

(b) Because of the personal and subjective nature of conscientious objection, the existence, honesty, and sincerity of asserted conscientious objection beliefs cannot be routinely ascertained by applying inflexible objective standards and measurements on an "across-the-board" basis. Requests for discharge or assignment to non-combatant training or service based on conscientious objection will, therefore, be handled on an individual basis with final determination made at the headquarters of the military service concerned in accordance with the facts and circumstances in the particular case and the policy and procedures set forth herein.

§ 75.5 Criteria.

General. The criteria set forth herein provide policy and guidance in considering applications for separation or for assignment to noncombatant training and service based on conscientious objection.

(a) Consistent with the national policy to recognize the claims of bona fide conscientious objectors in the military service, an application for classification as a conscientious objector may be approved (subject to the limitations of § 75.4(a)) for any individual:

- (1) Who is conscientiously opposed to participation in war in any form;
- (2) Whose opposition is founded on religious training and beliefs; and
- (3) Whose position is sincere and deeply held.

(b) War in any form: The clause "war in any form" should be interpreted in the following manner:

- (1) An individual who desires to choose the war in which he will participate is not a conscientious objector under the law. His objection must be to all wars rather than a specific war;
- (2) A belief in a theocratic or spiritual war between the powers of good and evil does not constitute a willingness to participate in "war" within the meaning of this part.

(c) Religious training and belief: (1) In order to find that an applicant's moral and ethical beliefs are against participation in war in any form and are held with the strength of traditional religious convictions, the applicant must show that these moral and

ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth and duration have directed the lives of those whose beliefs are clearly found in traditional religious convictions. In other words, the belief upon which conscientious objection is based must be the primary controlling force in the applicant's life.

(2) A primary factor to be considered is the sincerity with which the belief is held. Great care must be exercised in seeking to determine whether asserted beliefs are honestly and genuinely held. Sincerity is determined by an impartial evaluation of the applicant's thinking and living in its totality, past and present. Care must be exercised in determining the integrity of belief and the consistency of application. Information presented by the claimant should be sufficient to convince that the claimant's personal history reveals views and actions strong enough to demonstrate that expediency or avoidance of military service is not the basis of his claim.

(i) Therefore, in evaluating applications the conduct of applicants, in particular their outward manifestation of the beliefs asserted, will be carefully examined and given substantial weight.

(ii) Relevant factors that should be considered in determining an applicant's claim of conscientious objection include: Training in the home and church; general demeanor and pattern of conduct; participation in religious activities; whether ethical or moral convictions were gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated; credibility of the applicant; and credibility of persons supporting the claim.

(iii) Particular care must be exercised not to deny the existence of bona fide beliefs simply because those beliefs are incompatible with one's own.

(a) Church membership or adherence to particular theological tenets are not required to warrant separation or assignment to noncombatant training and service for conscientious objectors.

(b) Mere affiliation with a church or other group which advocates conscientious objection as a tenet of its creed is not necessarily determinative of an applicant's position or belief.

(c) Conversely, affiliation with a church or group which does not teach conscientious objection does not necessarily rule out adherence to conscientious objection beliefs in any given case.

(d) Where an applicant is or has been a member of a church, religious organization, or religious sect, and where his claim of conscientious objection is related to such membership, inquiry may properly be made as to the fact of membership, and the teaching of the church, religious organization, or religious sect, as well as the applicant's religious activity. However, the fact that the applicant may disagree with, or not subscribe to, some of the tenets of his church does not necessarily discredit his claim. The personal convictions of each individual will be controlling so long as they derive from his moral, ethical or religious beliefs.

(e) Moreover, an applicant who is otherwise eligible for conscientious objector status may not be denied that status simply because his conscientious objection influences his views concerning the Nation's domestic or foreign policies. The task is to decide whether the beliefs professed are sincerely held, and whether they govern the claimant's actions in both word and deed.

(d) The burden of establishing a claim of conscientious objection as a ground for separation or assignment to noncombatant training and service is on the applicant. To this end, he must establish by clear and convincing evidence: (1) That the nature or basis of his claim comes within the definition of and criteria prescribed herein for conscientious objection, and (2) that his belief in connection therewith is honest, sincere and deeply held. The claimant has the burden of determining and setting forth the exact nature of his request, i.e., whether for separation based on conscientious objection (1-O) or for assignment to noncombatant training and service based on conscientious objection (1-A-O).

(e) An applicant claiming 1-O status shall not be granted 1-A-O status as a compromise.

(f) Persons who were classified 1-A-O by Selective Service prior to induction shall upon induction be transferred to a training center, or station, for recruit training, and shall be subject to noncombatant service or training. They will be required to sign and date a statement as set forth in the form in § 75.11. Thereafter, upon completion of recruit training, they shall be assigned to noncombatant duty. They may be transferred to the medical corps, or a medical department or unit for further training, provided they meet the requirements therefor. Such persons when assigned to medical units will not be allowed to avoid the important or hazardous duties which are part of the responsibility of all members of the medical organization. Any person who does not meet the requirements for this training, who fails to complete the prescribed course of instruction, or who otherwise cannot be assigned to this duty will be assigned to other noncombatant duties.

(g) Commanders at levels directed by the service headquarters are authorized to return to an applicant, without action, any second or subsequent application that is based upon essentially the same grounds, or supported by essentially the same evidence, as a previous application disapproved by the military service concerned.

(h) The provisions of this part will not be used to effect the administrative separation of individuals who do not qualify as conscientious objectors, or in lieu of administrative separation procedures such as those provided for unsuitability or unfitness or as otherwise set forth in part 41 of this title. Individuals determined not qualified for conscientious objector status, but the separation of whom would otherwise appear to be in the best interest of the Armed Forces, should be considered for administrative separation under the provisions of part 41 of this title. Under no circumstances will administrative separation of these individuals be effected pursuant to this part.

(i) Nothing in this part prevents the administrative elimination, pursuant to law and regulations of the military

department concerned, of any officer whose classification as a 1-A-O conscientious objector results in substandard performance of duty or other cause for elimination.

§75.6 Procedure.

(a) A member of the Armed Forces who seeks either separation or assignment to noncombatant duties by reason of conscientious objection will submit an application therefor. The applicant will indicate whether he is seeking a discharge or assignment to non-combatant duties and will include the following terms:

(1) The personal information required by §75.9.

(2) Any other items which the applicant desires to submit in support of his case.

(b) Prior to processing the application of the individual, he will be (1) advised of the specific provisions of section 3103 of title 38, United States Code¹ regarding the possible effects of discharge as a conscientious objector who refuses to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, and (2) required to execute the statement in §75.10.

(c) The applicant shall be personally interviewed by a chaplain who shall submit a written opinion as to the nature and basis of the applicant's claim, and as to the applicant's sincerity and depth of conviction. The chaplain's report shall include the reasons for his conclusions. In addition, the applicant will be interviewed by a psychiatrist (or by a medical officer if a psychiatrist is not reasonably available) who shall submit a written report of psy-

chiatric evaluation indicating the presence or absence of any psychiatric disorder which would warrant treatment or disposition through medical channels, or such character or personality disorder as to warrant recommendation for appropriate administrative action. This opinion and report will become part of the case file. If the applicant refuses to participate or is uncooperative or unresponsive in the course of the interview, this fact will be included in the statement and report filed by the chaplain and psychiatrist or medical officer.

(d) Commanders at levels directed by the Service Headquarters will appoint an officer in the grade of O-3 or higher to investigate the applicant's claim. The officer so appointed will not be an individual in the chain of command of the applicant. If the applicant is a commissioned officer, the investigating officer must be senior in both temporary and permanent grades to the applicant.

(1) Upon appointment, the investigating officer will review the applicable service regulations which implement this part. During the course of his investigation, the investigating officer will obtain all necessary legal advice from the local Staff Judge Advocate or legal officer.

(2) The investigating officer will conduct a hearing on the application. The purpose of the hearing is: To afford the applicant an opportunity to present evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority. In this regard, any failure or refusal of the applicant to submit to questioning under oath or affirmation before the investigating officer may be considered by the officer making his recommendation and evaluation of the applicant's claim. If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance.

(i) If the applicant desires, he shall be entitled to be represented by counsel,

¹38 U.S.C. 3103 provides, in pertinent part, that the discharge of any person on the grounds that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, shall bar all rights (except government insurance) of such persons under law administered by the Veterans' Administration based upon the period of service from which discharged or dismissed. The only exception is in cases in which it is established, to the satisfaction of the Administrator, that the member was insane.