

Center on Conscience & War

National Interreligious Service Board for Conscientious Objectors

MILITARY CONSCIENTIOUS OBJECTOR ACT (MCOA)

WHAT IS CONSCIENTIOUS OBJECTION?

Throughout history there have been those who, in good conscience, could not participate in the killing and violence of war. In the Western world, conscientious objection has deep religious roots as many of the early Christian martyrs were executed for refusing to fight as they sought to follow the teachings of Christ. Many of our country's earliest settlers came to this land seeking religious freedom in hopes that they would be able to escape religious persecution for to their unwillingness to participate in war. Today, conscientious objectors hold a variety of religious beliefs, or no religious beliefs at all, but what they all share with the martyrs of the past, is a sincere belief that they cannot participate in the violence and killing of war for reasons of conscience.

THE RELIGIOUS FREEDOM OF CONSCIENTIOUS OBJECTION AND THE MILITARY.

Today, there are few people who *wrestle with their conscience* more than those in our armed forces. And today, members of our military will arrive at the conclusion that in good conscience they can no longer participate in the *killing and violence of war*. They have become conscience objectors. Honoring the *religious freedom of conscientious objection* has improved throughout history as our country has sought to fulfill its founding ideals, but much work needs to be done. *We must work as a nation to protect* the religious freedom of conscientious objection for our brothers and sisters in uniform. The proposed MCOA seeks to afford them such protection.

WHY IS THE MCOA IMPORTANT?

- Soldier's religious, moral and ethical beliefs should not be infringed upon.
 - The *religious freedom and human right of conscientious objection* should be honored by the United States. Those in the military should not be prohibited from following their conscience.
- Current System for dealing with conscientious objectors is broken
 - The *CO policy was suspended* by the Pentagon during the Gulf War in 1991. According to a GAO study over 500 conscientious objectors went to jail. CO's today are facing undue hardship as they are faced with following their conscience.
- Mainline church doctrine supports the "Just-War Tradition" and "selective conscientious objection."
 - There are many "*selective conscientious objectors*" in the United States military that do not enjoy a "*right to freedom of conscience and religion.*" The DoD gives no credence to their beliefs which *undermines our Constitution* and the founding ideals of our country.

Military Conscientious Objector Act (MCOA): Current Policy VS Proposed Law

	Current Military Policy	Military CO Act	Reasoning
Statutory Right	Under current policy, the ability to apply for conscientious objector status can be suspended at any time.	With the MCOA, the right to discharge or reassignment as a conscientious objector will become law under the United States Code.	During the Gulf War the policy was suspended. This fundamental religious freedom needs to be protected by the law.
Support Religious Freedom	Under the current DoD definition, a conscientious objector (CO) is defined as one who opposes "war in any form."	With the MCOA, the definition of a CO will be expanded to include one opposed "...to participation in a particular conflict."	The overwhelming majority of religious bodies subscribe to this viewpoint. This religious freedom needs to be protected for both the majority and minority.
Time Frame	There is no set time frame for processing a claim. Processing a claim usually takes over six months to one year, sometimes even longer.	If the set guidelines are followed, the maximum amount of time to reach a decision will be a little over 5 months.	In far too many cases, it takes over a year to process a claim. This places an unfair burden on the CO, his/her chain of command, and other soldiers in the unit.
Burden of Proof	Burden of proof rests solely on the CO applicant to demonstrate clear and convincing evidence of their beliefs.	The MCOA will keep the burden of proof on the applicant. The applicant will need to establish a preponderance of the evidence for discharge or reassignment.	The preponderance of evidence burden of proof brings the CO process in line with the principles of RFRA and court precedent regarding government laws and regulations that burden religious beliefs.
Notice of Intent	Once an applicant notifies his/her chain of command that they are a CO, they can be ordered to prepare and file a claim overnight or within days.	Under the MCOA, an applicant can file a notice of intent at which point he/she has a maximum of 45 days to submit a completed CO claim.	Completing a CO application can be a daunting task, particularly for soldiers with learning disabilities. A CO also needs time to gather statements of support.
Limitations of Duties while in Process	When submitting a CO application, the current policy states that the applicant be assigned, "To the extent practicable under the circumstances... to duties that will conflict as little as possible with their asserted beliefs."	When submitting a CO application, the MCOA would require that an applicant be assigned duties which conflict as little as possible with their claimed beliefs, and shall not be required to participate in weapons training or the handling and shipping of weapons.	In far too many cases, those who have applied for conscientious objector status have been ordered to handle weapons and ammunition. In many cases COs have refused such orders and are disciplined for violation of the UCMJ.
Decision-Making Authority	The investigative officer, who completes a detailed investigation into the CO claim, files a report and recommendation based upon the entire record. Once filed it moves through the chain-of-command (see "Reasoning" column for exception) to the CO Review Board who makes the final decision to discharge or reassign the applicant.	Under the MCOA, the investigative officer, who completes a detailed investigation into the CO claim, files a report and recommendation based upon the entire record. Once filed, the commanding officer will make the final decision to discharge or reassign the applicant.	Currently, when a CO applies for a 1-A-O reassignment, and the investigative officer recommends reassignment, the commanding officer of the applicant is responsible for reassigning the individual to non-combatant duty. Under the MCOA, the commanding officer would be given similar authority for both reassigning AND discharging. This would align with other discharge procedures.
Adjudication Panel	No appeal is possible when the highest level of command, the CO Review Board, makes a final administrative decision.	If a CO is denied discharge or reassignment by his/her commanding officer, the case is referred to an adjudication panel, which holds final administrative authority, much like the current CO Review Board.	This would allow for an appeals process before going to the federal courts.
Access to Federal Courts	A CO applicant whose claim is denied can file a <i>writ of habeas corpus</i> for judicial review.	Remains the same	This is a limited judicial review.

PLEASE VISIT OUR WEBSITE FOR MORE INFORMATION ON THE MCOA.

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