

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1997-097

FINAL DECISION

ANDREWS, Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10, United States Code. It commenced upon the BCMR's receipt of the applicant's application on April 11, 1997.

This final decision, dated January 14, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct her military record by restoring her aviation designator, which the Coast Guard cancelled on xxxxxxx, 199x. The applicant also asked the Board to restore retroactively her aviation career incentive pay (ACIP), which she has not received since xxxxxxx, 199x. In addition, she asked the Board to order the Coast Guard to pay her all back pay, ACIP, and allowances she would be due as a result of the corrections.

APPLICANT'S ALLEGATIONS

The applicant alleged that in a letter to her dated xxxxxxxxxxxxxx, 199x, the Coast Guard arbitrarily removed her aeronautical designator and terminated her entitlement to ACIP as of xxxxxxx, 199x. She alleged that, in doing so, the Coast Guard violated its own regulations because none of the required procedures set forth in the Personnel Manual was followed prior to the removal of her designator. She alleged that the Coast Guard had removed her aeronautical designator

in order to save money after it xxxxxxxxxxxx under which she flew. She alleged that this motive was an improper ground for the removal of her designator.

The applicant further alleged that because, by xxxxxxxx 199x, she had “operationally [flown] for over four (4) years, [she] had qualified to draw ACIP through twelve (12) years of service, from February 24, 19xx to February 24, 20xx, even without flying again.” Her four years of operational flying had given her a “statutorily vested right to ACIP” in the amount of \$650 per month. Although she currently is performing non-flight duty by xxxxxxxxxxxxxxxx, she alleged that pilots in her position are entitled to ACIP “regardless of whether [they] ever [fly] again.” Moreover, the applicant stated that she is “still physically qualified to fly and could be ordered to operational flight duties at any time.”

INITIAL VIEWS OF THE COAST GUARD

On February 24, 1998, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant’s request. The Chief Counsel stated that “[t]here is no ‘entitlement’ to career incentive pay for a specialty and a designator that no longer exists.” “[T]he Coast Guard cannot be required to maintain a rating for xxxxxxxx it does not have.” The Chief Counsel compared the elimination of the xxxxxx’s aeronautical designation to the Coast Guard’s cancellation of the sonar technician rating when sonar was removed from all Coast Guard ships.

Furthermore, the Chief Counsel questioned whether the BCMR had jurisdiction over the applicant’s case. He stated that the case is “largely a claim against the United States” and should therefore be settled by the Comptroller General, pursuant to 31 USC § 3702¹ and BCMR Docket No. 176-95. According to the Chief Counsel, the Comptroller General has held that the BCMR statute does not grant the Secretary authority to grant or withhold monetary benefits; such entitlements “depend solely on a proper application of the statutes to the facts or purported facts as shown by the corrected record in the particular case.” 34 Comp. Gen. 7, No. B-117367 (July 7, 1954; *accord*, In re Garcia, 1982 U.S. Comp. Gen. LEXIS 367, No. B-20299 (Oct. 6, 1982).

The Chief Counsel incorporated into his advisory opinion for this case a supplemental advisory opinion prepared for BCMR Docket No. 96-084. In that supplemental advisory opinion, the Chief Counsel argued that the Coast Guard’s decision to cancel all xxxxxxxx designators was a matter within its discretion. He explained that the “xxxxxxx were hired for a specific function: to plan and conduct xxxxxxx aboard XXX aircraft, and to operate the XXX’s xxxxxxxx to

¹ In 1996, the authority to settle members’ claims was transferred from the Comptroller General to the Secretary of Defense. 31 U.S.C. § 3702.

provide on-scene command, control and communications in support of other missions. . . . [W]ith the removal of the XXX xxxx from the Coast Guard's inventory, no documented mission existed for xxxxxxxxx. . . . The Coast Guard had no need for career officers to maintain aeronautical qualifications unique to an aircraft that it no longer flew." The Chief Counsel identified the central issue as "whether the Coast Guard, having determined that it no longer needed xxxxx to perform its missions, was nevertheless required to continue Applicant's xxxxx designation and continue paying Applicant career incentive pay."

In the supplemental advisory opinion to BCMR Docket No. 96-084, the Chief Counsel also argued that the assignment of "members to specific duties is a matter committed to the discretion of the Commandant." "The Comptroller General has determined that the Commandant may terminate a Coast Guard aviator's designator, and his entitlement to ACIP, when that officer's duties are changed." In re Miller, No. B-195691, 1989 U.S. Comp. Gen. LEXIS 47 (Jan. 9, 1989). He stated that the xxxxx were not entitled to an Aviator Evaluation Board before the removal of their designators because their job performance was not at issue.

The applicant in BCMR Docket No. 96-084 also argued that his right in ACIP was "vested." However, the Chief Counsel argued, the applicant's right was dependent on the statute, and without the aeronautical designator, he had no statutory right to ACIP. "[A] close reading of the statute shows that passing the requisite 'career gates' does not itself establish entitlement to career-long, continuous ACIP." The Chief Counsel argued that the statutory provision for continuous monthly ACIP for officers who complete a certain number of years of operational flying (37 USC § 301a(a)(4)) does not affect the requirement that officers hold an aeronautical rating to receive ACIP in Section 301a(a)(3). Therefore, he argued, the applicant had not proved that the Coast Guard had committed any error or injustice.

Furthermore, the Chief Counsel argued, COMDTINST 7220.39 states that "[o]fficers who are not designated aviators, flight officers or flight surgeons are not entitled to ACIP." Therefore, the Board cannot find that the applicant is entitled to ACIP "absent a showing that the Coast Guard's regulations are *ultra vires*."

APPLICANT'S RESPONSE TO THE INITIAL ADVISORY OPINION

On September 20, 1998, the applicant submitted a response to the Coast Guard's advisory opinion.

The applicant cited BCMR Docket No. 96-084 as a recently decided precedent and very similar case in which the Board had granted the applicant's request to restore his aeronautical designator and ACIP.

The applicant alleged that Coast Guard regulations permit an aeronautical designator to be removed in only two ways and that both ways give the officer an opportunity to be heard. She cited Article 6-A-1 of the Personnel Manual and Article 7-A of the Pay and Personnel Manual for this proposition. She also stated that the regulation the Chief Counsel cited as authorizing the Commandant to revoke a designator, COMDTINST 7220.39, was issued in August 1994 and was not in existence when her aeronautical designator was revoked in October 199x.

The applicant said that the Chief Counsel's comparison of the removal of her designator to the termination of the sonar technician rating was not sound because the sonar technicians did not lose any pay or benefits to which they had become entitled when the rating ended. The case In re Miller, which was cited by the Chief Counsel, is not relevant because the officer in that case had voluntarily chosen to leave an aviation career for a law career. Her case, she pointed out, is more like that of the Coast Guard's astronaut. The Coast Guard maintained the astronaut designator until the person holding it retired even though the Coast Guard was not planning to send up any spacecraft. In addition, she alleged that, contrary to the Chief Counsel's claim that the xxxxxs' mission was unlikely to be revived, "[t]he XXX program was nearly revived by Presidential order in the winter of 199x-199x." Moreover, if war were declared, the xxxxxs could serve on Navy XXX or C-130V aircraft.

The applicant alleged that the Coast Guard had acted in bad faith when it recruited xxxxxs for the XXX program because it "never really intended to develop a viable career path" for them. She alleged that the Service had used ACIP to attract aviators but had removed the incentive once the xxxxxs had been induced to serve. She likened her situation to that of the plaintiffs in United States v. Larinoff, 431 U.S. 864 (1977). In Larinoff, the Supreme Court held that the Navy could not renege on its promise to award a bonus to members who extended their enlistments when, after it had induced them to extend, their skills became less critical. Like the plaintiffs in Larinoff, she argued, "she is entitled to the ACIP award level which existed at the time she agreed to become a Coast Guard Xxxxxx."

SUPPLEMENTAL VIEWS OF THE COAST GUARD

On October 26, the Chief Counsel submitted a supplemental advisory opinion indicating that the Coast Guard had changed its position to recommend that partial relief be granted.

The Chief Counsel stated that the Coast Guard would “not contest the restoration of Applicant’s Xxxxxx designator in view of the Deputy General Counsel’s . . . endorsement of the Board’s action in BCMR Docket #96-084. However, the Coast Guard does not agree with Applicant’s request as to her ACIP entitlement.” The Chief Counsel stated that, [i]f the Board directs the restoration of Applicant’s designator, the Coast Guard would then evaluate Applicant’s status under COMDTINST 7220.39 to determine what ACIP back pay, if any, is due.”

The Chief Counsel noted that the applicant had accumulated only four and one-half years of operational flying time. Because of that, her

claim to ACIP . . . is factually distinguishable from the recently decided BCMR case in Docket #96-084. The applicant in Docket #96-084 had met the requirements of 37 U.S.C. § 301a(a)(4) for continuous monthly incentive pay by completing more than 12 years of operational flying duties thus meeting the requirements of the 2nd “gate” provision in the statute (12 years or more operational flying during the first 18 years of the officer’s aviation service). This applicant has not even passed the 1st gate. . . . Under the provisions of COMDTINST 7220.39, if a member is initially qualified for ACIP with an aviation designator, their eligibility ends when they can no longer attain a total of 8 years of operational flying time within the first 12 years of their aviation service. This Applicant will never attain 8 years of operational flying time and, therefore, Applicant cannot even qualify for her 1st “gate.”

The Chief Counsel alleged that, whereas the applicant claimed she is owed ACIP through February 24, 20xx, she would only have qualified for ACIP through April 1, 199x, if her designator had not been removed and assuming she met all of the other criteria. After April 1, 199x, it would have been impossible for the applicant to qualify for the first “gate” since the XXX program had ended. Based on a cursory review of her record, the Chief Counsel stated that, with only 4 years, 5 months, and 7 days of operational flying time, the applicant needed 3 years, 6 months, and 23 days more to meet the first “gate” of 8 years out of the first 12. The Chief Counsel calculated that the applicant’s first 12 years would end on October 22, 199x. After April 1, 199x, it was impossible for her to accumulate the 3 years, 6 months, and 23 days of additional operational flying time she needed before October 22, 199x. Thus, the Chief Counsel concluded, if the Board restored her aeronautical designator, the applicant would be owed at most 29 months of ACIP.

**APPLICANT’S RESPONSE
TO THE SUPPLEMENTAL ADVISORY OPINION**

On November 12, 1998, the applicant responded to the Chief Counsel's supplemental advisory opinion. The applicant contended that the only remaining issue for the Board to decide is how her ACIP should be calculated. She stated that the Aviation Career Incentive Act of 1974 (Pub. L. No. 93-294, 88 Stat. 177, codified at 37 U.S.C. § 301) is a "wait and see" statute that entitles her to ACIP until the end of her first 12 years of aviation service. She alleged that only at the end of those 12 years, on October 23, 199x, should the Coast Guard determine whether she has met the first "gate" and, if not, terminate her ACIP. She calculated that her ACIP payments through October 199x would amount to \$39,560. She also alleged that, even if the Coast Guard were to terminate her ACIP when it becomes "impossible" for her to meet the first "gate," she would still be due ACIP through October 23, 199x, in the amount of \$23,400. She asked the Board to order the Coast Guard to calculate her ACIP entitlement through her 12th year of aviation service, which ends October 23, 199x.

THE COAST GUARD'S THIRD RESPONSE

On November 30, 1998, the Chief Counsel responded to the applicant's submission. He stated that the applicant had

misconstrue[d] the Coast Guard's comment regarding the restoration of her Xxxxxx designator. The Coast Guard has decided not to contest the Board's decision regarding restoration of Applicant's Xxxxxx designator. That does not concede that back ACIP is automatically due to Applicant. ACIP may only be paid if the Applicant also fulfills all other requirements
...

The Chief Counsel reiterated that the calculation of any monies due the applicant as a result of the Board's decision is outside the jurisdiction of the Board, pursuant to 31 U.S.C. § 3702.

APPLICANT'S FINAL RESPONSE

On December 29, 1998, the applicant responded to the final submission of the Coast Guard. The applicant asked the Board to follow its decision in BCMR Docket No. 96-084 and grant her the reinstatement of her aeronautical designator and the retroactive payment of ACIP.

SUMMARY OF THE RECORD

On May xx, 198x, the applicant graduated from the U.S. Coast Guard Academy and received her commission. On xxxxxx, 198x, she began flight training. This date marks the beginning of her aviation service.

On xxxxxx, 198x, the applicant completed flight training, was designated a xxxxxx, and was certified as an xxxxxxxx. According to a report on xxxxxx career paths forwarded to the Commandant by the Commanding Officer of the Coast Guard Air xxxxxxxx, a xxxxxx "is an XXX [aircraft] aviator whose primary duty is to plan and conduct missions to xxxxxxxxxxxxxxxxxxxxxxxxxxxx. They also operate the XXX's xxxxxxxx to provide on-scene command, control and communications in support of xxxxxxxx and xxxxxxxx missions."

On xxxxxx, 198x, the applicant completed her training and was certified for xxxxxxxx. Soon after, she began serving at the Coast Guard Air Station in xxxxxxxx. On xxxxxx, 199x, she was designated an xxxxxxxx in the XXX aircraft. On xxxxxx, 199x, she was designated a xxxxxxxx in the XXX aircraft.

On xxxxxx, 199x, the applicant received orders to attend graduate school. On October 6, 199x, while the applicant was attending school, the Military Personnel Command issued a letter to all XXX xxxxxs. The letter announced that their aviation designators were to be removed as of xxxxxx, 199x, and that they would no longer receive ACIP. However, the letter stated, the xxxxxs could continue wearing the xxxxxx insignia. After receiving her graduate degree, the applicant was transferred on July 28, 199x, to a xxxxxxxxxxxxxxxxxxxxxxxxxxxx.

APPLICABLE LAWS

United States Code

Title 37 U.S.C. § 301a (the ACIP statute) provides the following in pertinent part:

Subsection (a)(1) states that a member is entitled to ACIP if she

- is entitled to basic pay; and
- frequently and regularly performs flying duty required by orders.

Subsection (a)(2) restricts payment of ACIP to officers who

- hold or are in training leading to an aeronautical designator; and
- engage and remain in aviation service on a career basis.

Subsection (a)(3) states that an officer is entitled to **continuous** ACIP if she

- is entitled to basic pay;
- holds an aeronautical designator; and
- is qualified for aviation service under the Secretary's regulations.

Subsection (a)(4) restricts entitlement to **continuous** ACIP to officers who

- perform operational flying duties for 9 of the first 12 or 12 of the first 18 years of aviation service.

Subsection (a)(5) ends entitlement to continuous ACIP “[i]f upon the completion of either 12 or 18 years of aviation service it is determined that an officer has failed to perform” the required 9 or 12 years of flying duty.

Subsection (a)(6) provides that entitlement to ACIP begins when an officer begins training that leads to an aeronautical designation.

Coast Guard Personnel Manual (COMDITINST M1000.6A)

Article 6.A.1. of the Personnel Manual prescribes the qualifications for Coast Guard aviators. Subsection d. permits the Commander of the Personnel Command to terminate the flight status of any aviator who, due to a non-temporary condition, does not meet the physical standards for aviators set out in the Medical Manual. Subsection h. of Article 6.A.1. permits the Commander of the Personnel Command to terminate the flight status of any aviator after convening and receiving the recommendation of an Aviator Evaluation Board upon the advice of an aviator’s commanding officer or an “administrative senior” that the aviator (1) has shown faulty judgment; (2) has demonstrated a lack of skill; (3) has demonstrated an emotional or mental inaptitude; (4) has shown him or her self to be “professionally unfit for flying for any reason”; or (5) has been determined by a military flight surgeon “not to be aeronautically adaptable.”

Coast Guard Pay and Personnel Manual (COMDTINST M5230.1)

Article 7.B.8.a. of the Pay and Personnel Manual provides that the following table shall govern how the Personnel Command pays ACIP to officers with an aeronautical designator who, like the applicant, had less than six years of aviation service as of October 1, 1991:

NUMBER OF YEARS [OF] AVIATION SERVICE	[TOTAL OPERATIONAL FLYING] TIME	ACIP STATUS	NOTES
Under 12 years	No minimum	Continuous	No minimum flight hour requirements necessary to qualify for ACIP.
12 (Gate I)	Less than 9 years	Monthly	Required to fly minimum hours each month to qualify for monthly ACIP. . . .
12 (Gate I)	9 years minimum	Continuous	No minimum flight hour requirements necessary to qualify for ACIP.
18 (Gate II)	Less than 10 years	Monthly	Required to fly minimum hours each month to qualify for monthly ACIP. . . .
18 (Gate II)	10 years minimum, but less than 12	Continuous or monthly	Continuous ACIP to 22 years of officer service, then monthly.
18 (Gate II)	12 years minimum	Continuous	Continuous ACIP to 25 years of officer

APPLICABLE CASE LAW

BCMR Docket No. 96-084

In Docket No. 96-084, the applicant was a former Navy xxxxxx who had left the Navy after completing xx years of operational flying for a direct commission as a Coast Guard xxxxxx. When the Coast Guard revoked his aeronautical designator as of xxxxxx, 199x, the applicant had completed over 12 years of operational flying. Therefore, he had passed the second “gate” and was entitled to continuous ACIP through the end of his first 25 years of service as an officer pursuant to 37 U.S.C. § 301a(a)(4).

The Board granted the applicant’s request to restore his aeronautical designator based upon the following findings:

4. . . . [T]he applicant performed the requisite amount of operational flying to preserve his entitlement to ACIP. Under Section 301a(a)(4), the applicant was not required to perform any more operational flying to preserve that entitlement. By removing the applicant’s aeronautical designator, and thereby terminating the applicant’s aviation service, the Coast Guard has unjustly deprived the applicant of ACIP after the applicant fulfilled all of the statutory requirements that were necessary for him to establish his entitlement to that pay, and to preserve that entitlement until the applicant completes 25 years of service as an officer.

5. The Coast Guard committed an error in canceling the applicant’s aeronautical designator and terminating his receipt of ACIP. . . . The fact that no present or prospective missions may exist does not negate the entitlement to ACIP that the applicant has already earned by virtue of performing 12 years of operational flying duties.

United States v. Larinoff, 431 U.S. 864 (1977).

In the early 1970s, the appellee extended his enlistment in the Navy in order to receive a bonus under the Variable Re-enlistment Bonus (VRB) program. *Id.* at 867. Before the extension became operative, however, the Navy reduced the size of the promised bonus because the appellee’s skills were determined to be less critical. In addition, Congress repealed the VRB program in 1972, prior to the effective date of the appellee’s extension. *Id.* When the extension became operative, the Navy refused to pay the promised bonus. *Id.*

The Court found that payment of members of the armed forces is governed by statutory rights rather than by ordinary contract rights. *Id.* at 869. After

reviewing the legislative history of the VRB program, the Court held that “[b]ecause Congress intended to provide at the re-enlistment decision point a promise of a reasonably certain and specific bonus for extending service in the Armed Forces, Larinoff and the members of his class are entitled, as the Court of Appeals held, to payment of VRB’s determined according to the award levels in effect at the time they agreed to extend their enlistments.” *Id.* at 877.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. The applicant requested an oral hearing before the Board. The Chairman, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The applicant asked the Board to restore her aeronautical designator, which the Coast Guard removed on xxxxxxxxxx, 199x, making her ineligible for ACIP. She alleged that in doing so, the Coast Guard had violated its own regulations and the ACIP statute. She argued that her four-plus years of operational flying gave her a “statutorily vested right to ACIP” until February 24, 20xx, when she would have finished 12 years of aviation service. Citing BCMR Docket No. 96-084 and *United States v. Larinoff*, 431 U.S. 864 (1977), the applicant stated that “she is entitled to the ACIP award level which existed at the time she agreed to become a Coast Guard Xxxxxx.” She therefore asked the Board to order the Coast Guard to pay her ACIP through February 24, 20xx.

4. The Chief Counsel of the Coast Guard chose not to contest the restoration of the applicant’s designator in light of the Final Decision in BCMR Docket No. 96-084. The Chief Counsel stated that pursuant to 31 U.S.C. § 3702, the Board has no authority to calculate any monies due the applicant as the result of a decision to correct her record by restoring her aeronautical designator. The Chief Counsel stated that a cursory review of its regulations suggested that, if the Board restored the applicant’s designator, she might be owed up to 29 months of ACIP.

5. The Chief Counsel’s decision not to contest the restoration of the applicant’s aeronautical designator does not close the inquiry into that issue for the Board. In BCMR Docket No. 96-084, neither the Board nor the Deputy Gen-

eral Counsel concluded that the Commandant can never remove an aviator's designator and stop his or her ACIP because the Coast Guard has abolished the program under which the aviator flies. Instead, the Board held that, because the applicant in BCMR Docket No. 96-084 had completed over 12 years of operational flying time and thereby passed the second "gate," he had a statutory right to continuous ACIP through his twenty-fifth year as an officer pursuant to 37 U.S.C. § 301a(a)(4). The Board found that the Coast Guard had committed error and injustice by removing his aeronautical designator in order to cancel his ACIP in violation of his statutory right to continuous ACIP.

6. The Board finds that, following the decision in BCMR Docket No. 96-084, it must determine whether this applicant had a statutory right to continuous ACIP that rendered the removal of her designator due to the xxxxxxxxxxxx erroneous or unjust. Absent a statutory right to continuous ACIP, the Board must determine whether the Coast Guard violated its own regulations or committed injustice in removing the applicant's designator and denying her ACIP.

7. The applicant argued that as of xxxxxxxx, 199x, she had acquired a "statutorily vested" right to continuous ACIP because she had completed more than four years of aviation service. If the Board were to read the subsections of 37 U.S.C. § 301a as providing separate, independent bases for entitlement to continuous ACIP, that interpretation would be reasonable. In fact, read independently, subsections (a)(3) and (a)(5) would seem to entitle an officer who held an aeronautical designator for just one day to continuous ACIP for 12 years even if the Coast Guard no longer flew any planes (assuming the officer remained qualified to fly). However, the Board does not believe that it can ignore subsection (a)(4) in determining whether an officer has a statutory entitlement to continuous ACIP. Subsection (a)(4) expressly restricts the statutory entitlement to continuous ACIP to officers who have performed operational flying duties for 9 of the first 12 years of aviation service. With less than five years of operational flying duties, the applicant has not met this requirement. Therefore, the Board finds that the Coast Guard did not violate a statutory right of the applicant's when it removed her aeronautical designator and denied her ACIP.

8. The applicant also argued that the Coast Guard violated its own regulations when it removed her designator. She alleged that the Coast Guard could only remove aeronautical designators pursuant to Article 6.A.1. of the Personnel Manual and Article 7.A. of the Pay and Personnel Manual. Article 6.A.1. of the Personnel Manual is inapplicable because the removal of the applicant's designator was not caused by any change in her physical, mental, or other qualifications. Article 7.A. of the Pay and Personnel Manual is irrelevant to whether the applicant has a right to an aeronautical designator. That article merely pre-

scribes how the Coast Guard Personnel Command is to pay ACIP to officers who hold those designators.

9. The applicant argued, in essence, that because there were no regulations prescribing how the Commandant could terminate the designators of participants in a terminated program, the Commandant could not terminate her designator. The Board is not persuaded by the applicant's argument. No law or regulation states that the Commandant may only remove designators when the removal is justified by a personal failure of the officer to qualify for the designator. Article 6.A.1. merely provides the process by which a designator should be removed when an officer does fail to qualify. Therefore, the Board finds that the Coast Guard did not violate its own regulations when it removed the applicant's aeronautical designator.

10. The applicant argued that under *United States v. Larinoff*, 431 U.S. 864 (1977), she is entitled to the ACIP award level which existed at the time she agreed to become a xxxxxx. In *Larinoff*, the Court found that payment of a member of the armed forces is governed by statutory rights rather than by ordinary contract rights. *Id.* at 869. As stated in Finding No. 7, above, the Board finds that the applicant had no statutory right to continuous ACIP.

11. The applicant also argued that, because the Coast Guard had not removed the designator of an astronaut even though "the Coast Guard was not planning to send up any spacecraft," it was unjust for the Coast Guard to remove her designator when it scrapped the XXX program. The Coast Guard did not address this issue. Nevertheless, the Board is not persuaded that the applicant's circumstances can be fairly equated to those of the astronaut. Because the Board is not aware that the Coast Guard has ever operated spacecraft, it presumes that the astronaut designator has been assigned to members participating in a space program conducted by another government agency. There is nothing in the record to suggest that the Coast Guard has terminated its participation in the space program. In contrast, the Coast Guard has specifically canceled the XXX program, on which the applicant relied in requesting retention of her aeronautical designator.

12. Accordingly, the Board finds that the Coast Guard did not commit any error or injustice in removing the applicant's aeronautical designator and denying her ACIP. Therefore, her application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of XXXXXXXX, USCG, is hereby denied.

Angel Collaku

Mark A. Holmstrup

Coleman R. Sachs