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ADMINISTRATIVE LAW - SELECTIVE SERVICE ACT - FINALITY OF LOCAL DRAFT BOARD'S CLASSIFICATIONS

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RECENT DECISIONS

ADMINISTRATIVE LAW — SELECTIVE SERVICE ACT — FINALITY OF LOCAL DRAFT BOARD'S CLASSIFICATIONS — The wife of a registrant who had been placed in class I-A and inducted into the army under the Selective Training and Service Act of 1940 [1] petitioned the federal district court for a writ of habeas corpus to secure her husband's release, contending that the draft board had acted arbitrarily in classifying him. The petitioner and the registrant became engaged in December, 1939, at which time the date of their wedding was set for January 4, 1941. On November 20, 1940, the registrant filed his questionnaire with his local board, indicating that he then had no dependents but that he was to be married in January. On December 3, 1940, the board placed the registrant in class I, and he received his physical examination on January 3, 1941, the day before his marriage. The board changed the classification of the registrant from class I to class I-A on January 7, claiming that he had no dependents on the date of classification, which was December 3. *Held*, the proper date of classification was January 7; thus the registrant was released from the army because the local board had acted arbitrarily in refusing to find that the petitioner was a dependent. *Application of Greenberg*, (D. C. N. J. 1941) 39 F. Supp. 13.

The Selective Service Regulations provide for deferment if the registrant has a dependent at the time of his classification.[2] Since it also provides that a registrant cannot be placed in class I-A until after his physical examination,[3] and that he is entitled to notice of his classification [4] with a ten-day period in which to appeal,[5] it seems clear that the date of classification in the principal case was January 7. Thus a registrant can expect deferment if he marries after his physical examination before classification, provided that his wife is dependent upon him and that the marriage was not for the purpose of evading the draft law.[6] Although there is no provision in the act for review by the courts,[7] it is well settled that a federal court will issue a writ of habeas corpus if there is a showing of a denial of a fair hearing or a gross abuse of the discretion vested in the board; [8] but the courts will not review the action of the draft

[1] 54 Stat. L. 885 (1940), 50 U. S. C. A. (Supp. 1940), § 301 et seq.

[2] "In Class III shall be placed any registrant upon whom one or more dependents . . . depend for support." 3 SELECTIVE SERVICE REGULATIONS, § 23, par. 354 (1940). "Such person, *at the time the registrant is classified*, must depend . . . on income earned by the registrant. . . ." Id., § 23, par. 355 (1940).

[3] Id., § 18, pars. 330, 331 (1940).

[4] "On the same day that the local board classifies . . . a registrant, it shall mail notice thereof . . . to . . . the registrant." Id., § 18, par. 332, as amended (1941).

[5] Id., § 27, par. 371, as amended (1941).

[6] There is no presumption, as there was in the 1917 Selective Service Regulations, that a marriage occurring after the act is entered into with the primary purpose of evading military service. SELECTIVE SERVICE REGULATIONS (1917), § 72, Rule 5.

[7] See 54 Stat. L. 893 (1940), 50 U. S. C. A. (Supp. 1940), § 310.

[8] United States ex rel. Filomio v. Parvell, (D. C. N. J. 1941) 38 F. Supp. 183. For cases arising under the 1917 Selective Service Act, see: Angelus v. Sullivan, (C. C. A. 2d, 1917) 246 F. 54; Ex parte Hutflis, (D. C. N. Y. 1917) 245 F. 798.

boards if the error complained of consists of findings of facts from a consideration of the evidence.[9] In the principal case a writ of habeas corpus was the proper remedy [10] because the local board and the appeal board had acted arbitrarily in adopting the wrong date as the time of classification. It is unlikely, however, that many cases will be reviewed by the courts, since the most prominent issue will be whether or not the marriage was entered into with the purpose of evading the draft laws.[11] This is a conclusion to be drawn from the evidence and so will ordinarily remain undisturbed by the courts.

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[9] Shimola v. Local Board, (D. C. Ohio, 1941) 40 F. Supp. 808.

[10] A writ of certiorari may be issued to bring up the record in support of a writ of habeas corpus: Petition of Soberman, (D. C. N. Y. 1941) 37 F. Supp. 522.

[11] There were only two cases arising in the courts on this point under the Selective Service Act of 1917: Ex parte Tinkoff, (D. C. Ill. 1918) 254 F. 222; Boitano v. District Board, (D. C. Cal. 1918) 250 F. 812.