Cole v. Spear, 747 F.2d 217 (4th Cir. 1984)) notes that military courts generally do not recognize conscientious objection as a

defense for refusal to carry out a lawful order.

- Cole v. Spear, 747 F.2d 217 (4th Cir.1984) explains that the ultimate merit of a claim for conscientious objection does not exempt a petitioner from exhaustion of military administrative remedies before turning to the federal courts for relief.
- Bratcher v. McNamara, 448 F.2d 222, 224 (9th Cir. 1971). The decision of the CORB on behalf of the Secretary is the final and official decision of the Army.
- Von Hoffburg v. Alexander, 615 F.2d 633 (C.A.5, 1980) As exceptions to rule of strict application of exhaustion doctrine in military discharge cases, (1) only those remedies which provide genuine opportunity for adequate relief need be exhausted, (2) exhaustion is not required when petitioner may suffer irreparable injury if he is compelled to pursue his administrative remedies, (3) doctrine will not apply when administrative appeal would be futile, (4) and exhaustion may not be required, under some precedents, if plaintiff has raised substantial constitutional question.
- Ludlum v. Resor 507 F.2d 398 (C.A.Mass. 1974). An applicant for discharge should not be deprived of an application to appeal to the Army Board for Correction of Military Records simply because the applicant did not meet the schedule set by the district court, where the applicant mistakenly applied to the federal courts before exhausting his administrative options within the military.
- Pitcher v. Laird, 421 F.2d 1272, 1276 (C.A.Tex. 1970). Where neither a court martial nor military justice procedures are pending, an unsuccessful applicant for in-service conscientious objector discharge does not have to appeal to the Board for Correction of Military Records before petitioning federal courts for a writ of habeas corpus in order to exhaust available administrative remedies.

4. DUE PROCESS CONCERNS & PROCEDURAL ERRORS

a. Due process concerns and general procedural issues

- Crotty v Kelly, 443 F.2d 214 (C.A.N.H. 1971) Petitioner, a member of the National Guard called to active duty, who was denied access to recommendations made to conscientious objector review board

with respect to his application for conscientious objector status was denied his due process of law.

- Gonzalez v. US, 348 U.S. 407 (1955) Registrant who claimed conscientious objector status and had obtained hearing before Department of Justice had the right to have Department's recommendation furnished him at time it was forwarded to selective service appeal board, and to have an opportunity to reply as part of due process, even though the relevant statute was silent on subject.
- Finley v. Drew 337 F.Supp. 76 (D.C.Pa., 1972) held that if petitioner lacked adequate notice and opportunity to rebut adverse information in his record it is a violation of his due process.
- Hollingsworth v. Balcom, 441 F.2d 419 (C.A.Ohio 1971), held that it was a due process violation and a violation of the pertinent regulation where a commanding officer who to continued an interview relating to conscientious objector matters without insuring that reservist was aware of the reason for the interview, understood its purpose, and intended to be interviewed without counsel present.
- Sanger v. Seamans, 507 F.2d 814, 820 (C.A.Cal. 1974) (describing a procedure on remand) If a petition is denied based on information which was not in the applicant's file and not available to applicant or to district court in which applicant filed petition for habeas corpus, it is a due process violation.

- U.S. ex rel Coates v. Laird, 494 F.2d 700 (4th Cir. 1974), Denial of a conscientious objector application is not valid if no reason for denial of petition is given. However, that invalidation does not give trial court the power to review record and summarily grant a discharge. Unless no basis in fact for the denial is apparent from the record, the court should remand the case to the service to correct the procedural defect and decide the case on the merits.

b. Military must follow its own regulations:

- Hollingsworth v. Balcom, 441 F.2d 419, 421-2 (C.A.Ohio 1971). The military, as an administrative agency, must follow its own regulations in order "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures."
- Hollingsworth v. Balcom, 441 F.2d 419 (C.A.Ohio 1971), held that it was a due process violation and a violation of the pertinent regulation where a commanding officer who to continued an interview relating to conscientious objector matters without insuring that reservist was aware of the reason for the interview, understood its purpose, and intended to be interviewed without counsel present.
- Silverthorne v. Laird, 460 F.2d 1175, 1186 (C.A.5, 1972). If the

Army promulgates regulations, it is bound to follow them.

- **Silverthorne v. Laird**, 460 F.2d 1175, 1186 (C.A.5, 1972). In regulations pertaining to conscientious objectors, the Army cannot apply its rules in an arbitrary manner. When it does apply its rules in an arbitrary manner, the courts do have power to review.

5. CRYSTALLIZATION (a lot of overlap with “Timing” section below)

- Ehlert v. U. S., 402 U.S. 99 (1971). A system in which persons whose conscientious objector beliefs crystallized between date of issuance of induction orders and date of induction could present their claims after induction, with the assurance of no combatant training or service before opportunity for ruling on the merits, would be wholly consistent with statute which grants to conscientious objectors the unconditional right to exemption from combatant training and service. Military Selective Service Act of 1967, § 6(j), 50 U.S.C.A. App. § 456(j).
- U.S. ex rel. Tobias v Laird, 413 F.2d 936 ([C.A.Va. 1969](#)), held that even though the prospect of combat duty acted as a catalyst and was the stimulus for submission of the request for discharge, it did not warrant the refusal of discharge to one whose sincerity had been clearly established by other means.
- U.S. ex rel. Healy v. Beatty, 424 F.2d 299, 302 (C.A.Ga. 1970). The underlying religious belief upon which the objection is based need not “manifest itself only subsequent to entry on active duty but rather, the objection itself must so manifest itself and not exist prior to entry on active duty” as stated in the Army’s own regulations: “Claims based on conscientious objection growing out of experiences prior to entering military service, but which did not become fixed until entry into the service, will be considered.” A.R. 635-20 §3(b)
- Helwick v. Laird, 438 F.2d 959, 966 (C.A.Tex. 1971). To be entitled to a CO exemption, there is no requirement that religious belief upon which objection is based must manifest itself only subsequent to entry into the service; rather it is the objection itself that must become fixed after entry into the service.
- Richmond v. Larson, 476 F.2d 1038, 1042 (9th Cir. 1973) (initial

petition denied due to lateness of crystallization) The court held that crystallization which occurs only after combat orders are received is not a basis in fact to deny CO status because: “ human experience repeatedly contradicts [that] inference: We again and again fail to decide what we think about a situation until we must confront it. Recognizing this reality, we have held that crystallization of conscientious objector views upon receipt of orders to Viet Nam is not an indicum of insincerity.”

- Tressan v. Laird, 454 F.2d 761 (9th Cir. 1962) held that full and explicit explanation for reasons of late crystallization can overcome a conclusion of insincerity based on lateness.
- Rothfuss v. Resor 443 F.2d 554, 559-60, (C.A.Tex. 1971) held that late crystallization is relevant when considering a conscientious objection application..
- Polsky v. Wetherill, 455 F.2d 960 (C.A.10, 1972). There is no basis in fact for denying CO petition if petitioner was apprehensive prior to enlisting about a conflict between his moral and religious views and military service, solved this conflict by enlisting, but then had a crystallization of beliefs after entering the service.
- Bouthillette v Commanding Officer, Newport Naval Base, 318 F. Supp. 1143 (D.C.R.I. 1970) (good discussion, analysis) Since petitioner alleged that his beliefs were the result of an ongoing, developmental process, his earlier involvement with machine guns could not be said to be evidence of insincerity, at least where there was a significant lapse of time between that activity and the date upon which his beliefs allegedly crystallized. If it were otherwise, one could always point to prior activity which was inconsistent with presently claimed conscientious objection, simply because the present claim was then in an embryonic stage of development which permitted behavioral contradictions.

6. TIMING OF CO APPLICATIONS

a. Weight Accorded to timing

- LaFranchi v. Seamans, 536 F.2d 1259, 1260 (C.A.Cal. 1976).

(Pediatrician resigned his commission for conscientious objection reasons after receiving activation orders.) Timing alone is never a reason to deny a conscientious objector application.

- Rothfuss v. Resor 443 F.2d 554, 560 (C.A.Tex. 1971). “If the only credible evidence which cast doubt on the applicants' sincerity was the timing of their applications, the writs must be granted and the appellants discharged. If additional evidence is adduced, the district court should determine whether the sum total of the evidence as it then exists constitutes a basis in fact for the denials of the applications.”
- Koh v. Secretary of the Air Force, 719 F.2d 1384, 1386 ([C.A.Cal., 1983](#)). (rejecting application where objector submitted her claim one month after receiving active duty orders) Although timing cannot be the only basis for rejecting a status change, it can lend doubt to the application.
- U. S. v. Broyles, 423 F.2d 1299 (4th Cir. 1970). Lateness of selective service registrant in making claim for conscientious objector classification does not as a matter of law require rejection of the claim.
- Ehlert v. U. S., 402 U.S. 99 (1971). A system in which persons whose conscientious objector beliefs crystallized between date of issuance of induction orders and date of induction could present their claims after induction, with the assurance of no combatant training or service before opportunity for ruling on the merits, would be wholly consistent with statute which grants to conscientious objectors the unconditional right to exemption from combatant training and service.
- Christensen v Franklin, 456 F.2d 1277 (9th Cir. 1972). Delayed but timely filing of conscientious objector application did not, standing alone, provide sufficient factual basis to support conscientious objector review board's finding of insincerity.
- Lobis v. United States Air Force, 519 F.2d 304, 307 (C.A.Mass. 1975). Suspicion based on timing is not sufficient by itself to be a basis in fact for denial of a claim.
- Grubb v. Birdsong, 452 F.2d (C.A.6, 1971), held that if petitioner

was a conscientious objector at the time of induction and did not raise the point, then he cannot apply for conscientious objector status afterwards.

- Cohen v. Laird, 439 F.2d 866, 868 (C.A.S.C. 1971). It is acceptable for the military to consider timing of the assertion of conscientious objector claim as a way to evaluate sincerity, especially in conjunction with other factors.
- Tressan v. Laird, 454 F.2d 761 (9th Cir. 1972), held that full and explicit explanation for reasons of late crystallization can overcome a conclusion of insincerity based on lateness.

b. General lateness

- Strait v. Laird, 464 F.2d 205, 207, 208 (9th Cir. 1972), *on remand from* 406 U.S. 341 (1972). (Officer delayed filing for CO status until after his student deferral was over and until shortly before he was to report to duty.) Delay in filing for CO status after a realization of conscience in order to come to a firm realization of beliefs does not in any way call an applicant's sincerity into question. It is "wholly consistent with conscientious objection that the enlisted soldier should strive to find some means of reconciling a conflict between conscience and duty in such a fashion that both might be respected and to postpone repudiation of the claims of duty until it becomes clear that their demands make reconciliation impossible." 464 F.2d 205, at 208.
- Roby v. U.S. Dep't of Navy, 76 F.3d 1052 (9th Cir. 1996). Upheld denial of CO discharge based on lack of depth was supported in part by short amount of time petitioner held qualifying beliefs prior to applying for discharge.
- Ward v. Volpe, 484 F.2d 1230 (9th Cir. 1973). (in-service application for CO status from the Coast Guard) The court clarified that the timing of crystallization of the belief must itself become fully formed after entry into the service, but the applicant may have doubts on entering the service. (Helpful application for conscientious objector status is quoted extensively in the case.)
- Helwick v. Laird, 438 F.2d 959, 966 (C.A.Tex. 1971). To be entitled to a CO exemption, there is no requirement that religious belief upon

which objection is based must manifest itself only subsequent to entry into the service; rather it is the objection itself that must become fixed after entry into the service.

- Polsky v. Wetherill, 455 F.2d 960 (C.A.10, 1972). There is no basis in fact for denying CO petition if petitioner was apprehensive prior to enlisting about a conflict between his moral and religious views and military service, solved this conflict by enlisting, but then had a crystallization of beliefs after entering the service.
- Rastin v. Laird, 445 F.2d 645 (C.A.Cal. 1971). Lateness of crystallization is not an indicum of insincerity.
- U. S. ex rel. Brooks v. Clifford, 409 F.2d 700 (C.A.S.C., 1969). If a habeas corpus petitioner's views qualifying him as a conscientious objector were sincerely held and were the result of religious training and belief, then the fact that he delayed assertion claim that he was a conscientious objector until after his views had been formulated, and that this did not occur until after his military service had begun and he had completed basic training and advanced to special weapon training was no ground to deny him discharge either under Military Selective Service Act, or the established administrative procedures,.
- Richmond v. Larson, 476 F.2d 1038, 1042 (9th Cir. 1973) (initial petition denied due to lateness of crystallization) The court held that crystallization which occurs only after combat orders are received is not a basis in fact to deny conscientious objector status because: "human experience repeatedly contradicts [that] inference: We again and again fail to decide what we think about a situation until we must confront it. Recognizing this reality, we have held that crystallization of conscientious objector views upon receipt of orders to Viet Nam is not an indicum of insincerity."
- Shaffer v. Schlesinger, 531 F.2d 124 (C.A.N.J. 1976) held that lateness of crystallization is not enough of a basis in fact to find insincerity.

c. Application submitted after receiving deployment orders

- Rothfuss v. Resor, 443 F.2d 554, 558-9, (C.A.Tex. 1971). The fact

that an application for discharge was not made until deployment to a combat zone was imminent is not by itself sufficient to provide a basis in fact for rejection of applicant's prima facie showing of conscientious objector beliefs.

- Rothfuss v. Resor, 443 F.2d 554, 559 (C.A.Tex. 1971). The impending prospect of fighting and killing others may be the added ingredient which crystallizes beliefs in opposition to war.
- Koh v. Secretary of the Air Force, 719 F.2d 1384, 1386 (C.A.Cal., 1983) (rejecting application where objector submitted her claim one month after receiving active duty orders) Although timing cannot be the only basis for rejecting a status change, it can lend doubt to the application.
- U.S. ex rel Lehman v. Laird, 430 F.2d 96 (C.A.Va. 1970), held that the imminent prospect of being required to go to war is not reason by itself to deny the petition for conscientious objector status.
- U. S. ex rel. Tobias v. Laird, 413 F.2d 936 (C.A.Va., 1969). Even though the prospect of combat duty acted as a catalyst and was the stimulus for submission of the request for discharge, it did not warrant the refusal of discharge to one whose sincerity had been clearly established.
- Jones v. Mundy, 792 F.Supp. 1009 (E.D.N.C., 1992). Corporal in Marine Corps Reserves sought writ of habeas corpus, challenging Marine Corps' refusal to discharge him as conscientious objector (CO). The District Court held that fact that reservist had filed application for CO status **did not preclude his call to active duty as part of Gulf War mobilization.**

Also see the following more recent case, in which a pending conscientious objection claim was *not* a defense to missing movement charges by courts martial:

- **U.S. v. Johnson, 45 M.J. 88 (U.S.Armed Forces, 1996).** Pending application for conscientious objection status, or alleged violation of procedures for considering that status, was not defense to court-martial for missing movement or disobeying otherwise lawful orders.

7. REGULATIONS RE: DENIAL OF CLAIM: Specifics v. Generality

- Whenever the Army denies a member's application for discharge as a conscientious objector, its own regulations require it to provide its reasons to the applicant, and then to make the reasons part of the record: "If a determination by HQDA that the person's request is disapproved, the reasons for this decision will be made a part of the record. It will be provided to the person through command channels." Army Regulation 600-43 2-8. *d.*(3).
- Sanger v. Seamans, 507 F.2d 814, 818, (C.A.Cal. 1974). "Boilerplate" reasons for denying an application may suffice "when the factual reasons for the denial were unambiguously demonstrated in the record."
- Sanger v. Seamans, 507 F.2d 814, 819, (C.A.Cal. 1974). Court should "neither speculate as to these reasons nor search the record for some other unstated reasons"
- Sanger v. Seamans, 507 F.2d 814, 820, (C.A.Cal. 1974). Court should at most give the Army the opportunity to provide, in good faith, the actual reasons for its denial of the petitioner's application.
- Sanger v. Seamans, 507 F.2d 814, 820, (C.A.Cal. 1974). If the Army fails to provide such reasons within the time granted by this Court, or if the reasons it provides are either trumped up, insufficient or not supported by a basis in fact in the record, this Court should grant the writ and order the Army to discharge the petitioner as a conscientious objector.
- Lobis v. United States Air Force, 519 F.2d 304 (C.A.Mass. 1975). In Footnote 4, the court noted that a JAG cannot dismiss the investigating officer's report because of inadequacies without further questioning of the officer.

8. BASIS IN FACT:

a. What constitutes a basis in fact?

- Koh v. Sec. of U.S. A.F. 719 F.2d 1384 (C.A.Cal., 1983). Once a

petitioner asserts a prima facie claim for conscientious objector status, the burden of proof shifts to the government to demonstrate a basis in fact for which to deny the application.

- Roby v. U.S. Dep't of Navy, 76 F.3d 1052, 1058 (C.A.9 (Idaho), 1996). A basis in fact is "some proof that is incompatible with the applicant's claim." (internal citations omitted).
- Roby v. U.S. Dep't of Navy, 76 F.3d 1052, 1058 (9th Cir. 1996). Basis in fact can be inferred from a combination of factors together, each of which by themselves would not be enough to constitute basis in fact. "Although there may be some problems with these findings individually, considered as a whole they create a basis in fact for the Navy's denial."
- Frey v. Larsen, 448 F.2d 811, 813 (9th Cir. 1971). (suspect timing, and admission of willingness to participate as a non-combatant in a defensive war on U.S. territory, as well as no evidence of public displays against war all combined to qualify as "basis in fact"). Before evidence may be a "basis in fact," it must be "supported by objective facts in the record from which the administrative board could have fairly drawn an inference of sham or insincerity."
- Frey v. Larsen, 448 F.2d 811, 813 (9th Cir. 1971). Disbelief in sincerity "must be supported by objective facts in the record."
- Woods v. Sheehan, 987 F.2d 1454 (9th Cir. 1993). There is a basis in fact for denying a CO application when there are a variety of factors which cast doubt on the sincerity of beliefs, including late timing, the impressions of the interviewing officer, and issues of "disliking the military life" in letters supporting the application.
- Woods v. Sheehan, 987 F.2d 1454, 1458 (9th Cir. 1993). "Each item by itself ... does not constitute a basis in fact. However, taken together they suggest that Woods' conscientious objection to war is not sincere and deeply held."
- Taylor v. Claytor, 601 F.2d 1102 (C.A.Cal., 1979). (case includes a good discussion of process and standard for COs, and reviews major cases). Judicial review under the basis in fact test is the "narrowest review known to law."
- Rothfuss v. Resor, 443 F.2d 554, 559-60 (C.A.Tex. 1971). Without

more, the court cannot accept “conclusions of the interviewing officers as the basis in fact for those same conclusions.”

- Shaffer v. Schlesinger, 531 F.2d 124 (C.A.N.J. 1976) The reviewing Board is not free to merely disbelieve; mere suspicion of motivation is not a basis in fact for denial of petition.
- Silverthorne v. Laird, 460 F.2d 1175, 1186 (C.A.5, 1972). Basis in fact existed for rejection of conscientious objector application because of statements on security questionnaire and personal history indicating membership in organizations proposing violent revolution, and petitioner’s willingness to use whatever measures needed to overthrow the government, which was inconsistent with later statements made by petitioner during the conscientious objector process.
- Naill v. Alexander, 631 F.2d 696 (C.A.Colo., 1980). There is a basis in fact for denying an in-service conscientious objection petition if the applicant’s beliefs, though sincere, are not based on religious training or belief.
- Thompson v. U.S., 474 F.2d 323 (9th Cir. 1973). (application properly denied when both late crystallization and being a conscientious objector all of his life are both asserted) There is a basis in fact for denial of a claim if late timing is combined with inconsistencies to that lateness asserted in application.

b. What is the role of the court if no basis in fact is given?

- Bohnert v. Faulkner, 438 F.2d 747, 751 (C.A.Ky. 1971). In making a review of the Board’s decisions, a court of appeals may make an independent search of the record for a basis in fact to support the Board’s decision, regardless of what the district court said.
- Peckat v. Lutz, 451 F.2d 366, 370 (4th Cir. 1971). “Rationality of the Army’s process in arriving at its conclusion must be made manifest in the decision itself. It will not do to leave the point in a state of ambiguity” until government attorneys in the future devise some explanation for the denial.
- Walshe v. Toole, 663 F.2d 320 (C.A.Mass., 1981). Reversal of denial of habeas corpus claim is proper when the denial was based

on a misapprehension of fact.

c. What is not enough to constitute a basis in fact?

- Goldstein v Middendorf, 535 F.2d 1339 (C.A.Mass. 1976). (hearing officer drew negative inference about petitioner's sincerity from his attempts to procure legal advice; officer reached his conclusion of insincerity on basis of assumption that his own views on the issues were the correct ones; and that hearing officer's enumeration of separate grounds did not avoid risk of reliance on improper ground.) No basis in fact existed for denial of application for conscientious objector status on grounds of insincerity where investigating officer's evaluation of insincerity was accompanied by explicit reliance upon factors that were, at best, irrelevant, and at worst, indicative of bias.
- Polsky v. Wetherill, 455 F.2d 960 (10th Cir. 1972). There is no basis in fact for denying conscientious objector petition if petitioner was apprehensive prior to enlisting about a conflict between his moral and religious views and military service, solved this conflict by enlisting, but then had a crystallization of beliefs after entering the service.
- Bouthillette v Commanding Officer, Newport Naval Base, 318 F. Supp. 1143 (D.C.R.I. 1970) (good discussion, analysis) In rejecting evidence (previous job in a munitions factory, voluntary enlistment, former desire to be an officer) as constituting a basis in fact for the Navy's denial, the court pointed out that the Department of Defense has provided for the recognition of legitimate claims of in-service conscientious objection; if such regulation is to be given any real meaning, then it must be impermissible to rely upon voluntary entry into military service as evidence of insincerity.
- Ferrand v Seamans, 488 F.2d 1386 (C.A.2, 1973). No basis in fact existed for Air Force's conclusion that captain's application for conscientious objector status, after he had completed his residency under Berry plan, was provoked by expediency, since there was other overwhelming evidence of his sincerity.
- Warren v Laird, 353 F.Supp. 730 (D.C.N.Y. 1972). No basis in fact existed for denial of conscientious objector status to Army Reserve

officer who stated in application that he could not participate in any war that massacres people because of different political beliefs, color, or ideologies, and that to be true to himself and his religious beliefs he had to be a conscientious objector, since the record contained no evidence to support holding that officer's beliefs were not sincere.

- Howe v. Laird, 456 F.2d 233 (C.A.5, 1972). Disbelief of conscientious objector applicant by interviewing officer does not constitute basis in fact for denial of the application.
- Christensen v Franklin, 456 F.2d 1277 (9th Cir., 1972). Delayed but timely filing of conscientious objector application did not, standing alone, provide sufficient factual basis to support conscientious objector review board's finding of insincerity.
- Frisby v Larsen, 330 F.Supp. 545, (D.C.Cal., 1971), affd per curiam, 486 F.2d 244. It is not a basis in fact when looking at the whole record, including applicant's unusually strong showing of conscientious objector status in application for discharge, if the military review board's finding of insincerity rests on serviceman's demeanor in interview, suddenness of his decision regarding his inability to conscientiously perform even noncombatant duties, answers during hearing "which seemed to be more a product of rote learning than a sincere effort to answer difficult questions," and the hearing officer's conclusion that serviceman felt that it would be nice to be out of military.
- Shaffer v. Schlesinger, 531 F.2d 124 (C.A.N.J. 1976). Late crystallization is not enough of a basis in fact to find insincerity.
- Finley v. Drew, 337 F.Supp. 76 (D.C.Pa., 1972), held that improperly considered medical evidence is insufficient for a basis in fact.
- Bates v. Commander, First Coast Guard Dist., 413 F.2d 475 (C.A. Mass. 1969). There was no basis in fact for Coast Guard's conclusion that the applicant's belief system was a personal code rather than a "religious belief," even though the applicant's religious beliefs affected his political and moral leanings.
- Bates v. Commander, First Coast Guard Dist. 413 F.2d 475 (C.A. Mass. 1969). Writing letters to express political opposition to a

specific war prior to submitting an application for discharge does not disqualify applicant from conscientious objector status because opposition to specific wars is compatible with opposition to all wars.

- Helwick v. Laird, 438 F.2d 959, 966 (C.A.Tex. 1971). A childhood rejection of organized religion does not constitute a basis in fact that current beliefs are not sincere.

9. NATURE OF CONSCIENTIOUS OBJECTION

a. RELIGIOUS BELIEFS

i. What is religious belief and training?

- United States Supreme Court in two separate opinions (see United States v Seeger, 380 U.S. 163 (1965), and Welsh v United States, 398 U.S. 333 (1970), construed the term "religious training and belief" broadly so as to include nontraditional as well as traditional expressions of religion.
- Helwick v. Laird, 438 F.2d 959, 964 (C.A.Tex. 1971). One need not accept formal religion or be a member of an established church in order to qualify as a conscientious objector.
- Fleming v. U.S., 344 F.2d 912, 915-6, (C.A.Okl. 1965), states that one who is entitled to conscientious objector status because of religion does not lose that right because his political and moral concerns also lead him to the same position.
- Fleming v. U.S., 344 F.2d 912, 915-6, (C.A.Okl. 1965), clearly states that "before a conscientious objector classification may be denied on the ground that the applicant's beliefs are based upon 'political, sociological, or philosophical views or a merely personal moral code', those factors must be the sole basis of his claim for the classification. In other words: 'The use by Congress of the words 'merely personal' seems to us to restrict the exception to a moral code which is not only personal but which is the sole basis for the registrant's belief and is in no way related to a Supreme Being.'"
- Welsh v. U. S., [398 U.S. 333](#) (1970). For draft registrant's conscientious objection to all war to be "religious" within exempting

provision is that opposition to war stems from registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with strength of traditional religious convictions.

- U S v. Kauten, 133 F.2d 703 (C.A.2,1943). A registrant whose opposition to war did not emanate from any religious training and belief but from his philosophical and political convictions was not entitled to classification as a "conscientious objector" within Selective Training and Service Act. (Selective Training and Service Act of 1940, § 5(g), 50 U.S.C.A. Appendix, § 305(g).)
- Pitcher v. Laird, 421 F.2d 1272 (C.A.Tex. 1970). Before a conscientious objector classification may be denied on ground that applicant's beliefs are based upon political, sociological or philosophical views or on a merely personal moral code, those factors must be the *sole basis* of his claim for the classification.
- U. S. ex rel. Hemes v. McNulty, 432 F.2d 1182 (C.A.Wis. 1970) Test of "religious belief" within meaning of conscientious objector statute is whether it is a sincere and meaningful belief, occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption.
- US v. Stetter, 445 F.2d 472 , 479 (C.A.Tex. 1971). (very thorough discussion of timing, sincerity, and basis in fact). On the nature of religious training required, the court held that "it is not the form or amount of training that is crucial. Sincerity of belief is the touchstone. The extent of training may, and often does, have no correlation with sincerity."
- U.S. ex rel Greenwood v. Resor, 439 F.2d 1249 (C.A.Va. 1971), held that an interviewing chaplain, not the commanding officer, is in the best position to determine whether there is a religious core to an conscientious objector applicant's belief.
- US v. Haughton, 413 F.2d 736, (C.A.Wash. 1969) (selective service registrant refused to be inducted into armed forces and was convicted of that offense. On appeal it was found that his conscientious objection claim was valid regarding his beliefs on religion and violence). Belief in a supreme being but not an anthropomorphic god does fit the requirements for religious training

and belief.

- Keefer v. U.S., 313 F.2d 773 (C.A.Ariz. 1963). A Jehovah's Witness may be denied conscientious objector status if he never stated his opposition to war in any form in his application, and had worked under military contracts in his civilian life.

ii. How manifestations of religious training and belief affect conscientious objector application

- Gillette v. United States, 401 U.S. 437 (1971). Persons who object solely to participation in a particular war are not within the purview of conscientious objector status, even though the objection may have such roots in claimant's conscience and personality that it is 'religious' in character.
- Gillette v. United States, 401 U.S. 437 (1971). The section of Military Selective Service Act dealing with conscientious objection does not violate establishment clause on theory that it works a de facto discrimination among religions nor does it violate the free exercise clause by conscripting persons who oppose a particular war on grounds of conscience and religion.
- Addressing itself to the issue of the difficulty inherent in analyzing and determining whether an individual's beliefs are "religious," within the meaning of § 6(j) of the Act of 1948, 50 U.S.C.A. App. § 456(j), the Supreme Court in United States v Seeger, 380 U.S. 163 (1965) said that in such an intensely personal area, the claim of the individual that his belief is an essential part of a religious faith must be given great weight.
- Sicurella v. U.S., 348 U.S. 385 (1955) held that willingness to fight spiritual wars with non-carnal weapons does not destroy conscientious objector status.
- Rosenfeld v. Rumble, 515 F.2d 498 (C.A.Mass.,1975). Jewish petitioner willing to take up arms—though not in a military—if Nazis invaded the United States does disqualify him from conscientious objector status.
- Polsky v. Wetherill, 455 F.2d 960 (10th Cir. 1972), reversed denial of

habeas petition where petitioner's pre-enlistment religious beliefs did not qualify him for conscientious objector status.

- Lobis v. Secretary of U.S. Air Force, 519 F.2d 304, 307 (C.A.Mass. 1975). The real question is not whether a conscientious objector applicant's beliefs develop through some specific process, but whether the applicant has "provided a plausible explanation" for the development of his beliefs.
- Taffs v. U.S., 208 F.2d 329 (8th Cir. 1954). A person's willingness to use force in self-defense is not a valid basis for denial of selective service classification as a conscientious objector, where other evidence of such person's opposition to participation in war because of religious belief is undisputed.
- U. S. ex rel. Brooks v. Clifford, 409 F.2d 700 (C.A.S.C., 1969). (applicant sought a writ of habeas corpus to effect his release upon claim that he was a conscientious objector) Even if member of Army was motivated in part by a personal moral code, he was still entitled to exemption because of unquestioned finding that he was also substantially motivated by views derived from religious training and belief.
- Naill v. Alexander, 631 F.2d 696 (C.A.Colo., 1980). There is a basis in fact for denying an in-service conscientious objection petition if the applicant's beliefs, though sincere, are not based on religious training or belief.
- US v. Haughton, 413 F.2d 736, (C.A.Wash. 1969). (selective service registrant refused to be inducted into armed forces and was convicted of that offense. On appeal it was found that his CO claim was valid regarding his beliefs on religion and violence.) If an applicant's opposition to all wars is based on religious training and belief, that belief is compatible with beliefs that any violence committed by the applicant against any human being must be personal and justified by spiritual background, and applicant's willingness to use force only to protect his community or to stop another from taking life.
- Hinkle v. U.S., 216 F.2d 8 (9th Cir. 1954). (Jehovah's Witness's views on violence outside of a war situation did not affect sincerity of CO beliefs) If an applicant holds religious reasons for opposition to

war in any form, belief in the use of violence for self-defense, defense of home, and justification for theocratic warfare in the Old Testament of the Bible is not incompatible with opposition to all wars.

- Keefe v. U.S., 313 F.2d 773 (C.A.Ariz. 1963). A Jehovah's Witness may be denied CO status if he never stated his opposition to war in any form in his application, and had worked under military contracts in his civilian life.

b. HOW POLITICAL BELIEFS MAY AFFECT CO APPLICATION

- Welsh v. U. S., [398 U.S. 333](#) (1970). For draft registrant's conscientious objection to all war to be "religious" within exempting provision is that opposition to war stems from registrant's moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with strength of traditional religious convictions.
- Bates v. Commander, First Coast Guard Dist., 413 F.2d 475 (C.A. Mass. 1969). Writing letters to express political opposition to a specific war prior to submitting an application for discharge does not disqualify applicant from conscientious objector status because opposition to specific wars is compatible with opposition to all wars.
- U. S. ex rel. Brooks v. Clifford, 409 F.2d 700 (C.A.S.C., 1969). (applicant sought a writ of habeas corpus to effect his release upon claim that he was a conscientious objector) Even if member of Army was motivated in part by a personal moral code, he was still entitled to exemption because of unquestioned finding that he was also substantially motivated by views derived from religious training and belief.
- US v. Haughton, 413 F.2d 736, (C.A.Wash. 1969). (selective service registrant refused to be inducted into armed forces and was convicted of that offense. On appeal it was found that his CO claim was valid regarding his beliefs on religion and violence). Opposition to war because of both religious training *and* political and moral beliefs is compatible with the requirements of conscientious objector status.
- US v. Haughton, 413 F.2d 736, (C.A.Wash. 1969). (selective service

registrant refused to be inducted into armed forces and was convicted of that offense. On appeal it was found that his CO claim was valid regarding his beliefs on religion and violence). If an applicant's opposition to all wars is based on religious training and belief, that belief is compatible with beliefs that any violence committed by the applicant against any human being must be personal and justified by spiritual background, and applicant's willingness to use force only to protect his community or to stop another from taking life.

- U.S. v. Hanson, 460 F.2d 337, 343 (8th Cir. 1972). The fact that the applicant's form discloses political, sociological, and philosophical as well as religious views does not detract from the prima facie validity of the claim when it is evident that his views stem at least in part from his religious training and belief.
- Fleming v. U.S. 344 F.2d 912, 915-6, (C.A.Okl. 1965). One who is entitled to conscientious objector status because of religion does not lose that right because his political and moral concerns also lead him to the same position.
- Fleming v. U.S. 344 F.2d 912, 915-6, (C.A.Okl. 1965) clearly states that "before a conscientious objector classification may be denied on the ground that the applicant's beliefs are based upon 'political, sociological, or philosophical views or a merely personal moral code', those factors must be the sole basis of his claim for the classification. In other words: 'The use by Congress of the words 'merely personal' seems to us to restrict the exception to a moral code which is not only personal but which is the sole basis for the registrant's belief and is in no way related to a Supreme Being.'"
- Sicurella v. United States, 348 U.S. 385 (1955). The Court held that applicant's use of the word "morally" to describe beliefs is consistent with the requisites of CO status, and does not automatically disqualify an applicant.
- Sicurella v. United States, 348 U.S. 385 (1955). The Court held that membership in antiwar groups is consistent with conscientious objector claims, because opposition to war in general would include opposition to specific wars.
- Aquilino v. Laird, 316 F.Supp. 1053 (D.C.Tex. 1970). "To be against

all wars requires that one must be against any war, including the one being fought at a particular time.” (internal citations omitted)

c. SINCERITY (See also “Basis in Fact”)

- Frey v. Larsen, 448 F.2d 811, 813 (9th Cir. 1971). Disbelief in sincerity "must be supported by objective facts in the record") (see Basis in Fact)
- U. S. v. Seeger, [380 U.S. 163](#) (1965). Validity of what one claiming conscientious objector status believes cannot be questioned in determining whether he is entitled to exemption as a conscientious objector, and task of local boards and courts is to decide whether beliefs professed by registrant are sincerely held and whether they are, in his own scheme of things, religious.
- Helwick v. Laird, 438 F.2d 959 (C.A.Tex. 1971). Depth and maturity of views are not prerequisites to conscientious objection to war, so long as the claimant is sincere; conscientious objection has no necessary relation to intellectual sophistication.
- Hager v. Secretary of Air Force, 938 F.2d 1449 (C.A.1, 1991). Applicant for conscientious objector status, whether applicant is service member or draft registrant, must show that he is conscientiously opposed to war in any form, that opposition is based upon religious training and belief, and that objection is sincere.
- Witmer v. U. S., [348 U.S. 375](#) (1955). The ultimate question in conscientious objector cases is registrant's sincerity in objecting, on religious grounds, to participation in war in any form; objective facts are relevant only insofar as they help in determining registrant's sincerity, a purely subjective question.
- U. S. v. Seeger, [380 U.S. 163](#) (1965). Registrant who professed "religious belief" and "religious faith", who did not disavow any belief "in a relation to a Supreme Being," and whose sincerity in opposition to war in any form was not questioned, was entitled to exemption from combatant training and service as a conscientious objector.
- U. S. ex rel. Tobias v. Laird, 413 F.2d 936 (C.A.Va.,1969). Even though the prospect of combat duty acted as a catalyst and was the

stimulus for submission of the request for discharge, it did not warrant the refusal of discharge to one whose sincerity had been clearly established.

- US v. Stetter, 445 F.2d 472 , 479 (C.A.Tex. 1971). (very thorough discussion of timing, sincerity, and basis in fact). On the nature of religious training required, the court held that “it is not the form or amount of training that is crucial. Sincerity of belief is the touchstone. The extent of training may, and often does, have no correlation with sincerity.”
- Shaffer v. Schlesinger, 531 F.2d 124 (C.A.N.J. 1976). The reviewing Board is not free to merely disbelieve; mere suspicion of motivation is not a basis in fact for denial of petition.
- Shaffer v. Schlesinger, 531 F.2d 124 (C.A.N.J. 1976). Lateness of crystallization is not enough of a basis in fact to find insincerity.
- Cohen v. Laird, 439 F.2d 866, 868 (C.A.S.C. 1971). It is acceptable for the military to consider timing of the assertion of conscientious objector claim as a way to evaluate sincerity, especially in conjunction with other factors.
- **Silverthorne v. Laird**, 460 F.2d 1175 (C.A.5, 1972). “Where the claimed exception is denied on the ground that applicant lacks sincerity, disbelief will not suffice “unless there is some affirmative evidence to support the rejection of the claimed exemption, or there is something in the record which substantially blurs the picture painted by the registrant and thus casts doubt on his sincerity.” (internal citations omitted)
- Naill v. Alexander, 631 F.2d 696 (C.A.Colo., 1980). There is a basis in fact for denying an in-service conscientious objection petition if the applicant’s beliefs, though sincere, are not based on religious training or belief.
- U.S. v. Purvis, 403 F.2d 555, 563 (C.A.N.Y. 1968), An applicant’s agreement that force can be used to restrain wrongdoing, especially as a last alternative, has little bearing on the applicant’s attitude towards war as relevant to conscientious objector status.
- U.S. v. Kember, 437 F.2d 534 (C.A.Cal. 1970). (person with student exemption to selective service applied for conscientious objector

exemption once he was no longer a student). A different exemption previously held does not indicate insincerity with respect to a conscientious objector exemption later sought.

- Rastin v. Laird, 445 F.2d 645 (C.A.Cal. 1971). Lateness of crystallization is not an indicum of insincerity.
- Rastin v. Laird, 445 F.2d 645 (C.A.Cal. 1971). An application for conscientious objector status which was interpreted as insincere due to its brevity is overcome by the unanimity of recommendations by all who interviewed applicant, and by the fact that applicant's descriptive statement of belief is not required to be lengthy.
- Bouthillette v Commanding Officer, Newport Naval Base, 318 F. Supp. 1143 (D.C.R.I. 1970). With respect to the government's contention that petitioner's credibility was seriously in doubt, since he stated that he was a lifelong pacifist but had worked on the machinegun, the court remarked that the Navy could not define pacifism for its own purposes when it was clear that petitioner was referring by that term to his life of personal nonviolence.

d. DEEPLY HELD BELIEFS/DEPTH of BELIEF

- Roby v. U.S. Dep't of Navy, 76 F.3d 1052, 1057 (9th Cir. 1996). (conscientious objector discharge denied because depth of sailor's conviction was thought shallow due to no big plans to change lifestyle other than applying for conscientious objector status and writing letters on behalf of other conscientious objectors.) Belief against war must be both sincere and deeply held. "Furthermore, we believe that there is an important function served by having the applicant demonstrate that his beliefs are both sincere and deeply held. The regulatory term "sincere" distinguishes between military personnel who genuinely believe something, and those who lie about their beliefs. The term "deeply held" distinguishes, from among those who are telling the truth, those who feel strongly about their belief that participation in war is wrong, and those who do not. These inquiries are distinct." 1057
- Helwick v. Laird, 438 F.2d 959 (C.A.Tex.,1971). Depth and maturity of views are not prerequisites to conscientious objection to war, so

long as the claimant is sincere; conscientious objection has no necessary relation to intellectual sophistication.

- Helwick v. Laird, 438 F.2d 959, 964 (C.A.Tex. 1971). An applicant's statement that they want to get out of the military no matter what can be consistent with a deep conscientious objector belief.
- U. S. v. Coffey, 429 F.2d 401 (C.A.Cal.1970) Only those whose beliefs are not deeply held and those whose objection to war does not rest at all on a moral, ethical, or religious principle but instead rests solely on considerations of policy, pragmatism, or expediency may be denied conscientious objector status.
- Rastin v. Laird, 445 F.2d 645 (C.A.Cal. 1971). An application for conscientious objector status which was interpreted as insincere due to its brevity is overcome by the unanimity of recommendations by all who interviewed applicant, and by the fact that applicant's descriptive statement of belief is not required to be lengthy.

10. WILLINGNESS TO SERVE AS NON-COMBATANT—effect on petition

- LaFranchi v. Seamans, 536 F.2d 1259, 1260-61 (C.A.Cal. 1976). (Pediatrician resigned his commission for conscientious objector reasons after receiving activation orders.) That an assignment would not directly involve combat operations is irrelevant to conscientious objector status.
- Parisi v. Davidson, 405 U.S. 34, 45 (1972), (soldier court-martialed for refusing order to board plane for Vietnam was assigned to non-combatant duties while his conscientious objector claim was being litigated) "Pendency of court-martial proceedings must not delay a federal district court's prompt determination of the conscientious objector claim of a serviceman who has exhausted all administrative remedies," even if the court martial is for a refusal to obey a lawful order.
- United States v. Noyd, 18 U.S.C.M.A. 483 (1969). Court of Military Appeals held that a soldier charged in a court-martial with refusal to obey a lawful order may, in certain limited circumstances, defend upon the ground that the order was not lawful because he had wrongfully been denied an administrative discharge as a conscientious objector.

- Silberberg v. Willis, 420 F.2d 662 (C.A.Mass. 1970). Willingness to engage in non-combat assignments while petition for conscientious objector status is pending should not negatively affect petition.

11. RIGHT TO BE ASSIGNED TO NON-COMBAT DUTY AFTER SUBMITTING CO APPLICATION

- Parisi v. Davidson, 405 U.S. 34, (1972). Footnote 9, and Army Regulation 635--20 provides that 'individuals who have submitted formal applications (for conscientious objector status) . . . will be retained in their units and assigned duties providing the minimum practicable conflict with their asserted beliefs pending a final decision on their applications.'
- Ehlert v. U. S., [402 U.S. 99](#) (1971). A system in which persons whose conscientious objector beliefs crystallized between date of issuance of induction orders and date of induction could present their claims after induction, with the assurance of no combatant training or service before opportunity for ruling on the merits, would be wholly consistent with statute which grants to conscientious objectors the unconditional right to exemption from combatant training and service.
- Jones v. Mundy, 792 F.Supp. 1009 (E.D.N.C.,1992). Corporal in Marine Corps Reserves sought writ of habeas corpus, challenging Marine Corps' refusal to discharge him as conscientious objector (CO). The District Court held that fact that reservist had filed application for CO status did not preclude his call to active duty as part of Gulf War mobilization.

Also see the following more recent case, in which a pending conscientious objection claim was *not* a defense to missing movement charges by courts martial:

- **U.S. v. Johnson, 45 M.J. 88 (U.S.Armed Forces, 1996)**. Pending application for conscientious objection status, or alleged violation of procedures for considering that status, was not defense to court-martial for missing movement or disobeying otherwise lawful orders.

12. OTHER APPLICATIONS FOR DISCHARGE—effect on petition

- U. S. v. Cummins, 425 F.2d 646 (C.A.Mo. 1970). The fact that selective service registrant sought other classifications and did not originally seek a conscientious objector classification could not by itself be a basis for denial of such a classification where record contained no legal basis of inconsistency or contradiction to local board's classification of registrant as a conscientious objector.
- Clementino v. U.S., 216 F.2d 10 (C.A.9 1954). If petitioner applied for two kinds of exemption from service, the board must look at both. If the first claim is rejected, the board must consider the next claim.
- U.S. v. Kember, 437 F.2d 534 (C.A.Cal. 1970). (person with student exemption applied for conscientious objector exemption once he was no longer a student). A different exemption previously held does not indicate insincerity with respect to a conscientious objector exemption later sought.