

Pre-filing for C.O. Status - What if the draft were re-instated?

BACKGROUND

Because of the pressures and incremental gains of on-going C-R operations and the problems the military has in enlisting personnel during good economic times (translated: low unemployment), there has been some talk of a draft re-instatement. **There is no serious talk of reinstating the draft. The SSS budget is approximately the same as it was in 1980 when Jimmy Carter resumed draft registration (25 million) so in real dollars adjusted for inflation, it is less. Hardly an indication of getting ready to reinstate the draft. If this were to be a universal draft for universal service, there might be some national benefit in that. This statement is opinion- and debatable.** However, if draftees would be targeted primarily toward military service (a certainty), we would be ready to provide whatever assistance we could in helping our youth apply for conscientious objector (CO) status.

Currently, the procedure only allows potential draftees, between the ages of 18 to 26, from seven to ten days from being called up to reporting to basic training wherein they can appeal to the draft board, and that is normally no where near enough time to establish a convincing CO status. NOT REGISTERING leaves the young man (not young woman... YET) open to a maximum of a \$250,000 fine and five years detention, or, if he escapes that, he is not eligible for normally available school assistance, federal jobs, etc., in addition to any individual state sanctions. (Oregon does not, as best that we can determine, have State sanctions for this heinous act!) **Everyone "escapes that". No one has been prosecuted since 1985. The financial aid for education referred to is GOVERNMENT aid- federal, and some state aid. There are other sources.**

However, this is not 1914 and, at least within in U.S., the same conscription conditions don't exist as Archibald Baxter, from New Zealand, wrote about of his of personal experiences in "We Will Not Cease." In the U.S., a series of court decisions have set the stage for a more humane treatment of C.O.s that could potentially be drafted and have even pointed the way toward setting the stage in the

potential C.O. recruit's favor... **this is about draftees, NOT recruits at least theoretically.** Here are the cases and the generalizations,

Conscientious objection was written into the Selective Service law of 1940. The standard in that law is that one must be “conscientiously opposed to participation in war in any form by reason of religious training and belief.” It was this law that established that one does not have to belong to a particular church, but rather that one’s personal religious beliefs were the deciding factor.

•**U.S. Supreme Court case U.S. v. Seeger (1965) established that, to satisfy C.O. status, one didn’t have to belong to a religion, but was to be considered as a C.O. if he held very strong basic beliefs about “a God” or Supreme Being, or was strongly adverse to any war or conflict (being adverse to just one war is not particularly advisable in this case).** The Seeger case struck down the Supreme Being clause. One of the questions on the CO form was, “Do you believe in a Supreme Being” and Dan Seeger said no- that’s not how he thought of God. He qualified in every other respect, but the SSS turned him down because of his answer to that question. The Supreme Court decided he qualified as a CO. Selective objection vs. objection to “war in any form” was not an issue in this case.

•**U.S. Supreme Court case Welsh v. United States (1970) allowed Welsh to be declared a conscientious objector even though he declared that his opposition to war was not based on religious convictions. Again, like Seeger, the depth and fervency of the beliefs are critical to determining which views exempt an individual from military service. In the Welsh case, building on the Seeger case, the Supreme Court ruled that ethical and moral beliefs qualify as religious beliefs. Political and expedient beliefs explicitly do not qualify.**

These cases, resolved literally back-to-back, set a new standard for honoring an individual's personal beliefs about God, war, the military, killing others, etc. It was established that a person did not have to belong to an established church and be "taught" a theology, but, with conviction, was capable of independent thinking and forming independent belief systems that could reject the military and anything having to do with war or other conflicts. A successfully-argued case for C.O. status should, in a worst-case scenario, then result in the potential recruit being assigned about a two-year tour of domestic public service. **I’m not sure what this last**

sentence means. What the law says is that CO's are not exempt from service. COs who are drafted perform alternative service- either as a non-combatant in the military or as a civilian. Furthermore, procedures are in place for assigning COs to alternative service, and the CO performing civilian service may choose his job. In some cases they may serve overseas.

•In this District Court case argued by the ACLU the plaintiff lost standing in his case, thereby losing the battle to get the Selective Service to put a place on the registration form (SSS Form 1) for a C.O. claim. However, in their argument for the defense, the Selective Service System stated that a statement could be put "in the margins" of the registration form.

I'm not sure why this case is cited- It's not one of the major cases, but maybe that's because later in this document there is reference to it. Also, if one is trying to establish that the courts are what defined CO, why not cite the Muhammad Ali case (*Clay v. United States*), in which the Supreme Court clearly stated the 3 essential elements of a CO claim.

RECOMMENDATION FOR A C.O.

REGISTRATION (not tested): (not sure what not-tested means here- since the regs and procedures have changed since the Vietnam period which is when we last had a draft, NOTHING related to SSS regs has been tested.)

NOTE - The Selective Service will not change its data in their computers to acknowledge that you would like to be registered as a CO. The Selective Service destroys the original registration cards after they are microfilmed, and conscientious objectors who have placed any such notice on the registration card will still have to request the CO classification if they receive induction notices. However, if you follow the procedures listed below, bring the aforementioned court decisions with you and are convincing in your CO beliefs (i.e., not self-serving in any way), you will be presenting a very strong case with sufficient materials to appeal an adverse board decision to induct you into the military.

1)For this purpose, DO NOT register on-line. The SSS will only recognize the official registration form, the paper version of which can be obtained at U.S. Post Offices (the SSS Form 1).

Actually, SSS acknowledges a variety of ways to register- you can even register over the telephone. While there is

literally no room "in the margins" as claimed in the above-cited case and the margins are serrated to be torn off, plus there is no way to ensure the microfiche system would pick it up if a statement were placed there. There is room, however, to insert small-print statements between blocks 1 and 4, and/or between 4 and 5, and/or between 5 and 6, or on the right side between blocks 3 and 5. **I did not compare the current SSS paper registration card with the advice given here, but I do know that the card is reformatted from time to time. So being this specific as to which lines to write things between may become incorrect even if it is correctly describing where it could be done now. I think it is sufficient to say do it where you find room between the lines on the face of the card, and not in the margins.**

Using a medium tip black-ink pen as on the rest of the form, we'd recommend a short sentence notation something like: "I hereby declare I am a 1-O (or) 1-A-O Conscientious Objector" or "I am a conscientious objector to all war." **1-O and 1-A-O are not explained anywhere in this document. Your average person facing the draft or reading this will have no idea what those terms mean. Rather than use 'in-house' jargon, it's best to stick with plain English.**

2) Optional - Then, if there's room, a witness, or preferably even a member of the clergy, could simply state an "I concur," or "I concur with the above assessment," and add his/her title and name, with a signature. (One member of RVPV is also an ordained minister and could provide such an evaluation and potential endorsement.) **This step is completely irrelevant. Since what we're discussing is the CO getting a statement of his beliefs on record, it doesn't matter if a minister or anyone else agrees.**

3) Photocopy this form at least twice before you mail it. Mail one of the copies to yourself and don't open it. Save the other copies for your files. **Or you could mail the copy to yourself NOT in an envelope, and the postmark**

would be on the photocopy itself, and you don't have to worry about a younger sibling getting into your stuff and opening the envelope. Or you could get a copy notarized on the date you register.

4) The acknowledgment letter from the SSS, Selective Service Form 3A, should be kept by the registrant as proof of his registration, but will contain no reference to the fact that you registered as a conscientious objector, since SSS is just registering people and not gathering information related to possible classification. The instructions say that if any information is incorrect, the registrant should return the accompanying Form 3B to correct any mistakes. Those who indicated conscientious objection on their registration card should return Form 3B, saying something like, "I registered as a conscientious objector. You apparently made a mistake by not including this in your records about me. Please correct your records."

5) However, you will still have to make an appearance at the MEPCOM induction center for a physical, etc., but it is at this point (or immediately after) that you will have to submit the formal claim on Form 8 or 9 (depending upon the induction system used) and check off the Conscientious Objector classifications. You cannot OFFICIALLY file for CO status until the Selective Service sends you your notice of fitness for military service and you request reclassification on Form 8 or Form 9. Mail this form as registered mail (again, making copies and perhaps mailing a copy back to yourself, again, to retain unopened), return receipt requested, to the Area Office shown on your induction notice.

This is wrong. It acknowledges that SSS has 2 sets of procedures, but doesn't accurately describe either one. According to the regulations, one can not apply for any classification until he has been issued an induction order, and he MUST file his claim by the day before he is scheduled to report for induction. He uses Form 9 to file a claim BEFORE he is scheduled to report. Anyone who

files a claim during the proper time would not have to report to the MEPS on the scheduled date.

If the other procedures are used, one would be ordered to report to the MEPS and if found acceptable for military service he would have 10 days to file a claim using form 8. HOWEVER, a CO who objects to submitting to military control for the physical may waive the physical.

While keeping copies of what you send in is ALWAYS advised, in this case sending it registered or certified RETURN RECEIPT REQUESTED (and the return receipt is the important part) is the best way to protect yourself. Doing that makes the mailing it to yourself advice unnecessary.

6) By this time you should have ample evidence of having tried to notify the SSS and have other support letters, etc., in your file, establishing that you attempted to get your beliefs on record with Selective Service long before they attempted to draft you. But this document, the Form 22 (sample in Adobe format), and your sincerity before the board, are now the deciding factors. Understand that the local SSS board's job is to induct you, so be sure to answer the Form 22 questions in detail long before you appear before the board, and to be consistent in your answers.

This piece focuses so much on getting on record with SSS and really skims over the important work of building a CO file. The stronger his documentation, the better his chances of success. But the job of the board IS NOT “to induct you”, but to decide if someone qualifies for the classification they have applied for. All of the advice given above (up until point 4) is merely to help with documenting your claim- doing those things has no other purpose. But there are other things people could, and should do to document their claim-- and they are only briefly alluded to in the above paragraph. It's important to emphasize that everything described above will be for naught if the person fails to submit form 8 or 9 in the appropriate and small window of time.

It shouldn't need to be said, but we will anyway: **Make copies before mailing the registration to Illinois!** This also confuses things because IL is where registration information and changes of address

are sent. Once he's dealing with Form 8, 9 and 22, he's dealing with the area office near his home of record, not IL.

Would this work? Each case is individual... some succeeded, but, to our knowledge, the ones that have lost their bids for CO status approval, lost primarily because they hadn't made adequate preparations. The process is in keeping with what was argued by the defense in the 3rd bullet, above, and puts the SSS on early notice. We would expect a formal hearing process might still be required **SSS regulations and procedures REQUIRE a personal appearance before the local board for COs.** but, by following these procedures, a strong groundwork has been established and an appeal for an adverse board decision can be more easily accomplished.

IF YOU MOVE

After you register, you are required to notify Selective Service within ten days of any changes to any of the information you provided on your registration card, like a change of address. You must report changes until January 1 of the year you turn 26. **Not sure where the Jan 1 date comes from. One is normally subject to the draft law until his 26th birthday.** You may do this by using the on-line "change of address" page on this Web Site (<https://www.sss.gov/RegVer/wfAddressChange.aspx>), by completing a change of address form (SSS Form 2) at the post office, or by calling 1-847-688-6888.

IF YOU'RE 26 YEARS OF OR OLDER AND HAVEN'T REGISTERED, SUBMIT THIS FORM and good luck!

This section, as presented, makes no sense to me. First of all, it is out of context- why is it here? And secondly, it doesn't explain what this is really about. Once someone turns 26 they cannot register because they are too old. But the laws that prevent them from getting federal jobs, financial aid, etc still apply to them- so they are PERMANENTLY excluded from these things. However, if there were circumstances beyond their control that prevented them from registering (such as hospitalization or incarceration) they may be exempt from registration, but if they are seeking certain governmental benefits they may have to verify either that they

registered or were exempt from registration. That's what this is about. It is lifted directly from the SSS website listed.

(per <http://www.sss.gov/PDFs/instructions.pdf>):

SECTION 1

- **Name:** you must provide your complete name, and any other names you have ever used. If you have more than one last name, you must provide both names.
- **Address:** you must include your complete mailing address. Forms received without a mailing address will not be processed.
- **Social Security Account Number:** If you have a Social Security Account Number, you must provide it. Also, if you have ever used a different Social Security Account Number, provide that as well.
- **Date of Birth:** This form is only for men born after December 31, 1959, who are 26 years old or older. You must provide your complete date of birth.
- **Daytime Telephone Number:** If possible, provide a telephone number where you can be reached during the day, in case we need to contact you.
- **E-mail Address:** If possible, provide your e-mail address in case we need to contact you.

SECTION 2:

This section is for explaining and documenting why you did not register with Selective Service. This section consists of five different parts. You must complete and submit documentation for any and all parts that apply to you. **Military:** To obtain proof of military service (DD-214, Official Military Personnel File) write to: National Personnel Records Center, GSA, Military Personnel Records Center, 9700 Page Blvd., St. Louis, MO, 63132. Or visit

<http://www.archives.gov/veterans/military-service-records>

Incarcerated, institutionalized, hospitalized, or confined to home: for each instance, provide type of confinement, dates of confinement, and supporting documentation.

SECTION 3:

Sign and date the letter. Return this letter to the address listed (below) with copies of supporting documents showing proof, and anything else you may wish to include. Do not send original documents, as they will not be returned. You should retain a copy of

**all documents and correspondence submitted.
Send follow-up status information letter and attachment to:
Selective Service System
P.O. Box 94739
Palatine, IL 60094-4739**

While this describes the process for getting a status letter from SSS, there is still the issue of getting the benefit from the appropriate agency (like the DOE for student financial aid) which is the only reason you might want a status letter. And it is actually the agency concerned that makes the determination. This info also from the SSS page cited is useful:

“If you are being denied a right, benefit, or privilege because you are not registered, submit a copy of your Status Information Letter and an explanation for your failure to register, to the Agency administering the right, benefit, or privilege. That Agency will make the final determination regarding your eligibility. The Selective Service System does not determine your eligibility for any right, benefit, or privilege.”

CCW has learned that the DOE regs allow the school to make that determination about financial aid. If you're going to put a section like this here, a more complete and clear description what this section is about and how one might qualify to get the benefit, if he can, should be a part of it. Starting out by saying “do this and good luck” doesn't seem to be very helpful to me.

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In-Service Conscientious Objector (CO) Status

This topic has also been briefly introduced on our "Before You Enlist Page," at <http://www.rvpv.org/Enlist.html#Discharges>

Basically, the legal standard is that the person must be conscientiously opposed to participating in war in any form, based on a sincerely held religious, moral or ethical belief. And the person must have had a change of heart since joining the military (typically requiring a statement and recognition of a religious epiphany), when the person signed a form saying he or she was not a conscientious objector and did not intend to become one. **One's beliefs must “crystallize” after entering the military, but it does not have to be a**

“religious epiphany.” As with the draft, the CO belief does not need to be a religious belief at all, but can be based on moral or ethical beliefs as well. When joining one does sign a statement that they are not a CO and there are no religious obligations that would prevent them from performing their job in the military. But no one signs a statement that she or he “did not intend to become” a CO.

The heart of the paperwork you would be filing uses the Form 22, or one very similar in the types of questions. The key difference, however, is in the answer... you've had an experience that was an epiphany for you. This experience HAS NOT made you fearful for yourself, but has opened another door of a spiritual nature. Form 22 is a Selective Service form. There is no official form for COs in the military. Each branch (ie Army, Navy) has its own slightly different system for dealing with COs. The regulations list 20 or so questions that CO applicants must answer. While the important questions are similar to those asked on form 22, military regs turn those 3 questions into 5 questions, and add a trick question about the use of force. Each branch of the military has its own CO regulations, and while they are similar, they are not identical.

Within the military, in all branches, this is a completely unadvertised and little understood way to "opt out," and the bar is high in successfully working through "the system," even with the military chaplains. The military hierarchy, typically even the military chaplain corps, is hard to convince and the screening system is laden with traps. As the word rapidly spreads through your unit, even your previous "buddies" will most likely be turned against you. However, those that actually have experienced that epiphany will normally prevail. This paragraph is difficult to follow- especially the reference to chaplains- what is being said about chaplains? Chaplains are a part of the process in each of the branches, but they are not the whole, or even the core of the process.

If the point is that COs often have a tough time- yes they do. But not all COs have a difficult time.

“those that actually have experienced that epiphany will normally prevail” is debatable. DOD statistics show an approval rate of around 50%. Who knows if their statistics are correct? Our experience is that those who get help from counselors who are well trained have a 70-80% success rate. And while it is true that the better one does on their application, hearings and rebuttals the

better their chance of success, we've seen some excellent claims denied for no good reason.

“People wake up to their beliefs about war at different times,” Ms. McNeil (former Director of the Center on Conscience & War, which is part of the G.I. Rights Hotline) said. “Sometimes it’s when they’re in training chanting, ‘Blood, blood, blood makes the grass grow green.’ Sometimes they don’t really think about it until they’re about to deploy or until they have to shoot a weapon.” Ms. McNeil’s center gets about 150 calls a month, about 100 from people who are either absent without leave or about to be, and about 20 asking about becoming a conscientious objector. “After talking to literally thousands of callers,” Ms. McNeil said, “I honestly believe that many of the people who go AWOL or commit suicide are people who are struggling with their conscience.”

More on this topic later