Indiana Law Journal

Volume 17 | Issue 4 Article 13

4-1942

Judicial Relief and Requirements of Notice

JUDICIAL RELIEF AND REQUIREMENTS OF NOTICE

Conscription is vital and necessary for our war effort; but no matter how essential, the policy of a democratic community requires that every registrant whose classification is questioned, personally receive notice to appear and be heard by an impartial tribunal. It is his constitutional right that neither his life nor his liberty be taken without due process of law. This does not mean, however, that he is entitled to a hearing before a court of law as a matter of right. A fair hearing before an administrative tribunal—in this case the local and appeal boards of the Selective Service System—is sufficient.

A registrant under the Selective Service Act and Regulations must exhaust the administrative remedies before he is entitled to any relief by a court. Failure to seek deferment in any manner provided by the Act or regulations has the effect of waiver of any right to deferment.[1] After induction into the armed forces, the proper remedy is by writ of *habeas corpus*.[2] Application for the writ may be made in the federal court sitting in the district wherein the selectee is detained. The writ will only be granted if the local board was without jurisdiction,[3] or acted arbitrarily[4] or refused registrant a hearing,[5] or did not allow

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[1] United States *ex rel.* Filomio v. Powell, 39 F. Supp. 183 (D. N. J. 1941) (failed to appeal from original classification); *Ex parte* Tinkoff, 254 Fed. 222 (N. D. Ill. 1918) (Failure to appeal to district board is bar to relief by *habeas corpus*); *Ex parte* Romano, 251 Fed. 762 (D. Mass. 1918) (denied relief by *habeas corpus* because failed to claim exemption in proper manner due to ignorance); *Ex parte* Blazekovic, 248 Fed. 327 (E. D. Mich. 1918) (must exhaust statutory remedies before any right of appeal to a court); United States *ex rel.* Koopowitz v. Finley, 245 Fed. 871 (S. D. N. Y. 1917) (must present claims for exemptions as prescribed by regulations); *Ex parte* Stringer, 38 Ala. 457 (1863) (only rights to exemption were those authorized by the Conscription Acts of the Confederate States); Lee v. Childs, 17 Mass. 35 (1821) (must comply with requirements of statute before able to claim exemption from military service); *Cf. Ex parte* Cohen, 254 Fed. 711 (E. D. Va. 1918) (need not appeal to district board where futile to do so); *Ex parte* Beck, 245 Fed. 967 (D. Mont. 1917) (non-declarant alien could not waive right to exemption).

[2] United States *ex rel.* Ursitti v. Baird, 39 F. Supp. 872 (E. D. N. Y. 1941); *Application of* Greenberg, 39 F. Supp. 13 (D. N. J. 1941); United States *ex rel.* Filomio v. Powell, 38 F. Supp. 183 (D. N. J. 1941).

[3] A person registered or subject to registration is within the jurisdiction of the local board. Sel. Ser. Reg. 603.54 (1942); Note (1941) 9 GEO. WASH. L. REV. 681. See *Ex parte* Fuston, 253 Fed. 90 (E. D. Tenn. 1918).

[4] *Application* of Greenberg, 39 F. Supp. 13 (D. N. J. 1941) (Board refused to give weight to the evidence that petitioner was engaged to be married and date for wedding set before Selective Training and Service Act was enacted); Arbitman v. Woodside, 258 Fed. 441 (C. C. A. 4th, 1919) (board refused to consider affidavits on ground that they could be obtained easily by perjury). There is dicta to the effect that, after the remedies provided by the Act have been exhausted, court review will be granted where the board lacked jurisdiction, abused discretion, or did not give the required hearing. *See* Angelus v. Sullivan, 246 Fed. 54, 67 (C. C. A. 2d, 1917).

[5] Rome v. Marsh, 272 Fed. 982 (D. Mass. 1920) (had permission of War Department to leave country and was inducted without any opportunity of being heard); *Ex parte* Hutflis, 245 Fed.

registrant to present evidence. *Habeas corpus* may not be used to review the sufficiency of evidence to sustain the board's decision or to correct error in the admission of evidence.[6]

A registrant who has been convicted of a crime in a civil court, after he was notified to report for military service, can not obtain his freedom from jail by writ of *habeas corpus* on his own petition.[7] When he is released he will be subject to military service.

Judicial relief is not available prior to induction. There is dicta to the effect that certiorari[8] may be issued in support of *habeas corpus*.[9] However, certiorari may not be issued without *habeas corpus*. Courts have no jurisdiction to mandate[10] local boards.[11] A prosecution for failure to register cannot be enjoined on the petition of the registrant. Mailing of notice to the last known address is sufficient to render a registrant liable even though he was not there to receive it. The record of mailing kept by the local board is sufficient evidence that notice was mailed. The burden of notifying the local board of any change in address is played upon the registrant. This is evidenced by the fact that notice mailed, not to the last address given by registrant, but to the address given by his father was insufficient.[12] It is obvious that notice mailed to the wrong address would be insufficient.[13] When the registrant has been inducted into the armed forces, pursuant to the local board's decision, the courts are reluctant to interfere with that decision.[14]

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798 (W. D. N. Y. 1917) (due to ignorance had not complied with regulations and court held he was entitled to hearing which he had not had.) Registrants may appear personally before local board but can not be represented by an attorney before local board. Sel. Ser. Reg. § 625.2 (1942).

[6] Clark v. Huff, 119 F. (2d) 204 (App. D. C. 1941) (an embezzlement case); Brown v. Spelman, 254 Fed. 215 (E. D. N. Y. 1918) (boards are not held to rules of legal evidence); United States *ex rel.* Kotzen v. Local Exemption Board No. 157, 252 Fed. 245 (S. D. N. Y. 1918) (not province of court to pass upon what evidence should satisfy board) (burden on registrant to establish cause for exemption).

[7] *Ex parte* Henry, 253 Fed. 208 (E. D. Wis. 1918); *Ex parte* Calloway, 246 Fed. 263 (N. D. Ala. 1918).

[8] *See Petition* of Soberman, 37 F. Supp. 522, 524 (S. D. N. Y. 1941); *Ex parte* Platt, 253 Fed. 413, 414 (E. D. N. Y. 1918).

[9] Dick v. Tevlin, 37 F. Supp. 836 (S. D. N. Y. 1941) (refused to mandamus local board to change date of birth which had been erroneously placed on registration card as 1905 instead of 1904); Brown v. Spelman, 255 Fed. 863 (E. D. N. Y. 1918).

[10] Stone v. Christensen, 36 F. Supp. 739 (D. Ore. 1940) (injunction was refused on the ground that constitutionality of the act could be determined in the criminal action).

[11] United States *ex rel.* Bullard, 290 Fed. 704 (C. C. A. 2d, 1923) *cert. denied* 262 U. S. 760 (1923); Sel. Ser. Reg. § 641.3 (1942).

[12] Allen v. Timm, 1 Fed. (2d) 155 (C. C. A. 7th 1924).

[13] *Ex parte* Goldstein, 268 Fed. 431 (D. Mass. 1920) (Relief was granted where one lost the notice and failed to inform registrant). Farley v. Ratliff, 267 Fed. 682 (C. C. A. 4th, 1920).

[14] In only one case under the Selective Training and Service Act of 1940 has a court granted relief from a decision of a local board