

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2013-153**



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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on July 25, 2013, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 10, 2014, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a [REDACTED] who was retired from the Coast Guard while his application was pending, asked the Board to correct his record to show that he was not selected for involuntary retirement by the Career Retention Screening Panel (CRSP) in June 2012 and was instead allowed to remain on active duty.

The applicant explained that he was selected for involuntary retirement by the CRSP that convened in June 2012, and he was notified in August 2012 that he would be retired involuntarily on December 1, 2013. The Coast Guard, however, failed to provide any reason for his selection in this regard. He appealed the decision, but his appeal was denied. The applicant stated that he also submitted a request to the Master Chief Petty Officer of the Coast Guard, who referred him to his Sector's Command Master Chief, but that position was vacant and the officer who served as the District's Command Master Chief had served on the CRSP, so asking him would have been unethical.

The applicant argued that the entire CRSP process was unjust because he was never told why he was selected "as not being worthy to continue serving" in the Coast Guard. He stated that there is no negative information in his record that "stands out that would be used to flag me and to discard me under the CRSP," and so he submitted his appeal "blindly" because no one could tell him why he was selected for retirement. In this regard, he noted that the proceedings of the CRSP are privileged and confidential. He argued that he could not reasonably appeal his selection since no one would tell him why he was selected.

The applicant stated that the only reason he might have been selected for retirement was his lack of recent advancement. He noted that he had repeatedly competed for advancement to master chief but always ended up in the middle of the advancement list and so was not advanced because there are not enough vacancies. However, he placed higher on the advancement list following the May 2012 servicewide examination (SWE) and so expected to advance to master chief before his retirement. The applicant noted that he also applied for and was selected to attend the prestigious [REDACTED] to improve his leadership, which cost the Coast Guard thousands of dollars for him to attend. He was required to obligate an additional 30 months of service following graduation to attend the school, but instead of being allowed to fulfill that obligation, he was involuntarily retired. Therefore, the Coast Guard will not get its return on the investment.

The applicant stated that the Board should grant relief because the Coast Guard failed to provide him with any reason for his selection for retirement. Another basis for granting relief, he stated, is that the Coast Guard changed the rules for the CRSP. He explained that after the first CRSP convened in 2010, he was not selected for retirement, and the Coast Guard stated that those who were not selected would not be rescreened until 2013. In January 2012, however, the Coast Guard announced that everyone who had been screened in 2010 would be rescreened in 2012 instead of 2013.

The applicant concluded that he should be retained on active duty, advanced to master chief, and assigned to an appropriate master chief billet. In support of his allegations [REDACTED] - cant submitted the following documents:

- The CRSP precept, dated June 8, 2012, directed a nine-member panel of officers and master chiefs to convene on June 18, 2012, to consider members who were eligible for retirement for involuntary retirement. The precept instructed [REDACTED] to review the candidates' records carefully to "afford each eligible candidate fair and equitable consideration." The panel was instructed to prepare a list of those selected for retirement and another list of those selected for continuation and was not given any quota. The panel was instructed to screen for continuation those who, *inter alia*, "show a propensity for upward mobility, advancement, and superior performance"; who "demonstrate a commitment to continual learning and self-improvement through the pursuit of advanced education"; who had "a record of creating and sustaining effective command climates and work environments characterized by respect for others and attention to the morale and welfare of subordinates"; who "possess an attitude of selflessness, humility, professionalism and enthusiasm"; who could "inspire, mentor, and encourage our people to greater levels of performance"; who would "hold subordinates accountable for lapses in performance and/or behavior"; who could provide "the leadership necessary to meet the current missions and operational tempo"; "who have demonstrated the potential to lead a diverse workforce and create circumstances for the success of all Coast Guard members"; and who reflect "the highest standards of conduct, integrity, capability, attitude, and military bearing."
- A certificate and transcript show the applicant's successful completion of the [REDACTED] on June 22, 2012.

- Correspondence shows that while on leave in August 2012, the applicant was advised by phone call, email, and letter that he had been selected for involuntary retirement by the CRSP.
- On August 30, 2012, the applicant appealed the decision of the CRSP on the following grounds: (a) He graduated from the [REDACTED] in late June following the CRSP, and the Coast Guard would not get a return on its investment if he were retired; (b) his predecessors in his current billet had retired in 2011 and 2012 and so his retirement in 2013 would deprive the Command Center of leadership stability; he had always intended to serve 30 years and had pursued education via the [REDACTED], the Command Master Chief Course, the Chief Petty Officers Academy, a bachelor's degree in Human Resources and Management, and a master's degree in Human Resources "to ensure that the Coast Guard had a leader that had the knowledge, skills, and abilities that the Coast Guard needs."
- On October 5, 2012, the Commanding Officer of the Personnel Service Center (PSC) denied the applicant's appeal and reminded him to submit his request to retire on or before December 1, 2013.
- On January 16, 2013, the Coast Guard responded to an inquiry from a congressman on behalf of the applicant. The Coast Guard stated that the Secretary had authority to approve the results of the CRSP under 10 U.S.C. § 1169 and 14 U.S.C. § 357(j). The Coast Guard noted that no reason could be provided for the applicant's selection for retirement because the deliberations and proceedings of the CRSP are privileged, but that the panel was aware of the applicant's educational achievements and that two-thirds of the nine-member panel had to approve a member's selection or non-selection for retirement.
- On January 30, 2013, the Coast Guard responded in similar fashion to an inquiry from a senator on behalf of the applicant.
- On July 19, 2013, the applicant sent an email to a Command Master Chief following up on a telephone conversation. He argued that he should not be retired because the Coast Guard had not yet received its return on the investment of taxpayers' dollars in sending him to [REDACTED], that he had had to obligate additional service to attend the school, and that the Coast Guard should therefore honor its obligation to him. He noted some of the many sacrifices he and his family had made over the years for the Coast Guard and stated that he felt discarded and disgraced since no one would tell him why he was selected for retirement.

### VIEWS OF THE COAST GUARD

On November 26, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG argued that the Board should deny relief because the applicant has failed to substantiate any error or injustice in his selection for retirement by the CRSP based on a two-thirds vote of the nine-member panel. The JAG stated that the CRSP was announced in ALCOAST 025/12, issued on January 13, 2012, and those eligible for the screening were advised [REDACTED] their military records for accuracy.

The JAG noted that the applicant complained about the lack of a reason for his selection but that the proceedings of such boards are privileged, and the members may not discuss their deliberations. In addition, the JAG stated, the applicant “was afforded an additional level of review and consideration through his appeal of 30 August 2012, which was subsequently denied.”

The JAG also [REDACTED] memorandum prepared by the Personnel Service Center (PSC). PSC stated that the applicant’s record was reviewed by the CRSP in accordance with the precept and that he was selected for retirement by a vote of two-thirds of the nine panel members. His appeal was carefully considered and denied. Therefore, PSC argued, no relief should be granted.

### APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 12, 2014, the applicant responded to the views of the Coast Guard. The applicant repeated many of the allegations that he included in his application and noted that since he was retired on December 1, 2013, he is now requesting that his retirement be voided and that he be reinstated on active duty with back pay and allowances. In addition, he asked to be advanced to master chief on December 1, 2013, because members who placed below him on the advancement list were advanced on that date.

The applicant argued that his pursuit of continuing education, completion of [REDACTED], and performance record show that he has the leadership skills needed by the Coast Guard. He argued that the CRSP results showed that the Coast Guard cares only about saving money and not about the value people bring to the organization.

The applicant stated that because he was assigned to the [REDACTED], he did not see ALCOAST 025/12 and was unaware that he would be subject to the CRSP. He reviewed his record after the CRSP, however, and did not find any negative information or error that might have caused his selection for retirement by the panel.

### APPLICABLE LAW AND POLICY

Title 14 U.S.C. § 357 includes the following provisions: “(a) Enlisted Personnel Boards shall be convened as the Commandant may prescribe to review the records of enlisted members who have twenty or more years of active military service. (b) Enlisted members who have twenty or more years of active military service may be considered by the Commandant for involuntary retirement and may be retired on recommendation of a Board—(1) because the member’s performance is below the standards the Commandant prescribes; or (2) because of professional dereliction. (c) An enlisted member under review by the Board shall be—(1) notified in writing of the reasons the member is being considered for involuntary retirement; (2) allowed sixty days from the date on which counsel is provided ... to submit any matter in rebuttal; (3) provided counsel ... to help prepare the rebuttal ... and to represent the member before the Board ...; (4) allowed full access to and be furnished with copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal ...; and (5) allowed to appear before the

Board and present witnesses or other documentation related to the review.” However, subsection (j) of § 357 states, “When the Secretary orders a reduction in force, enlisted personnel may be involuntarily separated from the service without the Board’s action.”

Title 10 U.S.C. § 1169 states that “no regular enlisted member of an armed force may be discharged before his term of service expires, except—(1) as prescribed by the Secretary concerned; (2) by sentence of a general or special court-martial; or (3) as otherwise provided by law.”

ALCOAST 025/12, issued on January 15, 2012, announced the upcoming CRSP and stated the following:

1. Planning is underway to conduct the 2012 CRSP in June. The CRSP was initially implemented in 2010 to preserve upward mobility in the enlisted workforce. The 2012 CRSP will again use a performance and conduct based methodology to determine who will be retained on active duty. The candidate pool will consist of all eligible enlisted personnel who were not reviewed by the 2011 CRSP and who meet the following criteria:

A. All E-6 and below with 20 or more years of active military service as of 01 June 2012.

B. All E-7 and above with 20 or more years of active military service who have three or more years’ time in grade as of 01 June 2012.

2. All personnel who meet the criteria in paragraph 1 above should use the next few months to review and update Direct Access information and work with SPO or admin offices to ensure the electronic personnel data record (EI-PDR) is accurate and complete. It is the SPO responsibility to ensure that all required information in the member’s SPO PDR is also in the member’s EI-PDR. However, it is in each member’s best interest to verify the contents.

3. Additional information on the 2012 CRSP will be provided in future messages. Previous CRSP messages, FAQs, and statistics are available on the PSC-EPM-1 website ...

### PRIOR BCMR CASE

In BCMR Docket No. 2011-130, the Board addressed the legality of the 2010 CRSP, determined that the CRSP was held pursuant to a “reduction in force,” and denied the applicant’s request for relief in that case. The Board noted that 10 U.S.C. § 1169 authorizes the Secretary to prescribe how an enlisted member may be discharged before his term of service expires and that 14 U.S.C. § 357(j) permits Coast Guard enlisted personnel to be involuntarily retired from the service without receiving an individual hearing before an enlisted personnel board when the Secretary orders a “reduction in force.” The Board based its holding that the 2010 CRSP process was a “reduction in force” on a series of ALCOAST messages in that time frame stating that the Coast Guard had more personnel than funded billets.

## 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 over this matter under 10 U.S.C. § 1552(a). The application was timely filed.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>1</sup>

3. The applicant alleged that his involuntary retirement pursuant to the CRSP convened in June 2012 was erroneous and unjust because nothing in his record warrants selection for separation, because the Coast Guard failed to get the 30 months of additional service it required him to obligate before attending ██████████, and because the Coast Guard provided him with no reason for his selection for retirement, and because the Coast Guard changed the rules for the CRSP. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>2</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>3</sup>

4. As did BCMR Docket No. 2011-130 with respect to the 2010 CRSP, this case involves the validity of the 2012 CRSP under 10 U.S.C. § 1169 and 14 U.S.C. § 357(j). The Board has concerns on this point. While the definition of "reduction in force" is not specifically defined for purposes of section 357(j) by statute or regulation, the essence of that term as used in other contexts is the termination of employment based on the elimination of the employee's position for budgetary or other business reasons. The Board is troubled by the discontinuity between the term reduction in force and the stated goal for the 2012 CRSP—the preservation of upward mobility—since in order for that goal to be achieved, more senior positions would need to be maintained in order to fill them through advancement of more junior members of the Coast Guard, rather than terminated. A process that, at its core, removes personnel from their employment positions in order to fill those positions with others who are viewed as more desirable as a matter of military policy, and in turn to fill the lower ranking positions with new accessions, regardless of its merits as policy (which the Board does not contest), is of questionable consistency with the term "reduction in force." Numerous cases stand for the proposition that when an employee is replaced in his or her position, that is not a "reduction in force."<sup>4</sup> However, there is evidence that the Coast Guard continued to undergo reductions in effective strength during the

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<sup>1</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>4</sup> See, e.g., *Sanders v. Kohler Co.*, 641 F.3d 290, 294-95 (8<sup>th</sup> Cir. 2011); *Oil, Chemical and Atomic Workers Int'l Union v. RMI Titanium Co.*, 199 F.3d 881, 885 (6<sup>th</sup> Cir. 2000).

period of the 2012 CRSP. According to Coast Guard data, in fiscal year (FY) 2010 the Coast Guard had 32,802 enacted enlisted positions. The FY 2011 President's Budget proposed a reduction of 978 positions from the enlisted workforce. The FY 2012 President's Budget proposed a reduction of 116 positions from the enlisted workforce. The FY 2013 President's Budget proposed a reduction of 738 positions from the enlisted workforce. The FY 2014 President's Budget proposed a reduction of 979 positions from the enlisted workforce. The numbers reflect a downward trend in the number of enlisted positions in the Coast Guard. Although the actual enacted numbers varied from the President's Budget requests, the Coast Guard needed to take appropriate steps to meet those proposed budgeted numbers. The enacted numbers also show a downward trend for enlisted positions. In FY 2010 the Coast Guard had 32,802 enlisted positions, but in FY 2014 the Coast Guard has 31,944 enlisted positions, which is a reduction of 858 enlisted positions since FY 2010. The Board notes as well that shortly after the January 2012 announcement of the 2012 CRSP, Commandant Papp stated in his February 23, 2012 State of the Coast Guard Address, "Navigating Uncertain and Stormy Seas": "The de-commissioning of high endurance cutters and patrol boats and the tightening of staffs in 2013 budget will reduce our personnel strength by over 1,000 people." Given that, and in light of the broad authority generally granted to Service Secretaries under 10 U.S.C. § 1169 to determine the discharges of enlisted personnel, the Board's concerns do not rise to the level of overcoming the presumption of regularity with respect to the implementation of the 2012 CRSP.

5. The applicant has not proved by a preponderance of the evidence that his involuntary retirement pursuant to the CRSP in 2012 constituted an error or injustice. Pursuant to the CRSP, the applicant was selected for retirement. He has not shown that those selected for retirement were legally entitled to a hearing or even a reason for their selection for retirement despite their lengthy careers and honorable devotion to duty. The applicant's selection shows only that at least six of the nine members of the CRSP selected him for retirement based on the criteria in the precept and the need to increase upward mobility in the shrinking enlisted workforce. Hundreds of skilled, educated, and experienced senior petty officers have been selected for involuntary retirement by the CRSPs in recent years.<sup>5</sup> The applicant has not shown that his being one of them is a result of error or injustice.

6. The applicant alleged that he was advised after being selected for continuation by the CRSP in 2010 that he would not be subject to screening until 2013, but the Coast Guard reneged on this promise by subjecting him to screening in 2012. The applicant did not submit anything to support his claim, but even if the Board assumes it is true, the policy change presumably met Service needs, and he has not shown that he was singled out or treated differently than other similarly situated petty officers who were selected for continuation in 2010.

7. The applicant argued that he should not have been separated because the Coast Guard spent thousands of dollars in 2012 for him to attend ██████████, and to attend that school, a member must agree to remain on active duty for at least 30 months after graduation. An enlistment contract, however, does not establish a contractual right to remain on active duty.<sup>6</sup> Certainly, as the applicant stated, obligated service requirements for training are intended to ensure that the Coast Guard benefits from the training it pays for, and the CRSP's decision pre-

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<sup>5</sup> The 2012 CRSP reviewed 677 members, of whom 530 were selected for retention and continued service.

<sup>6</sup> *Giglio v. United States*, 17 Cl. Ct. 160, 166 (1989).

vented the Coast Guard from reaping some of the benefit of the applicant's training. Because the proceedings of such boards are confidential, however, no one but the CRSP knows how it weighed such matters, but obligated service requirements are not mentioned in the CRSP's precept. The applicant drew this issue to the attention of the Personnel Service Center in his appeal of the CRSP's decision, but his appeal was not approved.<sup>7</sup> Therefore, it appears that matters other than obligated service requirements weighed most heavily in the decision-making of the CRSP and PSC. The applicant has not persuaded the Board that the CRSP or PSC erred or committed injustice in this regard.

8. Because the applicant has not proved by a preponderance of the evidence that his involuntary retirement on December 1, 2013, pursuant to the CRSP was erroneous or unjust, his request for relief should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>7</sup> ALCGENL 007/12 stated that "personnel notified that they have been identified for involuntary retirement can appeal the decision based only on material error, newly discovered evidence, or the presence of improper documents in the member's personnel file."



**ORDER**

The application of [REDACTED], USCG (Retired), for correction of his military record is denied.

April 10, 2014

