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IV. Selective Service

Kenneth N. Schlossberg

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A. Conscientious Objection—Ehlert v. United States, No. 21, 930 (9th Cir., Sept. 11, 1968); Blades v. United States, 407 F.2d 1397 (9th Cir. 1969).

Although the Selective Service statutes and regulations are being challenged on many fronts, probably no provisions have been examined more closely than those relating to the deferment of conscientious objectors.[1] Section 456(j) of the Selective Service Act provides for the deferment of conscientious objectors:

> Nothing contained in this [Act] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.[2]

The language of section 456(j) suggests that the right to claim exemption was intended to be available without limitation, up to the moment of induction. The courts, however, have held that conscientious objection, like all other deferments, is a matter of legislative grace, and, as such, is subject to the limitations of the Selective Service Regulations.[3] Specifically, section 456(j) is subject to the procedural requirements of section 1625.2 of the Code of Federal Regulations,[4] which provides:

> [T]he classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report . . . *unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.*[5]

Whether or not a conscientious objector claimant can secure a reopening[6] of his classification and receive a hearing on the merits of his

1. United States v. Gearey, 368 F.2d 144, 146 (2d Cir. 1966), *cert. denied*, 389 U.S. 959 (1967).

2. 50 U.S.C. APP. § 456(j) (Supp. IV, 1969).

3. Keene v. United States, 266 F.2d 378, 383 (10th Cir. 1959); *see, e.g.*, United States v. Taylor, 351 F.2d 228, 230 (6th Cir. 1965); Boyd v. United States, 269 F.2d 607, 611 (9th Cir. 1959); United States v. Schoebel, 201 F.2d 31 (7th Cir 1953). *Contra*, United States v. Underwood, 151 F. Supp. 874 (E.D. Pa. 1955); United States v. Crawford, 119 F. Supp. 729, 730 (N.D. Cal. 1954). *See generally* Note, *Pre-Induction Availability of the Right to Claim Conscientious Objector Exemption*, 72 YALE L.J. 1459 (1963).

4. See note 3 *supra.*

5. 32 C.F.R. § 1625.2 (1969).

6. When a local board reopens a registrant's classification it must consider the classification anew. The registrant has the same rights of personal appearance and

claim by the local board, subsequent to issuance of a notice to report, depends on a judicial interpretation of that regulation.

This Note will deal with the two legal problems attendant to a registrant's attempt to obtain conscientious objector reclassification by the local board between the time notice of induction is issued and the time that the date of induction has passed. First, is the crystalization of conscientious objector beliefs a circumstance beyond the registrant's control, thus enabling the local board under section 1625.2 to reopen the registrant's classification;[7] second, once the first question is answered in the affirmative, at what time prior to the induction proceedings must that claim be asserted.[8]

Conscientious Objector Beliefs: A Circumstance Beyond The Registrant's Control

The Ninth Circuit, in *Ehlert v. United States*,[9] brought the conscientious objector within the provision of section 1625.2 by holding that a claim of conscientious objection could mature or crystalize after a registrant had received his induction notice, and that this may be a circumstance over which the registrant had no control. In so holding, the Ninth Circuit aligned itself with the Second Circuit's ruling in *United States v. Gearey*,[10] where the court stated that a registrant

> who raises his conscientious objector claim promptly after it matures—even if this occurs after an induction notice is sent but before actual induction—[is] entitled to have his application considered by the Local Board.[11]

The facts in *Ehlert* show that the day before his scheduled in-

appeal as he had before he was classified. If the local board reopens the classification, any order to report for induction must be cancelled. 32 C.F.R. § 1624.11-.14 (1969).

7. This Note will not concern the registrant who, although he may be a conscientious objector *prior* to issuance of a notice to report, fails to assert his claim until *after* notice of induction has issued. Under section 1625.2, such a registrant cannot obtain a reopening of his classification. Boyd v. United States, 269 F.2d 607 (9th Cir. 1959).

8. This Note will not concern a claim of conscientious objection first raised after induction into the armed forces. "[C]lassification functions of the local board cease with induction . . . ." Palmer v. United States, 401 F.2d 226, 227-28 (9th Cir. 1968). As the court said in Boyd v. United States, 269 F.2d 607, 612 (9th Cir. 1959), "there must be some end to the time when registrants can raise and re-raise an alleged right to review," and that end the Ninth Circuit has ruled, is after the date of induction has passed. Blades v. United States, 407 F.2d 1397, 1399 (9th Cir. 1969); Palmer v. United States, 401 F.2d 226 (9th Cir. 1968). It should be noted that these claims may be presented to the appropriate military authorities; they are no longer the responsibility of the local board. *See* Dep't of Defense Directive No. 1300.6 ASD (M&RA) (May 10, 1968), in SELECTIVE SERVICE L. REP. 2325.

9. No. 21,930 (9th Cir., Sept. 11, 1968) (reheard en banc, decision pending).

10. 368 F.2d 144 (2d Cir. 1966), *cert. denied*, 389 U.S. 959 (1967).

11. *Id.* at 150.

duction Ehlert wrote the board[12] requesting conscientious objector status, "stating that he had been 'unable to make a decision of such moment until faced with the absolute necessity to do so.' "[13] He reported for, and thereafter refused, induction, whereupon he was directed to report to the local board. Subsequent to his date of induction, Ehlert did report to his local board and completed a formal application for conscientious objector status, SSS Form No. 150.

The district court held that "as a matter of law . . . changes in status involving conscientious objection were not beyond the control of the registrant."[14] Therefore, under section 1625.2 of the Selective Service Regulations, the local board could not reopen the registrant's classification; on this basis, Ehlert was convicted of refusing induction.

On appeal, Ehlert set forth three arguments in support of his position. The first argument focused upon a careful scrutinization of sections 1625.1 and 1625.2.[15] Section 1625.1(b) provides that the registrant shall report *any fact* to the local board that might result in the registrant being placed in a different classification.[16] Ehlert contended that these two regulations, as worded, "[made] it apparent that they were designed to include situations involving conscientious objector status."[17] Neither of the aforementioned regulations, claimed the appellant, excluded conscientious objection "from the spectrum of circumstances which may be beyond the registrant's control."[18] Second, he argued that the wording of section 456(j) "sets forth a strong policy of deferment for conscientious objectors."[19] To exclude conscientious objector claims from the proviso of section 1625.2 would be to thwart the reasons for the enactment of the legislation.[20] Such a construc-

12. There was no mention of the time that the letter was actually received by the board. The government, however, failed to claim that the letter was not timely filed.

13. Brief for Appellant at 2, Ehlert v. United States, No. 21,930 (9th Cir., Sept. 11, 1968) [hereinafter cited as Brief for Appellant].

14. Ehlert v. United States, No. 21, 930 (9th Cir., Sept. 11, 1968).

15. Brief for Appellant at 6-7.

16. "Each classified registrant and each person who has filed a request for the registrant's deferment shall, within 10 days after it occurs, report to the local board in writing *any fact* that might result in the registrant being placed in a different classification such as, *but not limited to,* any change in his occupational, marital, military, or dependency status, or in his physical condition." 32 C.F.R. § 1625.1(b) (1969) (emphasis added).

17. Brief for Appellant at 6.

18. *Id.* at 7.

19. *Id.*

20. *See* United States v. Gearey, 368 F.2d 144 (2d Cir. 1966). *See also* United States v. Underwood, 151 F. Supp. 874 (E.D. Pa. 1955), where the court stated that "[i]t is plain that a person meeting the conditions of [section 456(j)] is not to be

tion "might result in a conscientious objector having to perform combatant training and service."[21] Finally, he argued that to hold as a matter of law that conscientious objection is not within the proviso of of section 1625.2, would result in "a lack of uniformity [in the] treatment of conscientious objector claims."[22] This claim was based on the fact that claims may be presented before an induction order is mailed,[23] and after induction into the armed forces.[24] The armed services, however, will not consider a claim for exemption that has matured prior to induction."[25] Therefore, he argued:

> [I]f such claims can never be asserted before the local board after an Order to Report has been sent, one who has a valid claim maturing during that time would have no remedy. This would be contrary to the "strong congressional policy to afford meticulous procedural protections to applicants who claim to be conscientious objectors."[26]

The Government's position was that the construction urged by the appellant was a practical impossibility, and "would clearly impair the efficiency of the [Selective Service] System to an extent not required . . . by the enactment of Section 456(j)."[27] The case law indicates that the Government's position has been accepted by the Sixth[28] and Seventh[29] Circuits, while the appellant's position has been upheld in

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subjected to combatant training and service. This privilege is not to be defeated by procedural regulations. Nowhere in the Act does it provide that unless the registrant makes his claim before notice of induction he thereafter waives his right to the privilege." *Id.* at 876. In a district court case, United States v. Crawford, 119 F. Supp. 729 (N.D. Cal. 1954), the court stated that "[w]hile regulation 1625.2 is not invalid on its face, it can have no applicability to a claim of conscientious objection, whenever made, so as to deprive the objector of a hearing at which he may prove his good faith." *Id.* at 730.

21. Brief for Appellant at 7. *But see* United States v. Freeman, 388 F.2d 246, 248-49 (7th Cir. 1967), suggesting that a sincere claimant for conscientious objector status would not accept induction "under any circumstances." A sincere claimant would refuse induction, risking possible imprisonment.

22. Brief for Appellant at 7.

23. See 32 C.F.R. §§ 1625.1-.14 (1969).

24. *See* Dep't of Defense Directive No. 1300.6 ASD (M&RA) (May 10, 1968), in SELECTIVE SERVICE L. REP. 2325.

25. *Id.*

26. Brief for Appellant at 8, *quoting* United States v. Gearey, 368 F.2d 144, 150 (2d Cir. 1966).

27. Brief for Appellee at 9, Ehlert v. United States, No. 21,930 (9th Cir., Sept. 11, 1968).

28. *See* United States v. Jennison, 402 F.2d 51 (6th Cir. 1968); United States v. Taylor, 351 F.2d 228 (6th Cir. 1965).

29. Porter v. United States, 334 F.2d 792 (7th Cir. 1964); United States v. Schoebel, 201 F.2d 31 (7th Cir. 1953). *See also* Davis v. United States, 374 F.2d 1 (5th Cir. 1967) (*semble*); United States v. Al-Majied Muhammad, 364 F.2d 223 (4th Cir. 1966) (*semble*).

the Second[30] and Tenth Circuits.[31] The Ninth Circuit, prior to *Ehlert*, had not taken a definite stand.[32]

Two leading cases rejecting the crystalization theory are *United States v. Schoebel*[33] and *United States v. Jennison*.[34] In *Schoebel*, the Seventh Circuit stated that the crystalization theory was a "strained interpretation of the regulation [section 1625.2]."[35] The court reasoned that conscientious objection was simply not a circumstance over which a registrant had no control. In *Jennison*, the Sixth Circuit indicated that the crystalization theory was unsound because it did not accurately reflect the processes of decisionmaking. The court argued that the theory places too much emphasis on the time element of "crystalization"; conscientious objection is not subject to instant "crystalization," but results from a long period of internalization.[36]

In both the aforementioned cases the courts' reasoning is subject to criticism. First, the phrase "conscientious objection," by definition, indicates that it is something over which a registrant has no control. In the Ninth Circuit's words,

> [c]onscientious objection itself would seem to be a contradiction of control. It is difficult to see how one could in his thinking depart at will from a conviction which honestly is dictated by conscience. Conversely, a belief conveniently subject to the control of the holder would hardly seem to be conscientiously entertained.[37]

Second, the *Jennison* decision failed to recognize the import and effect that a pending induction may have. The decision to claim conscientious objection is a serious decision, requiring reflection and introspection. The registrant who is unsure in his own mind whether or not he is actually a conscientious objector cannot in all honesty lay claim to the exemption. For such a registrant, notification that he has actually been drafted may be the catalyst that crystalizes his views. In

30. *See* United States v. Stafford, 389 F.2d 215 (2d Cir. 1968); United States v. Gearey, 368 F.2d 144 (2d Cir. 1966).

31. *See* Keene v. United States, 266 F.2d 378 (10th Cir. 1959).

32. *Compare* Parrott v. United States, 370 F.2d 388 (9th Cir. 1966), *and* Boyd v. United States, 269 F.2d 607 (9th Cir. 1959) (two cases indicating disapproval of the theory of crystalization), *with* Boswell v. United States, 390 F.2d 181 (9th Cir. 1968) (failure of a board to give registrant a Form No. 150 and allow him to file it held arbitrary, capricious and denial of due process even though request was not received until after order to report mailed), Dugdale v. United States, 389 F.2d 482 (9th Cir. 1968), *and* Briggs v. United States, 397 F.2d 370 (9th Cir. 1968) (where the court refused to commit itself, expressly reserving the choice of rules).

33. 201 F.2d 31 (7th Cir. 1953).

34. 402 F.2d 51 (6th Cir. 1968).

35. 201 F.2d at 33.

36. *Accord*, Davis v. United States 374 F.2d 1 (5th Cir. 1967), where the court stated that "[b]elated development of conscientious objection is not a change in status beyond the control of the registrant." *Id.* at 4.

37. Ehlert v. United States, No. 21,930, at 2 (9th Cir., Sept. 11, 1968).

the words of the Second Circuit:

> The realization that induction is pending, and that he may soon be asked to take another's life, may cause a young man finally to crystalize and articulate his once vague sentiments.[38]

The language set forth in section 456(j) is clear and unequivocal; one who is conscientiously opposed to war in any form should not be subject to combatant training and service.[39] There is nothing in the language of the section to indicate that there is a time limitation upon the exercise of that exemption. Section 1625.2, a procedural regulation enacted to carry out the provisions of the Selective Service Act, should not be construed so as to thwart the very reasons for the enactment of the exemption.[40] With the *Ehlert* decision that conscientious objection can constitute a circumstance beyond the registrant's control, as specified in section 1625.2, the Ninth Circuit has adopted a construction consistent with the unequivocal language of section 456(j). A registrant whose conscientious objector views crystalize after notice of induction has been sent should have an opportunity to present his claim to the local board. The local board then has the responsibility of making the factual determinations of when the registrant's beliefs matured, whether there has been a change in status, and whether the crystalization of those beliefs was beyond his control.[41] Failure of the local board to afford such consideration to a registrant would constitute a denial of due process.[42] If the board concludes that the registrant's beliefs matured only after receipt of his notice to report, and in addition "that his beliefs qualify him for classification as a conscientious objector . . . he would be entitled to be reclassified by the Local Board."[43]

The Ninth Circuit has reheard *Ehlert* en banc; but its decision, at the time of this writing, has not been announced. Since the crystalization theory is sound, it is hoped that the court will be persuaded by the logic of its former holding.

The Timely Filing

Because the local board is not obligated to consider a claim of conscientious objection filed after the date of induction has passed,[44] it is essential that the registrant file his claim for conscientious objector

38. United States v. Gearey, 368 F.2d 144, 150 (2d Cir. 1966).

39. 50 U.S.C. APP. § 456(j) (Supp. IV, 1969).

40. *See generally* Note, *Pre-Induction Availability of the Right to Claim Conscientious Objector Exemption*, 72 YALE L.J. 1459 (1963).

41. United States v. Gearey, 368 F.2d 144, 150 (2d Cir. 1966).

42. *See id.*; United States v. Stafford, 389 F.2d 215 (2d Cir. 1968); United States v. Blaisdell, 294 F. Supp. 1303 (S.D. Me. 1968); United States v. Hench, 292 F. Supp. 696 (W.D. Mo. 1968).

43. United States v. Gearey, 368 F.2d 144, 150 (2d Cir. 1966).

44. See note 8 *supra*.

status prior to that time. All too often, the ordinary conscientious objector, unfamiliar with the applicable formalities of claiming exemption, will fail to present a judicially cognizable claim. The Second Circuit and the Ninth Circuit are in disagreement on when a claim of conscientious objection is deemed to have been filed.[45]

The Second Circuit, in *United States v. Stafford*,[46] extended the scope of their *Gearey* decision[47] by a liberal interpretation of what constitutes a timely filing of a claim of conscientious objection. In *Stafford*, the registrant reported to the induction station on the day of his scheduled induction. At that time he presented to the processing officer a letter claiming conscientious objector status; thereafter, he refused induction. The evidence indicated that he had earlier gone to the local board, intending to give them the letter; the board, however, was closed. The registrant's letter was never sent to the local board, but instead was forwarded to the United States Attorney's office. The board was never informed that the registrant had made a written claim of conscientious objector status before he refused induction. Approximately two months after induction, the registrant was allowed to file an SSS Form No. 150, a formal application for conscientious objector status. The board met to consider the claim but rejected it.

Stafford relied on the Second Circuit's ruling in *Gearey*, contending that there had been a change in status beyond his control, and that he qualified as a conscientious objector. The Government tried to distinguish this case from *Gearey* on the grounds that a claim for conscientious objection should have been made at the local board and not at the induction center. The court rejected the government's contention and held that the request was both sufficient and timely. "[W]e do not think that a legally untutored registrant should be penalized for his failure to distinguish between the two agencies."[48] The court further stated that " '[r]egistrants are not to be treated as though they were engaged in informal litigation assisted by counsel.' "[49] *Stafford* thus holds that an informal letter handed to the processing officer, merely stating a claim of conscientious objection, constitutes a timely filing, imposing upon the local board the obligation to review the registrant's claim according to the procedure outlined in *Gearey*.

Last year the Ninth Circuit was presented with a case, *Blades v. United States*,[50] having facts somewhat similar to those in *Stafford*.

45. *Compare* United States v. Stafford, 389 F.2d 215 (2d Cir. 1968), *with* Blades v. United States, 407 F.2d 1397 (9th Cir. 1969).

46. 389 F.2d 215 (2d Cir. 1968).

47. See text accompanying notes 10-11 *supra*.

48. 389 F.2d 215, 218 (2d Cir. 1968).

49. *Id.*, *quoting* Simmons v. United States, 348 U.S. 397, 404 n.5 (1955).

50. 407 F.2d 1397 (9th Cir. 1969).

On the night before his scheduled induction, Blades filled out and mailed SSS Form No. 150 to his local board. The letter was postmarked August 30, 1967, the date of his scheduled induction, and was received by the board on August 31, 1967, one day after the date of his scheduled induction. He reported to the induction center, refused to step forward, and instead handed the induction officer a typed, signed, statement, which read in part:

> I am opposed to participation in a war in any form by virtue of religious training and belief. I intend to secure judicial review of my First Amendment rights to conscientious objector status and of the denial of due process of law which has occurred in the issuance of the order of induction, the application of the selective service regulations case, and the consideration of my application for I-O [sic] classification.[51]

The appellant argued two points: (1) that the mailing of the Form 150 to the local board constituted a timely filing, and, in the alternative, (2) that the letter given to the induction officer was a sufficient and timely request for conscientious objector status. The court rejected both contentions and affirmed the conviction.

The court, in rejecting the appellant's first contention, held that a 150 Form "has not been 'filed' with or 'returned to' a local board until it has actually been received."[52] Here, the form was not actually received until the day after the registrant's scheduled induction. The second contention raised the issue decided in *Stafford*, namely, whether the letter handed to the induction officer constituted a timely filing. The court held that giving the letter to the officer was not a sufficient notice to the board and did not constitute a timely filing. The court stated that in order for a claim to be timely filed, "the draft board must acquire actual notice of a conscientious objector claim in time to at least consider whether the classification should be reopened."[53] The court expressly stated that "[t]o the extent that *United States v. Stafford*, is contrary to this conclusion, we are not inclined to follow it."[54] The court refused to follow *Stafford* because in their words,

> [i]f the decision in *Stafford* were followed, there would be an opportunity for a registrant to create an *ex post facto* defect in

51. *Id.* at 1399.

52. *Id.* The regulations are not explicit on this point. The court reasoned that "the regulations frequently authorize the board to mail documents to registrants (*e.g.*, 32 C.F.R. §§ 1621.9, 1623.1(a)), and provide that the period allowed a person to perform any act or duty required of him shall be computed as beginning on the day after the notice to him is mailed or posted. 32 C.F.R. §§ 1641.6. *See also* 32 C.F.R. § 1641.3. [But] the regulations do not speak in terms of registrants using the mails. Rather, they must 'return' or 'file' the documents (*e.g.*, 32 C.F.R. § 10(a), 1623.1 (a))." 407 F.2d at 1399.

53. *Id.* at 1400.

54. *Id.*

the induction process that might delay or defeat it indefinitely.[55]

Furthermore, the court stated an officer at an induction center has no power or authority to reopen a registrant's classification and therefore a letter served on him could not constitute a timely filing.[56]

With the *Blades* decision, the Ninth Circuit has taken the position that a claim of conscientious objection, in order to be timely filed, must at least be *received* by the local board before the time for induction. It is important to note that there is language in *Blades* that would seem to add the additional requirement that the notice be received by the local board in time for the board to at least consider whether the classification should be reopened.[57] The ambiguity and uncertainty that would result from any such requirement is obvious; for example, would the notice not be timely filed even if it were actually received at the board office on a Tuesday, but the induction was scheduled for Thursday and the next board meeting was not to be held until Friday? Such a conclusion would mean that no matter when he mailed his petition, the registrant's right of review would be subject to the uncertain chance that the next board meeting will precede the time for his induction. Such a conclusion is absurd, but follows from a literal interpretation of the court's language. A close reading of the *Blades* decision, however, leads to the more logical conclusion that the Ninth Circuit intended to establish a specific, ascertainable, and almost always predictable point of time, which, if it precedes the time for induction, will trigger the registrant's right of review: the time when the notice is received by the local board.[58] The adoption of this conclusion furthers the congressional intent to permit the conscientious objector the legally protected right to abstain from participation in any combatant activities.

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55. *Id.*

56. *Id.*

57. 407 F.2d 1400.

58. *See also* CALIFORNIA HEADQUARTERS OF SELECTIVE SERVICE, REGISTRANTS CLAIMING CONSCIENTIOUS OBJECTOR STATUS, OPERATIONS MEMORANDUM (May 29, 1969), referring to LOCAL BOARD MEMORANDUM No. 64 & 41. Section 7 of the Operations Memorandum provides that "[i]f the completed 150 Form is returned before the induction date and there will be a regularly scheduled meeting of the local board before the induction date the SSS Form 150 shall be reviewed by the local board. If the form is returned prior to the induction date and there will be no scheduled meeting of the local board before the induction date, the registrant's induction shall be postponed so that the local board can consider the information contained in the form at a regularly scheduled meeting. If a courtesy interview is deemed appropriate, the registrant should be notified of the time and place of the courtesy interview and if necessary his induction postponed to accomplish the interview." Section 12(b) however, states that "[i]f the form is returned on the date scheduled for induction or after the induction date, *its return is not timely* and no postponement is necessary" (emphasis added).

The Ninth Circuit, in *Ehlert v. United States*,[59] has tentatively accepted the crystalization theory, as formulated by the Second Circuit in *United States v. Gearey*. Recently, the Second Circuit, in *United States v. Stafford*, extended the scope of their *Gearey* decision by holding that a claim of conscientious objection first raised at the induction center, but prior to refusal of induction, constitutes a timely filing, and is sufficient to trigger a registrant's right to review. This holding extends the crystalization theory to its logical conclusion: A claim asserted *prior to induction* (or refusal of induction), is entitled to consideration. The Ninth Circuit, however, in *Blades v. United States*, refused to follow *Stafford*, but adhered instead to the procedural formalities of claiming conscientious objection[60] by holding that a processing officer at the induction center does not have the authority to reopen a classification.

The Ninth Circuit should once again follow the lead of the Second Circuit and extend the scope of their *Ehlert* holding. The typical registrant is likely to be untutored and unfamiliar with the complexities of the Selective Service System and may not differentiate the board from the induction center. If a registrant asserts a claim of conscientious objection *prior to refusal of induction*, he is entitled to have his claim reviewed, whether this claim be presented at the induction center or before the local board. The board should consider the claim according to the procedure outlined in *Gearey*—determine when the registrant's beliefs matured, whether there has been a change in status, and whether the crystalization of those beliefs was beyond his control. If the registrant presents "prima facie" confirmation, based on objective facts, that he is entitled to be reclassified, the local board must reopen the case.[61]

*Kenneth N. Schlossberg**

59. No. 21,930 (9th Cir., Sept. 11, 1968) (Merrill & Browning Circuit Judges, & Kilkenny, District Judge).

60. Other formalities require the registrant to actually make a written request for a reopening. Hoapili v. United States, 395 F.2d 656 (9th Cir. 1968); United States v. Davis, 284 F. Supp. 93 (S.D. Iowa 1968); United States v. Monroe, 150 F. Supp. 785 (S.D. Cal. 1957). The registrant must submit facts which, if true, would be a basis for a change in classification. Briggs v. United States, 397 F.2d 370 (9th Cir. 1968); Dugdale v. United States, 389 F.2d 482 (9th Cir. 1968).

61. *See* United States v. Baker, 1 SELECTIVE SERVICE L. REP. 3017 (E.D.N.Y. Feb. 9, 1968). *See also* Petrie v. United States 407 F.2d 267 (9th Cir. 1969). " 'The board is mandated into at least looking at the facts as stated, considering whether it has previously known those facts when its prior classification was made and considering whether the facts as stated, if true, would to *any* reasonable mind, justify a reclassification.' " *Id.* at 275, *quoting* United States v. Longworth, 269 F. Supp. 971, 974 (S.D. Ohio 1967).

* Member, Second Year Class.