Headnotes

U.S. v. Kerley, 787 F.2d 1147
34 ARMED SERVICES
34I In General
34k40.1 Compulsory Service or Draft Evasion
34k40.1(7) k. Defenses.
C.A.7.Wis.,1986
Although the Selective Service Act, 50 U.S.C.A.App. § 453, exempts members of the clergy from training and service and defers liability in qualified ministry students, individual whose religious training and belief are so strong as to preclude even registration has no alternative but to violate the law and accept the consequences, come what may. Military Selective Service Act, §§ 3,
6(g, j), 50 U.S.C.A.App. §§ 453, 456(g, j).

C
U. S. v. Irwin, 546 F.2d 1048
C.A.3.N.J.,1976
Belief that one is unacceptable to Army is not defense to charge of knowingly failing to report for induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C
U. S. v. Irwin, 546 F.2d 1048
C.A.3 (N.J.),1976
In prosecution for knowingly failing to report for induction, defendant's belief that he did not have to obey order to report for induction was no defense; erroneous belief that induction order is invalid, even if based on advice of counsel, is not a defense to prosecution for refusing induction; one who refuses induction on basis of such belief acts at his peril. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C
U. S. v. Bryant, 534 F.2d 420
C.A.1.Mass.,1976
Defendant could not raise invalidity of 1-A classification as defense to charge of failing to report for induction into armed services where he did not exhaust administrative remedies by appealing classification.

H
U. S. v. Atkins, 528 F.2d 1352
C.A.5.Ga.,1976
Propriety of registrant's draft classification was not defense to charge of failure to report for preinduction physical. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C
Robson v. U. S., 526 F.2d 1145
C.A.1 (N.H.),1975
Failure of Government to make any effort to contact registrant through names he had provided to his local draft board of persons he had said would "always know his address" precluded conviction for failure to keep local board advised of current address, and thus conviction was violation of due process. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C
U. S. v. Grier, 510 F.2d 570
C.A.5.Fla.,1975

Denial of right to personal appearance before local board following classification will invalidate conviction for failure to submit to induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Grier, 510 F.2d 570

C.A.5.Fla.,1975

Where, in light of language of notice received by registrant, his confusion as to his right to a hearing and appeal and as to the proper location for that hearing was reasonable, and in his timely letter to his local draft board he asked for an appeal, indicated that appearance before appeal board with jurisdiction over Atlanta area would be appreciated and requested a response, local board breached its affirmative obligation to assist him when, without any response, it simply voted to affirm the classification, and such breach precluded conviction for failure to submit to induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Grier, 510 F.2d 570

C.A.5.Fla.,1975

When a local board gives erroneous and misleading information to a registrant, a subsequent conviction for failure to submit to induction cannot stand. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Grier, 510 F.2d 570

C.A.5.Fla.,1975

Principle that failure to afford a registrant his right to personal appearance precludes subsequent conviction for failure to submit to induction is not limited in its application only to conscientious objector cases. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Drozd, 512 F.2d 1165

C.A.3.N.J.,1975

Where, on administrative appeal taken by registrant from action of local board in rejecting his claim for conscientious objector status, appeal board did not classify anew, but merely affirmed action of local board, and did not take into account supplemental materials in file added after local board's decision, decision of appeal board did not comport with recognized standards, and I-A classification of appeal board, on basis of which induction was issued, was unlawful, and registrant could not thereafter be convicted for wilfully refusing to submit to induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462; Fed.Rules Civ.Proc. rule 23(c), 28 U.S.C.A.

H

U. S. v. Shea, 508 F.2d 82

C.A.5.Ga.,1975

Generally, physical fitness of a registrant is a question for examining physicians and not one for the courts.

H

U. S. v. Shea, 508 F.2d 82

C.A.5.Ga.,1975

Registrant's letter to local board, in which he claimed that he was a drug addict and that he had numerous other disabilities, did not warrant judicial interference with opinion of examining physicians that registrant was medically qualified. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Moses, 507 F.2d 655

C.A.5.Fla.,1975

Failure of executive secretary of local draft board to convey to entire board information, which she received over telephone from inductee's mother, that inductee was attending university was harmless and did not invalidate induction order, as information conveyed to executive secretary did not indicate that he was satisfactorily pursuing a full-time course of instruction and did not present an arguable case for student deferment. Military Selective Service Act, § 6(i)(1, 2), 50 U.S.C.A. App. § 456(i)(1, 2).

U. S. v. Moses, 507 F.2d 655
C.A.5.Fla.,1975
Failure of inductee to inform his local draft board of facts necessary for it to ascertain that he was eligible for student deferment constituted failure to exhaust administrative remedies and such failure barred inductee's subsequent assertion, in prosecution for failure to report for induction, that he was entitled to a student deferment. Military Selective Service Act, §§ 6(i)(1, 2), 12, 50 U.S.C.A. App. §§ 456(i)(1, 2), 462.
U. S. v. Salas, 509 F.2d 1102
C.A.2.N.Y.,1975
Defendant's contention that he was exposed to induction as of December 31, 1971 and was not called during following three months and was thus entitled under military rules to be placed in nationwide lower priority selection group from which he would not have been drafted did not constitute an "order of call defense" which must be raised before trial and involves contention that order for induction came out of proper sequence or, conversely, that others who should have been called before defendant were not; hence, such claim could be raised in posttrial motions for judgment of acquittal and for arrest of judgment convicting defendant of refusing to submit to induction into armed forces. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a); Fed.Rules Crim.Proc. rules 29, 34, 18 U.S.C.A.
See publication Words and Phrases for other judicial constructions and definitions.
H
U. S. v. Bush, 509 F.2d 776
C.A.7.Ill.,1975
Where registrant's application for conscientious objector status and written statement in support of such status stated prima facie case of conscientious objection to war and where there was no way of determining with assurance that local draft board and appeal board based denial of conscientious objector status on finding of insincerity of registrant's beliefs and not on evaluation of substance of registrant's beliefs in that neither board gave the reasons for its decision, registrant's conviction for failure to submit to induction should be reversed. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.
U. S. v. Coale, 507 F.2d 1313
C.A.9.Cal.,1974
Where draft registrant asserted medical condition that clearly fell short of establishing prima facie claim, for medical disqualification, local board's failure to consider claim did not result in any prejudice which would require reversal of conviction for failure to report for induction. Military Selective Service Act, § 12(a), 50 U.S.C.A.App. § 462(a).
C
U. S. v. Pierce, 505 F.2d 1053
C.A.1.Mass.,1974
In the absence of the most extreme circumstances amounting to a systematic breakdown, order of call defense should be limited to proof of violation of regulations of a flagrant and serious nature which adversely affect the treatment of a registrant as compared with other I-A's, and thus I-A registrant was not entitled to inspect files of 52 registrants with II-S classifications holding lower random sequence numbers and who allegedly had not been subjected to annual review in apparent violation of regulation. Military Selective Service Act, § 10(b)(3), 50 U.S.C.A. App. § 460(b)(3); Fed.Rules Crim.Proc. rule 16(b), 18 U.S.C.A.
C
U. S. v. Ramey, 503 F.2d 705
C.A.4.N.C.,1974
Where selective service registrant on day he was ordered by local board in North Carolina to appear for physical examination presented himself for the examination in California where he was residing, registrant was told by employee of California board that he would have to return to North Carolina for the examination and there was no suggestion of any valid reason for denial of right to have physical examination in California, defendant's subsequent pro-

secution for failure to report for physical examination could not be sustained.

C

U. S. v. Ramey, 503 F.2d 705

C.A.4.N.C.,1974

Where draft board clerk misinformed selective service registrant that he was not entitled to have physical examination in state where he was residing but had to return to state of local board for examination, selective service system could not hold registrant accountable for noncompliance with order.

H

U. S. v. Sweet, 499 F.2d 259

C.A.1.Mass.,1974

Generally, validity of 1-A classification may not be challenged in prosecution for failing to report for induction if defendant has failed to utilize normal, available administrative remedies. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Sweet, 499 F.2d 259

C.A.1.Mass.,1974

Where selective service registrant asserted conscientious objector claim only in first communication with local board, and thereafter it was as though he had not asserted the claim at all, and he offered no explanation for not using administrative remedies, he was barred by exhaustion requirement from challenging 1-A classification, in prosecution for failing to report for induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Sweet, 499 F.2d 259

C.A.1.Mass.,1974

Selective service registrant could not, in prosecution for failing to report for induction, challenge legality of Vietnam war. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Bautista, 497 F.2d 1196

C.A.9 (Cal.),1974

Failure of registrant to appeal from 1-A classification entered by local board following reopening at instance of state headquarters did not bar registrant's assertion of defense, in prosecution for failing to report for induction, that there was no basis in fact for denial of conscientious objector classification, where registrant did not request reopening and did not provide additional information which necessitated reopening, result would not seriously impair normal functioning of selective service system, and result would not encourage deliberate bypassing of administrative review.

U. S. v. Butler, 496 F.2d 142

C.A.7.Ill.,1974

Registrant's closing statement in letter to draft board, after setting forth details of his aunt's alleged dependency upon him, that "I have no choice but to go to the appeal board," together with fact that no appeal was possible and further fact that registrant's classification was never thereafter reopened, precluded conviction for making a false statement bearing on classification. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Malone, 496 F.2d 462

C.A.9.Cal.,1974

Delay of nearly one month between decision to deny conscientious objector classification and notice of denial, even if violation of applicable regulation, did not prejudice registrant or negative his conviction for failure to report for induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Malone, 496 F.2d 462
C.A.9.Cal.,1974
Postconviction letter from state director to local board, requiring board to reopen classification of registrant, who had earlier been denied conscientious objector status, did not justify refusal to affirm conviction as unjust, where it appeared extremely unlikely that local board would reexamine conscientious objector claim. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Rosebear, 500 F.2d 1102
C.A.8.Minn.,1974
Where conscientious objector claim filed after notice to report for induction was issued was disposed of by local board's refusal, on jurisdictional grounds, to reopen, claim was clearly not considered on merits, and armed services could not interpret board's action as such so as to bar conviction for refusing to report for induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Cashion, 492 F.2d 42
C.A.5.Fla.,1974
Where selective service regulation, which registrant asserted as bar to his prosecution for knowingly and unlawfully failing and neglecting to perform a duty required of him, was revoked as of December 10, 1971, and was not replaced by any corresponding new regulations and defendant was convicted of an offense committed after the regulation was revoked, the registrant was not entitled to claim the protection of the regulation. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Krumwiede, 494 F.2d 268
C.A.8.Minn.,1974
Misleading conduct by local board or its representative may be raised as a valid defense for refusal to submit to induction.

C

U. S. v. Polizzi, 493 F.2d 570
C.A.3 (N.J.),1974
Failure of local board to consider and make decision on registrant's claim on which it had no power to act is not a denial of due process and will not vitiate a subsequent conviction for wilfully failing to submit to induction into armed forces. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Polizzi, 493 F.2d 570
C.A.3 (N.J.),1974
Registrant who was convicted for wilfully failing to submit to induction into armed forces could not claim to have been prejudiced by asserted unfairness in local board failing to inform him of available in-service review, where registrant testified at trial that he was aware of availability of such review. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Taylor, 490 F.2d 442
C.A.5.Ga.,1974
Defense to charge of failure to report for and to submit to induction that board improperly postponed induction of other registrants is unavailable to an inductee who refused to report for induction. Military Selective Service Act, §§ 1 et seq., 12, 50 U.S.C.A. App. §§ 451 et seq., 462.

U.S. v. Serfass, 492 F.2d 388
C.A.3.Pa.,1974

Local board lacked power to rule on merits of postinduction order conscientious objector claim and regardless of its ruling registrant would be permitted on military policy to obtain in-service review of his conscientious objector claim and, therefore registrant could not justify his refusal of induction on ground he faced "no man's land" because local board did not explain why it had denied his claim. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Shippee, 489 F.2d 697

C.A.5.Ga.,1974

Selective service board's failure to enunciate the underlying reasons for
denying defendant's application for conscientious objector status or to notify him that he had not made out a prima facie case was not prejudicial where defendant failed to establish a prima facie case before the board. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Shippee, 489 F.2d 697

C.A.5.Ga.,1974

Inclusion of summary of selective service board's hearing on application for conscientious objector status in defendant's file which was sent to the appeal board caused no harm to defendant who admitted that the summary was correct and adequately reflected the proceedings conducted at the hearing. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. DeHerrera, 492 F.2d 265

C.A.9.Cal.,1974

Although moral interview was not completed at time of preinduction examination there was substantial compliance with government regulations where, due to defendant's intoxicated condition, only physical phase was completed; failure to complete interview to determine moral acceptability was not prejudicial, on ground that had registrant been interviewed with respect to prior criminal record he would have been found unfit for service and, consequently, subsequent orders for examination and induction would not have issued and defendant would not have been convicted for failing to comply therewith.

H

U. S. v. DeHerrera, 492 F.2d 265

C.A.9.Cal.,1974

Selective Service System must comply with its own regulations; prejudicial noncompliance can be a defense to a subsequent failure to submit to induction.

H

U. S. v. DeHerrera, 492 F.2d 265

C.A.9.Cal.,1974

Although registrant's classification questionnaire alleged two juvenile court adjudications for assault and although prior order for physical had been postponed because registrant was in jail, registrant was not entitled to acquittal of, among other things, failing to report for physical examination and failing to submit for induction on ground that a personal interview of defendant, who was intoxicated when he appeared for preinduction examination, was unnecessary to determine that he was morally unfit for service, in that such information was otherwise available to the examining station.

H

U. S. v. DeHerrera, 492 F.2d 265

C.A.9.Cal.,1974

Fact that local army officer testified that had he had all the facts he would have recommended rejection of defendant for military service did not require acquittal of defendant, who did not complete moral interview because he was intoxicated when he reported for preinduction physical, since decision-making body would not necessarily have accepted officer's recommendation.

C

U. S. v. Shockley, 492 F.2d 353

C.A.9.Cal.,1974

While registrant was afforded a forum in which to assert his conscientious objection claim, i. e., in-service review, where he was not given reasonable guidance with which to identify that forum, in that he was forced to guess whether judicial review of his claim would be preserved through refusal of or submission to induction, and guessed incorrectly by refusing induction, due process did not operate to require registrant to forfeit his right to assert his conscientious objection claim, nor to punish him for making a reasonable, albeit mistaken, attempt to select proper forum in which to assert his claim. Military Selective Service Act, § 10(b)(3), 50 U.S.C.A. App. § 460(b)(3).

U. S. v. Hoffman, 488 F.2d 923

C.A.5.Ga.,1974

Purpose of allowing an order of call defense in appropriate cases of prosecution for refusing induction are to maintain the sequence of induction established by Congress to safeguard each registrant's due process rights. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Hoffman, 488 F.2d 923

C.A.5.Ga.,1974

To assert an order of call defense, registrant must report for induction processing and there refuse to be inducted; he cannot rely on such defense in a prosecution for failure to report to the induction center. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Hoffman, 488 F.2d 923

C.A.5.Ga.,1974

Where local board had followed consistent practice of scheduling physical examinations only upon expiration of student deferments, despite regulation providing that a board "may" order physical examinations earlier if it determines that induction may occur shortly, failure to order physical

examinations for registrants who were older than defendant but whose student deferments expired three months after his, with result that processing of them was not completed in time for induction ahead of defendant, did not sustain defendant's order of call defense in prosecution for refusing induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Zannini, 490 F.2d 1226

C.A.9.Cal.,1974

Letter wherein registrant's psychiatrist made a diagnosis of "Depressive Neurosis, chronic, severe, with schizophrenic features," and stated his belief that registrant was "unsuitable for service in the Army" and that "He should be disqualified under AR 40-501" was sufficient to present a prima facie case for psychiatric disqualification and was such as to require a specific psychiatric evaluation, failing which, conviction for refusal to submit to induction into armed forces was subject to reversal. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Velazquez, 490 F.2d 29

C.A.2.N.Y.,1973

Defendant charged with refusal to submit to a physical examination may raise all possible defenses, including inadequate notice of consequences of such refusal. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Sundstrom, 489 F.2d 859

C.A.2.N.Y.,1973

A good-faith belief, on advice of counsel, that one is exempt from selective service does not justify a refusal to obey an induction order.

U. S. v. Stockwell, 485 F.2d 700

C.A.1.Mass.,1973

Failure of local board to consider detailed letter from registrant's psychiatrist wherein psychiatrist concluded that registrant was disqualified for induction into the armed forces precluded conviction for failing to submit to induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Gutierrez, 485 F.2d 1378

C.A.9.Cal.,1973

Registrant's failure to appear on May 25, 1970 for a preinduction physical was not "excused" by selective service board's subsequent order to him to report for a physical on August 26, 1970.

U. S. v. Weislow, 485 F.2d 560

C.A.9.Cal.,1973

Possible invalidity of registrant's draft classification did not constitute defense to prosecution for failure to report for preinduction physical examination. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Richardson, 484 F.2d 1046

C.A.9.Cal.,1973

Prima facie showing that defendant's I-A classification was without basis in fact did not constitute defense to prosecution for failing to report for preinduction physical examination. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Riely, 484 F.2d 661

C.A.7.Ill.,1973

Where there was no personal appearance in connection with registrant's request for conscientious objector status and entire record before local board relating to that request was limited to conscientious objector form itself, fact that board reopened classification after registrant submitted the form did not require that he be furnished a statement of reason for denial of request and failure of board to furnish such statement did not warrant reversal of conviction of registrant for failure to report for induction. Military Selective Service Act, §§ 6(j), 10(b)(3), 50 U.S.C.A. App. §§ 456(j), 460(b)(3).

U. S. v. Lewis, 484 F.2d 734

C.A.7.Ill.,1973

If registrant's father's letter stating that registrant was needed at home presented a prima facie claim for a III-A deferment, board's failure to reopen would comprise error sufficient to require reversal of conviction for failure to report for induction. Military Selective Service Act, § 12, 50 U.S.C.A.
App. § 462.

U. S. v. Lewis, 484 F.2d 734

C.A.7.Ill.,1973

Registrant, who sought to overturn his conviction for failure to report for induction on ground, inter alia, that his father's letter to draft board stated a prima facie case for a III-A deferment and that draft board erred in failing to reopen his classification, was not disabled by his apparent failure to complete dependency questionnaire and return it to his board. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

Gee v. Smith, 479 F.2d 642

C.A.5.Ga.,1973

A claim of racial discrimination in the composition of a draft board, even if factually sustained, is not a defense to a criminal charge based on refusing to submit to an induction order, since the orders of such draft boards are de facto valid. Military Selective Service Act, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

H

U. S. v. Ford, 478 F.2d 169

C.A.1.Mass.,1973

Although the insertion into the file of the notation "selective C.O." by appeal board clerk violated regulation confining appeal board's consideration to the local board record, the notation could not have been prejudicial to the registrant, since he had characterized himself as a selective conscientious objector in completing series I of his form 150, and since the clerk's summary therefore did no more than accurately describe the basis on which the registrant was seeking exemption. Military Selective Service Act, § 6(j), 50 U.S.C.A. App. § 456(j).

H

U. S. v. Ford, 478 F.2d 169

C.A.1.Mass.,1973

Assuming, arguendo, that an average time statistic, relative to appeal board's consideration of conscientious objector claims, would provide a sufficient basis for reversing a conviction for refusing to submit to induction, the obvious facial invalidity of defendant registrant's conscientious objector claim precluded prejudice in the instant case. Military Selective Service
Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

C

U. S. v. Hunter, 482 F.2d 623

C.A.3.Pa.,1973

Selective service registrant charged with failure to report for induction was not entitled to assert his claim of failure of local board to take any action as result of statement he made on his current information questionnaire with respect to dependency, where he failed to exhaust his administrative remedies in that after the letter in question, he was reclassified from 1-A to 1-S(H), he did not appeal that classification and did not ever again indicate to board that he was concerned over hardship claim, even though he had numerous other contacts with board.

H

U. S. v. Mercado, 478 F.2d 1108

C.A.2.N.Y.,1973

An erroneous belief that an induction order is invalid, even if based on advice of counsel, is no defense to prosecution for refusing induction; one who refuses induction on the basis of such a belief acts at his peril. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Mercado, 478 F.2d 1108

C.A.2.N.Y.,1973

Where it was not shown that registrant, who first asserted conscientious objector claim when he appeared at induction center, was in fact aware of or relied on case law existing prior to United States Supreme Court decision that a local board need not reopen classification of a registrant who claims conscientious objector status after receipt of induction order, there was widespread disagreement on issue among Courts of Appeals and question had been argued and was pending decision in Supreme Court, registrant's case was not a proper one for exercise of a dispensing power, if one existed, to mitigate harshness of rule that one who refuses induction on basis of preexisting case law or on advice of counsel acts at his peril. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Coleman, 478 F.2d 1371
C.A.9.Cal.,1973
A selective service registrant found medically unacceptable as result of migraine headaches was disqualified as a matter of law and could not be prosecuted for refusing induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Bingham, 484 F.2d 365
C.A.9.Cal.,1973
To constitute reversible error with respect to failure to reopen classification, registrant must have presented prima facie case for reopening.

C

U. S. v. Bingham, 484 F.2d 365
C.A.9.Cal.,1973
Registrant who had indicated conscientious objection on classification questionnaire but who failed to return appropriate form could not raise, in prosecution for failure to report, noncompliance with local board's memorandum providing that in such cases board would make every effort to secure completed form.

C

U.S. v. Bertram, 477 F.2d 1329
C.A.10.Colo.,1973
Defendant's religious beliefs, which he contended prohibited him from complying with selective service registration requirement, did not constitute defense to charge of failure to register. Military Selective Service Act, §§ 3, 6(j), 12(a), 50 U.S.C.A. App. §§ 453, 456(j), 462(a).

C

U. S. v. Stewart, 478 F.2d 106
C.A.2.N.Y.,1973
Where an applicant states a prima facie case for classification as a conscientious objector and local board fails to state its reasons for denial of the application, thus precluding meaningful administrative review, a conviction based upon board's I-A classification must be reversed. Military Selective Service Act, §§ 6(j), 12(a), 50 U.S.C.A. App. §§ 456(j), 462(a); 18 U.S.C.A. §§ 4209, 5010(d).

C

U. S. v. Stewart, 478 F.2d 106
C.A.2.N.Y.,1973
Local board's failure to specify reasons for its rejection of registrant's conscientious objector claim was fatal, and required reversal of registrant's conviction for willful refusal to submit to induction in armed forces.
Military Selective Service Act, §§ 6(j), 12(a), 50 U.S.C.A. App. §§ 456(j), 462(a); 18 U.S.C.A. §§ 4209, 5010(d).

U. S. v. Falk, 479 F.2d 616
C.A.7.Ill.,1973
Particular circumstances of prosecution for failing to possess registration card or classification card placed burden on Government of proving nondiscriminatory enforcement of law and defendant was entitled to be heard on his claim that prosecution was for purpose of chilling exercise of rights guaranteed by First Amendment and to punish him for participation in draft-counseling organization. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462; U.S.C.A.Const. Amends. 1, 5, 14.

H

U. S. v. Holby, 477 F.2d 649
C.A.2.N.Y.,1973
Registrant's failure to appear before draft board for courtesy interview and subsequent refusal to appeal did not bar

him from asserting his defenses on the merits, in prosecution for unlawful refusal to submit to induction, on theory of failure to exhaust administrative remedies prior to second refusal of induction where registrant, claiming entitlement to conscientious objector classification, had already provided Selective Service with a full record and availed himself of administrative review at the highest level and where it was only after the case had been forwarded for prosecution to the United States Attorney, who declined to prosecute for initial refusal of induction, that registrant declined to appear on grounds that record was complete and that board refused to permit him to appear with counsel and to record the proceedings. Military Selective Service Act, §§ 1 et seq., 12(a), 50 U.S.C.A. App. §§ 451 et seq., 462(a).

H

U. S. v. Holby, 477 F.2d 649

C.A.2.N.Y.,1973

Failure of local board to state reasons for denial of conscientious objector classification, where prima facie case had been made out, constituted arbitrary action which invalidated 1-A classification on which order of induction was based, and thus conviction for unlawful refusal to submit to induction could not be sustained. Military Selective Service Act, §§ 12(a), 22(b)(4) as amended 50 U.S.C.A. App. §§ 462(a), 471a(b)(4).

U. S. v. Nelson, 476 F.2d 254

C.A.9.Cal.,1973

While selective service registrant's defense, to charge of refusal to submit to induction in the armed services, that action of local draft board rejecting his request for classification as a conscientious objector was without basis in fact was barred by registrant's failure to exhaust administrative remedies, registrant's claim that it was a violation of due process for members of the board to base their decision upon his "demeanor" in an appearance 22 months earlier before other persons rather than requiring him to appear before them as they had a right to do was not so barred. Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Nelson, 476 F.2d 254

C.A.9.Cal.,1973

Doctrine requiring selective service registrant to exhaust administrative remedies would not be applied in prosecution for refusal to submit to induction in the armed services merely because appeal board might have granted registrant relief on some ground and thus have obviated the need for prosecution. Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Kincaid, 476 F.2d 657

C.A.9.Cal.,1973

Only misleading conduct on the part of the Selective Service System or its agents will excuse the failure by a registrant to present his claim for an exemption or deferment to the local board in the first instance; and such misleading conduct operates not to relax the exhaustion doctrine but as a complete defense to a charge of refusing to submit to induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Kincaid, 476 F.2d 657

C.A.9.Cal.,1973

Although the circumstances may have left registrant confused, he was not relieved of the responsibility of making appropriate inquiries about his draft status, as the plain language of SSS Form 110 should have indicated to him that he should explore the avenues of relief open to him within the Selective Service System; accordingly, under the facts of the case, the failure of the registrant to exhaust his administrative remedies precluded him from raising, in prosecution for refusing to submit to induction, defense that his classification had no basis in fact. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Kincaid, 476 F.2d 657

C.A.9.Cal.,1973

Failure of selective service board to consider registrant's request for a different classification was prejudicial only if the information made out a prima facie case for a different classification because of a change in circumstances (1) subsequent to the mailing of the induction order (2) beyond the control of the registrant.

U. S. v. Daugherty, 476 F.2d 961

C.A.9.Cal.,1973

Even if there was passively misleading conduct on part of Oakland draft board in connection with delay in responding to selective service registrant's request for transfer of his induction to Hawaii by reporting to a Hawaii local board, reliance by registrant upon such conduct was unreasonable and did not constitute defense in prosecution for failure to report for induction, where

registrant knew from having read instructions contained in his order to report for induction of his right and duty to go immediately to any local board and make a written request of transfer of his induction if he was unable to comply with the order to report for induction in Oakland, and where he had adequate time to do so. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Uyeda, 476 F.2d 958

C.A.9.Haw.,1973

Order directing defendant to report for induction issued after local board had knowledge of facts establishing defendant's entitlement to student deferment was invalid, precluding defendant's conviction for failure to report on date specified. Military Selective Service Act, § 6(i)(2), 50 U.S.C.A. App. § 456(i)(2).

C

U. S. v. Chorush, 472 F.2d 917

C.A.2.N.Y.,1973

Conviction of conscientious objector for failure to comply with order to report for alternative civilian work could not be sustained where he had been improperly denied medical interview.

C

U. S. v. Burnett, 476 F.2d 726

C.A.5.Tex.,1973

If a selective service board deviated from regulations establishing order of call for inductees, and defendant would not have been called had board complied with the regulations, order to report for induction would be invalid and if such invalidity were proven would constitute a defense to offense of wilful failure to report for induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Sandoval, 475 F.2d 266

C.A.10.N.M.,1973

Registrant's failure to exhaust his administrative remedies, i. e., to make claim for conscientious objector's classification and appeal any adverse ruling by local board in connection therewith barred any defense, at his trial for refusing to submit to induction, that he had erroneously been classified I-A. Military Selective Service Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

H

U. S. v. Orr, 474 F.2d 1365

C.A.2.N.Y.,1973

Failure of appeal board to provide a statement of reasons was not subject to objection of precluding a meaningful judicial review of denial of conscientious objector status where sole reason stated by local board was, in effect, that registrant was not conscientiously opposed to participation in war in any form. Military Selective Service Act, §§ 6(j),

12(a), 50 U.S.C.A. App. §§ 456(j), 462(a).

C

U. S. v. Cate, 477 F.2d 536

C.A.9.Cal.,1973

Where registrant classified 1-O presented prima facie case for a hardship claim, and appeal board reclassified registrant 1-A-O without stating any reasons therefor and the appeal board's reasons could not be determined from the agency record with reasonable certainty, conviction for refusal to report for induction could not be sustained. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Schulz, 477 F.2d 8

C.A.9.Cal.,1973

Order-of-call defense to prosecution for failing to report for induction is just and proper when kept within reasonable bounds; where it extends to examination of local board procedures affecting collateral registrants twice or more removed from the defendant or takes account of relatively minor delays, where no substantial prejudice is shown, it loses its force as an instrument of equity and becomes hollow technicality. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Teresi, 474 F.2d 759

C.A.7.Ill.,1973

Even if procedure used by appeal board in using resume of the defendant's selective service file in reviewing his classification were improper, defendant showed no resulting prejudice, where the only claim raised by defendant in appealing his I-A classification was a claim for deferment based upon physical disqualification, and when the appeal board reviewed his classification defendant had not yet been given a preinduction physical examination; any defect in proceedings by appeal board was cured by full review of defendant's claims and could have resulted in no prejudice to him.

U. S. v. Weaver, 474 F.2d 936

C.A.7.Ill.,1973

Failure of local board to articulate in writing the bases for its denial of conscientious objector claim is fatal to indictment for refusal of induction, where information in selective service file of registrant is sufficient to comprise prima facie case for exemption, and where reviewing court cannot with assurance determine that decision made by the board properly supported the rejection. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Weaver, 474 F.2d 936

C.A.7.Ill.,1973

Where draft board responded to registrant's letter, which explained that he was returning conscientious objector form because it was inadequate to reflect unorthodox nature of his beliefs and which detailed nature of such beliefs, with form reaffirming classification as I-A and with notification of registrant's right to appeal, and where such action signified conclusively, under regulations then in force, that board had reopened registrant's classification, a step precluded by regulation unless prima facie case had been made out, failure of the board to explain in writing its rejection of registrant's conscientious objector claim after it had so reopened his case entitled registrant to reversal of his conviction for willful refusal to report for induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Weaver, 474 F.2d 936

C.A.7.Ill.,1973

Where selective service registrant, by letter requesting appeal to State Appeal Board, clearly evidenced intention and willingness to proceed along regularized channels of appeal within Selective Service System, and where such registrant would have obtained hearing had draft board supplied him with conscientious objector form in response to such

letter, registrant's failure to exhaust his administrative remedies was at worst mildly negligent and did not preclude defense, to indictment charging willful refusal to report for induction, based on failure of the draft board to articulate in writing the bases for denial of conscientious objector claim. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Bell, 476 F.2d 1046

C.A.7.Ill.,1973

Government was not bound by opinion of United States Attorney that registrant's belated conscientious objector claim may have cancelled his prior induction order where opinion was incorrect. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. King, 474 F.2d 402

C.A.1.Mass.,1973

There was no flagrant error, or prejudice to another registrant, in failure of draft board to review more promptly the files of expectant fathers, who by letter notified board of wives' pregnancy and who were placed in "awaiting board action" category until after birth, when evidence was presented, where all persons so placed in such category qualified, as of January 16, 1969, for III-A deferment; nor, in view of birth records, were such men improperly bypassed on ground of alleged insufficiency of proof of pregnancy, where births in fact occurred. Military Selective Service Act, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

H

U. S. v. Wright, 474 F.2d 853

C.A.9.Cal.,1973

Numerous errors, omissions and insufficiencies in registrant's selective service file were not prejudicial where appeal board affirmed his requested classification in accordance with existing regulations and law, though board refused to relieve him from civilian service obligation. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Waldron, 474 F.2d 90

C.A.7.Ill.,1973

Conviction of a registrant will not be overturned under an overbroad regulation adopted by the selective service system when the action was within the valid prohibition of underlying statute. Military Selective Service Act, § 6(h)(1), 50 U.S.C.A. App. § 456(h)(1).

C

Thompson v. U. S., 474 F.2d 323

C.A.9.Wash.,1973

Registrant who exhausted his administrative remedies properly raised defense of improper denial of conscientious objector status in prosecution for failing to accept induction into armed forces. Military Selective Service Act, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

C

Thompson v. U. S., 474 F.2d 323

C.A.9.Wash.,1973

Improper denial of conscientious objector status precludes conviction of failing to accept induction into armed forces. Military Selective Service Act, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

C

U. S. v. Ware, 473 F.2d 530

C.A.9.Wash.,1973

Army regulation providing that, if registrant refuses to comply with instructions, rules of procedures prescribed for registrant processing, he will be informed that his refusal constitutes a felony is merely a house-keeping measure

and its breach did not vitiate grand jury's indictment of registrant who refused to cooperate in connection with armed forces physical examination and left before it was completed. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Kelly, 473 F.2d 1225

C.A.9.Cal.,1973

Where record was devoid of any indication that the local board members ever received or considered the information relating to registrant's resumption of his high school education, it could not be assumed that the board members received and considered this information, and conviction for refusal to submit to induction would not be upheld since had the board received the new information they might have reclassified defendant. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Shriver, 473 F.2d 436

C.A.3.Pa.,1973

Failure to classify registrant as a conscientious objector was no defense to prosecution for failing to report for an armed forces physical. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Shriver, 473 F.2d 436

C.A.3.Pa.,1973

Registrant, who made no attempt to challenge denial of his conscientious objector claim, and did not even submit claim until after his date for reporting for an armed forces physical had passed, could not raise validity of his classification as a defense to prosecution for failure to report for a physical. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Wilson, 473 F.2d 297

C.A.9.Cal.,1973

Failure to exhaust administrative remedies precluded registrant, who claimed that Armed Forces Entrance Examining Station psychiatrist applied erroneous standard of medical qualification, from asserting such claim as defense to prosecution on charge of refusing to report for induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Boyd, 473 F.2d 674

C.A.9.Cal.,1973

Conviction of defendant who refused induction was reversed for failure to grant medical interview prior to his being ordered for physical examination when there was evidence of recognized disqualifying medical condition or physical defect that had not been subject of previous examination or evaluation.

U. S. v. Glavan, 471 F.2d 1192

C.A.8.Minn.,1973

Where registrant's misconception that Catholics were not eligible for conscientious objector classification was based on his own prior opinion, he could not validly defend charge of failure to report for induction on theory that he was misled by selective service forms.

U. S. v. Glavan, 471 F.2d 1192

C.A.8.Minn.,1973

Though registrant classified I-O cannot be prosecuted for failure to report for physical examination, registrant who had not been classified as conscientious objector and had never requested such classification could not assert, as a defense to charge of failing to appear to be physically examined, that as a conscientious objector he was not under a

legal duty to obey such order.

H

U. S. v. Jennings, 473 F.2d 999

C.A.9.Ariz.,1973

Defendant who on three occasions declined opportunities to indicate civilian work he preferred could not claim in prosecution for failing to report for civilian employment that local board failed in its duty to consider alternative work. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Dooley, 471 F.2d 570

C.A.8.Minn.,1973

Where there were no facts which appeal agent could have presented to local or appeal board which would have justified reopening of defendant's classification with regard to his C.O. claim and defendant's sole surviving son claim could not have been allowed as a matter of law, defendant suffered no prejudice on claim of denial of right to consult with a government appeal agent as provided by selective service regulations.

C

U. S. v. Dooley, 471 F.2d 570

C.A.8.Minn.,1973

Where claim of failure of local board to specify its reasons for denying defendant's claim for classification as a sole surviving son was not raised in lower court in either presentence motion or postsentence petition and there was no factual question and no doubt as to reason defendant was not given the classification and he did not qualify under the selective service statute because his father was not dead, failure of local board to specify its reasons for denying the claim was not a fatal procedural flaw. Military Selective Service Act, § 6(o), 50 U.S.C.A. App. § 456(o).

C

U. S. v. Burton, 472 F.2d 757

C.A.8.Minn.,1973

Misleading conduct by local board may be raised as valid defense for refusal to submit to induction; to establish such a defense, defendant must show that local board conveyed false or misleading information to him and that he was in fact misled and must show that his reliance on the misleading information was reasonable in the sense that he was entitled to rely thereon without making further inquiries of the board. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. D'Arcey, 471 F.2d 880

C.A.9.Cal.,1972

Fact that defendant was subsequently found acceptable by armed forces entrance and examination station did not mean that he was not prejudiced by denial of medical interview under regulation requiring local board to order a medical

interview if a registrant classified 1-A claims a disqualifying defect. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Strayhorn, 471 F.2d 661

C.A.2.N.Y.,1972

Registrants should be able to expect that they will be treated fairly according to previously established ground rules and order of call defense serves as safeguard to individual's right to be treated with due process.

H

U. S. v. Strayhorn, 471 F.2d 661

C.A.2.N.Y.,1972

Not every minor slipup in order of call is such affront to priority rules and notions of due process as to require re-

versing criminal conviction for failure to submit to induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Strayhorn, 471 F.2d 661

C.A.2.N.Y.,1972

Order of call defense is not made out by exposing single error, however egregious, and record must show actual prejudice to defendant, in wholly unjustified delay of induction of enough 1A registrants so that if local board acted correctly defendant would not have been called when he was.

H

U. S. v. Strayhorn, 471 F.2d 661

C.A.2.N.Y.,1972

Routine destruction of local board's documents, relating to local board quotas, was not prejudicial, and presumption of regularity surrounding establishment of quotas was not overcome, where defense, in prosecution for refusal to submit to induction, attacking quota system was not raised until time of trial and was based wholly on conjecture.

U. S. v. Alford, 471 F.2d 718

C.A.9.Cal.,1972

Registrant's failure to appeal his reclassification as 1-A barred his challenging the reclassification in criminal proceeding for failure to exhaust his administrative remedies. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Alford, 471 F.2d 718

C.A.9.Cal.,1972

Any errors made by local board or appeals agent in connection with selective service registrant's rights on appeal from his original classification or rejection of his conscientious objector claim were harmless inasmuch as reclassification began a new round of rights and remedies of which registrant did not avail himself. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Ossa, 470 F.2d 816

C.A.9.Cal.,1972

Even if clerk of local draft board had usurped the function of board in ordering registrant to report for induction, registrant was not prejudiced, where he made no claim that had he taken preinduction physical he would have been found disqualified; presumably the result would have been the same as at his induction physical; registrant could not urge prejudice from alleged denial of a classification that he never claimed. Military Selective Service Act, §§ 6(h), 12, 50 U.S.C.A. App. §§ 456(h), 462.

C

U. S. v. Ossa, 470 F.2d 816

C.A.9.Cal.,1972

Registrant could not claim prejudice on ground that if his preinduction physical had been rescheduled he would have found out about his 1-A classification, and would have done something about it, where registrant was presumed to have received the notice of classification that was sent to him despite his denial that he received it, his claimed failure to know was caused by his failure to perform his duty to inform his board of his change of address, and the board's order to report for physical should have alerted registrant to inquire about his status. Military Selective Service Act, §§ 6(h), 12, 50 U.S.C.A. App. §§ 456(h), 462.

C

U. S. v. Ossa, 470 F.2d 816

C.A.9.Cal.,1972

Registrant was not prejudiced because others were given a second date for preinduction physical and he was not, where he did not assert that those actions in any way affected his rights. Military Selective Service Act, §§ 6(h), 12, 50 U.S.C.A. App. §§ 456(h), 462.

C

U. S. v. Sanders, 470 F.2d 937

C.A.9.Cal.,1972

Local board's misleading conduct was valid defense to prosecution for refusal to submit to induction, where defendant, in response to board's letter inquiring whether defendant wished to withdraw conscientious objection claim in classification questionnaire, wrote that he would not fill out conscientious objector form since his church did not teach against participation in war, that he had moral and conscientious objection, and that he withdrew his claim of conscientious objector under selective service system standards but not his own, and board did not assist him in advancing his claim. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Sanders, 470 F.2d 937

C.A.9.Cal.,1972

Local board's misleading conduct, as defense to prosecution for failure to submit to induction, may consist of failure to correct evident misunderstanding as well as affirmatively conveying incorrect information.

U. S. v. Staples, 470 F.2d 993

C.A.9 (Cal.),1972

Where selective service registrant had dropped out of college before he received order to report for induction, he was not entitled to Class II-S status at time of order, if he ever was; thus, claim that lack of verification of II-S status was the fault of the college formed no basis for vitiating order or overturning conviction of failing to report for induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Alioto, 469 F.2d 722

C.A.1.Mass.,1972

Failure of draft board to give any reason when it refused to reopen classification after registrant, who had already received induction notice, claimed conscientious objection rendered induction order invalid and dictated acquittal on charge of refusing induction where it was impossible to determine if draft board's decision was "jurisdictional" or on the merits, since if it was jurisdictional and if the Army would have treated the refusal as a denial of the claim, and therefore would have refused to consider in-service claim, registrant would be in a "no-man's-land" in which his claim would receive no consideration on the merits, while if refusal was on the merits, it provided no basis for effective judicial review. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Godley, 469 F.2d 638

C.A.2.N.Y.,1972

Selective service registrant cannot escape his obligations merely because the local board failed to consider granting that which it clearly had no power to grant. 18 U.S.C.A. § 5010(b); Military Selective Service Act, §§ 6(i)(1), 12(a), 50 U.S.C.A. App. §§ 456(i)(1), 462(a).

C

U. S. v. Hudson, 469 F.2d 661

C.A.9.Cal.,1972

Issue as to whether local board erred by not granting defendant an appeal from his I-A classification in August 1966 was moot where defendant three years later was again classified I-A and at that time could no longer claim student status and, though during the interim he was improperly classified, he was not ordered for induction and final classification was not tainted by any errors in the 1966 classification. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Maciel, 469 F.2d 718

C.A.9.Cal.,1972

Defendant's assertion that his superiors in religious organization told him not to appeal from board's denial of his I-O claim did not make inapplicable exhaustion rule that defendant, convicted of refusing to submit to induction, could not raise defense attacking board's denial of his I-O claim because he failed to exhaust his administrative remedies by failing to appeal board's decision. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a); U.S.C.A.Const. Amend. 1.

H

U. S. v. Kelly, 469 F.2d 1310

C.A.9.Cal.,1972

That registrant did not appear for induction did not preclude him from asserting defense that his induction was postponed a total of 126 days in violation of selective service regulations which authorize postponements not to exceed 120 days.

H

U. S. v. Kelly, 469 F.2d 1310

C.A.9.Cal.,1972

Fact that registrant's induction was postponed 6 days more than the 120 days allowed by selective service regulations did not warrant reversal of registrant's conviction for refusal to submit to induction into armed forces, where many more than 6 days of delay were directly attributable to registrant's request for a conscientious-objector form, his correspondence concerning the form, and his interview before the board.

C

U. S. v. Trumpler, 468 F.2d 1374

C.A.3 (Pa.),1972

Failure of local board to consider whether registrant's work within his community at an institute for emotionally disturbed boys was desirable in national interest and qualified as an exception to rule that civilian work in lieu of induction be performed outside of community in which registrant resides required reversal of conviction for failing to report for alternative service, where there were no guidelines or criteria by which local boards were to determine if a particular job was desirable in national interest and, there existed no means by which district court could have determined what facts would have been sufficient to constitute a prima facie entitlement to exception. Military Selective Service Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

U. S. v. Trejo, 468 F.2d 603

C.A.9.Cal.,1972

Where neither words of minute entry in registrant's selective service file nor text of local board's letter informing registrant of its decision not to reopen I-O classification offered any support for implication that board's action included consideration and rejection of registrant's request for a late appeal, filed six weeks earlier, and, to contrary, words of entry and letter strongly suggested that no such action occurred, only reasonable conclusion to be drawn was that request for a late appeal was not submitted to or acted on by local board, and conviction for failing to report for civilian work required of conscientious objectors in lieu of induction would be reversed. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. De Liso, 468 F.2d 813

C.A.9.Cal.,1972

Where it was not claimed that registrant's syphilitic condition was active, chronic or unresponsive to treatment and examining physician considered registrant's report of past venereal treatment and noted that it was not considered disqualifying, registrant was not prejudiced by alleged failure to make serological tests at time he reported for induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Salisbury, 469 F.2d 826

C.A.8.N.D.,1972

Prejudice to registrant from failure to observe regulations must be established.

C

U. S. v. Salisbury, 469 F.2d 826

C.A.8.N.D.,1972

If there is significant possibility that registrant would have been rejected as unfit had he been afforded the kind of physical inspection prescribed, prejudice is indicated sufficient to invalidate induction process.

C

U. S. v. Salisbury, 469 F.2d 826

C.A.8.N.D.,1972

Notwithstanding preinduction medical examiner's finding that toe was deformed but not disqualifying, registrant whose fifth toe on right foot was deformed and overlapped fourth toe and who presented medical testimony that deformity was serious enough to require surgery and might be disqualifying under army regulations because it would interfere with wearing of combat boots demonstrated a sufficiently significant possibility that he might have been found unfit had he been given full physical inspection immediately preceding his induction and failure of medical officer at time of induction to comply with regulation requiring observing registrant with clothing removed precluded conviction of registrant who refused to be inducted.

U. S. v. Falk, 472 F.2d 1101

C.A.7.Ill.,1972

Government's refusal to dismiss draft card counts upon registrant's agreement to carry the cards did not establish intentional, impermissibly discriminatory prosecution against registrant for refusal to carry the cards even though the government might have made such "deals" with others in the past. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Guaraldi, 468 F.2d 774

C.A.9.Cal.,1972

Registrant failed to show prejudice from local board's delay in forwarding his file to appeal board where, had his appeal been handled with reasonable dispatch, there was no possibility that his conscientious objector claim would have predated valid induction order. Military Selective Service Act, § 6(h)(1), 50 U.S.C.A. App. § 456(h)(1).

C

U. S. v. Clark, 468 F.2d 708

C.A.3.Pa.,1972

Registrant charged with failure to report for induction could not successfully claim that while his failure to report was intentional it was not wilful since his statements show that he conscientiously objected to the armed forces and that an evil intent is not manifested from such statements. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Taranowski, 467 F.2d 1027

C.A.7.Ill.,1972

If third party who is entitled to notice of registrant's classification and has right to appeal in his own right does not receive notice of his opportunity to appeal, registrant is prejudiced even though he did not himself appeal. Military Selective Service Act, §§ 6, 6(h)(2), 50 U.S.C.A. App. §§ 456, 456(h)(2).

C

U. S. v. Taranowski, 467 F.2d 1027

C.A.7.Ill.,1972
Fact that registrant who had sought III-A, dependency classification, on ground that he supported his widowed mother and sister did not appeal from his I-O classification did not remove prejudice resulting from failure of selective service board to notify registrant's mother of her own appeal rights. Military Selective Service Act, §§ 6, 6(h)(2), 50 U.S.C.A. App. §§ 456, 456(h)(2).

C

U. S. v. Taranowski, 467 F.2d 1027

C.A.7.Ill.,1972
Inasmuch as registrant as well as person dependent upon him receives benefit of dependent's exercise of right of appeal from classification that would deprive dependent of means of support and dependent's rights can be protected only by invalidating any action taken in defiance of them, registrant has standing to assert invalidity of any such action. Military Selective Service Act, §§ 6, 6(h)(2), 50 U.S.C.A. App. §§ 456, 456(h)(2).

C

U. S. v. Taranowski, 467 F.2d 1027

C.A.7.Ill.,1972
In absence of registrant's mother having actual notice of her right to appeal from I-O classification of registrant, instead of III-A, the dependency classification, on ground that registrant supported his mother and sister, selective service board's failure to send form notifying mother of the classification was prejudicial to both registrant and mother; thus, subsequent order to report for civilian work was invalid and criminal conviction based on
such order could not stand. Military Selective Service Act, §§ 6, 6(h)(2), 12, 50 U.S.C.A. App. §§ 456, 456(h)(2), 462.

U. S. v. Melby, 465 F.2d 929

C.A.9.Cal.,1972
In prosecution for failure to report for induction, registrant's defense that his reclassification from III-A to I-A in March of 1970 was invalid because he was not given notice of or an opportunity to respond to the factual allegations contained in letter received by his local board in February stating that he was not living with his wife and child was foreclosed by the fact that the registrant, who did not respond to board's request for information before his
reclassification and who did not exercise his rights to a personal appearance and an appeal after reclassification, failed to exhaust his administrative remedies. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Melby, 465 F.2d 929

C.A.9.Cal.,1972
One who has wilfully failed to appear for or refused to submit to induction when validly ordered to do so cannot thereafter complain of mere administrative delay.

U. S. v. Dickinson, 465 F.2d 496

C.A.5.La.,1972
Refusal to submit to order of induction into armed forces is not punishable where order issued in violation of inductee's constitutional or statutory rights.

U. S. v. Ziskowski, 465 F.2d 480

C.A.3.Pa.,1972
Where local board denied prima facie case of conscientious objector classification and stated "It is the determination of the board that there has been no change in your status resulting from circumstances over which you had no control. Your classification has not been reopened," local board failed to sufficiently indicate reasons for its refusal to reopen classification and conviction for refusing induction could not be sustained. Military Selective Service Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

C

U. S. v. Rabe, 466 F.2d 783
C.A.7.Ill.,1972
Where registrant asserted his conscientious opposition to war in any form, alleged that his opposition was based on religious training and belief, and made clear in his statements that his beliefs were sincerely held by him, prima facie case for conscientious objector status was established; accordingly, once local board rejected claim without stating any grounds, reason or explanation, subsequent induction order was invalid, and conviction for refusal to obey order was subject to reversal.

C

U. S. v. Keys, 465 F.2d 736
C.A.6.Tenn.,1972
Where registrant at no time presented local board with any information respecting a formal or informal conscientious objector claim, board's action in reclassifying registrant 1-A, after receiving certification that he was no longer a full-time student, was strictly nondiscretionary, affording no opportunity for FBI report in registrant's file to have prejudiced him. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Keys, 465 F.2d 736
C.A.6.Tenn.,1972
Even if members of registrant's local board did not reside within jurisdictional area of the board as required by regulation, although eligible persons were available so as to make compliance with regulation feasible, board would nonetheless be a de facto board and registrant charged with refusal to submit to induction was not entitled to collaterally attack his 1-A classification on basis that the board was improperly constituted. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Roberts, 466 F.2d 193
C.A.7.Ind.,1972
Where registrant admitted that after his final reclassification from III-A to I-A he received new draft card which expressly informed him of his right to personal appearance and appeal, registrant was not prejudiced if he in fact did not receive notice of right to personal appearance and appeal.

H

U. S. v. Roberts, 466 F.2d 193
C.A.7.Ind.,1972
Even if registrant did not receive statement of physical acceptability he was not prejudiced where, despite being notified to bring doctor's certificate of any physical condition which might disqualify him from armed forces, his file did not show any medical certificates and he had ample time during postponement of his induction to question his physical qualifications.

C

U. S. v. Gress, 464 F.2d 1002
C.A.9.Cal.,1972
Where registrant had passed preinduction physical examination and indicated during induction process that there had been no change in his health, and where registrant's testimony at trial for refusing to submit to induction indicated that he knew of no reason that he should have been medically disqualified, there was no prejudice in Army's alleged failure to provide him with proper physical examination during induction process. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Medina, 462 F.2d 1110
C.A.10.Colo.,1972
Defendant's claim that he in good faith believed that he would not be inducted into armed services because he was

on parole and that he attempted to join military as soon as he was reasonably able after his release from confinement was not a valid defense to charge of failure to report and submit to induction into armed services. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Timmins, 464 F.2d 385

C.A.9.Cal.,1972

Unconscionably misleading conduct by local board may be raised as a valid defense in a criminal prosecution for refusal to submit to induction; to establish such defense, defendant must show that local board conveyed false or misleading information to him and that he was in fact misled, and must show that his reliance on the misleading information was reasonable in the sense that he was entitled to rely thereon without making further inquiries of the board.

U. S. v. Timmins, 464 F.2d 385

C.A.9.Cal.,1972

"Misleading conduct" and "misleading information" of local board such as may provide basis for defense in prosecution for refusal to submit to induction are not limited to instances where local board affirmatively conveys false or incorrect information; rather, such terms include circumstances where board, knowing that registrant holds erroneous impression of his rights or obligations, fails to make any effort to correct registrant's error.

See publication Words and Phrases for other judicial constructions and definitions.

U. S. v. Timmins, 464 F.2d 385

C.A.9 (Cal.),1972

Where registrant reasonably misinterpreted conscientious objector application Form 150 as requiring formal religious training, where registrant twice communicated with local board stating that he believed himself to be a conscientious objector on moral and religious grounds but that he lacked formal religious training which he thought necessary to complete Form 150, and requested other forms, and where the board simply reiterated that Form 150 was the only form for conscientious objectors, thus misleading registrant into believing that formal religious training was a prerequisite to a valid claim, registrant was thereby denied due process and the board's misleading conduct was a defense to prosecution for refusal to submit to induction.

U.S. v. Jacques, 463 F.2d 653

C.A.1.R.I.,1972

Where registrant after being classified 1-A telephoned local board to press claim for physical deferment and was told by board's executive secretary that it was not up to the board to decide medical issues and that registrant would have to report for his army physical, registrant was deprived of rights of personal appearance and appeal by the executive secretary's advice and the deprivation of procedural rights was not rendered nonprejudicial by the subsequent finding of physical acceptability inasmuch as local board could have classified registrant 1-Y, obviating the need for a subsequent examination. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U.S. v. Jacques, 463 F.2d 653

C.A.1.R.I.,1972

Claim of selective service registrant convicted of refusal to submit to induction that members of local board relied unduly on the executive secretary's prescreening of files was precluded by failure to exhaust administrative remedies. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U.S. v. Jacques, 463 F.2d 653

C.A.1.R.I.,1972

Selective service registrant was not precluded from raising issue in prosecution for refusal to submit to induction

that he was deprived of his administrative rights of personal appearance and appeal by misleading advice of local board's executive secretary on theory that he failed to exhaust his administrative remedies. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Jamison, 463 F.2d 1219

C.A.9.Cal.,1972

Registrant who, among other things, wrote that he would remain under the law unless ordered to kill or destroy others and that he could not allow himself to be used in the destruction of others, whose lengthy discussion of origin of his views supported conclusion that his opposition to killing stemmed from moral, ethical or religious beliefs sincerely held with the strength of traditional religious convictions, stated prima facie case for conscientious objector status, and, thus, conviction of failure to submit to induction was required to be reversed for failure of local board and appeal board to state reasons for denial of conscientious objector status. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Brudney, 463 F.2d 376

C.A.9.Cal.,1972

Registrant, who withdrew his request for personal appearance and for an appeal of his I-A classification and cancelled his appointment with draft board, failed to exhaust his administrative remedies and could not, on appeal from conviction for refusal to submit to induction, claim that the board should have given him a medical interview in light of opinion of his psychiatrist and that the board clerk committed prejudicial error by handling his medical record ministerially rather than turning information over to local board for its consideration.

H

U. S. v. Brudney, 463 F.2d 376

C.A.9.Cal.,1972

If alleged impropriety by draft board is in an area where correct determination depends upon administrative fact gathering and expertise, failure to exhaust administrative remedies will bar the registrant in a criminal proceeding from raising the board's errors as a defense.

C

U. S. v. Magnuson, 463 F.2d 662

C.A.7.Ill.,1972

A district court has jurisdiction to acquit a registrant on a charge of failing to report for induction where a local board should have, but did not, reopen a classification. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

H

U.S. v. Lathrop, 460 F.2d 761

C.A.3.Pa.,1972

Where registrant never appealed his conscientious objector classification, he was precluded from raising any alleged defects in such initial classification when he was prosecuted for refusing to report for civilian work of national importance and contended that he should have been granted ministerial classification. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U.S. v. Lathrop, 460 F.2d 761

C.A.3.Pa.,1972

Though clerk should not refuse to supply application form for ministerial exemption on the ground that registrant is not a formally ordained minister, such refusal, if it occurred, was no defense to charge of refusing to report for civilian work of national importance where the request, if any, was made after the date registrant was required to report. Military Selective Service Act, §§ 12(a), 15, 50 U.S.C.A. App. §§ 462(a), 466.

C

U. S. v. Drury, 459 F.2d 265

C.A.10.Colo.,1972

Induction order, which was issued before time for an appeal of registrant's classification and at same time registrant was declared a delinquent, was void, and registrant's failure to comply with order was not an offense, nor was his failure to comply with subsequent order, which was also void, not only because it was based on prior order, but because, several days prior to reporting date, registrant was reclassified from I-A to IV-C. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Hanson, 460 F.2d 337

C.A.8.Iowa,1972

Failure of local board to specify its reasons for denial of conscientious
objector classification constituted a fatal procedural error necessitating a judgment of acquittal of willfully and knowingly refusing to submit to induction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Kroncke, 459 F.2d 697

C.A.8.Minn.,1972

Defense of justification was not available to opponents of Vietnam War who forcibly entered selective service office at night in possession of various tools and forced open file drawers and removed some selective service draft registration cards in an attempt to disrupt operation of Selective Service System. Military Selective Service Act, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

C

U. S. v. Kroncke, 459 F.2d 697

C.A.8.Minn.,1972

Defendants were not legally justified in attempting to seize and destroy selective service records as a protest to the "immoral" war in Indochina and as a means of bringing that war to an end. Military Selective Service Act, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

H

U. S. v. Woloszczuk, 458 F.2d 1255

C.A.1.Mass.,1972

Although information that because of financial difficulties encountered by registrant as result of automobile accident occurring prior to administrative appeal selective service registrant was unable to continue in the full-time ministry and subsequent oral report indicating that registrant had been devoting only 20 hours per month to ministerial work while working full time at food store was not before the Appeal Board when it rejects claim for a ministerial exemption and granted 1-O status, such information demonstrated that registrant was not entitled to 4-D status and thereby rendered harmless any procedural or substantive error by the Board, which alleged employed erroneous standard in judging claim. Military Selective Service Act, §§ 6(j), 12, 16(g), 50 U.S.C.A. App. §§ 456(j), 462, 466(g).

H

U. S. v. Miller, 460 F.2d 293

C.A.9.Cal.,1972

Fact that induction order was allegedly 147 days old on the day registrant decided to refuse induction did not provide valid basis for collateral attack on the order in prosecution for the refusal where any delay beyond 120 days in bringing registrant to point of induction and refusal was of his own design. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Fargnoli, 458 F.2d 1237

C.A.1 (R.I.),1972

Registrant, who can demonstrate at the time of refusing induction he held beliefs which did not qualify under the then-existing law for conscientious objector classification but do qualify under Supreme Court decision making non-religious beliefs eligible for such classification, is not barred from raising claim in criminal prosecution by reason of failure to present claim to local board. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Harding, 461 F.2d 993

C.A.9.Cal.,1972

Where, 3 days after expiration of 30-day period allowed by regulation for appeal from his 1-A classification, registrant sent his local board a letter stating: "I appeal your decision and continue my petition for IV-D classification.", unauthorized action of executive secretary of the board in denying registrant's appeal and issuing order to report for induction without consulting the board was not "merely ministerial implementation," but was prejudicial to registrant because local board might have decided to allow his appeal, and required reversal of conviction for refusing to be inducted into armed forces. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Koehn, 457 F.2d 1332

C.A.10.Kan.,1972

Although by reason of interview and correspondence director of State Selective Service Board acquired information necessary to register defendant for draft, defendant was not entitled to have his conviction for knowingly failing to register with his draft board within 5 days of attaining age 18 overturned on ground that he should have been registered by State Selective Service Board under regulation authorizing the registrar to affix signature of a registrant who refuses to do so. 18 U.S.C.A. §§ 5005-5024; Military Selective Service Act, § 3, 50 U.S.C.A. App. § 453.

H

U. S. v. Brown, 456 F.2d 983

C.A.5.Tex.,1972

Where claim that letter which was sent by registrant's father to draft board and which indicated that father knew of no basis on which registrant was entitled to conscientious objector status was signed by father while intoxicated and after being cajoled by registrant's aunt and grandfather was first asserted three weeks after registrant was indicted for failing to submit to induction, claim was not timely and would be barred. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. O'Riley, 459 F.2d 53

C.A.9.Cal.,1972

Registrant could not successfully attack conviction for refusal to submit to induction on ground that the alleged cumulative effect of overcalls in prior five months preceding registrant's order resulted in a distortion in the number of selectees needed during the month in which he was ordered to report. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Turiace, 456 F.2d 247

C.A.9.Cal.,1972

Where there was insufficient basis in fact to justify draft board's rejection of conscientious objector claim, conviction for refusing to be inducted into the armed forces was reversed. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Tierce, 455 F.2d 511

C.A.9.Cal.,1972

Draft registrant was not without standing to challenge his classification in criminal prosecution for failing to report for induction, though he did not report and refuse to submit. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Greene, 456 F.2d 256

C.A.9.Wash.,1972

Registrant's crime of failing to report for induction into armed forces was complete on day that he failed to report, and whether possible disqualifying condition could have been discovered after he had failed to report was irrelevant to conviction. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Archer, 455 F.2d 193

C.A.10.Colo.,1972

Conviction for failure to report for induction was not required to be reversed because defendant's selective service file contained a letter from a doctor at mental hospital where defendant had previously committed himself for three days, where the letter was a result of a request by local board that defendant get a letter from his doctor and the letter was then written upon defendant's request for the same. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Archer, 455 F.2d 193

C.A.10.Colo.,1972

Defendant was not erroneously convicted of failure to report for induction on ground that local board under selective service rules and regulations prematurely referred his case to the United States Attorney for prosecution. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Francis, 457 F.2d 553

C.A.10.Colo.,1972

Where state board's classification of registrant as 1-A, for which classification state board gave no reason, came before effective date of statute requiring selective service boards to furnish registrant a brief written statement of reasons and before Court of Appeals' decision that failure of a local or state appeal board to give any reasons for denial of conscientious objector claim was improper and required reversal, conviction of registrant, who was denied conscientious objector status for failing to report for induction, was not controlled by statute or decision. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a) and § 22(b)(4), 85 Stat. 348.

C

U. S. v. Cordova, 454 F.2d 763

C.A.10.Colo.,1972

Defendant whose earlier delinquency had been purged unknown to him and who, in telephone call to draft board clerk, stated that he had received induction order, whereupon clerk incorrectly advised him that it was too late to apply for conscientious objector status, was denied administrative rights and was not subject to prosecution for refusal to submit to induction. Military Selective
Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. King, 455 F.2d 345

C.A.1.Mass.,1972

An order of call sufficiently off the mark will mean acquittal on a charge of refusing to report for and submit to induction. Military Selective Service
Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. King, 455 F.2d 345

C.A.1.Mass.,1972

Improper order of call is not a defense unless the registrant would not otherwise have been called when he was.

H

U. S. v. King, 455 F.2d 345

C.A.1.Mass.,1972

In cases coming to trial in February, 1972, or later, a defendant charged with refusing to report for and submit to induction will be deemed to have waived the order of call issue if he fails to raise it, after discovery, by moving for a judgment of acquittal on that ground prior to the trial-in-chief.

C

U. S. v. Iverson, 455 F.2d 79

C.A.8.N.D.,1972

Even if insincerity could be found from the record, failure of local board to state whether it was denying conscientious objector status on ground that registrant's beliefs, although religious, moral or ethical in nature were not deeply held or whether registrant's objection to war did not rest on moral, ethical or religious principles but rested on considerations of policy, pragmatism or expediency was fatal to conviction of registrant, who claimed to be entitled to conscientious objector classification and who refused to submit to induction. Military Selective Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Quattrucci, 454 F.2d 58

C.A.1.Me.,1972

Although defendant, who was charged with failing to submit to induction into the armed forces, could have been released from the service if the congressional manpower limitations were exceeded, those limitations did not affect the validity of defendant's induction order and provided no defense to a criminal prosecution for failure to submit to induction. Military Selective Service Act of 1967, §§ 4(b), 12, 50 U.S.C.A. App. §§ 454(b), 462; 10 U.S.C.A. § 3201.

H

U. S. v. Maybury, 453 F.2d 1233

C.A.9.Cal.,1972

Draft board's action, three months after defendant had failed to report for examination, in again ordering defendant to report for examination did not cancel the prior order or erase the offense of failing to report for the examination.

H

U.S. v. Heigl, 455 F.2d 1256

C.A.7.Wis.,1972

Defendant was not prejudiced by reason of his draft board's failure, in its letter informing him of its refusal to reopen his I-A classification and grant him an occupational deferment, to inform him of the reason for declining to reopen, considering fact that defendant's subsequent letter purporting to bolster his claim for an occupational deferment added nothing to what had been before the board earlier, and considering fact that, as phrased by the district court, defendant's showing for an occupational deferment was "pitifully, if not cynically, inadequate."

C

U. S. v. Pace, 454 F.2d 351

C.A.9.Cal.,1972

Letter from officer representing state Selective Service director and stating that there was no information contained in selective service file "which would indicate a basis for intervention by this Headquarters" in connection with rejection of conscientious objector application indicated that director or his representative made independent study of the matter and exercised his discretion in not requesting local board to reopen classification, and such exercise of discretion would not be disturbed on appeal from conviction of registrant for refusal to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Harris, 453 F.2d 862

C.A.9.Cal.,1972

Defendant was not improperly convicted of refusal to submit to induction on theory that his application for voluntary induction was in fact an offer for unilateral contract subject to revocation at any time prior to acceptance, that the acceptance could only be the act of induction, and that hence when defendant refused to report for induction he revoked his offer and the order to report based on it became invalid, since duties under Selective Service System are not consensual. Military Selective Service Act of 1967, § 4(c) (3), 50 U.S.C.A. App. § 454(c) (3).

H

U. S. v. Harris, 453 F.2d 862

C.A.9.Cal.,1972

Young males in the United States have a contingent obligation to serve in the armed forces, which obligation ripens into a fixed obligation (with minor exceptions), when the induction order issues; one who would defeat criminal prosecution for failure to report on ground that induction order is invalid must point out some failure on part of the Selective Service System to perform duties enjoined upon it by statute or regulation. Military Selective Service Act of 1967, § 4(c) (3), 50 U.S.C.A. App. § 454(c) (3).

C

U. S. v. Lee, 454 F.2d 192

C.A.9.Cal.,1972

While the improper processing of higher priority registrants provides a defense to failure to submit to induction, registrant must establish that the local board violated a specific regulation and that the result delayed significantly the time at which higher priority registrants became fully acceptable for induction; not every delay indicates intentional delay, discriminatory treatment, or favoritism. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Lee, 454 F.2d 192

C.A.9.Cal.,1972

Registrant was not improperly convicted for failure to submit to induction on ground that he was called for induction out of order under the prelottery, oldest first draft system, where registrant could not point to specific regulation which his board violated in denying the induction of other registrants. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Fox, 454 F.2d 593

C.A.9.Cal.,1971

Where registrant, who was declared delinquent for failure to appear for preinduction physical examinations, had never been found to be "acceptable for service" and was never mailed statement of acceptability, and where regulations in effect at time of registrant's induction order, with exception of delinquents and volunteers, required board to fill draft call from among registrants, who had been found acceptable for service and to whom board had mailed statement of acceptability at least 21 days before day fixed for induction, registrant's induction had been accelerated by declaration of delinquency as matter of law and thus registrant's conviction of failure to report for induction could not be sustained.

H

U. S. v. Howells, 452 F.2d 1182

C.A.9.Cal.,1971

Where registrant's name was within number specified in notice of call, he was not prejudiced by an overcall of one existing in month for which he was called. Military Selective Service Act of 1967, §§ 5(b), 12, 50 U.S.C.A. App. §§ 455(b), 462.

C

U. S. v. Buckley, 452 F.2d 1088

C.A.9.Cal.,1971

Where draft board sent letters of inquiry to every person whom defendant had listed as a relative or person who would know his whereabouts, board did not fail to follow regulation requiring it to attempt to locate delinquent registrant before turning his name over to United States attorney. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U.S. v. Ponto, 454 F.2d 657

C.A.7.Ill.,1971

Objection to local board's classification of draft registrant can be raised as defense to prosecution for refusing to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Schmall, 452 F.2d 468

C.A.9.Cal.,1971

Fact that only two of the normal complement of three members had been appointed to local board when claim for student deferment was rejected and registrant was classified 1-A did not prejudice registrant, convicted of refusing induction, where both members joined in the action.

C

U. S. v. Schmall, 452 F.2d 468

C.A.9.Cal.,1971

Where, within one week of rejection of request for undergraduate student deferment and assignment of 1-A classification, registrant furnished board with a second request for undergraduate student deferment stating that registrant was pursuing a full-time course of instruction and there was nothing to indicate that fact on which registrant based his claim had changed since prior request, board should have treated second request as notice of appeal and forwarded file to the State Appeal Board and such failure required reversal of conviction of refusing induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Camara, 451 F.2d 1122

C.A.1.Mass.,1971

Local board's refusal to reopen defendant's classification to consider his postinduction order claim for conscientious objector status did not entitle defendant, under the law at that time, to decline to submit to induction, even if the refusal to reopen was based on a finding that his change of status was not the result of circumstances over which he had no control, where there was no showing that at the time he declined to submit to induction defendant believed that the local board's action was illegal. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Camara, 451 F.2d 1122

C.A.1.Mass.,1971

The fact that 5 of 11 registrants, who were called after defendant charged with refusing to submit to induction, should have been called before defendant was not prejudicial to defendant where he was high enough on the list so that he would have been called even if there had been no such errors, and he had been provided with full information, cross-examination, and judicial attention as to each subsequent name on the call list.

H

U. S. v. Camara, 451 F.2d 1122

C.A.1.Mass.,1971

Defendant charged with wilfully refusing to submit to induction into the armed forces did not have standing to challenge the legality of the Vietnam War.

C

U.S. v. Hobbs, 450 F.2d 935

C.A.10.N.M.,1971

Good-faith belief that the selective service law is unconstitutional is not an excuse for failing to report for a physical examination and does not negate willfulness. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Munoz, 451 F.2d 1270

C.A.9.Cal.,1971

Where defendant, in prosecution for refusal to submit to induction, was in third priority group under "draft lottery," and where state Selective Service Board issued calls within that group in ascending order of lottery number from beginning of year to the time defendant was ordered to report, selective service regulations were followed and "order of call" defense, which could be asserted by those in lower priority groups who were called before those in higher priority groups, was unavailable to defendant alleging that it was impossible to tell whether he was called out of order within his particular priority group. Military Selective Service Act of 1967, §§ 5(a) (2), 12(a), 50 U.S.C.A. App. §§ 455(a) (2), 462(a).

C

U. S. v. Stupke, 451 F.2d 997

C.A.9.Cal.,1971

Defendant in selective service prosecution who was ordered to submit to induction on May 25, 1970, based on physical examination on January 29, 1970, failed to establish that prejudice resulted from allegedly mistaken 1-A classification following physical examination on February 5, 1969. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Neamand, 452 F.2d 25

C.A.3.Pa.,1971

Conscientious objector form which registrant submitted to local board after he had refused induction could not legally be considered as defense to the charge of refusal to submit to induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Neamand, 452 F.2d 25

C.A.3.Pa.,1971

Conviction for refusing to submit to induction in armed forces would be reversed where registrant's claim for conscientious objector status was denied by local board by notation that claim was considered and rejected and there was no explanation for the rejection. Military Selective Service Act of 1967, §§ 6(j), 10(b) (3), 12(a), 50 U.S.C.A. App. §§ 456(j), 460(b) (3), 462(a).

C

U. S. v. Bush, 450 F.2d 306

C.A.4.Va.,1971

Where registrant filed his request for reclassification as conscientious objector after induction order had been issued, failure of local board to reopen was unavailable as defense to prosecution for refusing induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Hershey, 451 F.2d 1007

C.A.3.Pa.,1971

Conviction for refusing to submit to induction in the armed services would be set aside where local board failed to give reasons for its decision in rejecting defendant's claim for conscientious objector status and the appeal board also failed to give reason. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Hall, 449 F.2d 1206

C.A.5.La.,1971

Fact that defendant, as a result of his failure to return to induction center after having been told to do so by induction center official and after having been told that he was fully qualified for induction, was not actually ordered to take traditional step forward did not preclude conviction of defendant of refusal to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. O'Bryan, 450 F.2d 365

C.A.6.Ky.,1971

Selective service registrant cannot be convicted for his refusal to obey an unlawful order. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. O'Bryan, 450 F.2d 365

C.A.6.Ky.,1971

Local board's failure to set forth reasons for denying registrant's application for conscientious objector classification, along with reviewing court's independent search of registrant's administrative file revealing no basis in fact upon which such a determination could validly have been made, precluded registrant's conviction for refusing to submit to induction into the armed forces. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Zaragoza, 449 F.2d 1278

C.A.9.Cal.,1971

Registrant, who stated, among other things, on his conscientious objector form that by reason of religious training and belief he was conscientiously opposed to participation in war in any form and who included a number of biblical references, presented a prima facie claim of conscientious objection based on his own beliefs and not a mere parroting of scripture and church doctrine, and his conviction for refusal to submit to induction must be reversed. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Tigerman, 456 F.2d 54

C.A.9.Cal.,1971

Alleged fact that induction order was signed by member of the local board who was not on the panel to which registrant's classification had been assigned did not preclude conviction for failure to obey such order, absent showing of prejudice. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Draper, 449 F.2d 807

C.A.9.Cal.,1971

Where local board was powerless to reclassify registrant, because alleged change of status did not result from circumstances beyond registrant's control, board's failure to consider letters requesting new classification was not prejudicial. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Farinas, 448 F.2d 1334

C.A.2.N.Y.,1971

Fact that officials at induction center may have failed to follow procedure outlined in Army regulations relating to induction did not invalidate conviction for violation of Military Selective Service Act of 1967, where registrant was amply warned pursuant to regulation that he would be subject to criminal sanctions if he were declared an uncooperative registrant, and where, in addition, registrant's statement to officer at induction center that he would not cooperate with him or anyone else in the center provided a sufficient basis for an inference that he did not intend to take part in the proscribed processing or to submit to induction, so that it would have been a futile gesture to read to him the prescribed governmental form. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Malatesta, 447 F.2d 1365
C.A.9.Cal.,1971
Where delay of induction chargeable to local board was less than 120 days and balance of 204 days which elapsed between first order to report and final date when registrant's refusal resulted in prosecution was chargeable to registrant, conviction for failure to submit to induction would not be set aside because new order for induction was not issued after 120 days had elapsed from issuance of original order.

C

U. S. v. Adams, 449 F.2d 122
C.A.5.Ga.,1971
Failure to send conscientious objector form when registrant first requested it did not require reversal of conviction for violation of Military Selective Service Act of 1967, where at time registrant requested such form he was classified II-S, which was a lower classification than conscientious objector, so that even if the board had considered his conscientious objector claim they would not have been able, unless he voluntarily gave up his II-S deferment, to grant him a conscientious objector classification, and where, more importantly, he had over one year to apply for another form before his II-S deferment expired, but he did not do so. Military Selective Service Act of 1967, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

C

U. S. v. Adams, 449 F.2d 122
C.A.5.Ga.,1971
Failure on part of selective service board clerk to submit completed conscientious objector form to the board, even though it was completed after notice of induction, did not require reversal of conviction for violation of Military Selective Service Act of 1967, where even if the form had been submitted to the board it could not have acted, since beliefs of registrant, according to his completed form, apparently crystallized in 1967, so that fact that he was presently asserting them after his induction in 1969 demonstrated that their development was not due to "circumstances beyond his control." Military Selective Service Act of 1967, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

C

U. S. v. Hart, 449 F.2d 340
C.A.6.Tenn.,1971
Local draft board whose members did live in county in which they functioned although some of the members were not residents of area in which it had jurisdiction was a de facto board whose action was not subject to collateral attack by registrant convicted for failing to keep local board informed of his current address and for failure to report and submit to induction, notwithstanding applicable regulation stating that members of local board shall be residents of county in which board has jurisdiction and shall also, if at all practicable, be residents of area in which local board has jurisdiction. Military Selective Service Act of 1967, § 1 et seq., 50 U.S.C.A. App. § 451 et seq.

U. S. v. Lewis, 448 F.2d 1228
C.A.9.Cal.,1971
Fact that some members of local selective service board resided outside of area over which the board had jurisdiction did not prejudice defendant registrant.

H

U. S. v. White, 447 F.2d 1124
C.A.9.Cal.,1971
Where registrant had wilfully and repeatedly failed to appear for and submit to induction and there was no official holding in abeyance and no benefit to government from delay which in fact resulted from government's giving registrant several chances to avoid criminal prosecution by re-scheduling induction and by giving consideration to very belated conscientious objector claim, lapse of more than 120 days between date on which registrant was first ordered to report and date on which he finally refused to submit to induction resulting in his conviction did not require re-

versal of conviction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Polites, 448 F.2d 1321

C.A.3.Pa.,1971

Alleged denial of registrant's right to essentially fair procedure in rejecting request for hardship deferment may be asserted in defense of prosecution for refusing to be inducted.

H

U. S. v. Polites, 448 F.2d 1321

C.A.3.Pa.,1971

Procedure of local board, which after granting registrant a personal interview relating to his hardship deferment request asked for a more detailed financial statement of household income and expenses but later the same day reclassified registrant 1-A three days before detailed financial information was received, was improper requiring reversal of registrant's conviction for refusal to submit to induction.

U. S. v. Lopez, 448 F.2d 758

C.A.9.Cal.,1971

Failure of defendant's local board, upon advising him of his 1-A classification, to advise him of his right to consult government appeal agent did not require reversal of defendant's conviction for refusing to submit for induction into the armed forces where, in the 26 months from defendant's registration to his reporting for induction, he did not attempt to present to local board the issue of his conscientious objection or any other evidence that might cast doubt on validity of his 1-A classification. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Stom, 448 F.2d 1332

C.A.9.Cal.,1971

Registrant's reliance on advice of law students, who allegedly dissuaded him from reporting when he arrived at doors of induction station, did not negative willfulness and knowingness so as to provide defense to prosecution for refusal to submit to induction.

C

U. S. v. Carson, 449 F.2d 345

C.A.9.Cal.,1971

Challenge to residency of local board's members was not ground for reversal of conviction for refusal to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. O'Brien, 448 F.2d 643

C.A.9.Cal.,1971

That state selective service director recommended that local board follow certain memorandum and grant registrant "courtesy interview" did not entitle registrant to relief on appeal from conviction of refusal of induction on theory that director had authorized reopening of registrant's late-matured conscientious objector claim. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Sowul, 447 F.2d 1103

C.A.9.Cal.,1971

Contention that local board was not properly constituted was not valid defense in prosecution for refusing to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Sowul, 447 F.2d 1103

C.A.9 (Cal.),1971

Good-faith belief in illegality of induction was not valid defense to refusal to submit to induction. Military Selective

Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Gyekis, 446 F.2d 1364

C.A.3.Pa.,1971

Normally, denial of deferment based upon erroneous official advice from state headquarters to local board will invalidate consequent induction order and preclude conviction for refusal to obey that order. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Gyekis, 446 F.2d 1364

C.A.3.Pa.,1971

Even if fact that registrant had not yet begun peace corps work had justified denial of occupational deferment, subsequent notification to local board before induction that registrant was engaged in that work imposed duty on board to reopen case and reconsider claim; board's failure to reopen, thereby preventing appeal board from considering merits of registrant's claim was improper, and registrant could not lawfully be punished for refusing to obey induction order. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Warren, 446 F.2d 568

C.A.9.Cal.,1971

Where registrant failed to appeal after he was classified 1-A and received form notifying him of his right to a personal appearance and an appeal, registrant's contention that his conscientious objector claim was improperly rejected could not be considered, on appeal from conviction for failure to submit to induction into armed forces, in that registrant had failed to invoke or exhaust his administrative remedies in a situation where they should have been pursued. Universal Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Harris, 446 F.2d 129

C.A.7.Ill.,1971

That draft board failed properly to record registrant's change of address and as a result registrant was not notified of recommendation of United States Department of Justice that registrant's classification be changed from I-AO to I-O was not prejudicial to registrant. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Harris, 446 F.2d 129

C.A.7.Ill.,1971

Draft board's issuance of a new draft card granting registrant a I-O classification was not prejudicial to registrant merely because it was mailed to wrong address. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Wood, 446 F.2d 505

C.A.9.Or.,1971

As specific intent is not element of crime of refusing to submit to induction into the armed forces, reliance upon advice of counsel that order to report was void does not constitute a defense. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Baray, 445 F.2d 949

C.A.9.Cal.,1971

Even though registrant's claim that he had been treated for tuberculosis more than two years prior to time of registration, absent an indication of relapse or restrictions on physical capabilities, was insufficient to establish a disqualifying condition requiring local board to order registrant to report for interview with its medical advisor, where regis-

trant was subsequently found to be physically unacceptable for military service by reason of his history of tuberculosis at pre-induction examination, board should have been alerted to fact that registrant suffered from a disabling condition which required an interview with medical advisor of board, and failure to grant medical interview was prejudicial and required reversal of conviction for refusing induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Baray, 445 F.2d 949

C.A.9.Cal.,1971

Failure of local board to follow prescribed regulation by granting registrant an interview with his medical advisor was prejudicial and required reversal of conviction for refusing induction, even though registrant was found acceptable in a subsequent physical examination, where, unlike pre-induction physical examination in which hundreds of registrants may be examined by several doctors in a day's processing, medical interview gives registrant opportunity to have a single doctor focus his attention on registrant's individual condition and make a specific finding thereon. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A.App. § 462(a).

U. S. v. Baray, 445 F.2d 949

C.A.9.Cal.,1971

Where, in contravention of regulation governing I-Y classification of registrants not eligible for a lower class who would be qualified for military service in time of war or national emergency, local board did not reclassify registrant I-Y even though he had been found to be currently qualified for services under applicable physical standards, so that registrant's classification was never re-opened and he was not given automatic right of appeal which accompanies reclassification, erroneous deprivation of registrant's right to appeal was prejudicial and required reversal of conviction for refusing induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U.S. v. Baray, 445 F.2d 949

C.A.9.Cal.,1971

Where registrant was a Jehovah's Witness and was considered an active minister of that faith, and where registrant stated that his beliefs against use of force were based on his study of the Bible and upon the teachings of Christ, prima facie case for classification as a conscientious objector was presented, and local board committed reversible error by rejecting registrant's claim for deferment as a conscientious objector without stating its reasons for doing so, but since he failed to appeal decision of local board, registrant was precluded from relying on reversible error unless he could show that his failure to appeal was a result of "exceptional circumstances."

U. S. v. Andrews, 446 F.2d 1086

C.A.10.Okla.,1971

Failure of local draft board or state appeal board to give any reasons for denying registrant's conscientious objector claim was improper and required reversal of conviction of registrant for refusal to submit to induction. Military Selective Service Act of 1967, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

U. S. v. Stephens, 445 F.2d 192

C.A.3.Pa.,1971

Registrant, who, after his conscientious objection claim was rejected, failed to report to induction station on appointed day, was not precluded from presenting his defenses to the Court of Appeals after being convicted of failing to comply with order to report for induction. Military Selective Service Act of 1967, § 10(b) (3), 50 U.S.C.A. App. § 460(b) (3).

U. S. v. Ward, 445 F.2d 261

C.A.9.Cal.,1971
Where it was possible that registrant filed Form 150 to announce crystalization of his conscientious objector beliefs as groundwork for establishing sincerity for future I-A-O classification and local board violated its own regulation by removing registrant's I-S(C) deferment and substituting the higher I-A-O classification, registrant could not be convicted based upon refusal to submit to invalid induction order. Military Selective Service Act of 1967, §§ 6(i)(2), 12, 50 U.S.C.A. App. §§ 456(i)(2), 462.

C

U. S. v. Ward, 445 F.2d 261

C.A.9.Cal.,1971
Prejudice resulting from premature issuance of induction order is obvious in view of severe limitations upon reopening a classification and presenting new evidence. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Zaugh, 445 F.2d 300

C.A.9.Cal.,1971
Conviction for refusing to complete an armed forces physical examination would not be considered invalid even if defendant was unaware of the specific penalties which could be imposed for his failure to comply with the law. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Merkle, 444 F.2d 411

C.A.3.Pa.,1971
Statement made by registrant in his application for conscientious objector status that love and understanding among men were delicate and were destroyed by violence and war, that to kill another man was an act of despair and blindness, and that registrant could not presume the right over another man's life, when supported with letters certifying to sincerity of his belief, made out a prima facie case for a conscientious objector classification, and when board did not submit its reasons to registrant for denying classification, so that it was impossible to know reason for actions of board and appellate selective service authorities, judgment and commitment of registrant for refusing induction into armed services would be reversed. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Newton, 443 F.2d 1078

C.A.9.Cal.,1971
Where defendant committed crime of failure to report for civilian work assignment for which he was convicted before he was notified of civilian work to which he was to be ordered, he could not raise as a defense the alleged unlawfulness of that work assignment. Military Selective Service Act of 1967, §§ 12, 16(g), 50 U.S.C.A. App. §§ 462, 466(g).

H

U. S. v. El, 443 F.2d 925

C.A.3.N.J.,1971
Registrant who did not present to his local draft board a claim for exemption based on conscientious opposition to war and raised matter for first time at induction center was foreclosed from raising any defense of erroneous classification at his criminal trial for refusing induction.

C

U. S. v. Stetter, 445 F.2d 472

C.A.5.Tex.,1971
Conviction of defendant for refusal to submit to induction into the armed forces could not be upheld where induction order was premised upon rejection of defendant's application for classification as a conscientious objector, and rejection of such application was without any basis in fact. Military Selective Service Act of 1967, §§ 6(j), 12(a), 50

U.S.C.A. App. §§ 456(j), 462(a).

C

U. S. v. Roberts, 443 F.2d 1009

C.A.8.Iowa,1971

Even if registrant had right to be reclassified after his file was returned to local board, such reclassification could not have had any legal effect on his earlier indictment for refusing to be indicted under a valid order to report for induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Smith, 443 F.2d 1278

C.A.9.Cal.,1971

A registrant may rely upon improper processing of higher priority registrants in defending a criminal prosecution if he can establish that his local board violated a specific regulation, and that the result was to delay significantly time when higher priority registrants became fully acceptable for induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Smith, 443 F.2d 1278

C.A.9.Cal.,1971

Where registrant, who claimed that order to report for induction was invalid because it was issued in violation of order of call regulations, was oldest of five registrants called on certain date, registrant had to show that there were at least four, in addition to one conceded by government, who were improperly bypassed in order to establish prejudice necessary for reversal of his conviction for refusing induction; and as evidence revealed only two additional men who were improperly bypassed by local board, registrant was not entitled to have his conviction reversed. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Smith, 443 F.2d 1278

C.A.9.Cal.,1971

Delays in processing one registrant cannot be relied upon by another registrant unless the allegedly prejudiced registrant can show that delay was in direct violation of a specific regulation calling for local board action in a particular sequence or within a particular time; in addition, the registrant who refuses induction must convince finder of fact that higher priority registrant, if properly processed, would have been fully qualified for induction at time of his order. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Tobias, 447 F.2d 227

C.A.3.Pa.,1971

Where selective service registrant did not challenge composition of draft board at any level in the selective service system, he was precluded from raising challenge based on ground that majority of board's members were not residents of area in which board had jurisdiction for the first time as a defense in prosecution for failure to report for induction. Military Selective Service

Act of 1967, § 10(b) (3), 50 U.S.C.A. App. § 460(b) (3).

C

U. S. v. Berry, 443 F.2d 5

C.A.9.Wash.,1971

Where local board was powerless to reopen registrant's classification because of failure of registrant to show a change in status resulting from circumstances beyond his control, board's failure to meet and consider request to reopen, and to notify registrant of that action, although a procedural error, was not prejudicial and therefore did not require reversal of registrant's conviction for failing to report for civilian employment as ordered in lieu of induction into armed forces. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Silvera, 441 F.2d 1152

C.A.3.N.J.,1971

Where defendant did not exhaust his administrative remedies, he was not denied the right to judicial review of his classification at trial for unlawfully failing to appear and report for induction.

H

U. S. v. Kohls, 441 F.2d 1076

C.A.9.Cal.,1971

Where defendant was processed for induction as a "delinquent" for failure to complete his physical examination, his conviction for refusing induction must be reversed. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Kohls, 441 F.2d 1076

C.A.9.Cal.,1971

Even if defendant was entitled to be classified 1-Y, failure of draft board so to classify him was not a defense to a prosecution for failure to submit to a physical examination. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Fisher, 442 F.2d 109

C.A.7.Ind.,1971

Action of local board in misleading registrant as to his appeal rights by failing to properly inform him as to identity of governmental appeal agent, whose assistance registrant sought and desired, constituted a denial of procedural due process and precluded conviction of registrant for failing to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Fisher, 442 F.2d 109

C.A.7.Ind.,1971

Even if action of local board in misleading registrant as to his right to assistance of an appeal agent did not constitute a deprivation of procedural due process, conviction for refusing to submit to induction was not warranted, where registrant was prejudiced in his appeal by deprivation of assistance of appeal agent who could have discovered existence of an adverse memorandum inserted in registrant's file following his appearance before board. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Stacey, 441 F.2d 508

C.A.9.Cal.,1971

Assuming arguendo that letter sent by registrant to local board requesting a 90-day deferment to continue working at post office during Christmas season was a request for an occupational deferment, error, if any, on part of board in failing to consider letter as such was harmless and did not preclude prosecution of registrant for failing to submit to induction, where registrant failed to supply board with facts upon which it could have based a finding that a change in registrant's status had occurred after mailing of induction notice. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Hayden, 445 F.2d 1365

C.A.9 (Cal.),1971

Conscientious objector registrants are immune from prosecution for failure to submit to physical examination.

C

U. S. v. Arneson, 441 F.2d 4

C.A.8.Minn.,1971
Defendant's claim to be classified as a conscientious objector, offered for first time at trial, afforded no defense to his conviction for failure to comply with order of his local board to report for and submit to induction into the armed forces.

H

U. S. v. Lemke, 439 F.2d 762

C.A.9.Cal.,1971
Local board member is not required to be resident of area over which board has jurisdiction and thus defendant, who was indicted for failure to submit to induction, was not entitled to have indictment dismissed on ground that member of defendant's local board, who was resident of county in which board sat, was not resident of geographical section of county over which board had jurisdiction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Pringle, 438 F.2d 1216

C.A.1.N.H.,1971
Even if draft board had reclassified registrant as conscientious objector, that would be no defense to charge of refusal to respond to an earlier order of induction, lawful on its face.

C

U. S. v. Pringle, 438 F.2d 1216

C.A.1.N.H.,1971
Defendant was not entitled to acquittal on charge of refusal to submit to induction on theory that he had been improperly classified 1-A because, in fact, he had been a conscientious objector all the time, although he had not advanced the claim.

C

U. S. v. Pringle, 438 F.2d 1216

C.A.1.N.H.,1971
Defendant was not entitled to acquittal on charge of refusal to submit to induction on theory that he had failed to file for conscientious objector classification earlier because he had not realized he was qualified therefor.

H

U. S. v. Pennington, 439 F.2d 145

C.A.9.Cal.,1971
Whether a selective service registrant is prejudiced by a declaration of delinquency depends upon whether registrant's delinquency status accelerated his order of induction.

C

U. S. v. Brown, 438 F.2d 1115

C.A.9.Cal.,1971
Failure, on induction day, to have registrant, who had received complete physical examination prior to day of his induction, remove his clothes and to have physician examine registrant, who gave no indication that he did not intend to cooperate during induction processing, constituted prejudicial error precluding conviction of registrant, who declined to take symbolic step forward to signify acceptance of his induction, of refusing to submit to induction where registrant, if examined, might have failed to meet minimum weight standards for his height. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Lee, 437 F.2d 897

C.A.8.Minn.,1971
Registrant's claim to be conscientious objector, offered for first time at trial, afforded no defense to charge of failing to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

Hall v. U. S., 437 F.2d 1063
C.A.7.Wis.,1971
Where record showed that defendant, who had been given conscientious objector classification, consistently adhered to position that he would only accept assignment to ministerial work for religious sect with which he was affiliated and that defendant finally stated that he would not report to board for assignment under any circumstances, fact that hospital to which defendant had been ordered to report for alternative service was affiliated with different church did not preclude prosecution for failing to comply with board's order. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462; U.S.C.A.Const. Amend 13.

C

U. S. v. Feldman, 437 F.2d 888
C.A.9.Cal.,1971
Local board, which refused request of registrant, on his return to school, for II-S classification, did not have authority to do so where registrant had not received four years of student deferment and had full academic credit for amount of time he had held such deferment, and thus registrant, who brought appeal from such classification that was not successful, and who thereby exhausted right to appeal and was precluded from appealing from or making personal appearance with respect to denial of his subsequent occupational deferment request, was entitled to reversal of subsequent conviction of failure to report for induction and of refusing to be inducted. Military Selective Service Act, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Garvin, 438 F.2d 1054
C.A.7.Ind.,1971
If classification of registrant, who had requested conscientious objector classification, should have been reopened, failure to do so was fatal to subsequent conviction for refusal to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Fox, 437 F.2d 419
C.A.9.Cal.,1971
Former selective service regulation governing residence qualifications of members of a selective service board was directory, not mandatory; thus, fact that two of five board members resided outside area of board's jurisdiction when registrant was classified I-A was not a basis for overturning registrant's conviction for refusing induction into armed services on ground that board's order to report for induction was invalid. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Ayers, 437 F.2d 832
C.A.7.Ill.,1971
Any procedural irregularity committed by local draft board when it failed to reopen registrant's file upon receipt of new evidence that he was then a minister had no bearing on whether registrant violated criminal proscriptions of statute one month earlier when he failed to report for civilian work; and, although board never sent registrant a letter notifying him that it was not
reopening his file after his original request for a ministerial exemption had been submitted, no prejudice to registrant occurred since he had actual notice of denial in time for him to renew the claim before he was ordered to report for civilian work. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Lowell, 437 F.2d 906
C.A.9.Wash.,1971
In very extreme cases, unconscionably misleading conduct by local board may be valid defense to criminal prosecution for refusing induction, but only if defendant shows that his reliance on misleading information was reasonable

in sense that person sincerely desirous of obeying law would have accepted information as true and would not have been put on notice to make further inquiries. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Lowell, 437 F.2d 906

C.A.9.Wash.,1971

Where draft registrant after receiving order for his induction asked draft board clerk about having his classification changed but did not say that he was conscientious objector and, district court found that clerk's statement to registrant that nothing could be done to change his classification had reference to student deferment he had previously requested, there was no such misleading conduct by draft board as would provide defense against prosecution for refusal to be inducted. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Brown, 436 F.2d 1317

C.A.3.Pa.,1971

Where registrant submitted evidence at appeal level tending to establish his claim that he had achieved full-time ministerial status within his religion some time after local board had refused to reclassify him, the appeal board should have recognized this procedural irregularity and referred such information to local board for treatment as a request for a reopening of registrant's classification, and since new evidence was sufficient to make out a prima facie case for a ministerial exemption, registrant could have compelled a reopening of his classification and was therefore substantially prejudiced by appeal board's failure to remand; overruling United States v. Brown (Gerald Lee) 423 F.2d 751 (3d Cir. 1970). Military Selective Service Act of 1967, §§ 4, 10, 50 U.S.C.A. App. §§ 454, 460.

C

U. S. v. Rucker, 435 F.2d 950

C.A.8.Mo,1971

Claim to be conscientious objector offered for first time at trial or on appeal affords no basis of attack on validity of order to report for induction and is no defense to refusal to submit to that order. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

Walsh v. U. S., 436 F.2d 1188

C.A.9.Nev.,1971

Where state law required that person hired as nursing assistant trainee pass examination unless there was an emergency and there was no emergency in staffing hospital, registrant who had been classified I-O and ordered to report at hospital to do welfare work but who had failed examination could not be convicted of failing to comply with order of his draft board when he did not report for duty as nursing assistant trainee regardless of whether registrant purposely disqualified himself. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462; N.R.S. 284.315.

C

U. S. v. Thaxter, 437 F.2d 417

C.A.9.Cal.,1971

Neither fact that registrant refused to be inducted before being asked to step forward nor fact that he was not warned that he could complete his preinduction processing before refusing induction was to be taken as meaning that he could not be prosecuted for refusing induction and could only be prosecuted for failing to cooperate. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Nordlof, 440 F.2d 840

C.A.7.Ill.,1971

Where selective service registrant at induction center, after receiving notice to report for induction, wrote and presented to Selective Service System official a six-page statement containing his claim of conscientious objection to war, local board should have considered reopening of classification and, in view of its failure to do so, his convic-

tion for refusing to submit to induction must be reversed. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Long, 435 F.2d 830

C.A.10.Okla.,1971

Refusal of local board to reopen registrant's classification after receiving his claim for conscientious objector status subsequent to induction order, absent a finding as to sufficiency of registrant's allegations, could not be upheld, and registrant's conviction for refusing to submit to induction would be reversed. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Bagley, 436 F.2d 55

C.A.5.Fla.,1970

It is of the essence of validity of draft board orders and of crime of disobeying such orders that all procedural requirements be strictly and faithfully followed and showing of failure to follow them with such strictness and fidelity will invalidate board's order and a conviction based thereon.

U. S. v. Bagley, 436 F.2d 55

C.A.5.Fla.,1970

Where registrant had three claims for deferment pending at time of his personal appearance before local board, but when he was told by clerk that board would deal only with one claim at a time, he discussed only one claim and he was inducted the same day that claim was denied, board's regulation requiring it to consider registrant's overall classification picture and place him in lowest classification applicable to him was violated and registrant who at induction station refused to take symbolic step forward was entitled to reversal of conviction for violation of Military Selective Service Act. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Bagley, 436 F.2d 55

C.A.5.Fla.,1970

Denial of registrant's request of an appointment with government appeals agent was reversible error, where only one of three pending claims for deferment was discussed at registrant's personal appearance before board and it could readily be assumed that, upon discovering such, appeals agent would have requested reopening so that all relevant information could be included in the record, thereby giving registrant opportunity to adequately make out his case and protecting board from issuing invalid induction order.

U. S. v. Prichard, 436 F.2d 716

C.A.9 (Cal.),1970

Where statements of registrant in his original application for "conscientiously opposed to combatant service" classification clearly stated basis in fact for status as conscientious objector to military service and there were letters in registrant's file attesting to his sincerity, failure of local board and appeal board to state reason for rejection of claim made 1-A classification improper and required reversal of conviction for refusal to be inducted into the armed forces. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Newton, 435 F.2d 671

C.A.9.Cal.,1970

I-A-O classification, which was made on ground that registrant's conscientious objections to military service in any form were not based on his religious training and belief and that his conscientious objector beliefs as to noncombatant service were not sincerely held, was without basis in fact and his conviction based thereon must be reversed. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Gilmore, 435 F.2d 170

C.A.5.Tex.,1970

Registrant who made no attempt to enlist in regular Army prior to receiving orders to report for induction could not refuse to submit to induction on basis that he was denied opportunity to enlist in regular Army. Military Selective Service Act of 1967, §§ 4(c), 15(d), 50 U.S.C.A. App. §§ 454(c), 465(d).

H

Steiner v. Officer in Command, Armed Forces Examining and Induction Center at Houston, Tex., 436 F.2d 687

C.A.5.Tex.,1970

Claimed errors making induction order unenforceable, although not subject to preinduction review, may be considered in connection with postinduction habeas corpus petition or as defense to indictment based on refusal to submit to induction. Military Selective Service Act of 1967, § 10(b) (3), 50 U.S.C.A. App. § 460(b) (3).

U. S. v. Hosmer, 434 F.2d 209

C.A.1.Me.,1970

Even if local board's according defendant "courtesy appearance" resulted in reopening of classification, and even if reopening cancelled earlier order to report for induction, defendant remained subject to prosecution for refusing to submit to induction at time when induction order was valid.

C

Alexander v. U. S., 435 F.2d 117

C.A.9.Cal.,1970

Even if statute governing conscientious objectors manifests a clear congressional intention to exempt such registrants from military service, statute is not self-operating and contemplates board's consideration of conscientious objector claims before registrant may be permitted to assert such a claim as a defense in a prosecution for refusing to submit to induction; thus, a registrant who deliberately refuses to make a claim of conscientious objection to his local board in first instance cannot be permitted to urge that claim as a defense. Military Selective Service Act of 1967, § 6(j), 50 U.S.C.A. App. § 456(j).

U. S. v. Griffin, 434 F.2d 740

C.A.6.Ky.,1970

Lack of understanding of relevant criteria for a ministerial exemption on part of members of local board does not require reversal when the record demonstrates that both the local board and the appeals board considered the claim for ministerial exemption and there is a basis in fact in record to support conclusion that applicant is not a regular minister of religion.

U. S. v. Noonan, 434 F.2d 582

C.A.3.Pa.,1970

Any defect in selective service proceeding subsequent to registrant's refusal to submit to induction is not relevant to issue whether crime was committed on day of scheduled induction; accordingly, any subsequent selective service procedural infirmity cannot be interposed as valid defense to offense of refusing to submit to induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Noonan, 434 F.2d 582

C.A.3.Pa.,1970

De facto opening of registrant's classification subsequent to induction order and subsequent to registrant's refusal to submit to induction did not nullify induction order or vitiate violation thereof.

H

U. S. v. Callison, 433 F.2d 1024
C.A.9.Cal.,1970
Where application of illegal standard and not finding of want of sincerity was basis for local board's action in denying conscientious objector status to registrant, and registrant's file contained material from which board could have found sincerity, reversal of conviction for refusal to submit to induction was necessary.

C

U. S. v. Garrity, 433 F.2d 649
C.A.8.Mo,1970
Contention, in prosecution for failure to comply with induction order, that induction order required registrant to report to local board at joint examining and entrance station and that compliance was impossible since local board did not maintain office there bordered on frivolous where order was clear and unambiguous in its import and registrant knew location of board and of station to which he was ordered to report and where no prejudice, from what was at most a technical irregularity, was shown. Military Selective Service Act of 1967, § 12, 50 U.S.C.A.App. § 462.

C

U. S. v. Garrity, 433 F.2d 649
C.A.8.Mo,1970
In view of constitutional exercise of power of Congress to raise armies, registrant, not claiming to be "selective conscientious objector," had duty to submit to induction under Selective Service Act, and alleged illegality of Vietnam War was not defense to prosecution for failure to report for induction. Military Selective Service Act of 1967, §§ 6(j), 12, 50 U.S.C.A.App. §§ 456(j), 462.

H

U. S. v. Reeb, 433 F.2d 381
C.A.9.Cal.,1970
Even if regulation, which provided that all local draft board members shall, if at all practicable, be residents of area in which their local board had jurisdiction, was mandatory, failure of defendant's local draft board to abide by such regulation did not prejudice defendant who was convicted of refusing to submit to induction, where reasons for defendant's failure to satisfy requirements for classification as conscientious objector were unrelated to residence of board members. Military Selective Service Act of 1967, §§ 10(b) (3), 12, 50 U.S.C.A.App. § 460(b) (3), 462; 18 U.S.C.A. § 5010(e); 28 U.S.C.A. § 1291.

H

U. S. v. Reeb, 433 F.2d 381
C.A.9.Cal.,1970
Request of defendant that "if at all possible, I would like you to make an appointment for me to see the Selective Service System's attorney of and/or for appeals" did not constitute request that defendant be represented by counsel before his draft board; thus defendant was not entitled to reversal of conviction for refusing to submit to induction on theory that he was denied right to counsel before draft board. Military Selective Service Act of 1967, §§ 10(b) (3), 12, 50 U.S.C.A.App. §§ 460(b) (3), 462; 18 U.S.C.A. § 5010(e); 28 U.S.C.A. § 1291; U.S.C.A.Const. Amend. 5.

C

U. S. v. Pacheco, 433 F.2d 914
C.A.10.N.M.,1970
Where registrant made claim of conscientious objection after he received order to report for induction and local board failed to determine when and in what circumstances registrant's belief matured though it did make finding that reasons which registrant stated on form were a personal moral code and a philosophical point of view, registrant's conviction for failing to submit to induction into armed forces would be reversed. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Higgins, 432 F.2d 924
C.A.2.N.Y.,1970
Where selective service registrant had received punitively accelerated induction, conviction for failure to report for and submit to induction into the armed forces could not be sustained. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Weissman, 434 F.2d 175
C.A.8 (Mo.),1970
Registrant's request for a duplicate registration certificate once he had torn his original certificate in half during a demonstration did not serve to purge registrant of having violated statute prohibiting knowing destruction or mutilation of draft card, notwithstanding claim that Congress intended to provide a locus poenitentiae, since registrant's violation of statute was a fait accompli, as opposed to a locus poenitentiae where a violation is an
intent and, before any substantive crime is ever committed, defendant changes his mind about even intending to commit or participate in commission of crime. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Weissman, 434 F.2d 175
C.A.8 (Mo.),1970
Government's failure to comply with local board memorandum requiring that delinquency procedures be used prior to prosecution did not constitute a denial of due process, since delinquency procedures had been declared void and consequently memorandum was void; however, even under regulations, compliance by local board with delinquency regulations was not a condition precedent to prosecution. U.S.C.A.Const. Amend. 5; Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Thompson, 431 F.2d 1265
C.A.3.Pa.,1970
Claim for III-A classification on basis of extreme hardship to dependents involved type of factual determination and exercise of discretion by local board that should be subjected to a full administrative review within Selective Service System before registrant may challenge merits of local board's action as defense to criminal prosecution for failure to report for induction. Military Selective Service Act of 1967, §§ 4, 12, 50 U.S.C.A. App. §§ 454, 462.

C

U. S. v. Thompson, 431 F.2d 1265
C.A.3.Pa.,1970
Where initially state director indicated he was favorably disposed to granting local board authority to reopen registrant's classification, but after board's clerk contacted only registrant's wife and related her comments to state director, he advised local board to proceed with registrant's induction, and, had registrant been given opportunity to rebut wife's claim of nonsupport, director might have recommended a reopening, the one-sided fact-finding procedure sufficiently prejudiced registrant to invalidate his subsequent conviction for refusal to submit to induction. Military Selective Service Act of 1967, §§ 4, 12, 50 U.S.C.A. App. §§ 454, 462.

C

U. S. v. Thompson, 431 F.2d 1265
C.A.3 (Pa.),1970
Proof of prejudice is required to substantiate a claim that denial of basic procedural fairness in selective service process invalidates a subsequent conviction for refusal to submit to induction. Military Selective Service Act of 1967, §§ 4, 12, 50 U.S.C.A. App. §§ 454, 462.

C

U. S. v. Townsend, 431 F.2d 702

C.A.9.Cal.,1970
Where registrant had been ordered to report for a physical examination, but failed to report, and as a result had been declared delinquent, and where local board never removed registrant from his delinquency status even though he did eventually report for his physical, assumption was justified, absent evidence to contrary, that subsequent induction orders were accelerated by registrant's continuing status as a delinquent, and reversal of conviction for failing to report for induction was required. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A.App. § 462(a).

H

U. S. v. Wroblewski, 432 F.2d 422

C.A.9.Nev.,1970
Refusal to hear registrant's claim that he was a conscientious objector, in prosecution for failing to report for induction, was proper, where registrant had never presented such claim to his draft board and thus had failed to exhaust his administrative remedies. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Lloyd, 431 F.2d 160

C.A.9 (Cal.),1970
Failure of local board to order selective service registrant for medical interview was not prejudicial where registrant, charged with refusal to submit to induction, failed to reply to board's letter that he submit verifying letter from any treating physician. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Burns, 431 F.2d 1070

C.A.10.Colo.,1970
Where executive secretary of local board, when asked by registrant what recourse person had if he were a pacifist, undertook to advise registrant rather than to give him conscientious objector form and erroneously gave registrant to understand that his belief had to be based on religious training and belief derived from religious organization and that Catholic church was not such an organization, and advice so misled registrant that he believed it useless to file claim for exemption prior to amendment of conscientious objector statute, conviction for failure to report for induction could not stand. Military Selective Service Act of 1967, § 6(j), 50 U.S.C.A. App. § 456(j).

C

U. S. v. Eades, 430 F.2d 1300

C.A.4.N.C.,1970
Selective service registrant convicted of willful failure to submit to induction was not barred from raising defense that he was a conscientious objector on grounds that he failed to exhaust his administrative remedies, since issue of whether registrant was entitled to exemption from military service was solely one of statutory interpretation and not discretionary, so that judicial review would not be significantly aided by additional administrative decisions. Military Selective Service Act of 1967, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

C

U. S. v. Perrin, 431 F.2d 875

C.A.9.Cal.,1970
Challenge to use of troops in Vietnam is premature in prosecution for refusing induction. Military Selective Service Act of 1967, §§ 1-21, 50 U.S.C.A. App. §§ 451-471 and §§ 472, 473.

H

Caverly v. U. S., 429 F.2d 92

C.A.8.N.D.,1970
Conviction for refusal to submit to induction could not be sustained where draft board had rested denial of conscientious objector claim on four grounds, only one of which was sustainable. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

Forsting v. U. S., 429 F.2d 134
C.A.8.N.D.,1970
Even if proceedings before local board were regular, inasmuch as registrant exercised his right to appeal to state appeal board, validity of classification
must be judged on basis of the appeal board's action, when he was charged with failing to submit to induction into armed forces. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H
Forsting v. U. S., 429 F.2d 134
C.A.8.N.D.,1970
In reviewing action of state appeal board on appeal from conviction for failing to submit to induction into armed forces, Court of Appeals is limited to determination of whether there was basis in fact for the classification or whether registrant was denied basic procedural fairness. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H
Forsting v. U. S., 429 F.2d 134
C.A.8.N.D.,1970
Where registrant gave detailed, specific and supported allegations of bias on part of hearing officer of Department of Justice, but appeal board in classifying registrant I-A gave no indication that it considered or failed to consider recommendation of Department of Justice or the allegations of bias on part of hearing officer, registrant was denied basic procedural fairness before the appeal board and his conviction for failing to submit to induction into armed forces must be reversed. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C
U. S. v. Deere, 428 F.2d 1119
C.A.2.N.Y.,1970
It was defendant's 1-A classification by appeal board and not that by local board for which court had to find basis in fact in prosecution for refusing to report for and submit to induction into armed forces. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C
U. S. v. Seeverts, 428 F.2d 467
C.A.8.Minn.,1970
Registrant's claim to be conscientious objector, offered for first time at his trial for refusal to submit to induction, afforded no basis of attack upon validity of order to report for induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A.App. § 462.

H
U. S. v. Weintraub, 429 F.2d 658
C.A.2.N.Y.,1970
In attack on another's classification, deferment or postponement of call, draft registrant defending charge of refusing to submit to induction on ground of invalid order of call must show action by the board so lacking in support in the record as to be arbitrary and capricious. Military Selective Service Act of 1967, §§ 10, 12(a), 50 U.S.C.A. App. §§ 460, 462(a).

C
U. S. v. Supina, 428 F.2d 1226
C.A.9.Ariz.,1970
Conviction for refusal to submit to induction would be reversed where registrant was processed for induction as a "delinquent" by his local board after he had failed to report for his physical examination. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Wilbur, 427 F.2d 947
C.A.9.Cal.,1970
That local board had practice of sending student deferment request forms to registrants, but did not send one to defendant, did not require reversal of conviction for refusal to submit to induction where practice was not provided for by regulations and it did not appear that defendant knew of practice and relied on it.

H
U. S. v. Wilbur, 427 F.2d 947
C.A.9.Cal.,1970
Local board's failure to forward to examining station letter board had received from psychologist did not require reversal of conviction for refusal to submit to induction where psychologist was not medical doctor, letter did not disclose his qualifications, and letter was directed to defendant's conscientious objector claim.

C
U. S. v. Stow, 427 F.2d 891
C.A.9.Cal.,1970
Where registrant had been processed as "delinquent" after he failed to report for his physical examination, conviction for refusal to submit to induction was reversed. Military Selective Service Act of 1967, § 12, 50 U.S.C.A.App. § 462.

C
U. S. v. Perdue, 425 F.2d 1092
C.A.4.N.C.,1970
Local selective service board's failure to disclose basis for its action in returning registrant to I-A classification after he had been reclassified I-A-O required reversal of conviction for failure to report pursuant to classification of I-A.

C
U. S. v. Simpson, 426 F.2d 286
C.A.4.N.C.,1970
Where defendant's selective service file established a prima facie case of entitlement to I-O classification, failure to assign any reason for its rejection rendered invalid conviction for failure to report for induction based upon invalid I-A-O classification.

C
U. S. v. Simpson, 426 F.2d 286
C.A.4.N.C.,1970
If draft registrant made an oral claim at induction station for classification as a conscientious objector, officers at station should have brought this claim to attention of local board and in any event should have given registrant opportunity to make full written statement or have his oral statement reduced to writing.

C
U. S. v. Karlock, 427 F.2d 156
C.A.9.Or.,1970
Where draft registrant was entitled to some ruling or notice that would have enabled him to request a personal appearance before local draft board with respect to his claim for student classification, but that was not done, and selective service officer had suggested that registrant appeal to appeals board from decision of local board denying his conscientious objector classification, and such classification was denied, it was improper to convict registrant for refusing to be inducted.


Vasilj v. U. S., 425 F.2d 1134
C.A.9.Cal.,1970
Even if person who signed induction orders had not been authorized by board resolution to do so, such was not defense to charge of refusal to submit to induction, where no prejudice therefrom was shown. Military Selective Ser-

vice Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Enslow, 426 F.2d 544

C.A.9.Cal.,1970

Registrant who claimed exemption as conscientious objector had burden of establishing facts which would warrant classification other than I-A, and having failed to give local board any facts upon which claim could be determined, failure to grant exemption could not be raised as defense in prosecution for refusal to report for induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462; 28 U.S.C.A. § 1291.

H

U. S. v. Troutman, 425 F.2d 261

C.A.8.Mo,1970

Where registrant was over 26 years of age at time he was ordered to report for induction and, apart from local board's delinquency determination, would not be in group required to report for induction at time order was entered and local board was not entitled to make delinquency the basis for accelerated induction, registrant's conviction for failure to report for induction would be reversed. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Chaudron, 425 F.2d 605

C.A.8.Mo,1970

Ordinarily, errors in processing a registrant's civilian work which cause substantial prejudice to registrant constitute a valid defense to charge of refusal to report for military or civilian service. Errors not rising to the level of substantial prejudice are harmless. Military Selective Service Act of 1967, § 6(j), 50 U.S.C.A. App. § 456(j).

H

U. S. v. Chaudron, 425 F.2d 605

C.A.8.Mo,1970

Fact that local board's decisions adhered to recommendations made by state and national selective service offices in suggesting acceptable civilian employment for conscientious objector did not invalidate conviction for failure to report for civilian work in lieu of induction. Military Selective Service Act of 1967, § 6(j), 50 U.S.C.A. App. § 456(j).

H

U. S. v. Chaudron, 425 F.2d 605

C.A.8.Mo,1970

Regulation providing that if at all practicable members of local board should reside in jurisdictional area of their board is directory rather than mandatory; hence board consisting of members all of whom were residents of county in which board had jurisdiction was at least a de facto board and residential qualifications of members were not subject to collateral attack by way of defense to refusal-to-report indictment. Military Selective Service Act of 1967, § 6(j), 50 U.S.C.A. App. § 456(j).

H

U. S. v. Collins, 426 F.2d 765

C.A.5.La.,1970

Defendant who admittedly failed to report for or submit to induction was properly found guilty where there was ample basis for his classification, which he never challenged, and he never filed conscientious objector form or made showing of change in circumstances justifying reopening of circumstances, although he objected to Constitution and activities of board. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Ebey, 424 F.2d 376

C.A.10.Colo.,1970

Although registrant was confined in a jail at time he received notice of order to report for induction, registrant could

be convicted for wilful failure to comply with order, where registrant received order in ample time to advise board of circumstances of his confinement and, after release from jail, made no effort to advise board of his whereabouts or that it was impossible for him to report and submit to induction at time and place designated in order. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Cummins, 425 F.2d 646

C.A.8.Mo,1970

Conviction of failure to report for induction under Selective Service Act could not stand where neither State nor National Appeal Boards set forth the basis of its reversal of local board's conscientious objector classification. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Blakely, 424 F.2d 1043

C.A.9.Cal.,1970

Where it was not until after registrant had refused induction and thus committed his crime that he first presented by way of explanation anything resembling representation of conscientious objector beliefs, he was properly convicted of refusing to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

Smith v. U. S., 424 F.2d 267

C.A.9.Cal.,1970

Allegation that war in Vietnam was illegal was not defense to prosecution for failure or refusal to submit to induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

Olsen v. U. S., 423 F.2d 925

C.A.9.Cal.,1970

Failure of reservist, who was certified by his reserve unit to his draft board for priority induction because of his failure to attend monthly reserve meetings, to submit to preinduction examinations did not preclude reservist, under exhaustion of remedies rule, from challenging validity of his conviction for refusing to submit to induction on ground that he was deprived of due process of law by his draft board's refusal to consider his request to be reclassified as a conscientious objector. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Lansing, 424 F.2d 225

C.A.9.Cal.,1970

In very extreme cases, unconscionably misleading conduct by local board may be a valid defense to a criminal prosecution for refusing induction.

C

U. S. v. Browning, 423 F.2d 1201

C.A.9.Cal.,1970

Where registrant's induction was accelerated because of his refusal to carry Selective Service documents, registrant was entitled to reversal of conviction for refusing induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Jones, 423 F.2d 636

C.A.4.Va.,1970

There was no error in judgment of conviction for failure to submit to induction into armed forces, though defendant claimed to be conscientious objector and minister, where defendant did not make such claim before board and did not make it until day set for induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Zmuda, 423 F.2d 757

C.A.3.Pa.,1970
Where order for accelerated induction was based solely on defendant's delinquency in failing to report for physical examination, conviction for failing to report could not stand.

H

U. S. v. Zmuda, 423 F.2d 757

C.A.3.Pa.,1970
Alleged invalidity of registrant's classification is not available as defense to prosecution for failing to report for physical examination. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Zmuda, 423 F.2d 757

C.A.3.Pa.,1970
Where selective service registrant failed to avail himself of review procedures available within Selective Service System for rectification of what he considered to be improper denial of conscientious objector classification, allegedly erroneous classification could not be considered as defense to prosecution for failure to report for physical examination. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Phillips, 423 F.2d 1134

C.A.5.Miss.,1970
Where defendant offered to perform maintenance work at hospital in lieu of induction and was assigned as shipping and receiving clerk in warehouse, involving physical handling of goods, and defendant by written statement willingly assented to placement in warehouse, there was not a misassignment of work that would entitle defendant to judgment of acquittal on charge of failing to report for and remain in employment for 24 consecutive months in violation of provision of Military Selective Service Act of 1967. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Freeston, 423 F.2d 1311

C.A.7.Ill.,1970
Defendant was not guilty of refusal to submit to induction into armed forces, where ultimate induction order recited that it was based on initial induction order, and initial induction order was based on invalid delinquency regulation authorizing local draft boards to rescind deferments of delinquents providing that local board may declare registrant a delinquent whenever he has failed to perform any duty required of him other than duty to comply with order to report for induction or duty to comply with order to report for civilian work. Military Selective Service Act of 1967, § 12 as amended 50 U.S.C.A. App. § 462.

H

Huisinga v. U. S., 422 F.2d 635

C.A.7.Ill.,1970
Record in prosecution for failure to report for civilian work in lieu of induction established that registrant had exhausted his administrative remedies and was entitled to defend prosecution on ground of invalidity of his classification. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

Schutz v. U. S., 422 F.2d 991

C.A.5.Ala.,1970
Even if draft registrant was called out of turn, such could not justify refusal to report for induction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Ritchey, 423 F.2d 685

C.A.9.Wash.,1970

Fact that postponements of induction process, which were received because it had been determined that registrant should have psychiatric consultation and because "civil hold" was placed on him, were signed by clerk of court and that there had been no meeting of board to consider such postponements, did not bar indictment of registrant for his failure to subsequently report for and submit to induction. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Brossard, 423 F.2d 711

C.A.9.Cal.,1970

Although there was allegedly no showing that local board clerk who signed order to report for induction had been authorized to do so by local board pursuant to rule, no claim of error could be predicated thereon by registrant, found guilty of failure to report for induction, where there was uncontroverted proof that registrant had been classified 1A by board. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462; 28 U.S.C.A. § 1291.

U. S. v. Turner, 421 F.2d 1251

C.A.3.N.J.,1970

It is mandatory duty of draft board to supply registrant with requested form for making claim for conscientious objector status, and failure to perform such duty will vitiate conviction for failure to report for induction.

C

U. S. v. Crutchfield, 422 F.2d 399

C.A.4.Va.,1970

Contention, in support of reversal of conviction of failure to report for induction, that selective service registrant was entitled to exemption as student minister of Islamic religion was without foundation and did not require reversal where exemption was never before selective service board and was not claimed by registrant until he testified. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

Gregory v. U. S., 422 F.2d 1323

C.A.9.Cal.,1970

Conviction of refusal to submit to induction was required to be reversed where registrant's delinquency, failure to have classification card in his possession, was used to accelerate induction rather than to change classification. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Thomas, 422 F.2d 1327

C.A.9 (Cal.),1970

Conviction for refusal to submit to induction was required to be reversed, where induction order on which defendant was convicted resulted from his having been processed as a delinquent for failure to cooperate and complete his armed forces physical examination following his classification as I-A; having classified registrant delinquent, it was required to be assumed, absent showing to the contrary, that board followed invalid regulatory command. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Williams, 421 F.2d 600

C.A.10.Colo.,1970

Where order of induction was unauthorized, conviction for failure to report and submit to induction could not stand. Military Selective Service Act of 1967, § 12(a), 50 U.S.C.A. App. § 462(a).

H

U. S. v. Shermeister, 425 F.2d 1362

C.A.7.Wis.,1970

Federal district court had no power to itself consider conscientious objector form submitted by selective service re-

gistrant, convicted of wilfully refusing to submit to induction, and to pass on merits of request to reopen. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

H

U. S. v. Shermeister, 425 F.2d 1362

C.A.7.Wis.,1970

Where local board had unanimously voted to take no action on registrant's second conscientious objector application, filed one day prior to induction, and had not sent letter informing registrant what action the board took or that information submitted did not warrant reopening, board's inaction amounted to denial of registrant's due process rights and required reversal of conviction for refusal to submit to induction, notwithstanding that second application was not filed within ten days of date it was received. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462; U.S.C.A.Const. Amend. 5.

C

U. S. v. Williams, 420 F.2d 288

C.A.10.Okla.,1970

Generally, only two questions before court in case in which registrant asserts invalidity of given draft classification as defense to criminal indictment for disobeying induction order are whether board's decision is supported by any basis in fact, and whether there has been denial of basic procedural fairness. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

C

U. S. v. Williams, 420 F.2d 288

C.A.10.Okla.,1970

For draft registrant to assert invalidity of given classification as defense to criminal indictment for disobeying induction order, he must first seek to have such classification set aside administratively by exhausting all of his administrative remedies, and generally, failure to do so constitutes waiver of right to question validity of such classification in any subsequent proceeding. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

C

U. S. v. Williams, 420 F.2d 288

C.A.10.Okla.,1970

Rule requiring draft registrant, who asserts invalidity of given classification as defense to criminal indictment for disobeying induction order, to first seek to have such classification set aside administratively by exhausting all of his administrative remedies can be relaxed under unusual and exceptional circumstances. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

C

U. S. v. Williams, 420 F.2d 288

C.A.10.Okla.,1970

If it can be determined that local draft board failed to afford registrant due process, its action ordering him to report for induction is invalid and conviction for refusal to submit to such induction must be reversed. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

U. S. v. Gillette, 420 F.2d 298

C.A.2.N.Y.,1970

Allegations that a particular employment of the armed services is in violation of Constitution, international treaties or a moral code do not raise a defense to a prosecution for failure to report for induction into armed forces. Universal Military Training and Service Act, §§ 6(j), 12 as amended 50 U.S.C.A. App. §§ 456(j), 462.

U. S. v. Gillette, 420 F.2d 298

C.A.2.N.Y.,1970
Registrant could not successfully challenge legality of Vietnam War in prosecution for failure to report for induction into armed forces. Universal Military Training and Service Act, §§ 6(j), 12 as amended 50 U.S.C.A. App. §§ 456(j), 462.

C

U. S. v. Hulphers, 421 F.2d 1291

C.A.9.Cal.,1969
Even if local board did not adopt a resolution authorizing its clerk to sign induction orders, this would not preclude registrant's conviction for refusing to submit to induction, in absence of showing of prejudice. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

Lockhart v. U. S., 420 F.2d 1143

C.A.9.Cal.,1969
Although registrant's selective service file contained a security questionnaire form on which registrant's name was typed but which was otherwise blank and this form was not among papers initially sent to draft board by induction center following registrant's refusal to submit to induction, in view of fact that registrant himself testified that during induction process he refused to complete certain forms, stronger inference was that registrant, who claimed denial of opportunity to complete form, simply refused to complete the security questionnaire; accordingly, registrant could claim no prejudice from fact that questionnaire was not completed.

H

U. S. v. Isenring, 419 F.2d 975

C.A.7.Wis.,1969
Where draft registrant was made sufficiently aware that his request to reopen classification had been denied, and no prejudice was shown, board's failure to send letter notifying him of refusal to reopen classification was not ground for reversal of conviction for failure to report for civilian work.

H

U. S. v. Boardman, 419 F.2d 110

C.A.1.Mass.,1969
Fact that defendant's conduct in failing to report for civilian work in compliance with order of selective service board was allegedly based upon bona fide belief in illegality of government's conduct or based upon constitutional claims did not preclude criminal conviction. Military Selective Service Act of 1967, § 12, 50 U.S.C.A. App. § 462.

C

U. S. v. Martin, 416 F.2d 44

C.A.10.N.M.,1969
Invalidity of selective service classification may be raised as a defense to prosecution for refusal to submit to induction. Universal Military Training and Service Act, §§ 10(b) (3), 12 as amended 50 U.S.C.A. App. §§ 460(b) (3), 462.

H

Robertson v. U. S., 417 F.2d 440

C.A.5.Miss.,1969
It is of essence of validity of orders of local board and of crime of disobeying them that all procedural requirements be strictly and faithfully followed, and showing of failure to follow them with strictness and fidelity will invalidate order of board and conviction based thereon. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

U. S. v. Grier, 415 F.2d 1098

C.A.4.N.C.,1969
Where draft board denied due process by depriving registrant of his right of appeal by failing to treat his classifica-

tion as reopened, order to report for induction was void and conviction for failing to report for induction could not stand. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

H

U. S. v. Owens, 415 F.2d 1308

C.A.6.Ky.,1969

Legality or nonlegality of conduct of American armed forces in Vietnam war was no defense to refusal to be inducted. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

H

U. S. v. Owens, 415 F.2d 1308

C.A.6.Ky.,1969

Challenge to legality of particular war is premature when raised as defense to charge of violation of Selective Service Act. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

H

U. S. v. Owens, 415 F.2d 1308

C.A.6.Ky.,1969

Legality of United States involvement in Vietnam and alleged violations of international law and treaties may not validly be raised for consideration by a constitutional court by refusal to obey induction orders and by interposing international treaty obligations as defense in criminal prosecution for refusal to be inducted. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

U. S. v. Mizrahi, 417 F.2d 246

C.A.9.Cal.,1969

Where registrant might not have been convicted of refusing to submit to induction if appeal board had followed then-applicable procedures for obtaining Department of Justice recommendation as to whether to classify registrant as conscientious objector, appeal board's failure to comply with applicable regulations was prejudicial.

C

U. S. v. Milliken, 416 F.2d 676

C.A.9 (Cal.),1969

If registrant has exhausted all administrative remedies he may set up invalidity of induction order as a defense to a criminal prosecution. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

H

Kemp v. U. S., 415 F.2d 1185

C.A.5.Ga.,1969

Any racial or other discrimination in composition of selective service board would not preclude conviction of defendant for failure to submit to induction. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A.App. § 462.

H

Kemp v. U. S., 415 F.2d 1185

C.A.5.Ga.,1969

Conviction of defendant for refusal to submit to induction was not improper on ground that induction would compel him to participate in commission of crimes against international peace and security and war crimes, inasmuch as congressional power to raise army is distinct from use made by Executive of those inducted. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A App. § 462.

H

U. S. v. Rehfield, 416 F.2d 273

C.A.9 (Ariz.),1969

Claims that United States, by its conduct of war in Vietnam, was violating various treaties to which it was a signat-

ory and that draft law was in aid of claimed violations, even if true, were not defense to charges of knowing destruction of draft card and of knowing failure to possess draft card. Universal Military Training and Service Act, §§ 10, 12(b) (3) as amended 50 U.S.C.A. App. §§ 460, 462(b) (3).

H

U. S. v. Brooks, 415 F.2d 502

C.A.6.Tenn.,1969

Failure to exhaust administrative remedies precluded selective service registrant who failed to appeal I-A classification from raising defenses to charge of refusal to submit to induction of improper classification or that board which ordered his induction was invalidly composed. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A.App. § 462.

H

U. S. v. Brooks, 415 F.2d 502

C.A.6.Tenn.,1969

Although some members of local board which ordered registrant to report for induction may have lacked proper residential qualifications, board was in all events a de facto body whose action was not subject to collateral attack on appeal from conviction for failure to submit to induction. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A.App. § 462.

C

U. S. v. Owen, 415 F.2d 383

C.A.8.Mo,1969

Where defendant, though entitled to exemption as full-time divinity student at time local board refused to reopen his classification, had left divinity school and had abandoned his preparation for ministry when he was classified I-A by appeal board over one year later, Court of Appeals would not be required to reverse his conviction for willfully refusing induction into Armed Forces for board's failure to reopen classification. Universal Military Training and Service Act, §§ 6(g), 12 as amended 50 U.S.C.A. App. §§ 456(g), 462.

C

U. S. v. Owen, 415 F.2d 383

C.A.8.Mo,1969

Where adverse commentary by minister unconnected with Selective Service System after viewing file of defendant enrolled in divinity school was made part of defendant's file and considered by appeal board without defendant's being apprised of the information or given opportunity to rebut it, defendant was denied a basic procedural right and denial could not be corrected by giving defendant opportunity to rebut the information before trial court on charge of willfully refusing induction. Universal Military Training and Service Act, §§ 6(g), 12 as amended 50 U.S.C.A. App. §§ 456(g), 462.

C

U. S. v. Owen, 415 F.2d 383

C.A.8.Mo,1969

Courts have no role in classification of registrants and deprivation of basic procedural right cannot be cured before trial court.

C

U. S. v. Ellis, 415 F.2d 1122

C.A.6.Tenn.,1969

Where defendant failed to apply for conscientious objector status until after he had been ordered to report for induction and his application for conscientious objector status offered no facts tending to show that claimed conscientious objector beliefs matured after he had received notice to report for induction, his conviction for refusing induction would be affirmed. Universal Military Training and Service Act, §§ 1-21 as amended 50 U.S.C.A. App. §§ 451-471, and 472, 473.

H

U. S. v. Smogor, 415 F.2d 296

C.A.7.Ind.,1969

Where defendant failed to appeal his I-A classification, he failed to exhaust an available administrative remedy and was not entitled to raise conscientious objector defense in prosecution for failure to report for induction.

H

U. S. v. Smogor, 415 F.2d 296

C.A.7.Ind.,1969

Defendant who did not communicate with local board concerning his conscientious objector views until after failure to report for induction could not defend on theory that local board improperly refused to reopen his classification.

C

U. S. v. Ronne, 414 F.2d 1340

C.A.9.Cal.,1969

Where there was basis in fact for Board of Appeals' conclusion that ministerial activity of registrant, who at one time was a pioneer minister in Jehovah's Witnesses, was discontinued to such an extent that he not only had abandoned his status as a pioneer but had, in other respects, dropped off his ministerial activity to the point where there was no reasonable basis to classify him as a minister of religion, refusal to classify him as minister of religion rather than as I-O conscientious objector was not arbitrary and did not invalidate conviction for failing to report for assigned civilian work in lieu of induction.

U. S. v. Davis, 413 F.2d 148

C.A.4.N.C.,1969

Where a selective service registrant has not been afforded by his draft board in formation or assistance required to be given him to assist him in deciding whether to appeal administratively, he is not subsequently barred in a criminal prosecution from questioning the classification. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A App. § 462.

U. S. v. Davis, 413 F.2d 148

C.A.4.N.C.,1969

An essential element of guilt in refusing induction is validity of the I-A classification; and when that classification is assailable, district judge has duty to examine file to see if the classification is founded upon some basis in fact; and where no examination occurs in the district court in a case where it is required, the validity of the I-A classification is simply undetermined, and the conviction cannot stand. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

H

U. S. v. Powers, 413 F.2d 834

C.A.1.Mass.,1969

Registrant's failure to exercise his administrative remedies when his hardship deferment was revoked precluded consideration, in his prosecution for failure to report for induction, whether board had basis in fact for revocation. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

U. S. v. Pritchard, 413 F.2d 663

C.A.4.N.C.,1969

Registrant who was furnished copy of recommendation of Department of Justice with respect to his application for conscientious objector status as well as resume of investigation, was granted 30 days in which to correct any mistakes and sent rebuttal which appeal board was required to consider was not entitled to reversal of conviction for refusing to be inducted into Armed Forces on ground that the department's recommendation contained factual errors

which made his I-A classification arbitrary and capricious. Universal Military Training and Service Act, §§ 6(j), 12(a) as amended 50 U.S.C.A. App. §§ 456(j), 462(a).

U. S. v. Troutman, 412 F.2d 810

C.A.8.Mo,1969

Ignorance of selective service law is no excuse for failure to comply with the law. Universal Military Training and Service Act, §§ 12, 15(a, b), as amended 50 U.S.C.A. App. §§ 462, 465(a, b).

Straight v. U. S., 413 F.2d 263

C.A.9.Cal.,1969

Where special form for conscientious objectors was not filed until after registrant had refused induction, his asserted reliance on board's subsequent action thereon was not relevant to propriety of his conviction for refusing to submit to induction. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

Schmitt v. U.S., 413 F.2d 219

C.A.5.Fla.,1969

Fact that offender may be answerable to court-martial for his civilian offenses does not absolve him before civilian courts. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462; 18 U.S.C.A. § 3231.

Schmitt v. U.S., 413 F.2d 219

C.A.5.Fla.,1969

In prosecution of National Guardsman who refused to submit to induction after National Guard had certified his performance as unsatisfactory, district court was not foreclosed from exploring allegations that certification of unsatisfactory performance was result of personal bias on part of guardsman's superior officers. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

Schmitt v. U.S., 413 F.2d 219

C.A.5.Fla.,1969

Minor departures from ordinary induction procedure are no defense to charge of willful failure to submit to induction. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

U. S. v. Pratt, 412 F.2d 426

C.A.6.Ky.,1969

Claim that Vietnam war is illegal and in violation of international law was no defense to prosecution for failure to submit to induction into armed services. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. § 462(a).

Shoemaker v. U. S., 413 F.2d 274

C.A.9.Cal.,1969

Where registrant requested conscientious objector classification and did not seek ministerial classification or request a reopening of his classification, registrant was not entitled to acquittal for failure to report to assigned civilian work as ordered by his local board on ground that he was entitled to a ministerial classification. Universal Military Training and Service Act, §§ 6(g), 12(a) as amended 50 U.S.C.A. App. §§ 456(g), 462(a); 18 U.S.C.A. § 4208(a) (2).

Flenghi v. U. S., 416 F.2d 404

C.A.9.Cal.,1969

Error of local board in failing either to forward to Appeal Board Selective Service System form 109, certifying that defendant was enrolled as full-time student, or to recall defendant's file from the Appeal Board for reopening (with

result that no consideration was given to the fact reflected in the certificate prior to issuance of order to report for induction) was not harmless, notwithstanding fact that information received after defendant refused to submit to induction indicated that form 109 may have been erroneously issued.

H

U. S. v. Smogor, 411 F.2d 501

C.A.7.Ind.,1969

Defendant, in prosecution for refusal to report for induction, was precluded from raising correctness of his classification as a defense, where he not only failed to appeal his classification but failed to report for induction and, therefore, afforded himself no opportunity to refuse to submit to induction, which is a prerequisite for presenting classification issue. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

H

U. S. v. Smogor, 411 F.2d 501

C.A.7.Ind.,1969

Contention of defendant that no distinction should have been made between his own failure to report for induction and a refusal to submit to induction because no administrative remedy was available at induction center and that he should not, therefore, have been precluded from raising correctness of his classification as a defense was without merit since a physical examination is an essential step in the administrative process and had defendant reported for induction, he could have been given an examination, thus raising possibility that he might have been found unfit. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

Carson v. U. S., 411 F.2d 631

C.A.5.Ga.,1969

Recognized defenses to prosecution for refusal to be inducted include there being no "basis in fact" for the classification and a failure by the draft board to follow the selective service regulations or its arbitrary or capricious action. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

C

U. S. v. Pence, 410 F.2d 557

C.A.8.Minn.,1969

Defendant in prosecution for failure to submit to induction could attack his classification although he had not exhausted his administrative remedies in that he had not submitted to medical processing, where defendant claimed right to conscientious objector classification and that his reclassification was brought about unlawfully for punitive and extrinsic reasons unrelated to merits of granting or continuing exemption. Universal Military Training and Service Act, § 10(b) (3) as amended 50 U.S.C.A. App. § 460(b) (3).

H

Davis v. U. S., 410 F.2d 89

C.A.8.Iowa,1969

Where first order for induction was cancelled and registrant made out prima facie case for reclassification as conscientious objector, local board's denial of registrant's request to personally appear before board to demonstrate the depth and quality of his beliefs and issuance of second order of induction were improper and registrant's conviction for wilfully refusing induction would be set aside. Universal Military Training and Service Act, § 6(j) as amended 50 U.S.C.A.App. § 456(j).

C

Mizrahi v. U. S., 409 F.2d 1219

C.A.9.Cal.,1969

Where registrant's written request to reopen his classification was timely filed, and new information furnished by registrant in support of his claim as a conscientious objector made prima facie case for placement in I-O classification, local board's refusal to reopen denied registrant due process and required reversal of his conviction for refusing in-

duction. 28 U.S.C.A. §§ 1291, 1294; Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

C

Kokotan v. U. S., 408 F.2d 1134

C.A.10.Okla.,1969

Local board's failure to mail delinquent registrant report to state director for transmittal to United States Attorney until 33 days after registrant failed to report and submit to induction did not bar prosecution for violating Universal Military Training and Service Act. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

Battiste v. U. S., 409 F.2d 910

C.A.5.Ga.,1969

Where selective service registrant had received induction order, subsequent letter sent to his local draft board notifying them that he was a father, that his wife was pregnant and would deliver within a few weeks, was too late for him to obtain reclassification from I-A into class III-A on basis of wife's pregnancy, and thus procedural irregularity in clerk's failure to transfer such information to local board was not prejudicial. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

Battiste v. U. S., 409 F.2d 910

C.A.5.Ga.,1969

Although decision that selective service registrant's marriage after mailing of order to report for induction did not amount to such a change in status as to justify reopening classification should have been made in the first instance by local board, failure of board to do so was not prejudicial where local board would have been without authority to reopen his classification. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

H

U. S. v. Tantash, 409 F.2d 227

C.A.9.Cal.,1969

Where record established that alien, with minimal familiarity with English language, was fairly processed and received notice of his I-A draft classification, and made no request for change of classification, but failed twice to report for induction, he was properly convicted of failure to report for and submit to induction into armed forces, notwithstanding his allegation of lack of knowledge of his rights and obligations and of courses open to him.

C

Howze v. U. S., 409 F.2d 27

C.A.9.Cal.,1969

Although registrant's counsel failed to raise issue of refusal of local board to reopen classification in prosecution for refusal to submit to induction, issues could be considered since if local board erred in not reopening, failure of trial court to remand would be plain error affecting one of registrant's substantial rights; and further it was not certain that defendant had failed to raise issue at trial. Fed.Rules Crim.Proc. rule 52(b), 18 U.S.C.A.

C

Rhyne v. U. S., 407 F.2d 657

C.A.7.Ill.,1969

Even a showing by defendant of a minor departure from prescribed procedure will not provide a valid defense to a charge of refusal to submit to induction where paramount requirements of induction process have been complied with.

C

Fleming v. U. S., 406 F.2d 1247

C.A.5.Ala.,1969

Defendant charged with failure to report for induction into armed forces was not entitled to have question of correctness of his 1-A classification considered in federal prosecution on ground that, since he did not have counsel, he could not have knowingly and intelligently waived his administrative remedies within selective service system. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462; U.S.Ct. of App. 5th Cir. Rule 18, 28 U.S.C.A.

Sellers v. U. S., 406 F.2d 465

C.A.5.Ga.,1969

Conviction for failing to comply with an order of local Selective Service Board to report for and submit to induction into Armed Forces of the United States was not subject to attack on ground that moral waivers from civilian authorities had not been obtained. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A.App. § 462.

Robertson v. U. S., 404 F.2d 1141

C.A.5.Miss.,1968

It is of essence of validity of orders of local board and of crime of disobeying them that all procedural requirements be strictly and faithfully followed, and showing of failure to follow them with strictness and fidelity will invalidate order of board and conviction based thereon. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A.App. § 462(a).

Vaughn v. U. S., 404 F.2d 586

C.A.8.Neb.,1968

That draft registrant failed to exhaust administrative remedies did not preclude judicial review of his classification in prosecution for failing to comply with local board order to report for induction. 50 U.S.C.A. App. § 462.

Daniels v. U. S., 404 F.2d 1049

C.A.9.Cal.,1968

A conscientious objector may not deny his local selective service board's right to require him to perform any civilian work whatever, refuse to make any choice as to willingness to perform among several kinds of work so offered him, and then, on his prosecution for failing to perform the particular work designed by the board, undertake to set up defense that he regarded the work as not being appropriate. Universal Military Training and Service Act, §§ 6(j), 12(a) as amended 50 U.S.C.A. App. §§ 456(j), 462(a).

Ashton v. U. S., 404 F.2d 95

C.A.8.Mo,1968

Defendant lacked standing to raise question of legality of use of draftees in Vietnam and the Vietnam War itself, where he had received no order to go to Vietnam. Universal Military Training and Service Act, § 12 as amended 50 U.S.C.A. App. § 462.

Cooper v. U. S., 403 F.2d 71

C.A.10 (Colo.),1968

It was not function of court in prosecution for mutilation of draft card to entertain challenges to legality or wisdom of executive branch in sending troops abroad or to any particular reason as presented by motions attacking constitutionality of Universal Military Training and Service Act as motions sought judicial review of political questions which were not within jurisdiction of court and were not a defense to charge. Universal Military
Training and Service Act, § 12(b) (3) as amended 50 U.S.C.A.App. § 462(b) (3).

U. S. v. Purvis, 403 F.2d 555

C.A.2.N.Y.,1968
Scope of judicial review of validity of selective service classification of defendant in criminal prosecution for refusal to submit to induction is a narrow one, but whether there was sufficient basis in fact for classification and whether hearing was a fair one were questions of law on which court must pass with independent judgment. Universal Military Training and Service Act, § 12(a) as Amended 50 U.S.C.A. App. § 462(a).

U. S. v. Purvis, 403 F.2d 555
C.A.2.N.Y.,1968
Since there was no proper basis in fact for registrant's classification as exempt from combat service alone rather than from all military service, his conviction for refusing induction into armed forces could not stand. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

H
Haven v. U. S., 403 F.2d 384
C.A.9.Cal.,1968
While personal interest, bias or prejudice may disqualify local draft board member from participating in particular case, charge of disqualification cannot wilfully be withheld for assertion for first time as defense to criminal prosecution. Universal Military Training and Service Act, §§ 1 et seq., 10(b) as amended 50 U.S.C.A. §§ 451 et seq., 460(b); U.S.C.A.Const. Amend. 6.

C
Lurie v. U. S., 402 F.2d 297
C.A.5.Tex.,1968
Defendant as a militiaman was entitled to local selective service board hearing on his claim of conscientious objection prior to his perfunctory induction order in accordance with regulation and without hearing on his conscientious objector claim, and his conviction for refusing to submit to induction could not stand. Universal Military Training and Service Act, §§ 6(c) (2) (A, D), (j), 12, 12(a) as amended 50 U.S.C.A. App. §§ 456(c) (2) (A, D), (j), 462, 462(a).

C
Oshatz v. U. S., 404 F.2d 9
C.A.9.Cal.,1968
Where draft registrant, who was prosecuted for refusing induction into armed forces in violation of Universal Military Training and Service Act, did not claim classification as a conscientious objector until after he was ordered to report for induction, it was incumbent on him to allege and demonstrate that his views as a conscientious objector had crystalized after receipt of induction notice. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

C
Oshatz v. U. S., 404 F.2d 9
C.A.9.Cal.,1968
Where government conceded that "loyalty" portion of induction proceedings of draft registrant was not conducted in conformity with regulations, conviction of registrant for having refused induction into armed forces in violation of Universal Military Training and Service Act was required to be reversed. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A. App. § 462(a).

C
Palmer v. U. S., 401 F.2d 226
C.A.9 (Wash.),1968
It is not expecting too much of a Selective Service registrant to assume that he will accept the invitation to inform himself as to courses open to him concerning his classification before engaging in conduct he knows to be criminal in character. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

Soranno v. U. S., 401 F.2d 534
C.A.9.Cal.,1968
Fear of registrant, whose nose had been operated upon, that he would be "socked" in the nose at induction center was not a sufficient excuse for his failure to report and to go "to the brink" of induction. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462; 18 U.S.C.A. § 3231; Fed.Rules Crim.Proc. rule 37(a) (1, 2), 18 U.S.C.A.

C
U. S. v. Carroll, 398 F.2d 651
C.A.3.N.J.,1968
Registrant, who had exhausted his administrative remedies, could properly assert defense of no basis in fact in criminal prosecution for failure to report for induction into military service. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.App. § 462(a).

C
U. S. v. Grundy, 398 F.2d 744
C.A.3.N.J.,1968
Failure to appeal from a 1-A classification by draft board waived defendant's right to challenge validity of 1-A classification in his criminal prosecution for failure to submit to induction. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.App. § 462(a).

H
U. S. v. Prince, 398 F.2d 686
C.A.2 (N.Y.),1968
Defendant could not successfully defend himself in prosecution for failure to report for induction into armed services by challenging use of selective service system to raise troops for Vietnam conflict.

C
Yeater v. U. S., 397 F.2d 975
C.A.9.Cal.,1968
As defendant did not appeal any of his I-A classifications through appellate review channels of selective service system, he was precluded from claiming as defense to criminal prosecution that there was no basis in fact for the classification. Universal Military Training and Service Act, s 12, 50 U.S.C.A. App. s 462.

H
Nelloms v. U. S., 399 F.2d 295
C.A.5.Ga.,1968
Claimed systematic exclusion of Negroes from selective service board service did not invalidate conviction for failure to comply with induction order. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.App. § 462(a).

H
U. S. v. Price, 397 F.2d 384
C.A.7.Ill.,1968
Even if defendant's letter stating that he had started vacation pioneering as minister of Jehovah's Witnesses intending to become fulltime pioneer was received by selective service board but lost or misfiled, resulting failure to consider letter did not constitute irregularity of substance or import or denial of procedural due process invalidating defendant's conviction for knowingly refusing and failing to report to local board for instructions.
Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

H
Sumrall v. U. S., 397 F.2d 924
C.A.5.Miss.,1968

Selective Service registrant lacked right to use as a legal defense for his refusal to be inducted into armed services complaint that pending misdemeanor charges against him had been dismissed, and prosecuting authorities had clear right, in their discretion, to dismiss the charges. Universal Military Training and Service Act, § 11, 50 U.S.C.A. App. § 462.

H

Sumrall v. U. S., 397 F.2d 924

C.A.5.Miss.,1968

Fact that city attorney, who was also appeal agent for local draft board, might have dismissed, or caused dismissal, of misdemeanor charges against registrant with result that registrant thereafter became subject to induction into armed services was immaterial, regardless of whether city attorney knew that dismissal would render registrant liable to military service, where attorney knew that dismissal would render registrant liable to military service, where attorney was not acting in his capacity as an appeal agent, and no appeal was pending. Universal Military Training and Service Act, § 11, 50 U.S.C.A. App. § 462.

U. S. v. McKart, 395 F.2d 906

C.A.6.Ohio,1968

Selective Service registrant who had not appealed his classification through Selective Service procedures was not entitled to raise defense, upon wholly undisputed facts, that he had been wrongfully classified when he was tried for failure to submit to induction into armed forces. Universal Military Training
and Service Act, § 6(o), 50 U.S.C.A. App. § 456(o).

C

Mahan v. U. S., 396 F.2d 316

C.A.10.Colo.,1968

Ordinarily, failure of registrant to question classification by local draft board within administrative processes established by Congress precludes a collateral challenge of that determination in court in prosecution for wilfully and knowingly failing to perform a duty required of him under the Universal Military Training and Service Act. Universal Military Training and Service
Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

Mahan v. U. S., 396 F.2d 316

C.A.10.Colo.,1968

Defendant, who unjustifiably failed to exhaust his administrative remedies when he was classified by local draft board as a conscientious objector instead of as a minister, was properly precluded by trial judge from collaterally challenging his conscientious objector classification in prosecution for wilfully and knowingly failing to perform a duty required of him under the Universal Military Training and Service Act. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

Campbell v. U. S., 396 F.2d 1

C.A.5.Miss.,1968

All contentions of appellant, who was convicted for failure to obey order of his local selective service board to report for civilian work in lieu of induction into armed forces, with respect to alleged violations of his constitutional rights were foreclosed by his failure to exhaust administrative remedies.

H

Edwards v. U. S., 395 F.2d 453

C.A.9.Cal.,1968

Where it was clear from evidence that registrant had indicated he would refuse
induction, it was no defense that alleged minor departures from the ordinary induction procedure occurred, where

the essential requirements of the induction process had been properly met. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462; 28 U.S.C.A. §§ 1291, 1294.

Clay v. U.S., 397 F.2d 901

C.A.5.Tex.,1968

Selective service registrant's remedy is in defense to criminal prosecution if he declines induction, and habeas corpus if he accepts induction but is still aggrieved by classification process. Universal Military Training and Service Act, § 10(b) (3) as amended 50 U.S.C.A. App. § 460(b) (3).

Langhorne v. U. S., 394 F.2d 129

C.A.9.Cal.,1968

Registrant's objection that work to which he was assigned in lieu of military service was not appropriate was not timely where first made after registrant had taken position throughout administrative hearing and at trial for violation of universal military training and service act that he was not going to perform any work in lieu of military service. Universal Military Training and Service Act, § 6(j) as amended 50 U.S.C.A. App. § 456(j).

Hunter v. U. S., 393 F.2d 548

C.A.9.Wash.,1968

The I-A classification of selective service registrant who refused to be
inducted was factually unassailable unless local board or appeal board was required to find that registrant was entitled to exemption at time he requested an exemption from both combatant and noncombatant training and service. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

Magee v. U. S., 392 F.2d 187

C.A.1.Mass.,1968

Defendant who failed to pursue his administrative remedies in selective service process could not complain of his draft classification on appeal from conviction for failing to report for civilian work in lieu of induction into armed forces after being classified as a conscientious objector.

Nickerson v. U. S., 391 F.2d 760

C.A.10 (Kan.),1968

Fact that registrant's actual induction would probably have been postponed until such time as felony charges pending against him were terminated if registrant had reported for pre-induction physical examinations and for induction as ordered was not a valid defense to prosecution for failure to report. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

DuVernay v. U. S., 394 F.2d 979

C.A.5.La.,1968

Failure to exhaust administrative remedies foreclosed consideration of contentions that indictment for refusal to be inducted was invalid on ground
that Negroes had been systematically excluded from membership on local board and local board's handling of case reflected denial of due process or that trial judge erred when he refused to permit questions concerning Ku Klux affiliation of chairman of local board. Universal Military Training and Service Act, §§ 10(b) (3), 12, 50 U.S.C.A.App. §§ 460(b) (3), 462.

Moorman v. U. S., 389 F.2d 27

C.A.5.Tex.,1968

Conviction of violation of the Universal Military Training and Service Act for failures to report for preinduction physical examination was not subject to attack on ground that local board waived declaration of delinquency when it failed to declare defendant delinquent at time acts were committed, that board failed to advise defendant of consequences of his acts and failed to give him an opportunity to rectify the acts since declaration of delinquency had no relevance to charge, printed form ordering defendant to report expressly stated
that failure to report would subject him to a fine and imprisonment and repeated opportunities were provided for defendant to rectify his default. Universal Military Training and Service Act, § 1 et seq., 50 U.S.C.A.App. § 451 et seq.

H

U. S. v. Mientke, 387 F.2d 1009

C.A.7.Wis.,1967

One accused of crime of failure to report for civilian duty may raise defense that administrative body acted outside of its power during one of steps leading to order which accused refused to obey. Universal Military Training and Service Act, §§ 10, 12, 50 U.S.C.A. App. §§ 460, 462.

U. S. v. Freeman, 388 F.2d 246

C.A.7.Wis.,1967

A selective service registrant who submits to induction may, after induction, challenge the legality of his classification by habeas corpus while one who refuses to submit to induction may challenge legality of his classification as a defense to a criminal prosecution for failure to submit to induction. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Freeman, 388 F.2d 246

C.A.7.Wis.,1967

Where one who has submitted to induction into the armed forces challenges legality of his selective service classification by habeas corpus and where one who has refused to submit to induction challenges legality of his classification as a defense in criminal prosecution for refusal to submit to induction, the judicial function in reviewing the classification is closely circumscribed to the narrow questions of whether the registrant has been denied due process, or whether the selective service board's classification is without a basis in fact. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Freeman, 388 F.2d 246

C.A.7.Wis.,1967

In a prosecution for refusing to submit to induction into the armed forces, the scope of judicial inquiry into the administrative proceedings leading to registrant's classification is very limited and the range of review is the narrowest known to the law and neither the clearly erroneous nor the substantial evidence rule applies. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

U. S. v. Freeman, 388 F.2d 246

C.A.7.Wis.,1967

Erroneous failure to reopen selective service registrant's classification upon his submission of conscientious objector form presenting new information was not cured by the de novo consideration of his classification made during his trial on charge of refusing to submit to induction. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

C

Kidd v. U. S., 386 F.2d 422

C.A.10.Kan.,1967

Claim of selective service registrant that he believed that he had a classification as minister went only to his intent in prosecution for failure to report for civilian work in lieu of military service. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

Quaid v. U. S., 386 F.2d 25

C.A.10 (Okla.),1967

Where local board failed to consider delinquent reservist's claim of conscientious objector before ordering him to report for induction, the District Court in which reservist was prosecuted for refusing to submit to induction into the Armed Forces erred in not remanding case to local board with instructions to consider and act upon reservist's claim to be a conscientious objector and in submitting case to jury, and reservist's conviction would be set aside and case would be remanded to the District Court to dismiss indictment and to direct the local board to act upon reservist's claim.

Universal Military Training and Service Act, § 6(j) as amended 50 U.S.C.A. App. § 456(j).

H

Dunn v. U. S., 383 F.2d 357

C.A.1.Mass.,1967

Defendant who knowingly failed to exercise his right of appeal from 1-A classification by local selective service board failed to exhaust his regular administrative remedies so that such classification was unreviewable. Universal Military Training and Service Act, §§ 10(b) (3), 12, 50 U.S.C.A.App. §§ 460(b) (3), 462.

Wills v. U. S., 384 F.2d 943

C.A.9.Wash.,1967

In prosecution for refusal to submit to induction into Armed Forces failure of defendant to exhaust administrative remedies by taking of an appeal through the selective service system when he was reclassified 1-A as a delinquent for refusal to carry a draft card did not foreclose defendant from attacking his reclassification on grounds that the act of destroying his draft card was symbolic speech of protest where reclassification of defendant preceded delinquency notice. Universal Military Training and Service Act, § 12(b) (3) as amended 50 U.S.C.A. App. § 462(b) (3).

Wills v. U. S., 384 F.2d 943

C.A.9.Wash.,1967

Irregularities or omissions in classification of registrant by draft board which do not result in prejudice to such registrant are to be disregarded in subsequent prosecution for refusal to submit to induction into the Armed Forces.

C

U. S. v. Jones, 382 F.2d 255

C.A.4.Md.,1967

In criminal prosecution for refusal to obey an order of Selective Service Board, scope of judicial inquiry into validity of Board's decision is very limited. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

C

U. S. v. Griffin, 378 F.2d 899

C.A.2.N.Y.,1967

Officer who was in charge of induction center and who explained serious consequences of registrant's refusal to submit to induction without instructing that registrant might still be able to present his conscientious objection claim to the local board had said nothing wrong, and failure to so instruct did not entitle registrant to reversal of conviction for refusing to submit to induction. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

Salamy v. U. S., 379 F.2d 838
C.A.10.Okla.,1967
Invalid selective service classification may be raised as defense to prosecution for failure or refusal to submit to induction. Universal Military Traning and Service Act, § 12, 50 U.S.C.A. App. § 462.

H

Thompson v. U. S., 380 F.2d 86
C.A.10.Okla.,1967
Invalid classification may be raised as defense to prosecution for failure to submit to induction. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

H

Thompson v. U. S., 380 F.2d 86
C.A.10.Okla.,1967
Where plaintiff had been first classified 1-A over two months after his baptism in certain church, he did not question his classification until more than month after he had been found acceptable and ordered to report for induction and he offered no justification for his failure to appeal on basis that he was a conscientious objector, he was not entitled to assert an invalid classification as defense to charge of refusal to submit to induction into armed forces. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

H

Capson v. U. S., 376 F.2d 814
C.A.10.Utah,1967
Defendant who had failed to challenge his classification by local draft board under administrative processes provided by Congress had waived right to question validity of his classification when tried for refusing to submit himself for induction into the armed forces. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

C

Gatchell v. U. S., 378 F.2d 287
C.A.9.Or.,1967
Defendant, who has been given a I-O classification as conscientious objector, and who has passed his physical examination, and who has exhausted his board of appeals remedies, and who has been ordered to report to local draft board for noncombatant work assignment, may defend a criminal prosecution under the Universal Military Training and Service Act for failure to so report on ground that he should have been given a IV-D classification as minister of religion or divinity student. Universal Military Training and Service Act, §§ 1 et seq., 6(g), 12(a), 16(g), 50 U.S.C.A. App. §§ 451 et seq., 456(g), 462(a), 466(g).

Daniels v. U. S., 372 F.2d 407
C.A.9.Cal.,1967
Registrant must obey order to report for induction into armed forces before he may defend on ground that his classification is illegal. Universal Military Training and Service Act, §§ 6(g, j), 16(g) as amended 50 U.S.C.A.App. §§ 456(g, j), 466(g).

Daniels v. U. S., 372 F.2d 407
C.A.9.Cal.,1967
Class I-O conscientious objector, who has passed his physical examination, exhausted his board appeal remedy, and been ordered to report to board for assignment to civilian employer may defend criminal action for failure to so report on ground that his classification is invalid, inasmuch as such person has reached the brink in the selective process without going through the formality of reporting to board or civilian employer; Bjorson v. United States, 272 F.2d 244, disapproved. Universal Military Training and Service Act, §§ 6(g, j), 12(a), 16(g) as amended 50

U.S.C.A.App. §§ 462(a), 456(g, j), 466(g).

Daniels v. U. S., 372 F.2d 407

C.A.9.Cal.,1967

Where class I-O conscientious objector had passed his physical examination, exhausted his board appeal remedies and been ordered to report to board for assignment to civilian employer, in subsequent prosecution for knowingly failing to so report he was entitled to defend on ground that he should have been classified as minister of religion or divinity student. Universal Military Training and Service Act, §§ 6(g, j), 16(g) as amended 50 U.S.C.A.App. §§ 456(g, j), 466(g).

O'Moore v. U. S., 370 F.2d 916

C.A.5.Fla.,1967

Regardless of the religious tenets of a registrant's faith, it was his duty to obey valid laws, and sanctions could be attached to compel obedience.

O'Moore v. U. S., 370 F.2d 916

C.A.5.Fla.,1967

Defendant's religious beliefs could not excuse his knowing and willful refusal to perform nonmilitary duties, and in view of fact defendant's status as a conscientious objector and his good faith belief were conceded, it was not error to exclude proffered expert testimony the effect of which would have been to show that under no circumstances could a member of the Jehovah Witness religion be compelled to submit to any law which would draft him for work or service to any government. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.App. §§ 456(j), 462.

Parrott v. U. S., 370 F.2d 388

C.A.9.Cal.,1966

Contention that defendant convicted of violation of Universal Military Training and Service Act had been illegally denied statutory 1-S classification, deferment to end of year of student satisfactorily pursuing full-time course of instruction, was not basis for reversal of conviction of defendant who had been granted postponement of induction by local board, on theory that if he had been placed in 1-S classification, instead of 1-A, his notice of induction would have been cancelled, and then, upon finishing his schooling, he would have had opportunity to appeal. Universal Military Training and Service Act, § 12, 50 U.S.C.A.App. § 462.

Parrott v. U. S., 370 F.2d 388

C.A.9.Cal.,1966

Defendant charged with refusing to submit to induction could not avoid conviction on theory that his religious views had never crystalized until sometime after he had requested postponement of induction until end of college year. Universal Military Training and Service Act, § 12, 50 U.S.C.A.App. § 462.

U. S. v. Jackson, 369 F.2d 936

C.A.4.W.Va.,1966

In a criminal prosecution for a refusal to obey a Selective Service Board order the scope of judicial inquiry into the administrative proceedings leading to the defendant's classification is very limited. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. App. § 462(a).

U. S. v. Mitchell, 369 F.2d 323

C.A.2.Conn.,1966

Alleged violation of various treaties to which United States was signatory by conduct of war in Vietnam and operation of Selective Service System as adjunct of that military effort was no defense to prosecution for failure to report for induction in armed forces, and evidence purporting to show treaty violation and operation of the Selective Service System as an adjunct was inadmissible as immaterial. Universal Military Training and Service Act, § 12, 50 U.S.C.A. App. § 462.

C

Storey v. U. S., 370 F.2d 255

C.A.9.Wash.,1966

Since registrant's classification was made by the appeal board, appellant cannot rely upon errors previously occurring before the local board.

H

U. S. v. Hogans, 369 F.2d 359

C.A.2.N.Y.,1966

Defendant, in prosecution for violation of the Universal Military Training and Service Act, was precluded from attacking correctness of his classification as a defense if the classification had a basis in fact, where defendant did not allege that local board acted contrary to laws regulating its procedures and limiting scope of its authority. Universal Military Training and Service Act, §§ 6(j), 12(a), 50 U.S.C.A. App. §§ 456(j), 462(a).

U. S. v. Gearey, 368 F.2d 144

C.A.2.N.Y.,1966

If local board's determination that defendant was not a genuine conscientious objector meant that defendant had never been one, or that whatever his beliefs were on the subject, they had matured before induction notice was sent, defendant's conviction for failing to submit for induction into armed services would stand, otherwise indictment must be dismissed. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. App. §§ 456(j), 462(a).

C

Woo v. U. S., 350 F.2d 992

C.A.9.Cal.,1965

Defendant who had not requested personal appearance before local board or appealed after being classified I-A was not entitled to judicial review of such classification when charged with failing to submit himself for induction. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.App. § 462(a); 18 U.S.C.A. § 3231; 28 U.S.C.A. §§ 1291, 1294.

C

Greiff v. U. S., 348 F.2d 914

C.A.9.Wash.,1965

Where record fully supported trial court's conclusion that defendant whom it found guilty of wilfully failing to report for induction had chosen to remain ignorant of his rights to appeal classification or request reexamination of classification, reviewing court was not required to consider merits of his claim to be conscientious objector. Universal Military Training and Service Act, § 12, 50 U.S.C.A.App. § 462.

H

U. S. v. Sturgis, 342 F.2d 328

C.A.3.Pa.,1965

Failure of local board to post names of advisers conspicuously in its office as required by Executive Order, standing alone, is insufficient to set aside judgment of conviction for knowingly and willfully failing to report for assignment to state hospital in lieu of induction. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

H

U. S. v. Sturgis, 342 F.2d 328

C.A.3 (Pa.),1965
Failure of local board to post names of advisers conspicuously in its office, as required by Executive Order, must be coupled with prejudice to defendant in order to set aside a judgment of conviction for knowingly and willfully failing to report for assignment to state hospital in lieu of induction to perform civilian work. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A. App. §§ 456(j), 462.

H

DeRemer v. U. S., 340 F.2d 712
C.A.8.Minn.,1965
That defendant claiming he should have been classified as conscientious objector, opposed to both combatant and noncombatant training and service, had not been furnished with facsimile of copy of hearing officer's report and that such copy was not placed in his selective service file for review by Appeal Board, did not constitute denial of due process and fair hearing or preclude his conviction for refusal to be inducted into armed services when ordered. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.App. §§ 456(j), 462.

H

DeRemer v. U. S., 340 F.2d 712
C.A.8.Minn.,1965
Question of possible prejudice on part of local board was not available to claimant to attack his classification granting him limited exemption from combat service only, where that classification was made by Appeal Board and not local board. Universal Military Training and Service Act, § 6(j), 50 U.S.C.A. App. § 456(j).

H

U. S. v. Lawson, 337 F.2d 800
C.A.3.N.J.,1964
Defendant convicted of violation of Universal Military Training and Service Act by failing to comply with valid order to report for civilian work at state hospital was not entitled to reversal on ground that since he had visited hospital and was interviewed by its personnel officer, who allegedly promised to notify defendant when job was available, his physical presence there was entirely superfluous and uncalled for. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.App. §§ 456(j), 462.

H

Badger v. U. S., 322 F.2d 902
C.A.9.Cal.,1963
Defendant, who was charged with knowingly failing to report for civilian employment contributing to maintenance of the national health as ordered by his local draft board in lieu of induction, was precluded from attacking his classification by his failure to exhaust administrative remedies through appealing from his I-O classification. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.Appendix, §§ 456(j), 462.

C

Osborn v. U. S., 319 F.2d 915
C.A.4.Md.,1963
Failure of registrant to appeal conscientious objector classification or to request hearing at any time precluded him from raising correctness of classification as defense in criminal prosecution. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A. Appendix §§ 456(j), 462.

U. S. v. Porter, 314 F.2d 833
C.A.7.Ind.,1963
Registrant under Universal Military Training and Service Act was properly convicted of failure to report for induction, where registrant had been ordered, on October 15, 1959, on January 6, 1960, and on August 1, 1960, to report for induction but first advised local board of his conscientious objections on August 8, 1960, which was day before he was to report for induction under August 1, order, and his conscientious objections were allegedly crystallizing in

January 1960. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.Appendix, § 462(a).

Keefer v. U. S., 313 F.2d 773

C.A.9.Ariz.,1963

In a prosecution for refusing to submit to induction in armed forces, scope of review into administrative proceedings leading to defendant's classification is the narrowest known to law, and unless there has been a denial of procedural fairness, a court may reverse the Appeal Board only if there is no basis in fact for classification which it gave the registrant. Universal Military Training and Service Act, § 12, 50 U.S.C.A. Appendix, § 462.

Donato v. U. S., 302 F.2d 468

C.A.9.Cal.,1962

District court should have considered whether rule requiring exhaustion of administrative remedies was subject to relaxation, where defendant prosecuted for refusal to submit to induction testified that he intended to appeal from 1-A classification made over his objection that he was conscientious objector, but was delayed because he had been summoned to firefighting duty, and he believed his appeal rights had been lost. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.Appendix, §§ 456(j), 462.

Fore v. U. S., 395 F.2d 548

C.A.10.Okla.,1962

Defendant may raise as defense to prosecution for failing to comply with order of local draft board the argument that board's classification was void because it had no basis in fact. Universal Military Training and Service Act, § 6(j), 50 U.S.C.A. App. § 456(j).

Glover v. U. S., 286 F.2d 84

C.A.8.Ark.,1961

In prosecution for refusing to submit to induction into the armed forces by defendant who claimed a conscientious objector classification where there was in fact no basis for the defendant's 1-A classification, his conviction could not be sustained on the merits. Universal Military Training and Service Act, §§ 6(j), 12(a), 50 U.S.C.A. Appendix, §§ 456(j), 462(a).

Glover v. U. S., 286 F.2d 84

C.A.8.Ark.,1961

Generally, a defendant in a Selective Service prosecution may not, as a defense to the criminal charges, collaterally attack his classification unless he has exhausted his administrative remedies provided by the Selective Service Act and pertinent regulations. Universal Military Training and Service Act, §§ 6(j), 12(a), 50 U.S.C.A. Appendix, §§ 456(j), 462(a).

Glover v. U. S., 286 F.2d 84

C.A.8.Ark.,1961

In prosecution for refusing to submit to induction into the armed forces by a conscientious objector, failure of defendant to appeal from his fifth classification of 1-A was not a failure to exhaust administrative remedies precluding him from asserting the invalidity of the administrative order and for judicial review, where local board failed to advise defendant as to the reason for fifth classification notice and defendant had already unsuccessfully appealed from a previous similar notice which was a matter of record and was known to the local board. Universal Military Training and Service Act, §§ 1(c), 6(j), 12(a), 50 U.S.C.A. Appendix, §§ 451(c), 456(j), 462(a).

Venus v. U. S., 287 F.2d 304

C.A.9.Cal.,1960
Registrant had continuing duty to give board accurate information as to where he could be reached, and it was no defense to prosecution for failing to keep draft board advised of address where mail would reach registrant that he had, on six previous occasions, advised board of change of address. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. Appendix, § 462(a).

U.S. v. Van Hook, 284 F.2d 489
C.A.7.Ill.,1960
Whether local board applied proper standards in classifying defendant accused of refusal of induction was immaterial in view of the state appeal board's consideration and classification de novo. Universal Military Training and Service Act, 50 U.S.C.A.Appendix, § 451 et seq.

Yaich v. U. S., 283 F.2d 613
C.A.9 (Cal.),1960
In prosecution for failing to report for civilian employment in lieu of induction, there was substantial compliance with selective service regulation when defendant was given his choice of two private charities (Goodwill Industries) and public charity; but, in any event, having categorically refused any type of civilian work, defendant was in no position to claim prejudice. 18 U.S.C.A. § 3231; Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462; 28 U.S.C.A. §§ 1291, 1294.

Yaich v. U. S., 283 F.2d 613
C.A.9 (Cal.),1960
Failure to comply with selective service regulation which did not prejudice registrant is no ground for upsetting conviction based on disobedience of induction or civilian-work order.

Yaich v. U. S., 283 F.2d 613
C.A.9 (Cal.),1960
Procedural irregularities or omissions that did not result in prejudice to registrant are to be disregarded. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A. Appendix, § 462(a).

Yaich v. U. S., 283 F.2d 613
C.A.9 (Cal.),1960
Even if permissive nature of regulation, stating that advisors to registrants may be appointed, was disregarded, no such prejudice because of absence of advisors was shown as would preclude conviction, for failing to report for civilian employment in lieu of induction, notwithstanding defendant's contention that he had been denied procedural due process when local board failed to have advisers to registrants available.

U.S. v. Corliss, 280 F.2d 808
C.A.2.N.Y.,1960
Appeal board's inclusion of letter which in general tenor was highly favorable to selective service registrant, but which stated that he was in Jehovah's Witness work since 1951 or 1952 and may have been one of sect's preachers in 1954, in file of registrant, who had attempted to enlist in March 1952, applied for enrollment in military college in August 1953 with knowledge that that would require two years military service after graduation, received preinduction notice on May 3, 1954, filed conscientious objector form on June 8, 1954, and claimed that letter had been undisclosed to him, was not so prejudicial as to warrant reversal of denial of his claim to exemption as conscientious objector. Administrative Procedure Act, § 10(b, e), 5 U.S.C.A. § 1009(b, e).

C

U. S. v. Neverline, 266 F.2d 180
C.A.3.Pa.,1959
In prosecution for refusing to submit to induction into the Armed Forces, fact that form letter of appeal board to the United States Attorney erred in stating that referral was made "since local board did not sustain the registrant in his claim of conscientious objection" although in fact local board had granted defendant a 1-O classification, would not be deemed to have prejudiced defendant in view of fact there was nothing in the cover sheet or file to indicate that the mistake had any effect whatsoever on the decision of the appeal board or that it was ever even noticed by the appeal board or the hearing officer which, based on ample justification in the file, classified registrant as 1-A-O, that is, conscientious objector, to be assigned to non-combatant duty.

Keene v. U.S., 266 F.2d 378
C.A.10.Colo.,1959
In prosecution for refusal to submit to induction into the Armed Forces, conviction was not invalid because the order to report upon which it was based was superseded by subsequent orders and became moot where the subsequent orders were merely postponements of the original order and provided that the original order should remain in effect. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.App. § 462(a).

C

Maddox v. U. S., 264 F.2d 243
C.A.6.Mich.,1959
In prosecution for refusal to submit to induction into the armed forces where defendant claimed he had renounced his American citizenship and claimed allegiance to a foreign flag but at no time took advantage of the administrative measures and remedies provided by the selective service system, he could not complain of a classification given him by the local board or urge that the classification was incorrect. Universal Military Training and Service Act, §§ 6(j), 12(a), as amended 50 U.S.C.A.Appendix, §§ 456(j), 462(a).

H

Prohoroff v. U. S., 259 F.2d 694
C.A.9.Cal.,1958
Person prosecuted for willful failure to report for induction into armed forces was barred from objecting to geographical jurisdiction of board over him because of his failure as to that objection, to exhaust his administrative appeal remedies.

H

Prohoroff v. U. S., 259 F.2d 694
C.A.9.Cal.,1958
Where registrant was prosecuted for failure to report for induction into armed services he could not claim that he was entitled to classification as a conscientious objector when he failed to exhaust his remedies of administrative appeal with respect to his classification. Universal Military Training and Service Act, §§ 1 et seq., 12, 50 U.S.C.A.Appendix, §§ 451 et seq., 462.

U. S. v. Stepler, 258 F.2d 310
C.A.3.Pa.,1958
Good faith and honest intentions on part of local draft board is not sufficient but there must be full and fair compliance with provisions of Selective Service Act and applicable regulations, to justify conviction for failure to comply with order of local draft board. Universal Military Training and Service Act, §§ 6(j), 12 as amended 50 U.S.C.A.Appendix, §§ 456(j), 462.

U. S. v. Stepler, 258 F.2d 310
C.A.3.Pa.,1958

The rule that in view of fact that it is duty of appeal board to consider case de novo, and since its classification supersedes that of local draft board, an erroneous test applied by local board is immaterial and does not invalidate its order where authorities on appeal reviewed de novo the record containing all the evidence is not an inflexible one, and where registrant is deprived of procedural due process, the legal action of the local board may reach out to the appeal board and affect the validity of its classification so that pertinent question in such case is whether decision of appeal board perpetuated procedural errors of the local board. Universal Military Training and Service Act, §§ 6(j), 12 as amended 50 U.S.C.A.Appendix, §§ 456(j), 462.

U. S. v. Stepler, 258 F.2d 310

C.A.3.Pa.,1958

The error of local draft board in denying ministerial exemption on erroneous basis that a member of Jehovah's Witnesses could not qualify as a minister was not cured upon appeal, where from the record court could not tell whether appeal board accepted the reasons given by the local board. Universal Military Training and Service Act, §§ 6(j), 12 as amended 50 U.S.C.A.Appendix, §§ 456(j), 462.

U. S. v. Stepler, 258 F.2d 310

C.A.3.Pa.,1958

The error of local draft board in denying draftee's claim for ministerial exemption on ground that a member of Jehovah's Witnesses could not qualify as a minister was not cured by subsequent events where later proceedings furnished persuasive indication that erroneous view of the law disclosed by the local board's statement persisted in the record even after the appeal board had acted and the record had been returned to the local board. Universal Military Training and Service Act, §§ 6(j), 12 as amended 50 U.S.C.A.Appendix, §§ 456(j), 462.

Evans v. U.S., 252 F.2d 509

C.A.9.Cal.,1958

Where local draft board, which had classified defendant I-A, reopened defendant's classification pursuant to order of Director of Selective Service because of an irregularity, and draft board, following interview, again classified him I-A and gave him written notice of the classification and of his right to appeal, but defendant did not appeal, his classification was not open

to question in prosecution for knowingly failing and neglecting to submit to induction into armed forces of United States. Universal Military Training and Service Act, § 6(j), as amended 50 U.S.C.A.Appendix, § 456(j).

Evans v. U.S., 252 F.2d 509

C.A.9.Cal.,1958

Even if local draft board lacked jurisdiction over defendant, his failure to appeal from classification of local draft board barred attack on local board's classification in prosecution for failing and neglecting to submit to induction into armed forces of United States. Universal Military Training and Service Act, § 6(j), as amended 50 U.S.C.A.Appendix, § 456(j).

Pate v. U. S., 243 F.2d 99

C.A.5.Miss.,1957

In prosecution of a Jehovah's Witness for refusing to perform civilian work as ordered by local draft board where defendant claimed exemption as a minister and the local board did not consider the defendant's status from the standpoint of the facts as applied to the law and regulations but upon an erroneous conclusion that since all of Jehovah's Witnesses claimed to be ministers all could not be, and that the claim of the defendant was on its face fraudulent and unsound reversal was required. Universal Military Training and Service Act, §§ 12, 16(g) (1-3), 50 U.S.C.A.Appendix, §§ 462, 466(g) (1-3); U.S.C.A.Const. Amend. 5.

C

Jessen v. U.S., 242 F.2d 213

C.A.10.Colo.,1957

In prosecution of defendant given a conscientious objector classification by local draft board and ordered to perform civilian work and who wilfully refused to perform such work, defendant could not attack the qualifications of the members of the local draft board in the instant proceedings. Universal Military Training and Service Act, § 10(b), 50 U.S.C.A.App. § 460(b).

C

U.S. v. Nichols, 241 F.2d 1

C.A.7.Wis.,1957

Selective service registrant, who did not appeal to the appeals board from the classification given him by the local board, did not exhaust his administrative remedy and, therefore, had no standing, in the criminal prosecution for failure and refusal to submit to induction in the armed forces after having been ordered to do so by the local board, to complain of the classification. Universal Military Training and Service Act, § 1 et seq., 50 U.S.C.A.App. § 451 et seq.

Steele v. U. S., 240 F.2d 142

C.A.1.Mass.,1956

Where failure to appoint advisers and to post their names and addresses conspicuously in local draft board's office constituted breach of one of rights conferred upon registrant only by legislative grace, such failure standing alone would not be ground for setting aside judgment of sentence for refusal to obey order to report, as conscientious objector, for important civilian work. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.Appendix, § 462(a); Executive Order No. 10469, U.S.Code Congressional and Administrative News 1953, p. 1029; Executive Order No. 10594, U.S.Code Congressional and Administrative News 1955, p. 1055.

Steele v. U. S., 240 F.2d 142

C.A.1.Mass.,1956

Failure to comply with selective service regulation which at time required board to appoint advisers and to post their names and addresses conspicuously in local draft board's office must have been coupled with prejudice to person before judgment of sentence for refusal to obey order to report, as conscientious objector, for important civilian work, could be set aside. Universal Military Training and Service Act, § 12(a), 50 U.S.C.A.Appendix, § 462(a); Executive Order No. 10469, U.S.Code Congressional and Administrative News 1953, p. 1029; Executive Order No. 10594, U.S.Code Congressional and Administrative News 1955, p. 1055.

C

Smith v. U.S., 238 F.2d 79

C.A.5.Ala.,1956

In order to obtain relief from convictions under Selective Service Act, it is essential to make a clear showing that claim violation of Act by local board was in fact such and that it resulted in a denial or deprivation of a substantial right of the registrant. Universal Military Training and Service Act, § 1 et seq., 50 U.S.C.A.Appendix, § 451 et seq.

H

Capehart v. U.S., 237 F.2d 388

C.A.4.W.Va.,1956

In proceeding before a local draft board which required conscientious objector to perform civilian work and wherein conscientious objector claimed a ministerial classification, such errors as might have been voiced by members of local board were rendered innocuous by subsequent classifications by the appeals boards. Universal Military Training and Service Act, 50 U.S.C.A.Appendix, § 451 et seq.

H

U.S. v. Chodorski, 240 F.2d 590
C.A.7.Ill.,1956
Fact that local draft board applied a wrongful test in determining question presented to it of whether defendant was a minister of religion was immaterial and did not prevent conviction of defendant for failing and refusing to perform civilian work, contrary to the Universal Military Training and Service Act, where appeal board at a de novo hearing heard the matter anew on record containing the evidence, defendant's statement, and Department of Justice report, and set aside the local board's classification of 1-A and entered one of conscientious objector. Universal Military Training and Service Act, §§ 1- 20, 50 U.S.C.A.Appendix, §§ 451-470.

C

Frank v. U.S., 236 F.2d 39
C.A.9.Cal.,1956
Where draft registrant did not exhaust administrative remedies by appeal from original classification, whether he should have been given a different classification was not before court in prosecution for failure to report for civilian work. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

C

Frank v. U.S., 236 F.2d 39
C.A.9.Cal.,1956
Where reclassification of draft registrant was merely a change in symbol of same classification in designation of conscientious objector, conforming to change in the law, registrant who had acquiesced for two years in original classification and did not originally appeal therefrom was not prejudiced by alleged error in denying him appearance before local draft board or administrative appeal. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

C

Frank v. U.S., 236 F.2d 39
C.A.9.Cal.,1956
Each refusal of draft registrant to report for civilian work was a violation of statute imposing continuing duty to report, and hence alleged waiver of first refusal to accept employment, by ordering registrant to report a second time, was not a defense to prosecution. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

C

Stain v. U.S., 235 F.2d 339
C.A.9.Or.,1956
A local draft board's order, denying draft registrant's petition to reopen his 1-A classification and reclassify him as conscientious objector after his filing of special form for such objectors on ground that since he was given physical examination on basis of his questionnaire containing no conscientious objector claim and found acceptable without protest, his record could not be reopened, without considering petition's contents or notifying registrant of board's ruling, was illegal, deprived him of due process of law and prejudiced him, so that order was void and registrant's refusal to be inducted into armed forces thereunder was not a criminal or illegal act. Universal Military Training and Service Act, §§ 1 et seq., 6(j), 10, 12, 50 U.S.C.A.Appendix, §§ 451 et seq., 456(j), 460, 462.

C

Kaline v. U.S., 235 F.2d 54
C.A.9.Cal.,1956
Where registrant claiming conscientious objector status did not keep local board informed of current address, failed to appear at scheduled hearing before justice department hearing officer, delayed in requesting new hearing until almost a month after previously scheduled hearing, never requested assistance or advice of local board and never checked bulletin board for list of advisors to registrants, registrant was not prejudiced by failure of board to have available advisors and to have conspicuously posted names and addresses of such advisors. Universal Military Training and Service Act, § 10 as amended 50 U.S.C.A.Appendix, § 460.

C

Kaline v. U.S., 235 F.2d 54

C.A.9.Cal.,1956

Where registrant did not appear at justice department hearing on conscientious objector status and hearing officer made no recommendation or comment, but merely returned registrant's file to justice department and noted non-appearance of registrant, failure to place hearing officer's report in registrant's file and failure to send copy of report to registrant did not prejudice registrant and was not a denial of due process. Universal Military Training and Service Act, § 6(j) as amended 50 U.S.C.A.App. § 456(j).

C

Reap v. James, 232 F.2d 507

C.A.4.Md.,1956

Where there is no basis in fact for order of local board, it may be treated as void in criminal action for failure to report for induction or in habeas corpus proceeding instituted to obtain release from service. Universal Military Training and Service Act, § 4(i), 50 U.S.C.A.Appendix, § 454(i).

H

Klubnikin v. U.S., 227 F.2d 87

C.A.9.Cal.,1955

That registrant's religious beliefs were such as to prevent him from obeying any order emanating from agency in any manner connected with military arm of Government was no defense to prosecution for failure to report for civilian work under Universal Military Training and Service Act. Universal Military Training and Service Act, §§ 1-21 as amended 50 U.S.C.A.Appendix, §§ 451-471.

Olvera v. U.S., 223 F.2d 880

C.A.5.Tex.,1955

It is of the essence of validity of draft board orders and of crime of disobeying such orders that all procedure requirements be strictly and faithfully followed and that showing of failure to follow them with such strictness and fidelity will invalidate board's order and a conviction based thereon. Universal Military Training and Service Act, 50 U.S.C.A.Appendix, §
451 et seq.; U.S.C.A.Const. Amend. 5.

H

U. S. v. Cooper, 223 F.2d 448

C.A.3.Pa.,1955

Person seeking exemption from military service on ground of being conscientious objector was entitled to receive copy of recommendation made by department of justice to appeal board in his case, and where such person did not receive this report, he was improperly convicted of refusal to be inducted into military service. Universal Military Training and Service Act, §§ 6(j), 12(a), 50 U.S.C.A.Appendix, §§ 456(j), 462(a).

H

U. S. v. De Lime, 223 F.2d 96

C.A.3.N.J.,1955

Even though department of justice failed to give selective service registrant fair resume of adverse information included in department's report recommending disallowance of registrant's claim to be classified as conscientious objector, registrant's conviction for failing to submit to induction would be affirmed, where registrant was not prejudiced by not receiving such fair resume of report because denial of conscientious objector status was necessitated by his own statements that his objection to war was based on philosophical rather than religious reasons. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.Appendix, §§ 456(j), 462.

Gaston v. U.S., 222 F.2d 818

C.A.4.S.C.,1955
In prosecution for violation of Universal Military Training and Service Act, where there was no evidence that hearing officer failed to furnish accused full and fair summary of F. B. I. report, that he requested such summary, or that he made any point with regard thereto until after his conviction, point that hearing officer failed to furnish report was frivolous. Universal Military Training and Service Act, 50 U.S.C.A.Appendix, § 451 et seq.

C

United States v. Schwenke, 221 F.2d 356
C.A.2 (N.Y.),1955
Local draft board had power to compel registrant to undergo physical examination before considering registrant's claim for exemption as non-declarant alien and, in absence of showing that board would not have given full consideration to claim if results of physical examination showed fitness for service, registrant's conviction upon guilty plea to charge of refusing physical examination could not be set aside. Fed.Rules Crim.Proc. rule 32(d), 18 U.S.C.A.; 50 U.S.C.A.Appendix, § 451 et seq.

C

U.S. v. Lauing, 221 F.2d 425
C.A.7.Ill.,1955
Where registrant made requests, prior to hearing before hearing officer of Department of Justice and at time of hearing, for copy of report made by Federal Bureau of Investigation, but requests were denied, and Department of Justice in report to appeal board considered matter, which was contained in secret report, and which it regarded derogatory to registrant, conviction of registrant for failing and refusing to submit to induction into military service would be reversed. Universal Military Training and Service Act, 1 et seq., 50 U.S.C.A.Appendix, 451 et seq.

C

U.S. v. Greene, 220 F.2d 792
C.A.7.Ill.,1955
Where National Selective Service Appeal Board's decision reversing decision of State Appeal Board, and reclassifying accused, charged with failure to submit to induction as 1-A, was not supported by any evidence in accused's files contradicting his proof as to his religious beliefs and activities, such classification was improper and accused could not be convicted of refusing to submit to induction. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

C

Rempel v. U. S., 220 F.2d 949
C.A.10.Colo.,1955
On appeal from conviction for refusing to submit to induction, judicial inquiry is confined to determining whether there was any rational basis in fact for registrant's classification by administrative tribunals, regardless of weight of evidence on which tribunals made final classification, and only where no such factual basis exists is the classification void and insufficient to support criminal charge of refusing to submit to induction. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A.App. § 462(a).

C

Rempel v. U. S., 220 F.2d 949
C.A.10.Colo.,1955
Where selective service registrant makes prima facie showing that he is conscientiously opposed to participation in war in any form, rejection of his claim for exemption will not support prosecution for refusing to submit to induction unless there be in his registration file some showing of countervailing nature which tends to justify finding on part of classification board that claim is not made in good faith. Universal Military Training and Service Act, § 12(a) as amended 50 U.S.C.A.App. § 462(a).

C

Doty v. U.S., 218 F.2d 93

C.A.8.Minn.,1955
In prosecution for failure to report for military service, army regulation, which provided that at time draft registrant reports for induction, if he has criminal record within scope of statute specifying offense punishable by death or imprisonment for term exceeding one year, he shall be morally unacceptable for service unless such disqualification is waived by respective department, afforded no defense to defendants who did not report for induction, notwithstanding lack of evidence of waiver. Universal Military Training and Service Act, § 6(m), 50 U.S.C.A.App. § 456(m).

Bradley v. U. S., 218 F.2d 657
C.A.9.Cal.,1954
Where registrant had reported at induction station and proceeded through induction process to point where it was determined that he was acceptable for service and he then stated in writing his refusal to be inducted, that registrant was not given opportunity to go through induction ceremony required by regulations was not prejudicial to him so as to warrant reversal of conviction for refusal to be inducted. Universal Military Training and Service Act, § 6(j), 50 U.S.C.A.Appendix, § 456(j).

Kalpakoff v. U. S., 217 F.2d 748
C.A.9.Cal.,1954
Draft registrant, who contended that, as member of Russian Spiritual Christian Jumpers, Molokan, he was entitled to conscientious objector exemption from all military training or service, and who had refused to report for induction upon order of his local draft board to do so, although, due to one-year time lapse between his pre-induction physical examination and his proposed induction, army regulation would have required new physical examination at which registrant could have been rejected, had not exhausted his administrative remedies, and in prosecution for refusing to report for induction was therefore without standing to assert invalidity of his classification. 50 U.S.C.A.Appendix, § 451 et seq.

Mason v. U. S., 218 F.2d 375
C.A.9.Cal.,1954
Draft registrant, who had refused to report for induction upon order of his local draft board to do so, although due to two year time lapse between his pre-induction physical examination and the order to report for induction, army regulation would have required new physical examination at which registrant could have been rejected, had not exhausted his administrative remedies, and in prosecution for having knowingly failed and neglected to comply with his induction order, was without standing to assert invalidity of the order, and was not entitled to raise jurisdictional defenses of denial of fair hearing and procedural due process, in his classification by the Selective Service boards. Universal Military Training and Service Act, §§ 4(a), 10, 12 as amended 50 U.S.C.A.Appendix, §§ 454(a), 460, 462.

H
Tamblyn v. U. S., 216 F.2d 345
C.A.5.Ala.,1954
One need not report for induction to be entitled to question draft board's denial of his claimed exemption from military service in a criminal proceeding against him.

C
Goetz v. U. S., 216 F.2d 270
C.A.9.Cal.,1954
The Justice Department's recommendation to draft appeal board that claim of draft registrant, classified by local board as conscientious objector available for noncombatant military service only, for exemption from both combatant and noncombatant service as minister of religion conscientiously opposed to both such types of service, be denied, was erroneous as matter of law, in absence of any basis for finding of registrant's insincerity, sham or fakery, so that his subsequent classification by appeal board as available for full military service was invalid as without

basis in fact and his conviction of knowingly refusing to be inducted into armed forces must be reversed. Universal Military Training and Service Act, 50 U.S.C.A.Appendix, § 451 et seq.

H

Skinner v. U. S., 215 F.2d 767

C.A.9.Cal.,1954

Where selective service registrant had not appealed from classification by local board, claim that classification was improper was of no force in his prosecution for failing and neglecting to be inducted into armed forces as ordered.

White v. U. S., 215 F.2d 782

C.A.9.Cal.,1954

In prosecution of registrant for refusal to be inducted into the armed forces of the United States in violation of the Universal Military Training and Service Act, registrant could make a defense that there was no basis in fact for his classification as a conscientious objector available for noncombatant military service only and that he was entitled, as a matter of law, to classification as a person conscientiously opposed to both combatant and noncombatant military service, only if there was no basis in fact for the classification which draft board gave registrant. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

C

Pine v. U.S., 212 F.2d 93

C.A.4.Va.,1954

Although courts have no power to review decisions of draft boards classifying draft registrants, the invalidity of a board order of classification can be asserted as a defense in a criminal action based on disobedience of the order. Universal Military Training and Service Act, §§ 1 et seq., 6(j) as amended 50 U.S.C.A.Appendix, §§ 451 et seq., 456(j).

H

Atkins v. United States, 204 F.2d 269

C.A.10 (N.M.),1953

Failure to accord registrant with local board procedural rights provided by Selective Service Regulations makes void an order to report for induction into armed forces and constitutes a valid defense to a criminal charge of refusing to be inducted into service. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

H

Atkins v. United States, 204 F.2d 269

C.A.10 (N.M.),1953

After registrant has appeared before local board administering Universal Military Training and Service Act and has been classified anew, failure of board to give registrant notice of action of board is fatal to validity of subsequent order to report for induction and constitutes valid defense to criminal charge of refusing to be inducted. Universal Military Training and Service Act, § 12, 50 U.S.C.A.Appendix, § 462.

Imboden v. U.S., 194 F.2d 508

C.A.6.Ohio,1952

That local draft board failed to follow regulations in making classification could be raised at trial of registrant for refusing service in armed forces. Universal Military Training and Service Act, §§ 6(j), 12, 50 U.S.C.A.Appendix, §§ 456(j), 462.

H

U.S. v. Mansavage, 178 F.2d 812

C.A.7.Ill.,1949

Where defendant withdrew claim as conscientious objector so that claim for exemption under Selective Service Act as a minister could be considered and was shortly thereafter classified as a full time laborer, indictment charging that

defendant failed to submit to induction after being classified 1-A three years later would not be invalidated on ground that claim as conscientious objector was withdrawn by defendant on advice of a federal officer. Selective Training and Service Act of 1940, §§ 1 et seq., 11, as amended, 50 U.S.C.A.Appendix, §§ 301 et seq., 311.

H

U.S. v. Mansavage, 178 F.2d 812

C.A.7.Ill.,1949

False advice deliberately given by a federal officer to delude registrant into abandoning claim as a conscientious objector would not invalidate indictment charging violation of Selective Service Act. Selective Training and Service Act of 1940, § 1 et seq., as amended, 50 U.S.C.A.Appendix, § 301 et seq.

H

U.S. v. Mansavage, 178 F.2d 812

C.A.7.Ill.,1949

Letter received by local selective service board regarding registrant claiming exemption as a minister which was merely filed and not considered by board could not affect validity of indictment charging registrant with failure to submit to induction. Selective Training and Service Act of 1940, §§ 1 et seq., 11, as amended, 50 U.S.C.A.Appendix, §§ 301 et seq., 311.

Gara v. U. S., 178 F.2d 38

C.A.6 (Ohio),1949

Fact that defendant sincerely believed that his Christian duty required him to oppose registration for draft as required by Selective Service Act did not absolve him from his violation of the act by knowingly counseling and aiding and abetting another to refuse or evade the registration. Selective Service Act, §§ 1 et seq., 3, 12(a), 50 U.S.C.A.Appendix, §§ 451 et seq., 453, 462(a).

U. S. v. Stiles, 169 F.2d 455

C.A.3.Pa.,1948

Where registrant exhausted his administrative remedies in protesting his classification by draft board as 1-A, he was entitled to set up the invalidity of his classification in his defense to prosecution under the Selective Training and Service Act for refusal to submit to induction into the armed forces. Selective Training and Service Act of 1940, § 11, 50 U.S.C.A.Appendix, § 311.

C

Jeffries v. U. S., 169 F.2d 86

C.A.10.Kan.,1948

Where selectee did not pursue his administrative remedies to the end, any error in classification of selectee was no defense to his refusal to report to local board as directed. Selected Training and Service Act of 1940, 50 U.S.C.A.Appendix, 301 et seq.

C

McGahee v. U.S., 163 F.2d 875

C.A.5.Ga.,1947

Registrant, having failed to exhaust his administrative remedies, could not interpose defense of wrongful classification in prosecution for willful failure to report for induction into armed forces.

H

Thomson v. U.S., 161 F.2d 761

C.A.9.Cal.,1947

Alleged misclassification by Selective Service Board is not available as a defense to prosecution for failure to report for induction into the armed service, since there is no exhaustion of rights under the selective service administrative process though more than 90 days have elapsed since pre-induction physical examination before order is made. Se-

lective Training and Service Act of 1940, 50 U.S. C.A.Appendix, § 301 et seq.

H

Hudson v. U.S., 157 F.2d 782

C.A.10.Kan.,1946

A defendant not exhausting procedure outlined in Selective Service Act by failing to report for induction as ordered by local draft board, which was the last step in the selective process, could not, in prosecution for failure to report, challenge order on ground that defendant was an ordained minister and therefore entitled to statutory exemption from military service. Selective Training and Service Act of 1940, Sec. 5(d), 50 U.S.C.A.Appendix, 305(d).

Cox v. U.S., 157 F.2d 787

C.A.9.Idaho,1946

In prosecution of registrants under the Selective Service Act who claimed exemption as ministers of religion and who after their arrival at conscientious objectors camp left and intentionally remained away defense could only go to the jurisdiction of the selective service board, or to whether board had discriminated against the registrants or considered registrants' case arbitrarily. Selective Training and Service Act of 1940, §§ 2, 5(d, g), 10, 11, as amended 50 U.S.C.A.Appendix §§ 302, 305(d, g), 310, 311; 50 U.S.C.A.Appendix, § 309a.

Berman v. U.S., 156 F.2d 377

C.A.9.Cal.,1946

Actual induction into the armed forces is not necessary as a step in the administrative process before a registrant acquires a legal right to defend against criminal charge that he neglected or refused to obey a local draft board order. Selective Training and Service Act of 1940, §§ 1 et seq., 11, 50 U.S.C.A.Appendix, §§ 301 et seq., 311.

C

Hideichi Takeguma v. U.S., 156 F.2d 437

C.A.9.Ariz.,1946

Defendants charged with failure to report for induction, but who had failed to obey order to proceed to induction center, could not attack validity of induction order in prosecution for failure to report. Selective Training and Service Act of 1940, § 3, as amended, 50 U.S.C.A.App. § 303.

H

Swaczyk v. U.S., 156 F.2d 17

C.A.1.Mass.,1946

Where registrant who believes that he has been rendered subject to service by an erroneous classification by his local board or by appropriate appeal board, has exhausted all opportunities for administrative review, the court must grant him an opportunity to show that there is no basis in fact for the classification either as a defense to criminal prosecution for noncompliance with orders under selective service act or in habeas corpus proceeding after his induction, but board's action must be upheld if there is a basis in fact therefor. Selective Training and Service Act of 1940, §§ 10(a)(2), 11, 50 U.S.C.A.Appendix, §§ 310(a)(2), 311.

H

Saunders v. U.S., 154 F.2d 872

C.A.9.Cal.,1946

The defense of lack of jurisdiction in draft board to make classification is available to a registrant in a prosecution for failure to obey an order of board where all administrative orders have been obeyed up to but not including induction, the registrant having the right to show that by his status he is exempt from board's classification or that board classified him arbitrarily.

Selective Training and Service Act of 1940, § 11, 50 U.S.C.A.Appendix, § 311.

Dodez v. U.S., 154 F.2d 637

C.A.6.Ohio,1946
Under the Selective Service Act, if registrant is indicted for refusal to be inducted he may urge in his defense that the draft board had no jurisdiction or was prejudiced against him or failed to follow the machinery and procedure provided for in the draft act and regulations. Selective Training and Service Act of 1940, 50 U.S.C.A.Appendix, § 301 et seq.

Dodez v. U.S., 154 F.2d 637
C.A.6.Ohio,1946
Where registrant under Selective Service Act failed to report for work of national importance, he had not exhausted his administrative remedies and therefore was not entitled to a judicial review of his classification as a defense to indictment for violating the Act and regulations issued pursuant thereto. Selective Training and Service Act of 1940, 50 U.S.C.A.Appendix, § 301 et seq.

Koch v. U.S., 150 F.2d 762
C.A.4.Va.,1945
Illegality of classification of a registrant by local board is not available as a defense in a prosecution for refusal to submit to induction. Selective Training and Service Act of 1940, § 11, 50 U.S.C.A.Appendix § 311.

U. S. v. Estep, 150 F.2d 768
C.A.3.Pa.,1945
Where draft registrant appeared at induction center but refused to "take one step forward" upon order as a means of induction, he had not exhausted administrative procedure whereby he could submit to induction and then obtain habeas corpus, and could not urge denial of due process by draft authorities as a defense in prosecution for violation of Selective Service Act. Selective Training and Service Act of 1940, § 5(d), as amended, and § 11, 50 U.S.C.A.Appendix, §§ 305, 311.

Smith v. U.S., 148 F.2d 288
C.C.A.4 (S.C.),1945
A selectee was under duty to comply with draft board's order to report for induction, and, in a prosecution for failure to do so, no defense based on the invalidity of the orders could be entertained. Selective Training and Service Act of 1940, 50 U.S.C.A.Appendix § 301 et seq.

Klopp v. U.S., 148 F.2d 659
C.C.A.6 (Ohio),1945
In prosecution for willful disobedience of order of local board functioning under the Selective Service Act that registrant report for work of national importance, allegedly erroneous classification of defendant as a conscientious objector rather than as a minister of religion is no defense, though order to report was after amendment of the act. Selective Training and Service Act of 1940, § 11, 50 U.S.C.A.Appendix § 311; 50 U.S.C.A.Appendix § 304a.

Shigeru Fujii v. U.S., 148 F.2d 298
C.A.10.Wyo.,1945
In prosecution for willful refusal to report for induction into armed forces pursuant to order of local draft board, alleged right to exemption from military service was not available as a defense. Selective Training and Service Act § 11, 50 U.S.C.A.Appendix § 311.

U.S. v. Rinko, 147 F.2d 1
C.A.7.Ill.,1945

In prosecution for violation of Selective Service Act in failing to obey orders of representatives of armed forces at induction center and in failing to submit to induction, defendant could not urge as a defense that local draft board acted erroneously in classifying him 1-A for reason that he was a minister of religion and therefore in a class of exempt persons. Selective Training and Service Act of 1940, § 11, 50 U.S.C.A.Appendix, § 311.

C

Sirski v. U.S., 145 F.2d 749

C.A.1.Mass.,1944

In prosecution for knowingly failing to report to local board for assignment to work of national importance, defense that defendant was entitled to exemption from any form of national service because he was a regular ordained minister of religion was not available. Selective Training and Service Act of 1940, §§ 5(d), 11, 50 U.S.C.A.Appendix, §§ 305(d), 311.

H

Stumpf v. Sanford, 145 F.2d 270

C.A.5.Ga.,1944

Enlistment by selective service registrant in the Canadian Army without reporting to local draft board was not a good defense to a prosecution for wilfully failing to keep local board advised of a change of address. Selective Training and Service Act of 1940, § 1 et seq., 50 U.S.C.A.Appendix § 301 et seq.

C

U.S. v. Messersmith, 138 F.2d 599

C.A.7.Wis.,1943

Even assuming that invalidity of local draft board's order of classification would constitute a defense in prosecution for violation of Selective Service Act, court may treat such order as a nullity only if it lacks foundation in law or is unsupported by substantial evidence, or is so arbitrary and unreasonable as to amount to a denial of due process. Selective Service and Training Act §§ 10(a), 11, 50 U.S.C.A.App. §§ 310(a), 311.

H

Ex parte Catanzaro, 138 F.2d 100

C.A.3.N.J.,1943

One prosecuted for failure to obey draft board's order to report for induction under Selective Service Act may not tender as defense that board acted unfairly or arbitrarily in making order, nor have his classification reviewed by certiorari before induction. Selective Training and Service Act of 1940, 50 U.S.C.A.Appendix, § 301 et seq.

U.S. v. Bowles, 131 F.2d 818

C.A.3.N.J.,1942

The action of the selective service authorities in making an erroneous classification, even though arbitrary or capricious, may not be set up in defense to prosecution for failure to comply with draft board's order to enter the armed forces of the United States. Selective Training and Service Act of
1940, § 5(g), 50 U.S.C.A.Appendix, § 305(g).

C

U.S. v. Grieme, 128 F.2d 811

C.A.3.N.J.,1942

The correctness of classification of a selective service registrant by local draft board and question whether board acted in an arbitrary or capricious manner are not defenses to a prosecution under Selective Training and Service Act for a failure to comply with board's order. Selective Training and Service Act of 1940, § 11, 50 U.S.C.A.Appendix, § 311.

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