

TOPIC

Exception to policy religious accommodation request from the dress and appearance and grooming standards in accordance with moral, conscience, or religious belief; specifically, the Sikh articles of faith.

TEXT OF THE DECISION

This opinion is in response to an inquiry regarding a pre-accession religious accommodation request from a candidate for enlistment who is a practicing Sikh has requested an accommodation to continue wearing his beard, long hair, and turban after enlisting. He also requests approval to wear his religious bracelet and necklace. We reviewed the request and concur with the recommendation to approve the accommodation. However, we recommend approval of this religious accommodation consistent with the limitations explained herein.

BACKGROUND

Applicant plans to enlist in the Air Force. As a cadet in the Air Force Junior Reserve Officer Training Corps program, Applicant developed an appreciation for the important work the Air Force undertakes, its culture, and those who serve in the military. He participated in physical training, drill competition, and other activities while maintaining his Sikh articles of faith. He is now eager to serve in the Regular Air Force. He requests religious accommodation so he can continue his religious practices immediately after enlisting, including during Basic Military Training.

Applicant's request is based on his sincerely held religious beliefs, which require him to uphold and wear the "Five Ks": kesh (uncut hair); kangha (a comb); kara (a conservative, silver bracelet); kirpan (a dagger); and kachera (clean undergarments). The Guru Granth Sahib Ji (The Sikh Holy Bible) strongly emphasizes the concept of decency and modesty in dress for men. In his religious practice he wears a beard, which is tied up neatly, and wears long hair, which is kept in a knot atop his head and is covered by his turban. He also wears a silver bracelet around his wrist and a thin, black string around his neck, which features two small pendants in the shape of a dagger and a comb.

Applicant submitted a request for these pre-accession religious accommodations. An Air Force chaplain conducted an interview with Applicant in accordance with the procedural guidance in AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel*, 11 July 2011 (last updated by AFGM 2018-01 on 28 September 2018), paragraph 9.12.3.2. Based on the interview, the chaplain stated Applicant has kept the 5 Ks of Sikhism since he was an infant. According to the chaplain, Applicant loves and desires to serve his country, but not at the sacrifice of his faith. The chaplain states Applicant's request "appears to be a very reasonable one and within the bounds of standard religious practice for this faith group."

Also included with Applicant's request is a letter from his Head Priest, who states Applicant practices the Sikh Religion Rites and Customs and grows his beard and wears an iron bangle (Kara) which is mandatory for him. He further states Applicant and his parents follow the Sikh religious rites and customs. The High Priest requests Applicant be permitted to grow his hair and beard, and wear the Kara.

GUIDANCE

Department of Defense Instruction (DoDI) 1300.17, Accommodation of Religious Practices Within the Military Services¹

"The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all." DoDI 1300.17, paragraph 4.a.

"In accordance with section 533(a) of Public Law 112-239, as amended, unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures of this instruction." DoDI 1300.17, paragraph 4.b.

"Requests for religious accommodation will be resolved in a timely manner and will be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement." DoDI 1300.17, paragraph 4.e.

"The Air Force will allow individuals intending to enter service to submit a pre-accession request for religious accommodation exception to policy of Air Force Instruction 36-2903, *Dress and Appearance of Air Force Personnel* and receive a decision before entry." AFI 36-2002, *Enlisted Accessions*, 11 July 2017 (last updated by AFGM 2018-18-01 on 5 November 2018), paragraph 2.3.1. Subject to the reservations contained in the exception to policy decision document, all approved religious accommodation exceptions to policy continue throughout the individual's career, unless the Airman's commander later believes a modification is necessary. AFI 36-2002, paragraph 2.3.3.8.

"Religious apparel" is defined as apparel worn as part of the observance of a religious faith practiced by an Airman. Religious items and apparel, other than head covering, may only be worn visibly during religious services. Plain, dark blue or black religious head coverings may be worn, indoors if approved by the installation commander. Plain, dark blue, or black religious head coverings may be worn, concealed under the uniform/headgear, outdoors if approved by the installation commander. AFI 36-2903, paragraph 6.3.7. "Airmen may request a waiver to permit wear of neat and conservative (defined as, discreet, tidy, and not dissonant or showy in style, size, design, brightness or color) religious apparel." AFI 36-2903, paragraph 9.12.1.

¹ 10 February 2009, Incorporating Change 1, Effective January 22, 2014.

Approval Authority

“Religious accommodation requests that require a waiver of service regulations will be forwarded to the Secretary of the Military Department for decision. The Secretary may delegate authority to resolve these requests no lower than the Deputy Chief of Staff for Manpower, Personnel and Services (AF/A1).” DoDI 1300.17, paragraph 4.f.(2).

As provided in paragraph 9.12.5 of AFI 36-2903, “[r]eligious head covering requests for outdoor wear and wear of items not concealed under headgear, or those impacting grooming standards and/or personal appearance (e.g., hair length and style, tattoos, body art) require endorsement from the unit commander, installation chaplain, appropriate installation commander, and the MAJCOM, FOA or DRU A1.” The request and associated recommendations are forwarded through A1 channels to AF/A1 for approval or disapproval, per AFI 36-2903, paragraph 9.12.5.2, and AFI 36-2002, paragraph 2.3.2.1.

Commander’s Determination and Recommendation

Air Force commanders must approve requests “when accommodation would not adversely affect mission accomplishment. For requests for religious accommodation when accommodation would adversely affect mission accomplishment, in accordance with section 2000bb-1 of Title 42, United States Code, requests for religious accommodation from a military policy, practice, or duty that substantially burdens a Service member’s exercise of religion may be denied only when the military policy, practice, or duty: (a) furthers a compelling governmental interest and (b) is the least restrictive means of furthering that compelling governmental interest.” AFI 36-2903, paragraph 9.12.1.

In considering whether a compelling governmental interest exists, commanders are advised to consider that “[m]ilitary interests in standardized dress and appearance are generally substantial and commanders should take the historic, well-understood functions of and considerations about uniforms into account when considering requests for uniform and dress and appearance-related religious accommodation...” AFI 36-2903, paragraph 9.12.2.

Requesting a Religious Accommodation Exception to Policy to Air Force Dress and Appearance Standards

“Prospective Airmen may submit a letter addressed to the AFRS/CC ... through their recruiter. ... The request must include a description or photo of the requested accommodation. The recruiter will forward the request for the exception to policy to AFRS ... for endorsement by an Air Force Chaplain and, if an Air Force specialty code has been assigned, endorsement by the Airman’s career field manager.” AFI 36-2002, paragraph 2.3.3.

“AFRS/RSOC ... identifies an appropriate Air Force Chaplain to conduct an in-person or telephonic interview of the prospective Airman to assess whether the requested dress and appearance accommodation is in keeping with the doctrinal or traditional observances of the member’s faith.” AFI 36-2002, paragraph 2.3.3.1.

“Once all materials are received by the recruiter, the recruiter forwards the prospective Airman’s religious accommodation request package through command channels to the approving authority.” AFI 36-2002, paragraph 2.3.3.5.

Jewelry

“Jewelry will be plain and conservative (moderate, being within reasonable limits; not excessive or extreme) as determined by the local commander.” AFI 36-2903, paragraph 6.3.1. “Airmen may wear one bracelet around their wrist” that will be conservative in design, “no wider than one-half inch, gold or silver in color, and will not have inappropriate pictures or writing.” AFI 36-2903, paragraph 6.3.1.2. Necklaces will not be visible at any time. If worn, they will be concealed under a collar or undershirt. AFI 36-2903, paragraph 6.3.1.5.

DISCUSSION

Applicant requests a religious accommodation to wear his beard, long hair, and turban, as well as to wear his religious bracelet and necklace – all in observance of his Sikh faith. He submitted his request for a religious accommodation. The requirements to request a waiver to permit wear of neat and conservative religious items were followed as outlined in AFI 36-2903, paragraph 9.12.1, and AFI 36-2002, paragraph 2.3. Accordingly, Applicant was then interviewed by a chaplain who, in a memo, attested to the sincerity of Applicant’s religious convictions. The chaplain also recommended approval of Applicant’s request.

Case Law

In 2015, the U.S. Supreme Court held in *Holt v. Hobbs*² that the Arkansas Department of Correction’s (Department) grooming policy³ violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) insofar as it prevented inmate, Gregory Holt, a devout Salafi Muslim, from growing a one-half inch beard in accordance with his religious beliefs. The Court reversed the lower court finding that Inmate Holt failed to prove that his religious exercise was grounded in a sincerely held religious belief⁴ and that the Department’s policy substantially burdened his right to exercise his religious beliefs.

In addition, the Supreme Court reversed the lower court finding that the Department used the least restrictive means to further a compelling governmental interest. Prison officials argued the grooming policy was the least restrictive means of furthering a compelling interest in prison safety and security, because it prevented prisoners from concealing contraband in their beards and from disguising their identities. Typically, the judiciary grants great deference to the assertions of prison officials when it comes to safety and security. However, in this case, the Supreme Court

² *Holt v. Hobbs*, 135 S.Ct. 853; 190 L. Ed. 2d 747 (2015)

³ The Department’s grooming policy allowed trimmed mustaches and, for inmates who had diagnosed dermatological problems, a one-quarter inch beard. The policy otherwise forbade facial hair.

⁴ The Department asserted that the grooming policy was not burdensome because Applicant, by his own testimony, stated that the Department provided alternative means to observe his faith (e.g., prayer rug, allowed to correspond with a religious advisor, etc.). As for the beard, the Department relied on Applicant’s concession in his testimony that not all Muslim men believe that men must grow beards. The Court found that Applicant’s conviction alone supported the sincerity of his beliefs and “that the protection of RLUIPA...is ‘not limited to beliefs which are shared by all members of a religious sect.’” *Holt*, at 862 (quoting *Thomas v. Review Bd. Of Indiana Employment Security Div.*, 450 U.S. 707, 715-716 (1981)).

closely scrutinized the prison officials' assertions that Holt's request presented a safety or security issue. On the matter of using a beard to conceal contraband, the Court deferred to evidence which showed how difficult it is to hide contraband in a one-half inch beard and the lack of a policy regulating hair on an inmate's head which could more easily be used to hide contraband, to find that the Department had not met its burden of demonstrating why it couldn't employ these lesser means to further the compelling interest than the current policy. On the issue of properly identifying inmates, the Court found the Department could photograph inmates with and without beards and periodically thereafter, as a lesser alternative to the beard prohibition.

In 2015, the District Court for the District of Columbia, in *Singh v. McHugh*,⁵ ruled against the U.S. Army's denial of a religious accommodation requested by an observant Sikh, who was enrolled in a U.S. Army ROTC program, who asserted his religious conviction that he should not cut his hair or beard, and that he must wear a turban. The court granted relief under the Religious Freedom Restoration Act (RFRA). In *Singh*, the Army argued granting a grooming and/or headgear waiver, under these circumstances, would erode unit cohesion. The court observed, "[w]here a regulation already provides an exception from the law for a particular group, the government will have a higher burden in showing that the law, as applied, furthers the compelling interest." (Internal citations omitted). Because there was evidence that other Army members are permitted to maintain beards (shaving profiles), wear religious headgear (yarmulkes), and the Army had allowed several other Sikhs to serve with accommodations for their turbans, beards, and unshorn hair, the Army failed to meet its burden. The court found the Army did not prove that permitting Singh's unshorn beard would undermine the Army's compelling interests in unit cohesion, good order and discipline, and safety, any more than the medically-based beard waivers approved by the Army. The court also noted the Army did not provide evidence to show any of the soldiers and officers who have served with beards have been less disciplined, less credible, less socially integrated, or less well-trained than their clean-shaven colleagues.

Deference to Military Authorities

The Supreme Court has traditionally deferred to the professional decisions made by military authorities on issues of order and discipline in the military: "[t]he military constitutes a specialized community governed by a separate discipline from that of the civilian,"⁶ and "[t]he complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments."⁷ Indeed, when Congress enacted RFRA, it specifically acknowledged the importance of maintaining order and discipline within the military ranks, and it noted the expectation that courts would adhere to the tradition of judicial deference in matters involving both prisons and the armed forces. However, it also expressed its clear understanding that RFRA's heightened standard of review of religious accommodation determinations made by federal agencies would also apply to the military.⁸

⁵ Civil Action No. 14-1906 (ABJ), 2015 U.S. Dist. Lexis 76526 (D.D.C. 2015).

⁶ *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953).

⁷ *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973).

⁸ H.R. Rep. No. 103-88: "Pursuant to [RFRA], the courts must review the claims of...military personnel under the compelling governmental interest test. Seemingly reasonable regulations based upon speculation, exaggerated fears or thoughtless policies cannot stand. Officials must show that the relevant regulations are the least restrictive means of protecting a compelling governmental interest. However, examination of such regulations in light of a higher standard does not mean the expertise and authority of military...officials will be necessarily undermined. The Committee recognizes that religious liberty claims in the context of...the military present far different problems for the operation of those institutions than they do in civilian settings..."

Beard Accommodation

We recommend approval of the request to his beard subject to the following limitations consistent with past beard exception to policy requests:

(1) While assigned or performing routine, non-hazardous duties, applicant may wear a neat, conservative beard that presents a professional, well-groomed military appearance, (2) applicant's beard may not exceed two inches in bulk; (3) applicant may roll and tie the beard to meet the two-inch length requirement; (4) applicant must comply with all safety and sanitary requirements; (5) should applicant be assigned or directed to perform hazardous duty or operate in a hazardous environment, continuation of the accommodation must be re-evaluated by applicant's chain of command; and (6) should applicant be assigned duties for which an occupational safety assessment requires removal of the turban, necklace or bracelet, continuation of the accommodation must be re-evaluated by applicant's chain of command. Additionally, a mustache worn with a beard may extend sideways beyond the corners of the mouth to connect with the beard, but must be trimmed or groomed to not cover the upper lip.

We recommend caveats as outlined above to make approval of Applicant's request consistent with other prior approvals. We make this recommendation in light of Applicant's request to grow his beard without specifying a length. Much like the Army has already done, we strongly recommend having a consistent military standard for beard approval. Having a consistent military standard associated with beard waivers allows for individual members to freely exercise their religious convictions and allows the Air Force to maintain a uniform grooming standard for beards. In analyzing requests for religious accommodations for beards the Air Force has been consistent in permitting a beard up to two inches in bulk. Although Applicant did not request a specific length, this accommodation should align with prior accommodations.

Additionally, we recommend caveat (5) due to the heightened nature of the Air Force's compelling governmental interest in ensuring the readiness of all Airmen for contingency operations that may involve exposure to chemical, biological, radiological, or nuclear agents. The Air Force has a compelling interest in ensuring the health and safety of Applicant, which interest, under some circumstances, is furthered in the least restrictive manner by requiring compliance with grooming standards.⁹ With respect to grooming practices, the Air Force is specifically charged with the obligation to carefully consider whether an accommodation would interfere with the wear or proper function of special or protective clothing or equipment¹⁰ such as gas protective masks.¹¹

Turban and Long Hair Accommodation

We recommend approval of the request for Applicant's turban and long hair with the following restrictions:

maintaining discipline in our armed forces [has] been recognized as [a] governmental interest[] of the highest order." *See also* S. Rep. No. 103-111, at 10.

⁹ *See generally*, DoDI 1300.17, paragraph 4.h.

¹⁰ DoDI 1300.17, Enclosure, paragraph 10.(a) – (d).

¹¹ Enclosure, paragraph 5.c.

While assigned or performing routine, non-hazardous duties, Applicant may wear a turban with uncut beard and uncut hair. The turban will be worn in a neat and conservative manner that presents a professional and well-groomed appearance. The material will be plain, dark blue, or black, free of designs or markings, except that when wearing the Airman Battle Uniform or the Operational Camouflage Pattern Uniform Applicant may wear a turban or under-turban in a camouflage pattern matching the uniform. If assigned to units wearing a beret of any color, Applicant may wear an appropriately colored turban or under-turban as directed by the unit commander.

Unless duties, position, or assignment require Applicant to wear the Advanced Combat Helmet or other protective headgear, Applicant is not required to wear military headgear in addition to the turban or under-turban. Rank insignia will be displayed on the turban or under-turban when worn in circumstances where military headgear is customarily worn and removed in circumstances where military headgear is not customarily worn, such as indoors or in no-hat/no-salute designated areas.

Hair worn under the turban is not subject to the standards in Air Force Instruction 36-2903, but may not fall over the ears or eyebrows or touch the collar while in uniform. When wearing an Advanced Combat Helmet or other protective headgear with the under-turban, the bulk of the hair will be repositioned or adjusted to ensure proper fit. When directed by a commander, Applicant may be required to wear an under-turban of fire-resistant material. With respect to grooming practices, the Air Force is specifically charged with the obligation to carefully consider whether an accommodation would interfere with the wear or proper function of special or protective clothing or equipment¹² such as gas protective masks.¹³

Jewelry and Undergarment Accommodations

Applicant has also requested accommodation to continue wearing his religious bracelet and necklace. As he states in his request and as described above, Air Force policy already permits Airmen to wear jewelry that is plain and conservative. The photograph of the bracelet demonstrates it is silver and conservative. It appears to be no more than one-half inch in width. His necklace would also be permissible, so long as it is concealed under a collar or undershirt. As to the requirement to wear clean undergarments, this does not require an exception to policy.

Occupational Safety Issues

Depending on the Air Force Specialty Code Applicant receives, it may be necessary to perform an occupational safety assessment to determine whether his accommodation needs to be modified. For example, if he is assigned to aircraft maintenance, there may be safety issues to consider when working around running aircraft or during maintenance activities if PPE (personal protective equipment) wear will be affected (that is, if wearing the turban prevents proper fit and security of safety helmet, face shields, goggles, etc.), or if wearing the turban, bracelet, or necklace is otherwise deemed unsafe or in violation of AFI 91-203, *Air Force Consolidated Occupational Safety Instruction*.

¹² DoDI 1300.17, Enclosure, paragraph 10.(a) – (d).

¹³ Enclosure, paragraph 5.c.

CONCLUSION

We recommend approving Applicant's request subject to the above-mentioned limitations. We believe it is feasible to accommodate Applicant while otherwise preserving Air Force interests. We do not recommend approving Applicant's request in full and without limitations, as blanket approval of Applicant's request would not align well with Air Force Standards, and it is not what Applicant requested. In addition, without more data to support a compelling interest to deny Applicant his request under DoDI 1300.17 and case law, we believe denying the request is not legally supportable.

OpJAGAF 2019-17 27 March 2019