

Chapter 8 - Conscientious Objection

All enlistees know in the abstract that they may someday be sent to war. But all too often, young recruits do not consider the moral or spiritual implications of military service and warfare before reporting for active duty. Every servicemember participates in the military's primary mission: to prepare for and fight wars. During their military career, servicemembers may develop profound objections to participating in war. Such servicemembers are often confused about what action to take on their newly-formed beliefs, and feel alienated and helpless in the military environment where they must work and live. Applying for conscientious objector status is intimidating — it is made even more so by the long and complicated process devised by the military. Assistance from a knowledgeable counselor is invaluable.

Members of the military who develop a “firm, fixed, and sincere objection to participation in war in any form or the bearing of arms,” based on moral, ethical, or religious beliefs, are entitled to discharge from the military or transfer to non-combatant status. An applicant for conscientious objector (CO) status must submit a written application and be interviewed by a chaplain, military psychiatrist, and investigating officer. The written application must describe:

The nature of the applicant's beliefs about participation in war.

How those beliefs changed or developed since entering the military.

When and why the applicant's beliefs prevented him or her from continuing to serve in the military.

How the applicant's daily lifestyle has changed as a result of his or her beliefs.

Criteria

A conscientious objector must meet three criteria:

1. object to participation in war in any form;
2. base his or her objection on “religious training and belief” (which can include moral or ethical training and belief) that “crystallized” after the applicant entered the military; and
3. demonstrate that his or her position is “sincere and deeply held.”

While the concept of objecting to war is fairly simple, the legal criteria that a military conscientious objector must meet are more complicated. To be a conscientious objector, an individual must have a firm, fixed, and sincere objection to personally taking part in war, not merely to the idea of war. And one must object, not merely dislike or be saddened by war.

Religious Training and Belief

Conscientious objectors must base their objections on strongly held religious, moral, or ethical beliefs — all of which qualify as “religious training and belief” under the regulations. The military's broad definition of “religious training and belief” comes from the Supreme Court's interpretation of that phrase as used in the draft law. In *US v*

Seeger and Welsh v US, the Supreme Court held that given the variety of religious belief, when Congress defined “religious training and belief” as “belief in a relation to a Supreme Being involving duties superior to those arising from any human relation,” it must have meant something broader than belief in a God. The Court held that it also included moral or ethical beliefs which occupy the same place in the life of the applicant as the belief in a traditional deity holds in the lives of traditionally religious people. The military has chosen to adopt the Supreme Court’s interpretation of the draft law’s definition of “religious training and belief.” Therefore, applicants with moral and ethical beliefs which act as a religion in their lives are just as entitled to conscientious objector status as traditionally religious objectors. Nevertheless, moral or ethical objectors face special burdens. Applicants must establish that the processes through which they developed their new-found beliefs are comparable to at least one form of the religious experience. In addition, applicants must demonstrate that their beliefs serve as a religion in their lives.

“Religious training” is the process by which a person develops his or her beliefs, whether religious or not. Everyone with a religious or moral belief arrived at it by a process, and therefore has “religious training.” The applicant’s training is his or her life: such as people, books, and other influences. Virtually any life experience can be viewed as religious if the applicant grew or learned from it. The applicant must show how these experiences and “training” led to the development of CO beliefs.

It is only natural that the religious, moral, or ethical beliefs of some applicants will lead them to have strong political views, and perhaps even to take political actions. While political views or actions do not disqualify an applicant from obtaining CO status, special care should be taken to explain how they grow out of, and do not conflict with, the applicant’s religious, moral, or ethical beliefs.

Applicants must base their objections on beliefs that arose or became central to their lives after entering the military. Beliefs “growing out of experiences before entering the military service,” including general feelings against war, do not disqualify applicants as long as an objection to participation in war “did not become fixed” until after the person entered the military.

Sincerity

The CO claim must document “views and actions strong enough to demonstrate that expediency or avoidance of military service is not the basis of [the] claim.” Evidence of such sincerity is documented through written answers to six required questions on the applicant’s training and belief, supporting letters submitted with the claim, and in two of the three required interviews.

Military regulations require that the applicant’s beliefs be both sincere and “deeply held.” Three United States Courts of Appeal have, for a variety of reasons, concluded that “depth of conviction” is not a requirement separate and apart from “sincerity.” The US Court of Appeals for the Ninth Circuit, however, has ruled otherwise. In *Roby v US Department of the Navy*, the Court affirmed the denial of CO status based on lack of depth of belief, even though the Navy conceded the applicant was sincere. The Court made the following distinction between “sincerity” and “depth”:

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.

While CCCO believes this is a misunderstanding of the regulations, it is binding precedent in cases brought within the Ninth Circuit. Applicants in states where the Ninth Circuit Court decision is controlling may therefore have to demonstrate “depth of belief” as well as “sincerity.” Because it is not possible to predict how courts in other jurisdictions will rule, applicants in states covered by Courts of Appeal which have not ruled on this issue should attempt to make a separate showing of depth of belief. The Army’s “Informal Guide for the Investigating Officer” states, “A conscientious objector is one whose conscience...allows him or her no rest or inner peace if he or she is required to fulfill the present military obligation.” Although this informal guideline is not a formal criterion for establishing a CO claim, in at least one case, the Army has given it such force. Courts which have addressed the legitimacy of “no rest or inner peace” are not consistent in their rulings. Although the legitimacy of such criteria may be challenged on appeal, the applicant must be prepared to deal with these questionable standards. The applicant must object to participation in war in any form and may not “choose the war in which he [or she] will participate.” This does not mean that an applicant must maintain a position that his or her views are forever immutable. As the Supreme Court stated in *Gillette v US*, “Unwillingness to deny the possibility of a change of mind, in some hypothetical future circumstance, may be no more than humble good sense, casting no doubt on the claimant’s present sincerity of belief.”

Counseling

The application process is intentionally long and arduous. A CO applicant needs help clarifying his or her own beliefs, writing down those beliefs in the form dictated by the military, preparing for the required interviews, and waiting for a final decision on the claim. The first step is to help the servicemember decide whether to apply for CO status. CO applicants will likely be new to the concept of objection to war; most servicemembers do not even know that a discharge for conscientious objection exists. The recruiting process, family expectations and traditions, the scarcity of serious depictions of nonviolent principles, military stereotypes about conscientious objectors, and the military culture itself all work against anyone becoming a conscientious objector. Deciding whether they object to participation in war in any form is the primary moral question applicants must consider. Rethinking one’s beliefs about war raises a host of questions. Two typical questions asked by applicants and investigating officers alike are: “Would you fight if the country were attacked?” and, “Would you have fought Hitler?” (For a full discussion of these topics, see CCCO’s publication *Advice for Conscientious Objectors in the Armed Forces*.)

The important thing to remember about these questions is that while they are interesting to discuss, they have no real answer. For instance, it is simply impossible to really know what a person would have done had he or she been born in a different time. Rather than attempt to speculate, the applicant can explore what his or her beliefs would

require in various hypothetical situations. In answering such questions, applicants must reaffirm what they will not do — they will not participate in war in any form. In addition to deciding whether they qualify for CO status, applicants must decide whether they want to apply for CO status. To aid in this decision:

- Ω Discuss other possible discharges that might result in a faster, or otherwise more desirable, discharge. (But keep in mind that simultaneously seeking another discharge while applying for CO status often leads the military to question the sincerity of the CO claim. An exception is seeking an entry level performance and conduct discharge while applying for CO status.)
- Ω Review the entire application process so the applicant knows what to expect.
- Ω Investigate any problems in the applicant's record or history that may impinge on the claim.

Applicants who seem inclined to apply for 1-A-0 must think through whether they can actually participate in good faith as a non-combatant. Remind clients that, even though they would not be required to bear arms, every job in the military supports the military's primary mission of preparing for, and fighting, wars. Counselors can also explain that applicants are no more likely to be awarded 1-A-0 status than 1-0 status. There are a number of stereotypes about conscientious objectors that work against many applicants. The military generally assumes that COs are white and middle class, with an above average education, an intellectual bent, and a way with words. Conscientious objectors are expected to be a bit naive and unworldly, gentle pacifists who would never talk back to an officer or defend themselves against a bully. If an applicant's views are religious, he or she is expected to live in church and spend spare time reading religious texts. If the views are moral or ethical, applicants are expected to be ascetic. Applicants who do not match these stereotypes need to be particularly careful to explain their beliefs in a way the military can understand.

Writing the Claim

A counselor can assist an applicant in writing his or her claim in two ways:

- Ω Lend a sympathetic ear and encourage the applicant in a difficult writing process.
- Ω Critically review the claim with the views of the military in mind.

Counselors often find it difficult to be both a sympathetic listener and a critical reader. Many counselors will ask another experienced counselor to review the written claim before it is submitted. (Contact CCCO if there are no other counselors in your area.)

Writing things down, whether answering the official questions or not, can often help applicants to clarify their beliefs. If an applicant finds writing to be a real struggle, remind him or her that a CO claim is not a term paper. To help get over writer's block, an applicant might try ignoring the official questions altogether, writing for ten minutes without lifting the pen from the page, speaking into a tape recorder, or recording a

conversation with someone else. Encourage the applicant to write clearly, succinctly, and with an eye towards details and facts. However, a claim need not be perfectly written. Applicants should avoid arguing in the application. While it may be emotionally fulfilling or politically tempting for some applicants to try to convince the military that it is wrong, this approach can harm the chances of a claim's approval. The military favors claims which simply feature statements about one's experiences and beliefs, and how they led to conscientious objection. Remind argumentative applicants that there are other public forums available to express political beliefs about the military after discharge.

A successful claim will involve several drafts. Applicants generally do not like this fact and are often anxious to move the application process along quickly. However, thorough answers to the required questions are the foundation for the entire claim. While it is possible to add to the claim later, it is best to present an initial claim that is well thought-out. No application should be submitted before being reviewed by a counselor.

When reviewing drafts, a counselor can give input on areas that need clarification. If an applicant writes a few densely packed sentences, unpack the sentences so a reader unfamiliar with the applicant can fully understand the applicant's beliefs. Applicants may also be hesitant about appearing to repeat themselves, or feel that answers to some of the military's questions can easily be found elsewhere in the application. It is important that every question be answered fully and each point explained, even if that requires making the same point in several different places in the application. Unlike many other types of writing, repetition is good in a CO application. While assisting the applicant, remember he or she must defend the claim, and it makes no sense to prepare a claim which may not completely reflect the applicant's own mind.

It is better to have applicants express their beliefs in their own words than it is to produce a "polished" application. For instance, if an applicant has little formal education, assisting them to create a highly polished essay — even one that clearly and accurately expresses his or her own beliefs — could lead the military to conclude that someone other than the applicant answered the questions.

Documentation

The applicant has the "burden of establishing a claim of conscientious objection...through clear and convincing evidence...." Therefore, the applicant must establish that his or her claim meets the criteria for conscientious objection and that the applicant's belief is "honest, sincere and deeply held." Each Service has slightly different standards for meeting this burden. For example, in the Marines, once a claim has been made through the written application, CO status will be granted "unless the [military] can establish a rational basis in fact for denying the application." On the other hand, in the Navy, "if an interviewer or investigating officer is not convinced of the beliefs or sincerity of the applicant, they should recommend the application be disapproved since the burden is upon the applicant to prove their beliefs and sincerity."

Make at least two copies of all documents concerning a CO claim. The applicant can keep one in a personal file and another with a trusted person off-base. Harassment and deliberate destruction of CO claims are less common than they once were, but incompetence and loss of records are still all too common in the military.

The Required Questions

DoD Directive 1300.6 contains 25 required questions for CO applicants. Most are simple: name, Social Security number, etc. There are six questions about training and belief that require extensive answers. (The Army, in AR 600-43 §B-1.b.(1)., adds a seventh question which asks whether the applicant is applying for discharge or transfer.) While there is no correct length for a CO claim, a frequently-used guideline is 7-15 pages for the answers to the questions on one's beliefs. If the claim is too short, it may not be taken seriously. If it is too long, it may not be read. The claim should be typed, double-spaced, with the military's questions restated at the beginning of each answer. Using military memo style is not required.

Nature of Belief

A description of the nature of the belief which requires the applicant to seek separation from the military service or assignment to non-combatant training and duty for reasons of conscience.

The answer to this question is a concise description of the applicant's underlying or overall belief system, followed by a short explanation of how that belief prevents the applicant from participating in war in any form. The goal is not to prove the correctness of a particular ethical or religious doctrine but to illustrate the centrality to the applicant's life of the beliefs that lead the applicant to oppose participation in war. For example, a Catholic applicant could show how his or her understanding of Catholic teaching leads to his or her CO position. Secular applicants can describe the system of belief or set of principles that they have come to believe. The applicant should also explain why he or she is applying for discharge instead of non-combatant status, or vice-versa.

Applicants sometimes present their beliefs in a very logical, even detached, manner and must be encouraged to connect the ideas expressed to their personal convictions. For instance, religious applicants can make the mistake of stringing together quotations from religious texts without explaining the importance each statement has for their individual system of belief. Applicants can describe positive behavior and actions their belief system urges them to undertake (such as prayer, self-sacrifice, etc.), as well as behavior that is frowned on or forbidden (such as selfishness, dishonesty, etc.). Further credibility is gained when applicants describe the consequences of not following their beliefs. (For instance, Hell is a motivator most military officials can understand.)

The military often assumes that any political beliefs mentioned in a CO claim must be the center of the applicant's belief system. Many counselors discourage clients from using political jargon to describe their moral or religious beliefs. Where political beliefs are mentioned, it is important to show the moral or religious beliefs they are grounded in.

Change of Beliefs

An explanation as to how his [or her] beliefs changed or developed, to include an explanation as to what factors (how, when, and from whom or from what source training

received and belief acquired) caused the change in or development of conscientious objection beliefs.

Encourage applicants to tell their story — chronologically, with as much detail as possible. That story includes influences and characteristics that existed long before CO beliefs began to emerge, such as a childhood propensity towards honesty, church influences that left a lasting trust in God, or gang involvement that, upon later reflection, led to a sense of the sanctity of life. An applicant can describe the beliefs that allowed him or her to join the military and the applicant must make it explicit that he or she was not a conscientious objector at the time of enlistment. Take care to explain areas in the applicant's background that might appear to conflict with CO beliefs or present an ulterior motive.

Applicants must “provide a plausible explanation...for the...development of [their] beliefs.” Becoming a CO is a complex process. It usually involves a mixture of experience, reading, thinking, as well as other factors. Record as many influences as the applicant can think of — people, religion, books, music, movies, television, etc., as well as experiences in the military which have produced a kind of “negative training” (such as target practice or being ordered to yell “Kill! Kill! Kill!” during training). For applicants basing their claim on moral or ethical grounds, this answer can be used to establish that the processes through which they developed their new-found beliefs are comparable to at least one form of the religious conversion experience. Such applicants can also further demonstrate how their beliefs serve as a religion in their lives.

Timing and Crystallization of Beliefs

An explanation as to when these beliefs became incompatible with military service, and why.

Great care must be taken to establish when the applicant's objection to participation in war became fixed, or “crystallized.” If an applicant held similar, but nonqualifying, beliefs prior to entering the military, it is important to show how and when the applicant's beliefs changed after entering the military.

Care must also be taken whenever an applicant does not seek discharge soon after the crystallization of his or her beliefs. The Navy suggests that an investigating officer may question an applicant's sincerity “when there is a long period between the assertion of conscientious objection beliefs and submission of a formal application.” This timing issue creates a real dilemma because the military could also make a finding of insincerity where the applicant applied so soon after developing CO beliefs that he or she did not yet have time to change many aspects of his or her life. Any timing problems must be fully explained.

The Navy further suggests that investigating officers question an applicant's sincerity when “beliefs became fixed immediately prior to hazardous duty or shortly after termination of educational benefits...” However, many military personnel do question their beliefs during political crises and military escalations; some inevitably conclude they are conscientious objectors. The challenge for applicants is to establish, through an explanation of their thought processes, the credibility of their claims.

This question is an opportunity for applicants to tell another part of their story. (It also provides applicants with an opportunity to briefly state their beliefs again, and to

explain their importance.) Have the applicant describe any external events that immediately preceded or actually triggered crystallization, as well as the emotions and religious or moral thought that accompanied it. Describing feelings that came up after crystallization — which may include serenity, joy, or stark terror at being in the military with their new beliefs — can be particularly powerful. The more specific applicants can be regarding dates and events, the more credible their statements will be.

Use of Force

An explanation as to the circumstances, if any, under which the applicant believes in the use of force, and to what extent, under any foreseeable circumstances.

This question invites applicants to disqualify themselves by providing an answer that the military could interpret as either the applicant's willingness to participate in war or as a demonstration of insincerity and lack of depth. It must therefore be approached with care.

Conscientious objectors do not have to repudiate all acts of violence. Muhammad Ali, for example, despite being a world champion boxer, opposed participating in all wars based on his Muslim faith. He took his conscientious objector claim to the Supreme Court — and won. The Supreme Court has also ruled that willingness to “use force in defense of home and family, or in defense against immediate act of aggressive violence toward other persons in the community” does not disqualify applicants for CO status. Some applicants fear that a belief in use of force short of war will disqualify them and they may abandon their claim or be less than forthcoming. If an applicant lies about his or her beliefs on the use of force, and the investigating officer discovers the lie, it could form the basis for a finding of insincerity. The best approach is to be forthcoming on the applicant's position on the use of force — taking care to explain how the applicant's beliefs on force are consistent with his or her conscientious objector beliefs as described in the “Nature of Belief” and other questions.

It is best to make clear what force the applicant is opposed to and how beliefs about the use of force arose from the moral or religious principles that underlie the claim. A complicated or convoluted answer to this question can result in numerous questions from interviewers testing the applicant's consistency and sincerity. The result: confusion, hesitation, uncertainty, and possibly a needless conclusion by interviewers that the applicant is not sincere.

It may be helpful for the applicant to define their interpretation of “force.” Discuss the range of things force may include and then discuss the types of force that do, and do not, conflict with the applicant's beliefs. Positive kinds of force (such as prayer or nonviolent intervention) can also be discussed.

An applicant who has based their application on a belief in nonviolence needs to have some ideas, however sketchy, about how to respond nonviolently to an attack on the US. For instance, if the applicant would attempt to resist attacks nonviolently, he or she should address the potential effectiveness of such tactics. Nevertheless, an applicant does not have to present a pocket solution to abolish war in order to establish a claim.

Change in Lifestyle

An explanation as to how the applicant's daily life style has changed as a result of his [or her] beliefs and what future actions he [or she] plans to continue to support his [or her] CO beliefs.

A CO applicant in the military cannot easily change his or her life, and few applicants have clear future plans beyond getting out of the military as soon as possible. Nonetheless, the applicant must answer this question as fully as possible. An in-depth discussion with the applicant will reveal some change that the applicant has experienced.

Changes which applicants typically experience include:

- Ω a change in attitude towards performing military duties;
- Ω a change in religious institutions;
- Ω meditating or praying more often, or in a different way;
- Ω an intensive course of reading relevant literature, or discussing these issues with others;
- Ω a change in television- and movie-viewing patterns to avoid gratuitous violence, or to seek out portrayals that deal with issues of conscience;
- Ω putting more energy into various life-sustaining volunteer projects;
- Ω becoming vegetarian;
- Ω a change in friends, or difficulty relating to prior friends;
- Ω a curtailment of destructive habits (such as excessive drinking);
- Ω the actual application for discharge or transfer (as a relevant attempt to change one's life).

Any changes in what an applicant does day-to-day, or a change in the way that an applicant feels about day-to-day activities, are all important if they are a result of CO beliefs. Applicants may need to address any lack of change in their lifestyle (particularly if there is no change in patterns of worship). Even small changes and vague plans (like a general desire to work for peace) are evidence of sincerity. It can also be helpful to include things that demonstrate good character and general moral nature, even if these things are not new. Be sure to stress changes that occurred around the time of the crystallization of CO beliefs.

Depth of Belief

An explanation as to what in the applicant's opinion most conspicuously demonstrates the consistency and depth of his [or her] beliefs which gave rise to his [or her] claim.

Applicants can chronicle actions they have taken based on their changed beliefs. In fact, part of the answer to this question can include a list of such actions. An applicant might also choose one or two of the most significant lifestyle changes or plans from the previous question and describe them in more detail here. The CO claim itself is powerful evidence. If commanders, close coworkers, friends, or family members disagree with the

applicant, and especially if this opposition has caused the applicant pain, this can be evidence of how important these beliefs are.

Even if this question seems redundant, it must be answered with the same detail as the other questions. As this is the applicant's closing statement, it is useful to conclude with a paragraph restating the applicant's beliefs and their importance to the applicant.

Supporting Letters and Documents

Supporting letters are important to document the applicant's general sincerity and integrity, and to corroborate dates and events that are cited in the applicant's claim. Counselors' opinions vary on how many supporting letters to include with a claim, ranging from three to eight supporting letters. A good supporting letter will at least be a character reference, and at best a discussion of evidence that the CO is sincere. Anyone can write one, but the military will evaluate the "credibility of persons supporting the claim."

Supporting letters should be returned to the applicant who can forward them to the investigating officer. Review all supporting letters and documents to ensure they are consistent with the claim. If changes to a letter can make the claim stronger, make suggestions and ask if the letter can be revised.

People who disagree with the CO, but believe he or she is sincere, can provide important evidence of sincerity. These can include current or former military personnel (the applicant's coworkers, officers in his or her command, etc.). A letter from a spiritual leader, if the claim is coming from a spiritual basis, is helpful — especially if the person has been involved in the applicant's religious development. A person who was influential in the ethical development of a secular objector can likewise be useful.

It is helpful to include one letter from a family member. Be careful, however, about letters from pacifist-oriented lovers and spouses because, on a number of occasions, the military has rejected claims on the pretext that the applicant was merely echoing the beliefs of a new love.

Inform people who are writing letters of the criteria for receiving CO status. In particular, it is important to remind letter writers that, contrary to popular belief, it is counterproductive to try to portray the applicant as a lifelong CO. (Share with letter writers Appendix 6, Supporting Letters for Conscientious Objectors.) If a letter writer can corroborate evidence in the claim, ask the writer to include his or her recollection of particular events or conversations.

Applicants can submit other documents which reflect their development as COs, including letters, diary entries, poems written by the applicant, or excerpts from books or poems that had a strong impact on the applicant. It is often helpful, if the applicant belongs to a church, temple, mosque, synagogue or other religious institution, to provide a statement from the denomination about the compatibility of CO beliefs and their faith. (For information on where to find such statements, see "Other Resources" on page 8.22.)

Approaching the Command

When the written application is completed, and supporting letters have been gathered, it is submitted to the applicant's immediate commanding officer. (If the

applicant is not attached to a unit, see “Reservists” on page 8.21.) Additional supporting letters and other documentation can be added to the application before the investigating officer’s hearing.

Occasionally applicants may want to inform their command in writing, before the application is ready, that they intend to apply for CO status because they have developed an objection to participating in war in any form. This initial notice may result in a speedier transfer to duties that least conflict with the applicant’s beliefs, or may prevent the applicant from being deployed. Shortly after the initial notice, the applicant must submit a complete written claim.

Applicants may want to refuse possible promotions or to seek a less combat-related (even if less attractive) assignment. Discuss with applicants what, if anything, to say to coworkers and superiors about their CO beliefs before submitting their claim. Applicants may find it difficult to discuss newly-formed beliefs with people who are likely to be hostile and confrontational. By making their CO beliefs known, applicants may also expose themselves to command harassment. However, the military may doubt an applicant’s sincerity when the people an applicant interacts with every day never heard about the development of an applicant’s CO beliefs.

Pressuring an Unresponsive Command

The applicant will likely need to diplomatically keep after the command to complete on-base processing as quickly as possible. A CO who wants to speed up the process can offer to set up the required chaplain and psychiatric interviews. (See also Chapter 3, Understanding the Discharge Process, under “Pressuring an Unresponsive Command” on page 3.5.)

It is not unheard of for a noncommissioned officer to refuse to forward a CO application through the chain of command to the commander. The applicant may want to physically walk the application up the chain of command and deliver it to the commanding officer. If the applicant encounters problems submitting his or her application, the counselor can mail the application directly to the commander with a cover letter citing the conscientious objection regulations. If problems persist, try contacting the base legal office (the Judge Advocate General) as well as requesting assistance from a Congressional office.

Official Process

Once the written application has been submitted, the military begins an involved process for evaluating the claim. After interviews with a chaplain, a psychiatrist or medical officer, and a hearing with an investigating officer, the investigating officer will make a recommendation to the commander. The applicant’s commanding officer will then make recommendations for approving or denying the claim. Final approval or denial is made by the headquarters of the Service, usually through a CO Review Board. The initial interviews are often scheduled soon after the application is submitted. The investigating officer hearing may take a few weeks to schedule, depending on the investigating officer’s schedule and the officer’s familiarity with the regulations and process.

Chaplain's Interview

The chaplain evaluates the “nature and basis” of the claim and the applicant’s “sincerity and depth of conviction.” The regulations clearly request specific reasons and documentation for the chaplain’s conclusions. The Army and Air Force forbid the chaplain from recommending approval or denial of the application.

Chaplains vary from helpful to obdurately militaristic. If the applicant can choose a chaplain, try to identify which chaplains on base are helpful and which are hostile or unreasonable. If the chaplain was obviously biased, the applicant can note this in his or her rebuttal (see below) or request a new interview.

Applicants will do well to avoid theological debates with chaplains. The chaplain will almost always conclude that they “won” and often use the evaluation as an attempt to get the last word. Instead, it can be useful to acknowledge that the chaplain has a different perspective, but then redirect the conversation. Some applicants ask the chaplain, at the end of the interview, to reiterate the basis of their CO claim. The applicant can then clarify any points that were misunderstood.

Psychiatric Interview

The psychiatric evaluation will indicate any disorder which warrants treatment or other administrative action (such as a discharge for other physical and mental conditions). In the Army and Air Force, the psychiatrist, psychologist, or medical officer conducting the evaluation will make no recommendation for approval or denial of the application. While the psychiatric interview is more often than not a mere formality, a negative report on the applicant’s sincerity can adversely affect the claim.

Applicants can find the implication that they are mentally ill insulting. However, if an applicant refuses to cooperate with the procedure, it is noted in the record and this may cause the military to reject the claim.

The Investigating Officer

An investigating officer (IO) in the grade of 0-3 or higher, who is not in the applicant’s chain of command, will be appointed to investigate the claim. The investigating officer may be a military attorney. While some investigating officers have dealt with CO cases before, many IOs knowledge of CO cases is derived from reading the regulations and discussions with the command judge advocate’s office. Some officers make a serious effort to educate themselves about the CO application process — others do not.

Investigating officers are instructed to take particular care “not to deny the existence of bona fide beliefs simply because those beliefs are incompatible with one’s own.” However, military regulations encourage the IO to investigate the possibility of ulterior motives. The Army regulation points out several “indicators” that warrant “further inquiry as to the person’s sincerity.” Such indicators include whether the applicant “may have sought release...through several means” or have applied “shortly after becoming aware of the prospect of undesirable or hazardous duty....” The Navy regulations caution reviewing officers twice to look for expediency or ulterior motives.

Investigating officers can undertake an investigation (seeking information from commanders, supervisors, coworkers, clergy, friends, records, and other sources), but often the required hearing is all that takes place. The purpose of the hearing is to:

- Ω “afford the applicant an opportunity to present any evidence he [or she] desires in support of their application;”
- Ω “enable the investigating officer to ascertain and assemble all relevant facts to create a comprehensive record;” and
- Ω “facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority.”

The hearing is informal and, at least according to the regulations, it is not supposed to be an “adversary proceeding.” Whether the hearing becomes an adversary proceeding or not, applicants can find intensive questioning of their beliefs and sincerity difficult and frightening. To help an applicant prepare for the hearing, role play a mock hearing with him or her. The goal is to practice fielding questions, not to prepare pat answers. The applicant’s sincerity, not his or her glibness, is being evaluated.

When evaluating an applicant’s sincerity, Navy investigating officers are instructed to consider “their personal impressions of the applicant, such as the application’s demeanor and the manner in which they answer questions...and any outward manifestations which tend to support or rebut the applicant’s claim.” In particular, they are to consider “how the applicant acted when the opportunity arose to assert beliefs consistent with those now asserted.”

Statements at the hearing are made under oath or affirmation, but statements obtained from persons not at the hearing need not be made under oath. The applicant can submit new information, bring witnesses, and request witnesses from his or her command. The applicant will be permitted to question any witnesses who appear and to examine all items in the file. The applicant can be represented by civilian counsel at his or her own expense, but no military counsel will be provided. (“Counsel” is generally presumed to mean an attorney. However, nothing in the regulations prohibits nonattorney counselors from representing an applicant in these interviews.)

Counselors can check in with the investigating officer before the hearing to introduce themselves and to gauge the attitude of the officer. If the IO is confused about the role of a lay counselor, this is also an opportunity to clarify that role before the hearing.

A verbatim record of the hearing is not required. If the applicant arranges for a transcript or tape recording of the hearing, he or she must provide a copy to the investigating officer. (The Marines will not accept tape recordings in place of a verbatim record.) If no transcript is made, the investigating officer will summarize the testimony of witnesses and permit the applicant and his or her counsel to note for the record their differences with the summary.

The investigating officer will prepare a written report with “conclusions as to the underlying basis of the applicant’s conscientious objection and the sincerity of the applicant’s beliefs, including [the IO’s] reasons for such conclusions.” Based on “the entire record” and “not merely on the evidence produced at the hearings,” the

investigating officer will recommend either denial of classification as a CO or classification as a 1-0 or 1-A-0 CO (whichever the applicant requested).

The applicant will receive a copy of the investigating officer's report, along with a copy of the full record of the case, including the transcript or summary of the hearing. The applicant then has five to 15 days (depending on the Service) to rebut any of the findings or evidence in the report. The applicant should prepare a thorough rebuttal of any misinformation or misperceptions contained in the report. The IO's recommendation is often determinative, but a recent case in which the IO was egregiously and demonstrably misleading was salvaged by a scathing rebuttal letter. The report, with any rebuttal, is forwarded to the commanding officer, who reviews it and can (but rarely does) send it back for further investigation.

The commanding officer then makes a recommendation for approval or denial. The record is forwarded up the chain of command to the Service headquarters. If any adverse information is added by the commander or anyone else, the applicant should be informed and given a chance to rebut.

Notification

The decision of the Service headquarters (and the CO Review Board) can take anywhere from one to six months, after which they will inform the applicant and his or her command. If the Review Board denies the applicant's claim, it must state its reasons in writing. Counselors can often monitor the progress of a claim, and sometimes even find out the Board's decision, by telephoning the Board directly. The numbers often change and can be tracked down through the investigating officer or CCCO. When contacting the CO Review Board, try to speak directly to the attorney handling the applicant's claim and offer to answer any questions that have come up about the claim. In the Army, the commander exercising general court-martial convening authority over the applicant can approve the claim, resulting in speedier discharge or transfer. Only if the commander recommends denial does the claim go to headquarters.

Assignment During Processing

Waiting for a CO claim to be processed is often the hardest part of the procedure. The applicant is to be placed on duties "which will conflict as little as possible with [his or her] asserted beliefs." Theoretically, this means non-combatant duties. But the military's definition of non-combatant may not be acceptable to the applicant. Applicants can try to work out an acceptable assignment with the command but this is not always possible. Submission of an application does not preclude deployment or reassignment. Applicants faced with combat-related or weapons-bearing assignments can take several steps to receive duties less inconsistent with CO beliefs:

- Ω The applicant or counselor can show the commanding officer a copy of the Service CO regulation. (This "friendly" approach can work when the commanding officer is simply unaware of the applicant's rights under the regulations.)
- Ω Counselors can talk with the JAG officer who advises the command.

Ω The applicant can file an Article 138 complaint. (See Chapter 6, Grievances and Filing Complaints.)

Should all of the above steps fail, the applicant's only remaining choice may be to disobey an order to bear arms, and risk court-martial. At such a court-martial, the issue would be the legality of the order. Consult CCCO for more information if an applicant is considering disobeying an order.

Type of Separation

Discharge or Transfer?

It is entirely the applicant's choice whether to request discharge (1-0) or transfer to non-combatant status (1-A-0). The military is prohibited from offering 1-A-0 status "as a compromise."

Characterization of Discharge and Veterans Benefits

A CO discharge is Honorable unless, under the guidance outlined in Chapter 2, Overview of Military Discharges, a General (under Honorable Conditions) characterization is warranted. COs are eligible for any veterans' benefits to which their characterization and length of service entitles them.

During the processing for CO status, the applicant is asked to sign a form stating that he or she may lose benefits as a "conscientious objector who refuse[s] to perform military duty (or refuses to wear the uniform) or otherwise to comply with lawful orders of competent military authority." Simply put, applicants who violate military law and face disciplinary action may lose benefits. Signing this statement has no effect on eligibility for benefits.

Appeals

If a claim is denied, carefully review the reasons given by the CO Review Board. It may also be helpful to consult an attorney for advice about possible litigation. (CCCO can provide referrals to attorneys experienced in such cases.) If the claim was denied for invalid reasons, or for valid reasons which are not supported by the record, the applicant can ask a federal court for a writ of habeas corpus which, if granted, would force the military to grant the discharge.

A CO applicant whose claim has been denied can seek discharge on other grounds. A final alternative is to submit a second CO claim. However, if the military determines that the second claim is "based upon essentially the same grounds, or supported by essentially the same evidence" they will return the application without action. In preparing a second claim, it is important to show how the applicant's beliefs have changed or grown in the interim. Unfortunately, second claims are not often successful.

Fighting Separation

This discharge can only be initiated by the servicemember. If a CO applicant is threatened with a different, undesirable discharge, seek further guidance under “Fighting Separation” in the chapter discussing the particular discharge.

Reservists

Reservists must apply through their local units or administrative centers. Interviews with the psychiatrist, chaplain, and investigating officer may be scheduled with members of the reservist’s unit or at a nearby base. The military often takes much longer to process a reservist’s CO claim, especially for an applicant not subject to drills or annual training. Applicants can request to be exempt from attending drills while the claim is pending but, if the request is turned down, they are still liable to the same obligations and punishments for unsatisfactory participation as any other reservist. The applicant should be assigned to non-combatant duties during drills and annual training. During a mobilization, it is important that applicants file their claim quickly. The Services policies for calling up CO applicants are mixed, and often unclear. A Marine reservist will not normally be ordered to involuntary active duty until the application is resolved, unless the application is judged to be without merit. However, the Navy requires applicants to “comply with active duty or transfer orders in effect at the time or subsequently received.” In the past, it has been difficult to prevent the call-up of reservists who filed for CO status after their orders for involuntary active duty were published. The publication date of an order can occur long before an applicant receives the order. The fact that an applicant has not yet received an order (and does not expect to receive an order) does not ensure that the applicant has much, if any, time to submit an application soon enough to prevent activation. Therefore, reservists on inactive duty should file a bare-bones application as soon as possible. After the application has been filed it can be supplemented in more detail. (See Chapter 18, Mobilization and Involuntary Active Duty.)